

# **MANAGEMENT AGREEMENT,**

made this \_\_\_\_ of July 2019 between the parties, Charles Henry Properties, LLC., a New York Corporation (the "Agent") and John Riccardi and Jeffrey Shah, jointly (the "Owner").

The parties hereby agree as follows:

## **I. APPOINTMENT AND ACCEPTANCE**

The Owner appoints the Agent to be its sole and exclusive managing agent for the property located at 534 West 42nd Street, Unit 4, New York, N.Y. 10036 (the "Property"). The Agent accepts the appointment and agrees to furnish its services for management of the Property, subject to and in accordance with the terms of this Agreement.

## **II. AGENTS OBLIGATIONS**

### **A. OPERATIONS**

1. Personnel: The Agent, for the account of the Owner, agrees to cause to be hired, discharged, supervised and paid employees and other personnel required to operate and maintain the Property. All employees and other personnel shall be considered to be employees of the Owner and not the Agent. The Agent shall use its reasonable best efforts to cause qualified employees and personnel to be hired. The Agent, however, shall not be responsible for their acts, omissions, errors, defaults or negligence. The Agent agrees not to hire any employees to operate and maintain the property without the prior written consent of the Owner.

2. Maintenance and Repairs: The Agent agrees to cause to be made, through employees of the Owner, contracted services, or otherwise, all ordinary repairs and replacements which Agent deems reasonably necessary to preserve the Property in its present condition and for the operating efficiency of the Property.

3. Contracts: In performing its duties hereunder, the Agent is authorized to negotiate and enter into, in either the Owner's name or the Agent's name, as the Agent may elect, various contracts for window cleaning, air conditioning maintenance, security, pest control and other services and supplies which the Agent deems necessary or prudent for the maintenance or operation of the Property. The Agent agrees to notify the owner of any such negotiations and pending contracts and make best efforts to contact the owner for permission prior to entering into said contracts. All discounts and rebates related to purchases will be credited to the Owner.

4. Owner's Consent to Repairs and Contracts/Emergency Repairs: Notwithstanding any other provision contained herein to the contrary, repairs, services and purchases and contracts for repairs, services and purchases costing more than \$100.00 per occurrence must be approved in advance by the Owner except that, if the Agent believes emergency repairs are needed (i.e. those immediately necessary for the preservation of the safety of the Property or the Property's occupants or to avoid the suspension of any

essential service to the Property or to avoid danger to life or property, or to comply with federal, state or local laws), the Agent shall be entitled to arrange for the emergency repair irrespective of cost without prior consent of the Owner.

## **B. PROPERTY SERVICES**

1. Payment of Bills: The Agent agrees to review all bills received by the Agent for services, supplies and, if the billing is believed to be correct, pay such bills or cause such bills to be paid out of the funds in the Agent's account. Receipt and payment of bills for taxes and mortgage payments remain the sole responsibility of the Owner.
2. Collecting Rent and Charges: The Agent agrees to bill and collect or cause to be billed and collected all rents and other fees from all tenants and subtenants, If the Owner establishes a general schedule of rents fees and other charges chargeable with respect to the Property and notifies the Agent of such schedule, the Agent will observe such schedule.
3. Monthly Financial Statements: The Agent agrees to provide the Owner with a monthly financial summary showing disbursements and collections with respect to the operation of the Property for the previous month. Such summary shall include a monthly collection report, cash flow statement, and disbursement register.
4. Tax Records: Upon thirty (30) days' prior request from Owner, the Agent agrees to provide the Owner's accountant with all records in the Agent's possession which the Owner's accountant requires to prepare and file on the Owner's behalf all federal, state, local and other required tax returns, and assist the accountant in its annual audit of the books of account.
5. Insurance: If requested by Owner, the Agent agrees to assist the Owner in hiring an insurance agent acceptable to Owner, but the Agent shall not in any way be responsible for the failure to obtain any specific coverage or for the failure to obtain adequate coverage or for any errors or omissions in any insurance policy. The Agent shall file all insurance claims with the insurance agent.
6. Security Deposits: The Owner agrees to collect, deposit and disburse security deposits in accordance with the terms of each lease or security agreement.

## **C. ADMINISTRATION**

1. Record Maintenance Procedures: The Agent agrees to establish and maintain in good order reports, records and books for the Owner, and maintain files containing maintenance/rent records, insurance policies, leases and subleases, correspondence, receipted bills and vouchers and all other documents and papers pertaining to the Property or their operation.
2. Availability of Records: The Agent will make available to the Owner, all tenant-shareholders and the Owner's officers, accountants, attorneys or other representatives, all documents and records held by the Agent pursuant to this Agreement. The Owner will promptly make available to the Agent any and all documents and records pertinent to the Property or which the Agent considers useful in the performance of its duties hereunder.
3. Communication Between Owner and Occupants: The Agent shall communicate to the occupants of the Property, and supervise the implementation of all of

the Owner's policies with respect to the Property.

4. Leases: The Agent agrees to assist the Owner in the preparation of a lease and sublease form for the Property. All leases shall be signed by the Owner and not the Agent.

### **III. RELATIONSHIP OF AGENT AND OWNER: AUTHORIZATION TO PERFORM**

The relationship of the parties to this Agreement shall be that of principal and agent and all duties to be performed by the Agent under this Agreement shall be for and on behalf of the Owner, in the Owner's name and for the Owner's account. In taking any action under this Agreement, the Agent shall be acting only as the agent for the Owner and nothing in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement except that of principal and agent, or as requiring the Agent to bear any portion of losses arising out of or connected with the ownership or operations of the Property. Nor shall the Agent at any time during the term of this Agreement be considered a direct employee of the Owner. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement, except that the Agent is authorized to act with such additional authority and power as may be necessary to carry out the spirit and intent of this Agreement. All duties of the Agent may be delegated to employees of the Agent. Unless otherwise specifically directed in writing by the Owner, the Agent may rely on the directions or statements of any person claiming to be authorized to speak on behalf of the Owner, including, but not limited to, any agent or employee of the Owner or any attorney of the Owner.

### **IV. DEPOSITS AND DISBURSEMENTS FROM ACCOUNT**

#### **A. DEPOSITS**

The Agent shall deposit all rents, maintenance fees and other receipts with respect to the Property (other than security deposits) in an account (the "Account") held by the Agent in a bank designated by the Agent. The Agent shall not in any way be responsible for the failure, insolvency or bankruptcy of such bank or any other chosen depository for any losses arises therefrom.

#### **B. DISBURSEMENTS**

The Agent is authorized to pay, or reimburse itself for, from the Owner's account, all monthly or recurring payments and all other expenses and costs incurred in connection with the performance by the Agent of its duties pursuant to this Agreement, the operation of the Property, and the payment of any sums due the Agent hereunder (including but not limited to, the Agent's compensation hereunder). In the event the balance in the Account is insufficient to pay disbursements hereunder, the Owner will promptly remit to the Agent sufficient funds to cover any deficiency.

#### **C. ADVANCE PAYMENTS AND REIMBURSEMENTS**

Notwithstanding any other provision in this Agreement to the contrary, the Agent shall not be obliged to make any advances to, or for the account of, the Owner, or to pay any amounts in connection with the Property or this Agreement except out of

funds in the Account, nor shall the Agent be obliged to incur any financial liability or obligation in connection with the Property or this Agreement unless the Owner shall first furnish the Agent with the necessary funds for that purpose. If the Agent elects to advance funds on behalf of the Owner or incur any expense on behalf of the Owner, the Owner shall reimburse the Agent for such expenditures immediately upon demand thereof and the Owner authorizes the Agent to deduct all such amounts from funds in the Account.

#### **D. OWNERS DISBURSEMENTS**

Agent hereby agrees to make quarterly disbursements to Owner or at any time at the request of Owner, any and all funds it has received for the account of Owner, less any expenditures made on behalf of Owner including Agent's management fee and anticipated expenses related to contractual obligations of the Owner relating to the Property.

### **V. OWNER'S OBLIGATIONS**

#### **A. EXPENSES**

All expenses resulting from the performance by the Agent of its duties hereunder on behalf of the Owner, including, but not limited to, repair and maintenance expenses, utility deposits, premiums and deductibles required under insurance policies, attorney's fees and costs, wages and other compensation of employees, contractors or other personnel employed with respect to the management, maintenance or operation of the Property shall be paid by the Owner.

#### **B. INSURANCE**

The Owner shall, at the Owner's expense, at all times carry and maintain in full force and effect adequate property insurance, liability insurance, worker's compensation insurance, employer's liability insurance, employee dishonesty bond, fidelity bond and such other insurance as may be necessary for the protection of the interests of the Owner and the Agent. The Agent shall be named as additional insured under all such insurance policies including, but not limited to, all employee, vendor and contractor liability and compensation insurance policies, and the Owner shall deliver certificates evidencing the same to the Agent upon demand therefor. Said policies shall provide that notice of default or cancellation shall be sent to the Agent as well as the Owner and shall require a minimum of thirty (30) days' written notice to the Agent before any cancellation of or changes to said policies.

#### **C. INDEMNIFICATION: DEFENSE OF CLAIMS**

1. The Agent shall not be liable to the Owner for any loss or damage not caused by the Agent's own gross negligence or willful misconduct with respect to the Property or the performance of the Agent's obligations hereunder. The Owner shall promptly defend, indemnify and hold the Agent (including the Agents' shareholders, directors, officers, employees and other representatives) harmless from and against;

a. Any liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements and those incurred in enforcing this indemnity) arising out of or connected with claims of personal injury or property damage

sustained, incurred or incurring on, in, about, or in connection with the Property unless such injury or damage shall be finally adjudicated to have been caused by the Agent's own gross negligence or willful misconduct; and

b. Any liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements and those incurred in enforcing this indemnity) arising out of or connected with claims relating to the performance of acts by the Agent pursuant to this Agreement or under the express or implied consent of the Owner.

2. The Agent, promptly upon receipt of notice of any claim, act or proceeding shall cooperate fully with the Owner and its attorneys. In the event the Owner fails to defend any such action or proceeding, or elects to defend in its own name, the Agent may defend the same at the sole cost and expense of the Owner.

## **VI. LIABILITY**

The Agent assumes no liability whatsoever for any acts or omissions of the Owner or any previous owners of the Property or any previous management company or other agent of either. The Agent assumes no liability for any failure of or default by any tenant in the payment of any rent or other charges due the Owner or in the performance of any obligations owed by any tenant to the Owner pursuant to any lease or otherwise. Nor does the Agent assume any liability for any violations of environmental or other regulations. No officer, director or shareholder of the Agent or any employee of the Agent shall have any personal liability whatsoever under this Agreement.

## **VII. MANAGEMENT FEE**

In compensation to the Agent for the management services provided by the Agent hereunder (and exclusive of reimbursement of expenses to which the Agent is entitled as hereinafter provided), the Owner shall pay the Agent, without right of setoff or counterclaim, the monthly fee of 8% of the gross rental receipts, in advance, on the first day of each month during the term of this Agreement.

## **VIII. COSTS**

### **A. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES**

1. In addition to payment of the management fee described in paragraph VII above, the Owner shall promptly upon demand therefore, reimburse the Agent for all disbursements and expenses made by the Agent in the performance of its duties under this Agreement, including, but not limited to, the following items:

- a) postage costs
- b) messenger service fees
- c) photocopying costs
- d) filing and processing fees

### **B. ADDITIONAL FEES:**

If requested by the Owner, the Agent is hereby given authorization and is entitled to invoice and collect the following additional fees:

- 1. Major Alterations: The Owner shall pay the Agent an additional fee of

10% of the costs of the job to the Agent for services rendered by the Agent in connection with the supervision of, or consultation with respect to, building, alterations, repairs, reconstruction, decoration or capital improvements to the Property which are beyond the scope of ordinary repairs.

2. Court Appearances: For Court Appearances on behalf of the Owner, Owner shall pay a fee to the Agent of \$175.00 per hour for appearance by field agent, and \$350.00 per hour for appearance by principal. Travel time not to exceed 1/2 hour in each direction for appearances in the borough of Manhattan and 1 hour in each direction for appearances outside the borough of Manhattan.

3. Extraordinary Services: If the Agent shall at the request of the Owner, perform any extraordinary service not customarily part of the usual services performed by a managing agent and not otherwise referred to in this paragraph 1 or in paragraph 2 above, the Owner shall pay the Agent a fee for such services, in an amount agreed to by the Agent and the Owner.

## **VIII. TERM**

### **A. INITIAL TERM**

The term of this Agreement shall be for an initial period of One (1) year commencing on First day of August, 2019 (the "Commencement Date") through Thirty-First day of July, 2020 (the earlier to occur of such date or the actual date of termination, as hereinafter provided, the "Termination Date").

### **B. RENEWAL**

Sixty (60) days prior to the Expiration Date, both parties shall endeavor negotiate and execute a new agreement for future management services. Should the parties fail to enter into a new agreement prior to the Expiration Date, the terms of this Agreement shall continue to govern and this Agreement shall remain in effect on a month-to-month basis. If the parties ultimately execute a new agreement, the terms of the new agreement governing management and all other fees due the Agent shall be retroactive to the day following the Expiration Date.

### **C. TERMINATION BY EITHER PARTY**

Either the Agent or the Owner may terminate this Agreement with or without cause at any time following the Commencement Date, by notice to the other party given no less than thirty (30) days in advance of the intended date of termination.

### **D. TERMINATION FOR CAUSE**

This Agreement shall terminate in any event, and all obligations of the parties hereunder shall cease (except as to liabilities or obligations which have accrued or arisen prior to such termination, and obligations to insure and indemnify which specifically survive termination as herein provided), upon the occurrence of any of the following events:

1. Breach of Agreement: Thirty (30) days after the receipt of notice by either party to the other specifying in detail a material breach of this Agreement, if such breach has not been cured within said thirty (30) day period; or if such breach is of a nature that it cannot be cured within said thirty (30) day period but can be cured within a

reasonable time thereafter, if efforts to cure such breach have not commenced or such efforts are not proceeding and being continued diligently both during and after such thirty (30) day period prior to the breach being cured. The breach of any obligation of either party hereunder to pay any monies to the other party under the terms of this Agreement shall be deemed to be curable within thirty (30) days.

2. Failure to Act, Etc.: In the event that any insurance required of the Owner is not maintained without any lapse, or it is alleged or charged that the Property, or any portion thereof, or any act or failure to act by the Owner, its agents and employees with respect to the Property fails to comply with any law or regulation, or any order or ruling of any public authority and the Agent, in its sole discretion, considers that the action or position of the Owner or its representatives with respect thereto may result in damage or liability to the Agent, or disciplinary proceeding with respect to the Agent's license, the Agent shall have the right to terminate this Agreement at any time by notice to the Owner of its election to do so, which termination shall be effective upon the service of such notice.

3. Excessive Damage: Upon the destruction of or substantial damage to the Property by any cause, or the taking of all or a substantial portion of the Property by eminent domain, in either case making it impossible or impractical to continue operation of the Property.

4. Inadequate Insurance: If the Agent deems that the insurance obtained by the Owner as required pursuant to Article V is not satisfactory to protect its interest under this Agreement; the Agent shall have the right to cancel this Agreement upon the service of notice to the Owner.

## **E. TERMINATION OF DUTIES**

If this Agreement is terminated by either party, the Agent and the Owner shall account to each other for all uncompleted business and, at the request of the Owner, the Agent will promptly deliver a statement to the Owner setting forth the Agent's reasonable estimate of sums due the Agent for expenses previously incurred and to be incurred on behalf of the Owner, in accordance with the terms of this Agreement, and not yet reimbursed. The Agent may withhold funds for ninety (90) days after the end of the month in which this Agreement is terminated in order to pay such expenses and to close all accounts. Any amounts due in excess offends in the Account shall be paid by Owner to the Agent immediately upon demand. The Agent shall deliver to the Owner, within ninety (90) after the end of the month in which this Agreement is terminated, any balance of monies in the Account (or any other account with respect to the Property) as well as a final accounting reflecting the balance of income and expenses with respect to the Property as of the date of termination. Provided that the Agent has been reimbursed by the Owner for any and all sums due the Agent, the Agent shall then, at the Owner's expense, deliver to the Owner all records, leases and corporate books relating to the Property. Upon termination of this Agreement, the Agent shall no longer be responsible for any obligations hereunder or with respect to the Property including, but not limited to, the payment of any fees or charges incurred as a result of any late payments accruing after the Termination Date and the Owner shall assume the obligations of all contracts relating to the Property and responsibility for payment of all unpaid bills.

## **X. OWNER'S REPRESENTATION**

The Owner represents and warrants to the Agent that it is authorized to enter into this Agreement, that there are no judgments, decrees, regulations, order, actions or proceedings which might prevent the Owner from complying with its obligations hereunder and that the making of this Agreement does not violate any agreement, order, decree, judgment, regulation or decree binding upon the Owner or the Property.

## **XI. MISCELLANEOUS**

### **A. GOVERNING LAW**

This Agreement shall be governed by, and construed and interpreted in accordance with, the Laws of the State of New York.

### **B. HEADINGS**

The headings used in this Agreement are for convenience only and shall not be deemed to constitute a part of this Agreement

### **C. SEVERABILITY**

The provisions of this Agreement are severable and if any clause or provision hereof shall be held invalid or unenforceable, in whole or in part, then such invalidity or maneuverability shall affect only such clause or provision or part thereof.

### **D. COOPERATION**

Each of the parties to this Agreement shall cooperate with the other to effectuate the terms of this Agreement.

### **E. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties with respect to the management and operation of the Property. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein.

### **F. BINDING EFFECT**

This Agreement shall be binding on the Owner and the Agent and their successors and assigns, and, if the Owner is an individual, the heirs, administrators and executors of the Owner. Notwithstanding the foregoing, this Agreement may be assigned by the Agent with not less than 45 days written notice to the Owner and, provided assignee assumes all of the obligations of the Agent hereunder, effective upon such assignment, the named Agent shall be relieved of all further obligations hereunder. Nothing herein shall be deemed to prevent the Agent and persons and entities affiliated with the Agent to, at their option, act as agents, brokers, owners, tenant-shareholders and in any other capacity with respect to other real properties in the vicinity of the Property and with respect to apartment units at the Property, without thereby incurring any liability

to the Owner.

#### **G. CHANGES**

This agreement can be changed only in writing signed by both parties.

#### **H. CHANGE CUMULATIVE: NO WAIVER**

No right or remedy herein conferred upon reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or reincarnates of such right or remedy with respect to subsequent events. Every right and remedy given by this Agreement to the parties to it may be exercised from time to time and as often as may be deemed expedient by those parties.

#### **I. FORCE MAJEURE**

Any delays in the performance of any obligation of the Agent under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of the Agent, and any time periods required for performance shall be extended accordingly.

#### **J. NOTICES**

1. Addresses: Except as otherwise set forth herein, all notices and other communications made pursuant to this Agreement shall be in writing as follows:

For Agent: Charles Henry Properties, LLC.  
534 West 42<sup>nd</sup> Street  
Unit 8  
New York, NY 10036

For Owner: John Riccardi and Jeffrey Shah  
620 West 148<sup>th</sup> St.  
New York, NY 10031

or to such other address as the Agent or the Owner may specify hereafter in writing.

2. Delivery: Such notices and other communications shall be delivered either by hand, by certified mail return receipt requested, or other verifiable delivery method. Electronic mail shall be deemed verified if acknowledged by reply in an email who's sender address in the header shows an email address for the sender which can be verified by previously verified correspondence. Notwithstanding the foregoing, it remains the sole responsibility of any party who transmits funds electronically to verify

the veracity of payment instructions contained in electronic communications. Notices sent by certified mail return receipt requested shall be deemed received on the date noted on the return receipt (or the date of refusal of receipt as noted thereon). Notices sent or delivered by hand or by overnight mail shall be deemed given upon delivery. Notices sent via electronic communication shall be deemed delivered upon acknowledgment of receipt in a reply by the recipient.

#### **K. SURVIVAL OF CERTAIN REPRESENTATIONS AND OBLIGATIONS**

All representations and warranties of the parties contained herein shall survive the termination of this Agreement. All provisions of this Agreement that require the Agent or the Owner to have insured or to defend, reimburse, or indemnify the Owner or the Agent, respectively shall survive any termination, and if the Agent or the Owner is or becomes involved in any proceeding or litigation in connection with the terms of this Agreement, such provisions shall apply as if this Agreement were still in effect.

#### **L. ACCEPTANCE OF TERMS**

The Owner and the Agent hereby indicate their consent to the terms of this Agreement by signing below:

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Claude Simon  
Charles Henry Properties, LLC

Dated: \_\_\_\_\_

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John Riccardi

Dated: \_\_\_\_\_

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Jeffrey Shah

Dated: \_\_\_\_\_