



## **RESIDENTIAL LEASING AND PROPERTY MANAGEMENT AGREEMENT**

### **1. PARTIES:**

A. The parties to this Agreement are:

**Owner:** \_\_\_\_\_  
\_\_\_\_\_

If Owner is not an individual, Owner is a: ☐ estate ☐ corporation ☐ limited liability company (LLC)  
☐ trust ☐ partnership ☐ limited liability partnership (LLP) ☐ other \_\_\_\_\_, chartered  
or created in \_\_\_\_\_ (State).

The individual signing this Agreement for the Owner and for the Property represents and warrants to Broker that such party has the authority to bind Owner as well as the Property to this Agreement.

Single Point of Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Mobile Ph: \_\_\_\_\_ Alt Ph: \_\_\_\_\_

Fax/E-mail: \_\_\_\_\_

Additional Contact Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Broker:** Spencer Properties, Inc., as operated through its authorized and licensed agent,  
**SmartEgg, LLC** at PO Box 10743, Austin, TX 78766  
info@smarteggmgmt.com  
(512) 910-4408

### **EMERGENCIES**

Emergency phone calls by Owner outside of normal business hours (Monday–Friday, 9:00am–6:00pm) that relate to the Owner’s Property shall be made to 512-910-4408.

B. Owner appoints Broker as Owner’s sole and exclusive leasing and managing agent of the real property described in Paragraph 2 and in any addendum to this Agreement.

### **2. PROPERTY: “Property” means:**

Address (*including unit nos.*) \_\_\_\_\_  
\_\_\_\_\_

legally described as: \_\_\_\_\_

in \_\_\_\_\_ County, Texas, together with the following non-real-property  
items: \_\_\_\_\_  
\_\_\_\_\_

“Property” also includes any other Property described in any attached Multiple Property Addendum.

Name listed on the Deed: \_\_\_\_\_



### 3. TERM:

- A. Primary Term: The primary term of this Agreement begins and ends as follows:  
Commencement Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_
- B. Automatic Extension: Unless either party provides written notice of termination (non-renewal) to the other party at least 30 days before the Expiration Date, this Agreement will automatically renew for another twelve months and will continue to automatically renew thereafter for twelve month terms on the anniversary dates of the Expiration Date. Either party may prevent any further automatic renewal terms for 12 months by notifying such other party with at least 30 days' written notice (of such intent of non-renewal) prior to the Expiration Date of the then term.
- C. Notice to Modify Terms and Conditions: Broker may modify the terms of this Agreement by serving Owner with at least 60 days' written notice to Owner of such changes to the Agreement. If such proposed changes are material changes that change the fee structure or substantially limit the services provided by Broker, then Owner shall have a right to terminate this Agreement upon 30 days' written notice of termination to Broker.
- D. Effective Services: If Broker determines that Broker cannot continue to effectively provide leasing and management services to Owner for any reason at any time during this Agreement Broker may terminate this Agreement by providing at least 30 days written notice to Owner.
- E. Fees Upon Termination: At the time this Agreement ends, Owner must pay Broker amounts specified in Paragraph 14.

### OWNER OCCUPANCY

- A. If Property is occupied as a home by Owner at the time this Agreement begins, Owner must provide a firm date for move-out to Broker.
- B. Owner may not occupy the Property during any period of vacancy while the Property is under management by Broker or during any term of management under this Agreement.

### 4. SUMMARY OF FEES:

#### I. Pertaining to RESERVES:

Reserve for Owner: \$500.00 per unit within the Property or Properties managed by Broker under this Agreement. The reserve fees for each unit are immediately due upon the signing of this Agreement and must be paid through the owner portal. Management services will not begin until such reserve is paid. Broker may at Broker's discretion, use the reserve to pay any expense related to the leasing and management of the Property(ies) (including but not limited to Broker's fees). If the balance of the reserve becomes less than the amount stated at any time, Broker may: (a) deduct an amount that will bring the balance to the amount stated from any subsequent rent received on behalf of Owner and deposit the amount into the reserve; or (b) notify Owner that Owner must promptly deposit additional funds with Broker to bring the balance to the amount stated. Upon any vacancy/notice of termination by any tenant, Broker may at Broker's discretion, temporarily increase reserve in a reasonable amount to ensure make-ready costs are covered.

Owner agrees to fund Broker (SmartEgg) for any expenses owed to Broker within a period of 48 hours of any request for reimbursement. Such expenses include but are not limited to commissions, repairs, and reserves. Such funds to be paid to SmartEgg's master bank account (or trust account if required) via the Owner Portal.



## **II. Pertaining to Paragraph 5. BROKER'S FEES:**

- A. Management Fees: Each month Owner will pay Broker the greater of \$75.00 per Unit and per Property (minimum management fee) or 8% of the gross monthly rents collected that month.
- B. Leasing Fees for New Tenancies: Each time the Property is leased to a new tenant, Owner will pay Broker a leasing fee equal to 100% of one full month's rent to be paid under the lease.
- C. Renewal or Extension Fees: Each time a tenant in the Property renews or extends a lease, Owner will pay Broker a renewal or extension fee equal to \$250 as a flat fee.
- D. Maintenance Coordination Fees: Each time Broker arranges for the Property to be repaired, maintained, redecorated, or altered as permitted by this Agreement, Owner will pay Broker a service fee equal to 10% of the total cost of each repair, maintenance, alteration, or redecoration.
- E. Interest On Trust Accounts:
- F. Administrative Fees:
- G. Fees Related to Insurance and Legal Matters:
  - (1) Owner's failure to obtain insurance. An additional monthly fee of \$100.00 *plus* the reimbursement amount required under Paragraph 11C(1).
  - (2) Coordination/communication for casualty on Property. For Broker's time expended in such matters and in preparation of such matters in the amount of 5% of vendor invoices.
  - (3) Cooperation in legal proceedings. \$100.00 per hour for Broker's time expended in such matters and in preparation of such matters.
- H. Optional Services Fees:
  - (1) A list of optional services will be provided to Owner at the start of this Agreement, which includes periodic property inspections. If Owner requests any other one-off visits to the Property for any reason, outside of Broker's normal procedures, such will be performed at a charge of \$50.00 per hour.
  - (2) As part of Broker's management services, Broker works with trusted vendors to ensure all Properties and units are ready and prepared for new tenants to move in. As relevant to your Property, Owner can expect the following repairs/maintenance will occur in-between tenants at Owner's expense:
    - a. walk-through inspections;
    - b. code compliance services, including re-keying all locks, checking for smoke and CO detectors, servicing window and screen door latches, inspecting deadbolts and peepholes per City Code;
    - c. one-time pest control treatments, HVAC service (if not already on a regular schedule), fireplace and chimney cleaning, if needed, lawn maintenance, utilities turned on, property cleaned for showing and new tenants (beyond previous tenant obligations). All such fees and costs will be at the expense of Owner.
- I. Fees in the Event of a Sale:
  - (1) Sale Coordination Fees: If at any time during this Agreement Owner agrees to sell the Property, Owner will pay Broker \$75.00 per hour for Broker's time and services to coordinate showings, inspections, appraisals, repairs, and other related matters.

## **III. Pertaining to Paragraph 14. TERMINATION:**

- A. Fees Upon Termination: At the time this Agreement ends, Owner must pay Broker:
  - a. all amounts due Broker under this Agreement; and



- b. if the Property is leased to a tenant on the date this Agreement ends and Owner terminates this Agreement, an amount equal to the greater of:
  - i. the management fees that would accrue over the remainder of the term of the lease; or
  - ii. \$250.00 ; or
- c. if the Property is not leased on the date this Agreement ends and Owner terminates this Agreement, \$500.00.
- d. If more than one property or unit is made part of and subject to this Agreement, Paragraph 4(III)(A) applies to each property or unit separately.

B. Broker Obligations: *intentionally left blank*

C. Off-Boarding Services: Owner will pay Broker a one-time fee of \$195.00 for performing off-boarding services.

**5. BROKER'S FEES:** All fees to Broker under this agreement are payable in Travis County, Texas. This Paragraph 5 survives termination or expiration of this Agreement with regard to fees earned during this Agreement which are not payable until after its termination. Broker may deduct any fees under this Paragraph 5 from any funds Broker holds in trust for Owner, except for the fees specified under Paragraph 5(I). If more than one property or unit is made part of and subject to this Agreement, each of the provisions below will apply to each property or unit separately.

A. Management Fees: A vacancy in the Property or failure by a tenant to pay rent does not excuse payment of the minimum management fee. Management fees under this Paragraph 5(A) are earned daily and are payable not later than the last day of each month.

B. Leasing Fees for New Tenancies: The leasing fees under this Paragraph 5(B) are earned and payable at the time the lease is executed.

C. Renewal or Extension Fees: The renewal or extension fees under this Paragraph 5(C) are earned and payable at the time the renewal or extension is effective. For the purposes of this paragraph, a new lease for the same Property with the same tenant then occupying the Property is an extension or renewal. This Paragraph 5(C) does not apply to month-to-month renewals or month-to-month extensions.

D. Maintenance Coordination Fees: The fees under this Paragraph 5(D) are earned at the time the repair, maintenance, redecoration, or alteration is made and are payable when services are rendered.

E. Interest On Trust Accounts: Any trust account Broker maintains under this Agreement may be an interest- bearing or income producing account. Broker will retain any interest or income from such account as compensation under this Agreement.

F. Administrative Fees: If Broker collects administrative fees from tenants or prospective tenants, including but not limited to, application fees, returned check fees, or late fees (as authorized under Paragraph 6(A)), Broker will retain such fees as compensation under this Agreement. The administrative fees under this Paragraph 5(F) are earned and payable at the time Broker collects such fees.

G. Fees Related to Insurance and Legal Matters:

- (1) If Owner fails to obtain the appropriate insurance on the Property, as listed in Paragraph 11, and Broker chooses to remedy using Paragraph 11(C)(1), Owner will pay Broker an additional fee as noted in Paragraph 4(II) plus the reimbursement required under Paragraph 11(C)(1).



- (2) If Owner requests or instructs Broker to coordinate or communicate with any insurance carrier regarding any casualty to or on the Property, Owner will pay Broker the amount noted in Paragraph 4(II) for Broker's time expended in such matters and in preparation of such matters.
- (3) If Owner requests or instructs Broker to appear in any legal proceeding or deposition related to the Property (including, but not limited to, evictions, tenant disputes, security deposit disputes, and suits for damages), Owner will pay Broker amount noted in paragraph 4(II) for Broker's time expended in such matters and in preparation of such matters.
- (4) Fees under this Paragraph 5(G) are earned and payable at the time the services are rendered.

H. Fees in the Event of a Sale:

- (1) Sale Coordination Fees: If at any time during this Agreement Owner agrees to sell the Property, Owner will pay Broker the amount listed in Paragraph 4(II) for Broker's time and services to coordinate showings, inspections, appraisals, repairs, and other related matters. Fees under this Paragraph 5(H)(1) are earned at the time such services are rendered and payable upon Owner's receipt of Broker's invoice.
  - (2) Definition: "Sell" means to agree to sell, convey, transfer or exchange any interest in the Property whether by oral or written agreement or option.
  - (3) Separate Listing Agreement Controls: If Owner sells the Property and pays Broker a fee under a separate written listing agreement between Owner and Broker: (a) this Paragraph 5(H) will not apply; and (b) Broker will waive any fees due under Paragraph 14 at the time the sale closes.
- I. Compensation from Benefit Programs or Packages: Broker may receive referral fees, periodic subscription fees, interest on outstanding debt, and other possible income by utilizing certain services involved with the management and/or leasing of the property. This may include but is not limited to administrative fees, HVAC filter subscription service, periodic property reviews, animal fees, concierge utility services, cable/internet/phone services, or Benefit Program that may be offered, and other products or services provided. Any referral fee Broker receives under this Paragraph 5(I) is in addition to any other compensation Broker may receive under Paragraph 14.

**6. AUTHORITY OF BROKER:**

- A. Leasing and Management Authority: Owner grants Broker the following authority which Broker may exercise when and to the extent Broker determines to be in Owner's interest:
- (1) advertise the Property for lease at Owner's expense by means and methods that Broker determines are reasonably competitive, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the Property and related information in any media and the Internet;
  - (2) place "For Lease" signs or other signs on the Property in accordance with applicable laws, regulations, ordinances, restrictions, and owners' association rules;
  - (3) remove all other signs offering the Property for sale or lease;
  - (4) submit the Property as a listing with one or more Multiple Listing Services (MLS) at any time the Property is marketed for lease and to change or terminate such listings;
  - (5) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times for purposes contemplated by this Agreement and to lend keys and disclose security codes to such persons to enter the Property;



- (6) duplicate keys and access devices, at Owner's expense, to facilitate convenient and efficient showings of the Property and to lease the Property;
- (7) place a keybox on the Property;
- (8) employ scheduling companies to schedule showings by other brokers at any time the Property is marketed for lease;
- (9) verify information and references in rental applications from prospective tenants;
- (10) negotiate and execute leases on Owner's behalf for the Property at market rates and on competitively reasonable terms for initial terms of not less than 12 months and not more than 24 months;
- (11) negotiate and execute any amendments, extensions, or renewals to any leases for the Property on Owner's behalf;
- (12) terminate leases for the Property, negotiate lease terminations, and serve notices of termination;
- (13) collect and deposit for Owner rents, security deposits, and other funds related to the Property in a trust account and pay from that account:
  - a. any compensation and reimbursements due Broker under this Agreement; and
  - b. other persons as this Agreement may authorize.
- (14) account for security deposits that Broker holds in trust to any tenants in the Property in accordance with applicable law, this Agreement, and any lease of the Property and make deductions from the deposits in accordance with the lease and applicable law;
- (15) collect administrative charges including but not limited to, application fees, returned check fees, and late charges from tenants in the Property or from prospective tenants;
- (16) institute and prosecute, at Owner's expense, actions to:
  - a. evict tenants in the Property;
  - b. recover possession of the Property; or
  - c. recover lost rent and other damages;
- (17) settle, compromise, or withdraw any action described in Paragraph 6(A)(16);
- (18) negotiate and make reasonable concessions to tenants or former tenants in the Property;
- (19) report payment histories of tenants in the Property to consumer reporting agencies;
- (20) obtain information from any holder of a note secured by a lien on the Property and any insurance company insuring all or part of the Property;
- (21) obtain access to home warranty on Property;
- (22) obtain access to Owner's Association information, if applicable;
- (23) hire contractors to repair, maintain, redecorate, or alter the Property provided that Broker does not expend more than \$500.00 for any single repair, maintenance item, redecoration, or alteration without Owner's consent. In order to ensure quality, accuracy and timeliness of repairs, maintenance, and cleaning, etc. Broker shall have sole authority to use only vendors selected by Broker;
- (24) hire contractors to make emergency repairs to the Property without regard to obtaining any competitive bids or to the expense limitation in Paragraph 6(A)(23) that Broker determines are necessary to protect the Property or the health or safety of an ordinary tenant;
- (25) contract, at Owner's expense, in either Broker's or Owner's name, for utilities and maintenance to the Property during times that the Property is vacant, including but not limited to, electricity, gas, water, alarm monitoring, cleaning, pool and spa maintenance, yard maintenance, and other regularly recurring expenses that Broker determines are reasonable to maintain and care for the Property;
- (26) perform other necessary services related to the leasing and management of the Property;
- (27) Sole discretion to determine whether the Property shall be listed for lease while occupied by tenants;
- (28) To automatically determine the amounts of rents to be charged, renew leases, to locate new tenants without prior notification to Owner, unless Broker has received advance written





notice from Owner regarding any termination of this Agreement or intent to sell the Property;

- (29) Sole discretion to approve prospective tenants for lease. However, under certain circumstances, Broker may contact Owner regarding input from Owner;
- (30) To provide a portable AC unit or heater (as part of any temporary equipment rental) to tenants if deemed necessary to ensure their comfort. Such costs for any such equipment will be billed to the Owner at \$50.00 per day until tenants' AC system has been fully repaired;
- (31) Sole discretion to maintain any appliances (such as refrigerator, dishwasher, oven, stove, microwave, washer and dryer, etc.) and to replace such appliances as needed at Owner's expense. **Appliance Repair Disclaimer:** Owner acknowledges that choosing to repair a malfunctioning appliance is a calculated risk, understanding that the repair may not fully restore functionality and could necessitate a replacement if unsuccessful. Reasonable efforts will be made to assess whether repair or replacement is the best option and repairs will be attempted if deemed appropriate. However, Owner acknowledges that despite such efforts, replacement may be ultimately required if repairs are unsuccessful;
- (32) To replace air filters located in areas of the Property that are difficult or hazardous to access, such as high ceilings or if replacement requires special tools or equipment. Owner will cover the cost of such replacement. Tenant shall be responsible for providing and purchasing air filters unless the system requires specialized filters not available through Broker's tenant air filter program;
- (33) To hire professional home inspectors at Owners expense to determine if a tenant should be allowed to renew any lease and/or to determine any needed repairs to the Property; and,
- (34) To accept pets at the discretion of Broker, unless otherwise advised by Owner. Please note that any exceptions to any pet policy might arise from the Owner's insurance policy, which may prohibit certain types of animals or breeds. In all instances, Owner shall not prohibit acceptance of properly qualified Service Animals as required to be accepted pursuant to local, state or federal law.

B. Record Keeping: Broker will:

- (1) maintain accurate records related to the Property;
- (2) file reports with the Internal Revenue Service related to funds received on behalf of Owner under this Agreement (for example, Form 1099); and
- (3) remit, each month, the following items to Owner:
  - a. funds collected by Broker for Owner under this Agreement, less authorized deductions and rents not yet due according to the terms of the Owner's Agreement with a tenant; and
  - b. a statement of receipts, disbursements, and charges. Owner may instruct Broker in writing to remit the items to another person or address.

C. Rents: Broker will:

- (1) Broker shall receive all rents and hold all security deposits and shall provide Owner with a complete monthly accounting of all rents received as well as paid to Broker pursuant to this Agreement. Broker shall credit to Owner's account all rents and other payments received and shall pay all expenses in the following order:
  - a. Commissions, charges and administrative fees of management,
  - b. management fees,
  - c. maintenance charges in the order incurred,
  - d. any amount necessary to restore the reserves, then
  - e. balance to Owner.
- (2) If any rent payment that was paid to Broker is reversed by tenants, at any time, Owner agrees to reimburse Broker with such funds within a period of five days' of notification to Owner by Broker. This provision shall remain in effect after termination of the Agreement.



- (3) When tenants provide notice of intent to move out, Broker shall withhold tenant's last month of rent from disbursement to Owner. Such funds will be applied to cover make-ready costs incurred after tenant has vacated the Property.
- (4) When income is available to be paid to Owner, it will be disbursed via ACH only into a bank account as designated by Owner. The Owner is required to provide and designate such bank account information to Broker for this purpose.

D. Security Deposits:

- (1) During this Agreement, Broker will maintain security deposits received from tenants in a trust account, as defined in Paragraph 6(G), and will account to the tenants for the security deposits in accordance with the lease(s) for the Property.
- (2) Except as stated in Paragraph 6(J), after this Agreement ends, Broker will deliver to Owner, or the Owner's designee, the security deposit held by Broker under an effective lease of the Property, less deductions authorized by this Agreement, and will send written notice to the tenant that states all of the following:
  - a. that this Agreement has ended;
  - b. the exact dollar amount of the security deposit;
  - c. the contact information for the Owner or the Owner's designee; and
  - d. that Owner is responsible for accounting for and returning the tenant's security deposit.
- (3) If Broker complies with this Paragraph 6(D), Owner will indemnify Broker from any claim or loss from a tenant for the return of a security deposit. This Paragraph 6(D) survives termination of this Agreement.

**Owner gives Broker sole discretion to determine deductions from a tenant's security deposit, including discretion for making deductions for damages beyond normal wear and tear. After termination of this Agreement, should there be any disagreement between Broker and Owner as to how the security deposit and pet deposit should be handled after tenant vacates, Broker will turn over such deposit(s) to Owner and Owner hereby agrees to be responsible for the security deposit disposition process, including the required accounting to the Tenant as required by law.**

E. Deductions and Offsets: Broker may disburse from any funds Broker holds in a trust account for Owner:

- (1) any compensation due Broker under this Agreement;
- (2) any funds Broker is authorized to expend under this Agreement; and
- (3) any reimbursement Broker is entitled to receive under this Agreement.

F. Insurance and Attorneys:

- (1) Broker may file a claim for a casualty loss with the carrier insuring the Property. Broker may communicate with the carrier to facilitate the processing of any claim Owner may file or other matters that Owner instructs Broker to communicate to the carrier.
- (2) Broker shall have the authority to hire and contract with attorneys on behalf of Owner for any matters relating to the operation and management of the Property.

G. Trust Accounts, MLS, and Listing Content:

- (1) Trust Accounts: A trust account must be separate from Broker's operating account and must be designated as a trust, property management or escrow account, or other similar name. Broker may maintain one trust account for all properties Broker leases and manages for others.
- (2) MLS:
  - a. Broker compensation or the sharing of compensation between brokers is not set by law nor fixed, controlled, recommended, or suggested by the Association of REALTORS®, MLS, or any listing service. Broker compensation is fully negotiable. Brokers independently determine their fees.





(3) Listing Content:

- a. "Listing Content" means all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, pricing information, and other copyrightable elements relating to the Property. "Owner Listing Content" means Listing Content provided by Owner to Broker or Broker's associates. "Broker Listing Content" means Listing Content that is otherwise obtained or produced by Broker or Broker's associates in connection with this Agreement.
- b. Owner grants Broker a non-exclusive, irrevocable, worldwide, royalty-free license to use, sublicense through multiple tiers, publish, display, and reproduce the Owner Listing Content, to prepare derivative works of the Owner Listing Content, and to distribute the Owner Listing Content, including any derivative works of the Owner Listing Content. This Paragraph 6(G)(3)(b) survives termination of this Agreement.
- c. All Broker Listing Content is owned exclusively by Broker, and Owner has no right, title, or interest in or to any Broker Listing Content.
- d. Owner understands and agrees that both the Owner Listing Content and Broker Listing Content, including any changes to such content, may be filed with the MLS, included in compilations of listings, and otherwise distributed, publicly displayed, and reproduced.

H. Performance Standard: Broker will:

- (1) use reasonable care when exercising Broker's authority and performing under this Agreement; and
- (2) exercise discretion when performing under this Agreement in a manner that Broker believes to be in Owner's interest, provided that Broker will treat any tenant honestly and fairly.

I. Inability to Contact Owner: If Broker is unable to contact Owner for two days, Broker is authorized to contact the person below for the sole purpose of attempting to reestablish contact with Owner.

**(Do NOT insert Owner's name)**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Email: \_\_\_\_\_

J. Foreclosure: If Broker receives notice of the Owner's delinquency in the payment of:

- (1) any mortgage or other encumbrance secured by the Property;
- (2) property taxes;
- (3) property insurance; or
- (4) owners' association fees,

Broker may give Owner 15 days to cure the delinquency during which period Owner authorizes Broker to freeze any funds held by Broker and no disbursements will be made to Owner related to this Agreement or the Property. If after the 15-day period, the delinquency is not cured and the foreclosure process is initiated, Owner authorizes Broker to deduct from any other funds being held by Broker for Owner any remaining Broker Fees or funds due to Broker related to services performed under this Agreement. Additionally, Owner authorizes Broker to return any security deposit being held by Broker to a tenant of the Property in addition to any prorated amount of rent being held by Broker and Broker may terminate this Agreement. This paragraph does not preclude the Broker from seeking any other remedies under this Agreement or at law that may be available to the Broker.

K. Fund-Sharing within Portfolio of Properties: If more than one Property or unit is made part of and subject to this Agreement, Owner grants Broker the authority to share funds from one property to another within the portfolio as Broker deems reasonably necessary to maintain all of Owner's properties.



- L. Delinquencies: Broker is not responsible for collection of delinquent accounts. Broker assumes no liability for monies that are uncollectable or for any damages or costs incurred by the Property as a result of any actions or inactions of the tenants.
- M. Evictions: Broker is authorized to institute and prosecute actions to evict tenants and to recover possession of the Property as well as to sue for unpaid rents on behalf of the Owner. Such actions shall be prosecuted under the name of the stated landlord in the lease. Broker shall be authorized to engage attorneys as may be necessary and may report monies owed by tenants for delinquencies to a collection agency. Owner consents to Broker's selection of any collection agency.
- N. Legal Fees: Owner shall be responsible for and shall pay for all expenses and attorneys' fees incurred by Broker involving any action or suit in any way relating to the operation or management of the Property or unit, whether such action or suit is asserted against Broker, landlord (Owner) or both. Such obligation to pay any expenses or attorneys' fees on behalf of Broker includes any actions or suits brought after the termination or expiration of this Agreement.
- O. Management Services Do Not Include: Normal Property management services as contemplated in this Agreement does not include monthly inspections, representation at court hearings, depositions, homeowner association meetings, providing on-site management, property sales, refinancing, preparing the Property for sale or refinancing, rehabilitation of the Property, fire or major damage restoration projects and similar matters. If Owner desires for Broker to perform services not normally included as part of the contemplated management of the Property, Owner acknowledges that such additional services shall require additional agreements and fees to be paid for such services prior to the commencement of any such additional services.

7. **LEGAL COMPLIANCE:** The parties will comply with all obligations, duties, and responsibilities under the Texas Property Code, fair housing laws, and any other statute, administrative rule, ordinance, or restrictive covenant applicable to the use, leasing, management, or care of the Property.

8. **ADVANCES:** Owner will, in advance, provide Broker all funds necessary for the leasing and management of the Property. Broker is not obligated to advance any money to Owner or to any other person. Broker is not obligated to perform repairs unless related to the health and safety of a tenant and/or the securing of the Property.

9. **OWNER'S REPRESENTATIONS:**

A. General:

(1) Owner represents that:

- a. Owner has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to lease the Property;
- b. Owner is not bound by:
  - (i) another agreement with another broker for the sale, exchange, lease, or management of the Property that is or will be in effect during this Agreement; or
  - (ii) an agreement or covenant that prohibits owner from leasing the property;
- c. no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
- d. Owner is not delinquent in the payment of any property taxes, owners' association fees, property insurance, mortgage, or any encumbrance on or affecting the Property;
- e. the Property is not subject to the jurisdiction of any court;
- f. all information related to the Property that Owner provides to Broker is true and correct to the best of Owner's knowledge; and



- g. the Owner Listing Content, and the license granted to Broker for the Owner Listing Content, do not violate or infringe upon the rights, including any copyright rights, of any person or entity.
- (2) Broker may disclose to a tenant or to a prospective tenant any information related to the representations made in this Paragraph 9.

B. Property Condition: Owner and Broker are obligated under law to disclose to a tenant or to a prospective tenant any known condition that materially and adversely affects the health or safety of an ordinary tenant. Owner is obligated under the Property Code to repair any such condition for a tenant. Owner represents that:

- (1) any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances; and
- (2) Owner is not aware of a condition concerning the Property that materially affects the health or safety of an ordinary tenant, except as stated below, in this Agreement, or in any addendum: \_\_\_\_\_

C. Lead-Based Paint: If the Property was built before 1978, Owner will complete and attach to this Agreement an addendum regarding lead-based paint and lead-based paint hazards that will be made part of any lease of the Property. If the Property was built before 1978, federal law requires the Owner (before a tenant is obligated under a lease) to:

- (1) provide the tenant with the federally approved pamphlet on lead poisoning prevention;
- (2) disclose the presence of any known lead-based paint or hazards in the Property; and
- (3) deliver all records and reports to the tenant related to such paint or hazards.

**10. OWNER'S COOPERATION:** Owner agrees to:

- A. cooperate with Broker to facilitate the showing, marketing, and lease of the Property;
- B. not rent or lease the Property to anyone without Broker's prior written approval;
- C. not negotiate with any prospective tenant who might contact Owner directly, but refer all prospective tenants to Broker;
- D. not deal with or negotiate with any tenant in the Property concerning any matter related to the management or leasing of the Property but refer all such dealings to Broker;
- E. not enter into a lease listing agreement or property management agreement with another broker for the rental, leasing, or management of the Property to become effective during this Agreement;
- F. provide Broker with copies of any existing leases or rental agreements related to the Property;
- G. provide Broker with keys and access devices to the Property;
- H. provide Broker with necessary passwords and controls for electronic devices on the Property;
- I. provide Broker with copies of all warranties related to the Property or any item in the Property;
- J. provide Broker with Owners' Association documentation and contact information;
- K. tender to Broker any security deposits paid by any existing tenants in the Property;
- L. complete any disclosures or notices required by law or a lease of the Property;
- M. amend applicable notices and disclosures if any material change occurs during this Agreement;
- N. notify Broker if Owner becomes delinquent in the payment of: (1) any mortgage or other encumbrance secured by the Property; (2) property taxes; (3) property insurance; or (4) owners' association fees; and
- O. give Broker reasonable notice before listing the Property for sale.
- P. **Owner may not enter the Property without a written agreement with Broker and without coordinating with Broker to obtain a mutually agreeable time for entry in order to avoid conflicts with tenants or the interference with any repairs, showings, or other matters as undertaken by Broker in the operation of the Property.**



## 11. INSURANCE:

- A. At all times during this Agreement, Owner must maintain in effect:
  - (1) a public liability insurance policy that names Broker as a co-insured or additional insured and covers losses related to the Property in an amount of not less than \$500,000.00 on an occurrence basis; and
  - (2) an insurance policy for the Property in an amount equal to the reasonable replacement cost of the Property's improvements and that contains endorsements which contemplate the leasing of the Property with vacancies between lease terms.
- B. Not later than the 15th day after the Commencement Date, Owner must deliver to Broker copies of certificates of insurance evidencing the coverage required under Paragraph 11(A). If the coverage changes at any time during this Agreement, Owner must deliver to Broker a copy of the insurance certificate evidencing the change not later than 10 days after the change.
- C. If Owner fails to comply with Paragraphs 11(A)(1) or 11(B), Broker may:
  - (1) purchase insurance that will provide Broker the same coverage as the required insurance under Paragraph 11(A)(1) and Owner must promptly reimburse Broker for such expense, plus any additional fee(s) listed in Paragraph 4(II)(G)(1); or
  - (2) exercise Broker's remedies under Paragraph 18.
- D. If Owner's Property was previously used as a homestead, it is Owner's responsibility to notify their insurance company that the Property will now be used as a rental so that the home policy is changed to a landlord policy.**
- E. Owner shall be required to name Broker and SmartEgg, LLC as additional named insureds on the insurance for the Property. Owner shall be required to provide Broker with all policies for the Property, including all renewal policies and shall provide Broker with proof that Broker and SmartEgg, LLC have been added as additional named insureds under the policies.**
- F. If the Owner's Property is vacant for more than 30 days, it is the Owner's responsibility to notify their insurance company of this circumstance, as the carrier may require a vacancy provision. Without such, the carrier may void coverage. For some insurance carriers, such requirement may be for 60 days. Owner should check with the carrier to determine any vacancy requirements.

## 12. HOME WARRANTIES

- A. If Owner purchases or renews a home warranty policy (also known as a residential services contract), it shall be the Owner's responsibility to provide Broker with a copy of the policy, including account number, effective dates and service phone number; and to provide authorization to the provider for Broker to make claims on the Owner's behalf. Broker shall have no responsibility to obtain a new or renewing home warranty policy information from Owner. If no warranty policy information is provided to Broker, Broker shall not utilize the home warranty.
- B. Emergency maintenance: In the event the home warranty company fails to start any emergency repairs within a period of 2 days from any claim and/or fails to complete such repairs within a period of 5 days of being notified of any such claim, Broker is authorized to choose a vendor to complete the repairs, and shall be authorized to provide the home warranty company with notice of Broker's intent to exercise such option. Owner shall maintain its rights to seek redress from the warranty company in the event of any issues with repairs.

## 13. HOMEOWNERS ASSOCIATION (HOA):

- A. If the property is a member of a homeowner's association (HOA), then Broker will provide documentation to the tenant so that they will be able to follow HOA rules and regulations. If



there are any HOA rules that Broker must follow (such as lawn sign restrictions, tenant approvals, etc.), it is the responsibility of Owner to inform Broker as to such rules and requirements. In the event Owner desires for Broker to review HOA regulations and requirements as to lawn restriction regulations, tenant approval regulations, etc. the cost to Owner for such review shall be \$25.00.

- B. Prior to entering into this Agreement, it shall be the Owner's obligation to review all HOA rules and regulations to determine if Owner's Property may be leased to third parties. In addition, it shall be the Owner's obligation to ensure all compliance with the HOA rules and regulations. Unless agreed to be handled by Broker, Owner shall be responsible to contact the HOA for the Property to ensure that any and all communications from the HOA shall be properly directed to the Owner. Unless agreed otherwise, Owner shall be responsible for paying all assessed fees and fines by the HOA.**

#### **14. TERMINATION:**

- A. Fees Upon Termination: At the time this Agreement ends, Owner must pay Broker those fees as listed in Paragraph 4(III).
- B. Broker Obligations: Unless otherwise specified in this Agreement, Broker is not required to perform any leasing or management services after this Agreement is terminated.
- C. Off-Boarding Services: The authority granted to Broker under Paragraph 6 is extended for 30 days after termination of this agreement to the extent necessary for Broker to complete off-boarding services. The performance of off-boarding services under this paragraph is at Broker's sole discretion. Off-boarding services may include but are not limited to the following: processing vendor invoices, utility bills, and security deposits.

Owner will cooperate with Broker to the extent reasonably necessary to assist Broker in performing off- boarding services.

(1) Off Boarding Service fee: Owner will pay Broker fees as listed in Paragraph 4(III).

- D. Funds Received After Termination: Except as provided in Paragraph 6(J), if Broker receives any funds on behalf of Owner after this Agreement ends (for example, rent, damages, past due amounts, and others), Broker will deposit those funds in Broker's trust account and will: (a) pay 100% of the funds received to Broker as compensation for services (for example, research, accounting, communicating, and processing) rendered at that time; and (b) pay the balance of the funds to Owner.
- E. Handling of Disbursements: After notice of any termination or non-renewal, all funds on-hand by Broker shall be used to pay all expenses for the Property prior to any final disbursements. If the Property or any unit has a negative balance upon the notice of termination or non-renewal (or at the termination date) of this Agreement, Owner agrees to pay Broker for any expense incurred by Broker. Such payment is to be made within a period of 48 hours upon request to Owner. If there is any termination of this Agreement at a time that Broker has undertaken any protest of property taxes on behalf of Owner, Broker is authorized to and will cancel the property tax protest. If the timing is such that it is too late for Broker to cancel the tax protest, Owner agrees to pay Broker any fees owed for this service before or after this Agreement expires. Broker is authorized to withhold monies in reserves until such protest is completed and Broker's invoice can be paid, after which any remaining funds in the reserves will be paid to Owner.

- 15. EXPENSE REIMBURSEMENT:** Upon Owner's receipt of Broker's invoice, Owner will immediately reimburse and pay Broker all expenses incurred by Broker in connection with managing and/or operating Property.





- 16. COOPERATION WITH OTHER BROKERS:** When the Property is marketed for lease, Broker will allow other brokers to show the Property to prospective tenants. If the other broker procures a tenant who leases the Property, Broker will offer to pay the other broker a fee out of the compensation Broker receives under Paragraph 5. Broker may change the below amounts without notice, provided that Broker will offer competitively reasonable amounts to other brokers. As of the date this agreement is signed, Broker's policy is to offer other brokers the following amounts:
- (1) If the other broker represents the tenant: 30% of one month's rent to be paid under a lease; and
  - (2) If the other broker is a subagent: \$0.00

**17. LIABILITY AND INDEMNIFICATION:**

- A. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by:**
- (1) other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property;
  - (2) acts of third parties (for example, vandalism, theft, or other criminal acts);
  - (3) freezing or leaking water pipes;
  - (4) failure to properly water the foundation of the Property;
  - (5) a dangerous condition or environmental condition on the Property; or
  - (6) the Property's non-compliance with any law or ordinance.
- B. Broker is not responsible or liable in any manner for:**
- (1) performing or certifying any inspections or surveys that may be required by local, state, or federal regulations;
  - (2) any late fees or other charges Owner incurs to any creditor caused by late or insufficient payments by any tenant in the Property; or
  - (3) damages to Owner caused by a tenant's breach of a lease.
- C. Owner agrees to hold Broker harmless and to protect, defend and indemnify Broker (including SmartEgg, LLC) in connection with any demands, claims, causes of action or suits against Broker or as in any way relating to Broker's operation or management of the Property. Such hold harmless and indemnity shall apply even for Broker's (including SmartEgg, LLC) negligent acts or the negligent acts of any agent on behalf of Broker or SmartEgg, LLC.**
- D. Owner is responsible and liable for all contracts and obligations related to the Property (for example, maintenance, service, repair and utility agreements) entered into before or during this Agreement by Owner or by Broker under Broker's authority under this Agreement. Owner agrees to hold Broker harmless from all claims related to any such contracts.**

**18. DEFAULT:**

A party is in default if the party fails to cure a breach within 10 days after receipt of written demand from the other party. If either party is in default, the non-defaulting party may: (a) terminate this Agreement by providing at least 10 days written notice; (b) recover all amounts due to the non-defaulting party under this Agreement; (c) recover reasonable collection costs and attorney's fees; and (d) exercise any other remedy available at law. Broker is also entitled to recover any compensation Broker would have been entitled to receive if Owner did not breach this Agreement. Owner shall be in default, if without the written consent of Broker, Owner contacts or communicates with a tenant, Owner takes partial or permanent possession of the Property (or otherwise goes onto





the Property) or instructs Broker to take any action that would violate the lease or the Texas Property Code. In such event, Broker may terminate this agreement upon 10 days' written notice to Owner.

- 19. ATTORNEY'S FEES:** In the event Owner is in default of this Agreement or Broker has retained counsel to enforce this Agreement in any way, Owner agrees to pay Broker's reasonable attorneys' fees and all costs associated with any proceedings.
- 20. ADDENDA:** Incorporated into this Agreement are the following addenda, exhibits, and other information:
- A. Information About Brokerage Services
  - B. Addendum Regarding Rental Flood Disclosure (mandatory)
  - C. Addendum Regarding Lead-Based Paint (mandatory for homes built pre-1978)
  - D. Multiple Property Addendum
  - E. IRS Forms (W-9 or W-8)
  - F. Owner's Authorization Concerning Unescorted Access to Property
  - G. General Information for Landlord Regarding Assistance Animals
  - H. Price list
  - I. Addendum Regarding Renovations and Repairs on a Pre-1978 Property
  - J. ACH Direct Payment Authorization

**Note: Complete and deliver to Broker IRS W-9 Form or similar form. Broker maintains a privacy policy that is available upon request.**

**21. AGREEMENT OF PARTIES:**

- A. Entire Agreement: This document contains the entire Agreement of the parties and may not be changed except by written agreement. The parties to this Agreement expressly disclaim reliance on any matters other than what is set forth in this Agreement.
- B. Assignments: Neither party may assign this Agreement without the written consent of the other party.
- C. Binding Effect: This Agreement, and Owner's obligation to pay Broker an earned fee, is binding upon the parties, their heirs, administrators, executors, representatives, successors, and permitted assignees. This Agreement is to be construed in accordance with the laws of the State of Texas. If any term or condition of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby. All individuals signing represent that they have the authority to sign on behalf of and bind the party for whom they are signing.
- D. Joint and Several: All Owners executing this Agreement are jointly and severally liable for the performance of all its terms. Any act or notice to, refund to, or signature of, any one or more of the Owners regarding any term of this Agreement, its extension, its renewal, or its termination is binding on all Owners executing this Agreement.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Agreement.
- F. **VENUE, FORUM AND JURY TRIAL WAIVER**: The parties agree that MANDATORY VENUE AND FORUM for any legal proceedings between or involving the parties in connection with any dispute arising from this Agreement or in any relating to this Agreement, shall be held in TRAVIS COUNTY, TEXAS. The parties further agree to mutually WAIVE THE RIGHT OF TRIAL BY JURY in connection with any matters arising under this Agreement or matters in any way relating to this Agreement or in any way pertaining to Property managed for Owner by Broker.



- G. **Severability:** If a court finds any clause in this Agreement invalid or unenforceable, the remainder of this Agreement will not be affected, and all other provisions of this Agreement will remain valid and enforceable.
- H. **Context:** When the context requires, singular nouns and pronouns include the plural.
- I. **Notices:** Notices between the parties must be in writing and are effective when sent to the receiving party's address, or e-mail address specified in Paragraph 1. **Owner further consents to receive notifications by text message from Broker.**
- J. **Agency Authority:** The parties agree and consent that SmartEgg, LLC is a licensed and authorized agent on behalf of Spencer Properties, Inc., the Broker. In the event of any default or breach of this Agreement by Owner, SmartEgg, LLC shall have the authority to bring any claim or action in its name and without the necessity of naming Broker as any party or obtaining Broker's consent. In such event, Owner waives the right to complain about the capacity of SmartEgg, LLC to bring any such claims or actions.

## 22. INFORMATION:

- A. **Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS®, MLS, or any listing service.**
- B. **In accordance with fair housing laws and the National Association of REALTORS® Code of Ethics, Broker's services must be provided and the Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, familial status, sexual orientation, or gender identity. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, or age).**
- C. **Owner may review the information Broker submits to an MLS or other listing service.**
- D. **Broker advises Owner to remove or secure jewelry, prescription drugs, and other valuables.**
- E. **The Property Code requires the Property to be equipped with certain types of locks and security devices, including (with some exceptions):**
  - (1) window latches on each window;
  - (2) a keyed doorknob lock or keyed deadbolt lock on each exterior door;
  - (3) a sliding door pin lock on each exterior sliding glass door of the dwelling;
  - (4) a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and
  - (5) a keyless bolting device and a door viewer on each exterior door of the dwelling. The Property Code also requires smoke alarms in certain locations. The Property Code requires the security devices to be rekeyed and the smoke alarms to be tested each time a new tenant occupies the Property.
- F. **Broker advises Owner to refrain from transmitting personal information, such as bank account numbers or other financial information, via unsecured email or other electronic communication to reduce risk of wire fraud.**
- G. **If Owner is a "foreign person" as defined by federal law, a Broker may be required to withhold certain amounts from the lease or rental proceeds and deliver the same to the Internal Revenue Service to comply with applicable tax law. A "foreign person" is a:**
  - (1) nonresident alien individual;
  - (2) foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation; or



- (3) foreign partnership, trust, or estate. The definition does not include a resident alien individual. If Owner is unsure whether Owner qualifies as a “foreign person” under federal law, Broker advises Owner to consult a tax professional or an attorney.

Owner notifies Broker that Owner ☐ is or ☐ is not a “foreign person” as defined by federal law.

Spencer Properties, Inc.	360978	_____
Broker's Printed Name	License No.	Owner's Printed Name

By: _____	_____	_____	_____
SmartEgg, LLC, as Authorized	Date	Owner's Signature	Date
Agent of Spencer Properties, Inc., Broker			

Abigail Lipson	_____
Printed Name of Authorized Agent of SmartEgg, LLC,	Owner's Printed Name
as Authorized Agent for Spencer Properties, Inc., Broker	

_____	_____
Owner's Signature	Date