

**MICHIGAN DEPARTMENT OF CONSUMER  
AND INDUSTRY SERVICES**

**MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY  
735 East Michigan Avenue  
Lansing, MI 48912**

**MARKETING AGREEMENT  
(Rental)**

In consideration of the terms, conditions and covenants set forth in this Agreement, Owner and Agent agree as follows:

1. Definitions: As used in this Marketing Agreement
  - a. "Authority" shall mean Michigan State Housing Development Authority, a public body corporate and politic established pursuant to Act No. 346 of the Public Acts of 1966 as amended.
  - b. "Development" shall mean the real property commonly known as, \_\_\_\_\_, MSHDA Development No. \_\_\_\_\_, and located at \_\_\_\_\_, Michigan and the improvements, buildings, appurtenances, and equipment located on the real property, including dwelling units, garage space to be rented and square feet of commercial space.
  - c. "Initial Rent-up" shall mean the period prior to the time when occupancy of dwelling units in the Development first achieve ninety-five percent (95%).
  - d. "Lease" shall mean the Model Lease (Legal Form No. 066) or such other form of lease as shall have been approved in writing by Owner and Authority, pursuant to which Owner has agreed to let and Tenant has agreed to accept the dwelling unit identified in the Lease in accordance with the terms of the Lease.
  - e. "Regulatory Agreement" shall mean the Regulatory Agreement executed by the Owner and the Authority pertaining to the Development.
  - f. "Rent" shall mean that monthly amount which Tenant is obligated to pay Owner pursuant to the terms of the Lease.
  - g. "Tenant" shall mean a person or family occupying a dwelling unit in the Development pursuant to the Lease.
2. Appointment and Acceptance: Owner appoints Agent as exclusive agent for the marketing of the Development, and Agent accepts the appointment, subject to the terms and conditions set forth in this Agreement.
3. Regulation by Authority: Agent acknowledges receipt of the Regulatory Agreement, has evidenced by the initials of the Agent's representative on a copy of same and the exhibits to the Regulatory Agreement, on or prior to the date of execution of this Agreement, and certifies to Owner and Authority that, as Agent, it shall undertake and perform all of Owner's duties and responsibilities under this Agreement in compliance with the terms of the Regulatory Agreement, Management Agreement, and Management and Marketing Plan.

4. The Marketing Plan and Factors: The Marketing Plan, as approved by Owner and Authority, (the "Plan" and the Marketing Agent Evaluation Factors (the "Factors") are attached to this Agreement as Exhibits A and B, respectively, and are hereby incorporated and made a part hereof. Agent agrees to comply with all applicable provisions of the Plan and the Factors, regardless of whether specific reference is made to the Plan and the Factors in any particular provision of this Agreement.
5. Market Activities. Agent agrees that the implementation of specific actions in fulfillment of its duties as set forth in the Plan and this Agreement, including, but not limited to, advertising, promotion and staffing, are subject to the prior review and approval of Owner and Authority. Agent shall carry out the market activities prescribed in the Plan observing all requirements of the Regulatory Agreement, and the Authority approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. Marketing expenses incurred by Agent on behalf of Owner shall be paid by Owner.
6. Liaison with Architect and General Contractor. During the construction phase of the Development, Agent shall consult with Owner in order to coordinate marketing concerns as construction of the Development progresses.
7. Duties of Agent. In accordance with the terms and conditions of the Regulatory Agreement, the Management Agent, the Plan and this Agreement, the Agent shall use all reasonable means available to cause the Development to be substantially occupied by qualified Tenants 120 days after release by the General Contractor of the last unit for occupancy. "Reasonable means" shall include, but no be limited to:
  - a. Commence diligent marketing activities no longer than 90 days prior to the anticipated date of availability for occupancy of the first unit of the Development.
  - b. With respect to non-elderly family units, the Agent will undertake marketing activities in advance of marketing to other prospective Tenants in order to provide opportunities to reside in the project to non-elderly families who are:
    - i. Least likely to apply as determined in the Affirmative Fair Housing Marketing Plan, or
    - ii. Expected to reside in the community by reason of current or planned employment.
  - c. The agent will lease all units to families and/or individuals with income limits pursuant to the development's program requirements.
  - d. Cooperate with Owner and the Management Agent for the Development to coordinate the marketing functions with the management functions under the respective Marketing and Management Agreements for the Developments.
  - e. Supervise, coordinate and maintain a lease office, and, if required, model dwelling units, which office and model dwelling units shall be provided and equipped by Owner at the site of the Development. Order and place equipment and furnishings in models and/or rental office arrange for cleaning of these facilities.

- f. At all times have sufficient qualified personnel present at the Development for the full and efficient performance of its duties under this Agreement, including physical presence of responsible persons as such times as the rental office is open for business, which office shall be open during Initial Rent-up not less than \_\_\_\_ hours per week in accordance with a schedule to be provided by the Agent in connection with the Plan. Upon written notice to and approval by the Owner and Authority, Agent may increase or decrease the number of on-site personnel and/or the number of hours or times the rental office is open and/or location of the rental office.
- g. Supervise and coordinate production and/or placement of advertisements as described in the Plan.
- h. Inspect all apartments prior to occupancy and prepare certifications in form and substance acceptable to the Authority indicated dwelling units are ready for occupancy.
- i. Establish written Resident Selection Criteria and an Application Processing Procedure consistent with applicable state and federal laws and regulations. A copy of the Resident Selection Criteria and the Application Processing Procedure shall be posted conspicuously in the on-site rental office.
- j. If the Agent determines that an applicant is ineligible on the basis of income or family composition, or if the Agent is not selecting the applicant for other reasons, the Agent will promptly notify the application in writing such determination, and that the applicant has the right to meet with the Owner or Agent in accordance with Authority requirements.
- k. Prepare all dwelling unit leases and parking permits, if applicable, and execute the same in the Agents name, identifying on these documents that the Agent is acting on behalf of the Owner. The terms of all leases shall comply with the pertinent provisions of the Regulatory Agreement, Management Agreement and the Authority regulations and shall be in a form approved by the Owner and the Authority. Individual dwelling unit leases need not be submitted for the approval of Owner and the Authority provided the same comply with the terms and provisions of the lease, as defined in this Agreement.
- l. Prepare and verify eligibility certifications and recertification for execution by prospective tenants in accordance with the Regulatory Agreement, Management Agreement and Authority regulations.
- m. Negotiate commercial leases and concession agreements, subject to prior approval by Owner and Authority of all terms and conditions, and execute the same in its name, identifying on such agreements that the Agent is acting on behalf of the Owner. Commercial rents for the development shall not be less than the minimums that are, from time to time, approved by Owner and Authority/
- n. At the time of the initial execution of a lease, the Agent will collect a security deposit from each Tenant in compliance with state law and Authority requirements. The Agent must place any security deposits collected in a segregated trust account which indicates the custodial nature of the account in a bank or other financial institution located within the State of Michigan whose deposits are insured by an agency of the Federal Government, or the Agent may deposit with the Secretary of State, a cash bond or surety bond



- b. Agent shall furnish and maintain, at the Development's expense for the duration of this Marketing Agreement and any renewals or extensions of this Agreement, plus one year after the expiration or termination of this Agreement, a blanket fidelity bond in favor of Owner, in an amount not less than two month's gross potential rents for the Development and in a form and with a company acceptable to Owner and Authority which blanket fidelity bond shall cover Agent and all employees hired by Agent in connection with this Agreement.

14. Records, Reports and Forms:

- a. Agent shall maintain a filing system which contains, at a minimum the following information and documents for each Tenant: (i) copy of the completed Authority Application Form No.\_\_\_\_; (ii) record of receipt of application fee including amount and date received; (iii) copy of credit report and invoice for same; (iv) copies of any other additional verifications received; (v) indication of Authority disposition; (vi) copy of notice of acceptance or rejection; (vii) executed copy of lease in a form approved by the Authority; (viii) completed Security Deposit Inventory Checklist; (ix) completed Authority-required Inspection Sheet; and (x) record as to amount and date security deposit was received. Similar files shall be maintained for all applicants who are rejected during the application process. These files will contain at a minimum items (i), (ii), and (vi) and shall also include such additional information and/or materials as were completed or submitted during processing prior to rejection. All files concerning the applicants and tenants shall be maintained for a period of three years following approval or rejection
- b. In addition to specific tenant application files, Agent shall maintain on-site or such other location as may be approved by the Owner and Authority, the following: (i) a current waiting list (updated monthly); (ii) a general ledger compiled daily recording all receipts; (iii) monthly Authority marketing report; (iv) copy of contract or fee schedule from applicable credit reporting agency; (v) copy of the most recent monthly statement(s) or billing(s) from credit reporting agencies; and (vi) all addition reports and form required in subparagraph (c.) below.
- c. Agent shall prepare and submit in a manner and time satisfactory to Owner and Authority all forms and reports required by Owner and Authority.
- d. Agent agrees that representative of Owner and Authority shall have full and free access, during work hours, to all such records and books of account of the Development, including the right to make photo static copies of, or excerpts or transcriptions from such records and books of account and related supporting documents and statements (including but not limited to bank statements, checks paid by banks and check stubs).

15. Accounting System. Agent shall establish and maintain an accounting system acceptable to the Owner and the Authority which shall include:

- a. Current records as to all receipts, including without limitation, application fees, security deposits, monthly rentals and those obtained from all other sources.
- b. Current records as to all disbursements, including, without limitation, marketing expenses and marketing commissions

16. Compensation. For services rendered under this agreement, the Agent shall receive the following compensation for each unit successfully leased. To qualify as having successfully leased a unit, the Agent must have a signed lease and must receive all funds required prior to occupancy (application fee, first month's prorated rent plus security deposit) and the tenant must meet the Authority's Resident Eligibility Standards.

- a. The Owner agrees to pay the Agent a(n) \_\_\_\_\_  
(Congregate, Elderly, Family)  
marketing fee equal to \$\_\_\_\_\_ for each unit successfully leased as its marketing compensation for services performed under this agreement and additional fee in the amount of \$\_\_\_\_\_ for each nit successfully leased to a Barrier Free Eligible Household during the period of time commencing on the date of Initial Release and ending 30 days after.
- b. The Owner agrees to pay the Agent a(n) \_\_\_\_\_  
(Congregate, Elderly, Family)  
marketing fee equal to \$\_\_\_\_\_ as its marketing compensation for services performed under this agreement and a fee in the amount of \$\_\_\_\_\_ for the Barrier Free Eligible Households for the period of time commencing 31 days after Initial Release and ending 60 days after date of Initial Release.
- c. The Owner agrees to pay the Agent a(n) \_\_\_\_\_  
(Congregate, Elderly, Family)  
marketing fee equal to \$\_\_\_\_\_ as its marketing compensation for services performed under this agreement and a fee in the amount of \$\_\_\_\_\_ for the Barrier Free Eligible Households for a period of time commencing 61 days after the Initial Release until all remaining units have been marketed.

17. Expiration, termination and Accounting upon Termination:

- a. Unless, canceled pursuant to subparagraphs (b), (c), (d) or (e) below, this Agreement shall be effect from the date of execution by Owner and Agent and approval by Authority and until ninety-five percent (95%) sustained occupancy has been achieved.
- b. This Agreement may be terminated upon the mutual written consent of Owner, Agent and Authority.
- c. In the event that Agent shall fail to perform any of its duties under this Agreement or to comply with any of the provisions of this Agreement, Owner may terminate this Agreement upon ten day's advance written notice to Agent and Authority.
- d. In the event a petition of bankruptcy is filed by or against Agent or in the event Agent makes an assignment for the benefit of creditors or takes advantage of any insolvency act. Owner may terminate this Agreement without notice to Agent, but shall promptly advise Authority of such action.
- e. It is expressly understood and agreed between Agent and Owner that Authority shall have the right to terminate this Agreement, with or without cause, on ten days advance written notice to Owner and Agent, except that in the even of a default of Owner under the Regulatory Agreement, the Authority may terminate this Agreement immediately upon issuance of a notice of termination, except for Agent's compensation to the date of such

termination, except for such liability as may exist under this agreement or arising out of acts or obligations predating the date of such determination.

- f. Within fifteen days after the termination of this Agreement, Agent shall submit to Owner and Authority a final accounting of all funds received by it to the date of such termination, and after Agent and Owner have accounted to each other with respect to all matters outstanding as of the date of termination, Owner shall furnish Agent security, in form and amount reasonably satisfactory to Agent, against any obligations or liabilities which Agent properly incurred pursuant to the terms of this Agreement on behalf of owner.
- g. In the event the Agent is terminated, then any and all books, records and documents pertaining to the Development in the actual constructive possession of the Agent shall be immediately delivered into the possession of the Owner. Such books, records, and documents are considered to be the property of the Development and shall include, but not limited to, the following:
  - i. Architectural plans and specifications;
  - ii. Guarantees and warranties pertinent to the construction of the development;
  - iii. Operating statements;
  - iv. Excess income reports;
  - v. Tenant ledger cards
  - vi. Tenant Files and preliminary applications;
  - vii. Bank statements, deposit tickets, canceled checks; and
  - viii. Account payable and receivable records.

The owner shall provide the Agent with reasonable access to these documents during regular business hours solely for the purpose of enabling the Agent to complete any final audits, financial statements or tax returns

The Owner and Authority reserve the right to pursue the remedies stated in this Agreement and those prescribed by law or in the Act for violation of this Agreement. As to a violation of this subparagraph these remedies include, but are not limited to, withholding any unpaid compensation due the Agent until compliance or any legal action designed to obtain the physical return to the above documents.

- 18. Assignment. This Agreement shall insure to the benefit of and constitute a binding obligation upon Owner and Agent and their respective successors and assigns; provided, however, Agent shall not assign this Agreement, or any of its duties under this Agreement, without the prior written consent of Owner and Authority.
- 19. Compliance with State and Federal Regulations. In the performance of its obligations under this Agreement, Agent shall comply with applicable state and federal regulations, including but not limited to the regulations referred to in the Regulatory Agreement, Management Agreement, and the exhibits to those Agreements including prohibiting discrimination in employment or in housing on the basis of race, color, creed, religion, national origin, sex, marital status, height, weight, handicap and age (unless with respect to a senior citizen housing program)
- 20. Affirmative Marketing. Agent agrees to develop and conduct an affirmative marketing program to include but not limited to: (a) attracting prospective residents of all minority and majority groups; (b) hiring and training of rental staff on a non-discriminatory basis; (c) participating in a community outreach program; (d)

implementing the Affirmative Fair Housing Marketing Plan; and (e) attracting qualified handicapped residents.

- 21. Subordination of Marketing Agreement. Owner and Agent each acknowledge that this Agreement is subject and subordinate to the Regulatory Agreement, the Regulatory Agreement shall prevail and control.
- 22. Partial Invalidity. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.
- 23. Amendment. This Agreement together with Exhibits A and B constitute the entire agreement between Owner and Agent and no amendment or modification of these documents shall be valid or enforceable except by supplemental agreement, in writing, executed by the parties to this Agreement and approved by the Authority.
- 24. Execution of Counterparts. For the convenience of the parties, this Agreement has been executed in multiple counterparts, each which shall constitute a complete original of this Agreement which may be introduced in evidence or used for any other purpose without the production of any other counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
("Owner")

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
("Agentr")

By: \_\_\_\_\_

Its: \_\_\_\_\_

This Agreement and the Agent appointed in this Agreement are approved as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY:

By: \_\_\_\_\_

Its: \_\_\_\_\_