



California Association of Community Managers, Inc.

SAMPLE Management Retainer Agreement

ARTICLE I Recitals

A. REAL PROPERTY ("PROPERTY") COVERED BY THIS AGREEMENT:

Common Interest Development:
Location:
Declaration Recordation No.:
Tract No.:
of CID Units:
Development Type (i.e., Condo, PD):
Developer (if any):
Address:

B. "ASSOCIATION" AS A PARTY TO THIS AGREEMENT:

Association: _____, a California Mutual Benefit, Non-Profit Corporation
Address:

C. "COMPANY [INSERT ACTUAL NAME]" AS A PARTY TO THIS AGREEMENT:

Name:
Address:
Principal:

D. DEFINITIONS:

"Assessments" As used in this Agreement, the term **"Assessments"** shall mean those rates for general and special assessments established and approved by the Board, which the Association members are bound to pay as their share of the common expenses.

"Association" shall mean a corporation formed under the California State Corporations Code, or an unincorporated California Association, its successors and assigns. As used in this Agreement, "Association" shall specifically represent «CID Name».

"Base Fee" shall mean the monthly fee identified in Section 8, (Sections 8.1, 8.1.1-8.1.3) and covers Company's basic contractual services and usual and customary office expenses, exclusive of all extraordinary services that may occur by board direction as identified in Section 9 and Exhibit A of this Agreement.

"Board" shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

"Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under its Declaration and Bylaws.

"Common Areas" shall mean all the real property and improvements, including without limitation, streets, open parking areas, landscape areas and recreational facilities, which are owned or controlled by the Association for the common use and enjoyment of all the owners.

"Common Interest Development" means any of the following:

1. A condominium project
2. A planned development
3. A stock cooperative

"Association," "Owner," or "Company," herein or any pronoun used in the place thereof, shall mean and include the masculine and the feminine, the singular or the plural number and jointly and severally, individuals, firms or corporations, and each of their respective successors, executors, administrators, and assignees as the context so indicates.

"Governing Documents" shall include but not be limited to the Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), Bylaws, and operating rules of the Association, which govern the operation of the common interest development or Association.

"Managing Agent" shall refer to Company and as defined and referenced in the California Davis-Stirling Common Interest Development Act.

E. MISCELLANEOUS

In consideration of the covenants herein, the Association enters into this Agreement with Company to manage the Property for the compensation provided in Section 8 and for the term in Section 11, subject to the "Scope of Services," Terms and Conditions set forth hereafter.

This Agreement supersedes any and all prior representations, understandings and communications, and may be modified only by written agreement of the parties. Any oral agreements or modifications are expressly invalid.

This Agreement will be construed in accordance with, and governed by, the laws of the State of California. If any term, provision, covenant or condition of this Agreement, including the Scope of Services, should be found by a Court of competent jurisdiction to be invalid, all other provisions shall continue in full force and effect and shall in no way be affected, impaired or invalidated.

If any legal proceeding is necessary to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and legal costs, in addition to any other relief to which such party may be entitled. The parties agree that this Agreement shall be effective as of the date set forth in Section 11.

If the Association is incorporated, it is understood and so assured by the signer that the person signing on behalf of Association is a duly elected officer thereof and has corporate authority to execute this Agreement. If the Association is un-incorporated, and this Agreement is signed by both parties prior to the first (organizational) homeowners meeting, it is understood and assured by the person signing on behalf of the Association that the Association automatically assumes or will assume the full legal obligations of this Agreement for the full term stated in this Agreement and that no provisions to the contrary are or will be included in the Association's CC&Rs or Bylaws.

ARTICLE II Scope of Services

APPOINTMENT AND ACCEPTANCE

In consideration of the mutual promises, covenants, and conditions set forth herein and pursuant to the governing documents of Association, Association hereby appoints Company as its exclusive managing agent as that term is defined in California Civil Code section 4158 and Company hereby accepts the appointment as exclusive managing agent, on the terms and conditions set forth herein, to assist the Board of Directors in managing and maintaining the Property. Company will deliver services reasonably necessary to provide Association with management services on behalf of the Association's Board and strictly within the scope of this Agreement.

It is expressly understood and agreed that Company is to perform services as an independent contractor and is not to be deemed an employee of Association. It is further expressly understood and agreed that Company's employees, officers, directors, shareholders, and other representatives of Company are not parties to this Agreement, except to the extent that they have a right to indemnification under the terms of this Agreement.

Association shall provide certification to Company, within 10 days of the date of this Agreement, that Association is in good standing with all governmental agencies, including but not limited to, the Internal Revenue Service, the Franchise Tax Board, and the Secretary of State. In the event Association fails to provide such certification, Company shall verify that Association is in good standing and, if necessary, take steps to help reinstate Association to good standing. Association shall pay Company for all time and expenses incurred with respect to providing this service at the rates set forth in Exhibit A.

1. COMPANY'S SERVICES AND RESPONSIBILITIES

- 1.1 Management shall utilize its experience, professional skills and knowledge to assist Association's Board and its committees in accordance with generally accepted industry standards in the area of Common Interest Development Management.
- 1.2 The Association retains the primary responsibility for enforcement of provisions of the Association's governing documents and contractual agreements and assumes liability for any and all acts and occurrences which relate to the actions of the Association and its actions concerning the Property covered by this contract.
- 1.3 Company will undertake reasonable efforts to implement the lawful decisions of the Board of Directors and in accordance with the Terms and Conditions of this Agreement, subject to the compensation schedule set forth herein. Company will not be obligated to implement any decision which:
 - a) is contrary to the terms of this Agreement, industry standards, applicable laws or governing documents,
 - b) outside Company's expertise, knowledge or licenses, or
 - c) could involve transactions, activities, services or time that are not expressly set forth in this Agreement.

Company may hire other professionals, at Association's sole expense, as are necessary and proper in the discharge of its duties under this Agreement.

- 1.4 It will be the responsibility of Company, during the term of this Agreement, to perform the duties as set forth in this Agreement, consistent with the plans and directives of the Association's Directors, and to perform such other acts as are reasonably necessary to discharge Company's responsibilities.

2. FINANCIAL MANAGEMENT

- 2.1 **Maintenance Assessments:** Company will provide for the collection and deposit of all general and special assessments and any other appropriate charges/fees as they become due and payable or as otherwise directed by the Board.
- 2.2 **Association Operating Funds:** Company shall establish and maintain, in a bank or savings institution of Company's choice, one or more separate trust accounts in the name of Association. Said deposits shall be insured by the Federal Deposit Insurance Corporation or equivalent, and shall contain only Association trust funds collected on behalf of Association. Company shall have the authority to draw on these accounts for any payments which Company must make to discharge any liabilities or obligations incurred pursuant to the terms of this Agreement, including payment of Company's fees. Any service fees charged for banking services or account maintenance by the financial institution shall be the responsibility of the Association and shall be a charge against Association's operating and/or money market accounts.
- 2.3 **Delinquent Accounts:** Company is authorized to take reasonable steps for collection of delinquent accounts in accordance with Association's governing documents and delinquency policy, including but not limited to sending notices and assessing the delinquent account late charges, interest, and collection costs. Association shall pay Company for these services in accordance with the rates set forth in Exhibit A. As an accommodation to Association, along with seeking collection of the delinquent accounts, Company shall attempt to collect from the delinquent owner the fees incurred by Association in connection with collecting the delinquent assessments/accounts. In the event such efforts fail, Company will have authority to record a lien against the delinquent owner's unit in accordance with the Governing Documents and the approved collection policy.

Company shall have the authority to utilize attorneys and/or collection agencies in the pursuit of delinquent accounts upon specific resolution of the Board. Company is further authorized to pay, from funds in Association's bank accounts, all costs and attorney's fees incurred in the collection of the delinquent account. When allowable, said costs and fees are to be charged back to the account of the individual owner.

Company is authorized to assess the delinquent account a late charge and a delinquent processing charge, along with other charges for collection and lien fees, reflective of the costs of collection, accounting, payment plan monitoring and legal proceedings. All such assessments are to be deposited into the account of the Association. Company shall be paid <<__>> % of any late charges paid by the delinquent owner. Statutory interest may be charged commencing 30 days after any due date. Reasonable costs of collection, including attorney's fees, are authorized to be charged and collected per Exhibit A.

Association agrees to hold Company free and harmless from any and all liabilities, costs, expenses, obligations and/or attorney's fees incurred by Company in pursuit of the collection of delinquent accounts/assessments, including but not limited to staff time assisting legal counsel or attending court hearings. Association shall pay Company in accordance with the rates set forth in Exhibit A.

- 2.4 **Disbursement Authorization:** Company is authorized and shall make all disbursements from Association funds for liabilities incurred on behalf of Association. Association acknowledges Company's role as "Paymaster" [UNDEFINED]; accordingly, such disbursements may be made via paper drafts or electronically at the discretion of Company. Company is authorized to utilize all fraud control systems and methods available to Company for the protection of Association's funds. Company is hereby granted authority to make any non-budget expenditures as provided in this section at its own discretion up to <<\$____.00>>. In addition, Company shall have the authority to

make normal and usual expenditures as prescribed by the Board and/or by the Association's approved operating budget. Company will obtain approval for any extraordinary expenses of the Association as needed.

Emergency repairs involving imminent danger to life or property, or immediately necessary for the preservation and safety of the property, or for the safety of the Members, or required to avoid the suspension of any necessary service to the complex, may be made by the Company irrespective of the cost limitation imposed by this section.

Company will establish Association's reserve accounts at Association's direction. Company makes no warranty or representations regarding the security or yield of any reserve investment. Except for the disbursements provided for above, all reserve account disbursements will be signed by two members of the Board.

- 2.5 **Accounting and Financial Statements:** Company will maintain a set of accounting records in accordance with generally accepted industry standards.
- a. Company will distribute monthly to all members of the Board a financial statement for the previous month, including copies of the Balance Sheet, Statement of Income and Expenses, Schedules of Cash Investments, reserve allocations, and a check register of disbursements. Company shall also report to Board any cash flow problems.
 - b. Company shall reconcile all bank statements received by Company and shall provide to the Board on a quarterly basis copies of the bank statements and reconciliations.
 - c. Company will cooperate with the Association's Certified Public Accountant in its review of Association's financial statement and preparation of the Association's tax returns. Association shall pay Company for this service as set forth in Exhibit A.
 - d. Company will, upon direction from the Board, distribute to all members (homeowners) of the Association, at Association expense, copies of annual financial statements, budgets, collection policies, and all other publications and reports deemed necessary by the Board and applicable laws.
- 2.6 **Budget Preparation:** Company will prepare and submit to the Board a proposed budget. Any budget draft will be subject to final approval by the Board and the Board shall retain full responsibility for the appropriateness of data contained in the budget. Any decision to adopt Company's proposed budget, or to amend it for adoption will be reserved to and exercised solely by the Board.
- 2.7 In the event Association elects to have an outside firm perform a reserve study, Company agrees to cooperate with said outside firm and to furnish any and all standard forms and documents in Company's possession, upon request.

3. PHYSICAL MANAGEMENT

- 3.1 **Maintenance:** Company will assist the Board in its responsibilities for the upkeep, maintenance and management of the Common Area and the equipment, pursuant to the Association's documents and within the scope of this Agreement.
- 3.2 Company will receive maintenance requests and/or complaints concerning the Common Areas, and communicate them to appropriate Association contractors and vendors for correction, repairs and maintenance.

- 3.3 Company will provide a 24-hours per day, 7 days per week call center to assist or refer emergencies in the Common Areas. Serious matters will be reported to the Association's Board with appropriate recommendations for the purpose of receiving further instructions from the Board on how to proceed.
- 3.4 Company will perform monthly general reviews of the Common Areas and facilities from ground level, and will submit findings, action taken and recommendations to the Board of Directors, to assist in preserving the aesthetics of the Common Areas. Company shall also make additional periodic reviews of the Common Area as it deems necessary to satisfy its duties under the terms of this Agreement. The Company shall not be required to review the Common Areas during its reviews from any other perspective than from ground level. Company is authorized to initiate routine repairs to the Common Areas and facilities, so long as such repairs and maintenance are in compliance with the Board's adopted management plan for the Association or Section 2.4 herein.
- 3.5 Bids and Quotations for Hiring, Supervising and Discharging Third Party Contractors and Vendors:

Company shall review and provide guidance and assistance to the Board concerning the bidding process to enter into contracts with third parties for goods, materials and services that are expected to exceed \$<minimum amount>. The phrase "goods, materials and services" shall be broadly construed to include every kind of goods, materials and services including, but not limited to, those supplied by accountants, architects, attorneys, banks, bookkeepers, governmental agencies, insurance agents and companies, landscapers, maintenance workers, repair workers and all other similarly situated contractors/vendors of the Association.

Company shall assist the Association in obtaining one or more bids from contractors or vendors. Company shall use reasonable commercial efforts in researching vendors and contractors, but cannot and does not make any warranties or representation as to the capability or quality of the work or services of any particular vendor or contractor.

- a. Company will, upon receipt of instructions or upon resolution of the Board, request bids from insured vendors/contractors of Company and Board's selection, with a minimum of two (2) and a maximum of three (3) bids for the types of third-party goods or services that Company believes, in its sole discretion, are likely to cost \$<<amount>> or more. Those items for which the Board requests bids that are in the Company's sole discretion likely to less than \$<<amount>> will not be let out for bid, and Company shall be under no duty to solicit bids for those items. Should the Board wish for Company to solicit bids for an item costing less than \$<<amount>>, Company shall be entitled to an hourly fee in accordance with Section 9.1 of this Agreement. Specifications for all items shall be included with the Board's request, and the Board shall be solely responsible for establishing the standards, specifications or criteria for work to be let out for bid. Company will endeavor to make helpful suggestions; however, the Board shall make and be responsible for the final decision in establishing standards, specifications and criteria.
- b. Company will, upon receipt of the Board's instructions or resolution, discharge Association vendors/contractors that the Board decides are not performing up to the standards, specifications or criteria established by the Board. Company, on the basis of an operation schedule, job standards and compensation rates approved by the Association, shall investigate, secure and pay third parties in order to maintain and operate the Association. Any contract for such third party will be a direct contract between the Association and the third party, and Company will act solely as the representative of the Association in negotiations and maintenance of said contracts, and not as a contracting party.

Compensation for the services of all third-party contractors shall be paid by the Association. Under no circumstance does Company make any representations or warranties for the work performed by any third party contractor.

4. ADMINISTRATIVE MANAGEMENT AND CONSULTING

- 4.1 Association is responsible for obtaining and delivering to Company all records from prior management. Company shall not be required to locate information not turned over to Company and Company is relieved of any obligation to perform Services under the terms of this Agreement to the extent that performance of such Services is rendered impossible or unreasonably burdensome due to Association's failure to provide Company with its records.

Company shall organize the records and documents it receives from Association, or its prior management, in accordance with Company's normal procedures. The fee Association shall pay to Company for the initial setup is set forth in Exhibit A.

Within sixty (60) days from receipt of complete records, Company shall provide a statement of Association's financial condition or recommend to Association that its records need to be audited by a Certified Public Accountant ("CPA"). If Company expresses concern about the completeness and/or accuracy of Association's financial records, Association agrees to have an independent CPA perform an incoming audit of Association's financial records. If, in the sole opinion of Company, it cannot issue financial reports as a result of the condition of the books and records it receives at the inception of this Agreement, it is relieved of the obligation of issuing financial reports until such time the condition of the books and records is remedied following the independent audit.

Association agrees also to have an independent CPA perform an outgoing audit of Association's financial report should either party terminate this Agreement.

If requested by Board, Company shall obtain three (3) bids for performance of these audits. If a CPA firm is not selected by Board within ten (10) days of notification by Company then Company shall have the right to select the CPA, absent action by Association. Association agrees to pay for and shall be solely responsible for the cost of any audit which may be performed.

- 4.2 Company will write or delegate letters and communicate as necessary to assist the Board in carrying out its responsibilities.
- 4.3 Company will counsel and advise Board and its committees in their day-to-day operations.
- 4.4 Company will assist in interpretation of the rules of the Association and suggest possible steps of enforcement.
- 4.5 Company will provide, at Association's sole cost and expense, material and expertise in the development of methods of communication to the member homeowners (rules and regulations, etc.), as necessary.
- 4.6 At the request of the Board, and at the Association's sole cost and expense, Company will send notices of Association meetings, prepare the Agenda for said meeting, circulate minutes of any such meetings as prepared by the Recording Secretary, and implement instructions as approved by the Board.

- 4.7 Company will attend up to twelve (12) monthly meetings of the Board in any calendar year. Time in excess of two (2) hours per meeting or fraction thereof that lasts after <<_:00 p.m.>>, shall be charged at the rate schedule in accordance with Section 9.1 of this Agreement.
- 4.8 Company will attend meetings scheduled Monday through Thursday, except holidays. Meetings held on days other than those identified herein, and which the Company agrees to attend, will be charged at the rate on Section 9.1 of this Agreement.
- 4.9 Company shall endeavor to prepare and send to Board, five (5) days prior to a regularly scheduled Board meeting, a Board packet and report containing the following:
- A description and summary of action items completed since the last regular meeting;
 - Copies of pertinent correspondence from homeowners, government agencies or third parties;
 - Periodic reports from vendors or contractors providing services to Association;
 - Copies of any bids;
 - A report of Association's financial transactions since the previous meeting or board packet;
 - Minutes of the previous meeting;
 - Copies of new owner welcome letters; and
 - A summary of all homeowners not current with their Assessments.
- 4.10 Company will not be obligated to attend special meetings of the membership or of the Board or the Association's committees. However, if Company is requested to attend and accepts, Association will pay Company at the rate schedule in accordance with Section 9.1 of this Agreement, per hour for each hour or fraction thereof that such meeting lasts, plus mileage at the IRS rate per mile in effect at that time.
- 4.11 At the Association's sole cost and expense, Company will assist in preparation for Association Annual Membership Meeting, including preparation of any appropriate/requested documents, and will attend and participate in conducting the meeting if so requested by the Board.
- 4.12 Company will not be responsible to record and/or type minutes of regular meetings of the Board or the Annual Meeting of the Association. Upon request by the Board, Company shall select a third party to serve as Recording Secretary, the costs for which shall be borne by the Association. At the request of Association, Company shall distribute a copy of the minutes to any owner, at the expense of Association, according to the rates forth in Exhibit A.
- 4.13 In the event any Board meeting is cancelled by Association ten (10) days or less prior to a scheduled meeting, for any reason whatsoever, then Association shall pay Company for any such rescheduled meeting at the rate for an extra meeting set forth in Exhibit A.
- 4.14 Company will maintain possession of all records of the affairs of the Association throughout the term of this Agreement. While Company will put forth every effort to

maintain Association records in good order, Company makes no representation or warranty as to the accuracy and/or completeness of such records. Accuracy and completeness of the Association records remain the responsibility of the Association.

- 4.15 Company agrees to assist Association to enable Association to provide records that Association is required to provide owners under California law and shall make available for inspection and copying by an owner of Association, or the owner's authorized designated representative, Association's records during Company's normal business hours, provided Company receives reasonable notice in advance. Association will pay Company for providing these records and any services related thereto in accordance with the rates set forth in Exhibit A. It is understood and agreed that the services/documents described in this section do not include those services/documents provided to facilitate an owner's sales or refinancing as described in Section 6.2 of this Agreement.
- 4.16 Special Mailings and Newsletters requested by the Board as prepared by the Association shall be duplicated and mailed at the expense of the Association. All requests for duplication of additional copies of project documents, correspondence, reports, etc., will be at the expense of the Association.

5. TERMINATION OF AGREEMENT

- 5.1 Either party may terminate this Agreement by providing sixty (60) days written notice to the other. This termination provision may be invoked with or without cause. Upon such notice of termination, the parties agree that this Agreement shall remain in full force and effect for the entire sixty (60) days. In the event that Association does give such notice to Company, Association shall pay to Company a cancellation sum equal to sixty (60) day's management fees.
- 5.2 In the event of a dispute over the performance and/or non-performance by either party in this agreement, the alleging party shall offer arbitration to the offending party prior to initiating legal action to gain compliance with the terms and conditions set forth by this agreement.

Prior to requesting arbitration, the alleging party must provide the offending party written notice of the dispute. Such notice shall allow for a reasonable time, not to exceed thirty (30) days, for the offending party to comply with this agreement. After the expiration of said thirty days the alleging party can proceed to binding arbitration or can elect to file suit. Upon acceptance of a written demand for arbitration the dispute shall be submitted to arbitration with a single arbitrator mutually selected by the parties from a list of five arbitrators submitted by the American Arbitration Association. The determination of the arbitrator shall be binding upon both parties. The arbitration shall be conducted pursuant to the rules of the American Arbitration Association and shall be submitted within 120 days of submission. Upon making a written demand for arbitration, the dispute shall be submitted promptly to an arbitrator mutually selected by the parties and the determination of the arbitrator shall be binding upon both parties. If the arbitrator shall determine that offending party has committed a material breach of this agreement, then such finding shall furnish the aggrieved party with the right to terminate the contract 30 days after the final decision of the arbitrator and the offending party shall bear all costs of the arbitration proceeding. In the event that the parties cannot mutually select a single arbitrator, the arbitrator will be selected by the American Arbitration Association from the remaining names. The arbitrator shall award the prevailing party its costs, including reasonable attorney fees.

- 5.3 The Association acknowledges that Company will incur extraordinary costs in the transition period after termination such as the generation of special reports identifying the inventory of records, the inventory of current activities, processing the transitional documents, mechanically and physically transporting books, records and documents, and

meeting with the Association and/or Company's successor to describe, define and explain the Association's documents, instruments and records, and the functioning of the community. Consequently, Association agrees that all such transitional services shall be deemed to be extraordinary services for which Company shall be compensated as hereafter set forth. In any event, however, the compensation for these transitional services shall not exceed the sum of the most recent monthly fee, including extras, payable under the Agreement.

- 5.4 Should any party hereto retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, including, but not limited to, instituting any action or arbitration to enforce any provision hereof, for damages by reason of such party's rights or obligations hereunder or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all such costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs for services rendered to such prevailing party.
- 5.5 Upon taking of the entire or a substantial portion of the Property through lawful condemnation proceedings by any governmental party, either party may terminate this Agreement by serving 30 days written notice by certified mail to the other party.

6. RECORDS RETENTION

- 6.1 The Association's current records shall be kept at the Company's office. Such records shall be available for inspection and copying during Company's normal business hours in accordance with California state laws and Association document provisions, Monday through Friday. Company shall be entitled to charge and receive copying and document research costs, as set forth in Exhibit A, from anyone requesting copies of records or documents, before making such copies. Company shall be entitled to reasonable notice prior to such inspection or copying of records.
- 6.2 Company shall maintain a current list of members/homeowners name/property address/mailling address) in accordance with the information supplied to Company. Reasonable efforts will be made to keep this list accurate, but it shall be the responsibility of the Association to advise Company of address or ownership changes. Company shall not be obligated to search official records for such transfers of ownership unless specifically requested to do so by the Board at hourly rates set forth in this Agreement. Company will record changes of address of ownership upon advice from owners or escrow, with supporting documentation.

Company agrees to assist Association to enable Association to prepare and provide documentation Association is required to maintain and/or provide under California law and as reasonably requested by escrow companies, appraisers, and lenders, in order to facilitate sales of individual residences located within Association, and in connection with a homeowner's re-financing needs. Association acknowledges that Company is providing this service as an accommodation and that Association will be charged by Company for these additional services. The fees Association is to pay Company for this service are set forth in Exhibit A or on the web site at <<[www._____](#)>> and are subject to change at the sole discretion of Company.

As a further accommodation to Association, Company agrees to prepare a "demand statement" prior to the close of escrow, and upon notification of the close of escrow, Company agrees to transfer all information from the name of the seller(s) to the name of the buyer(s). Association shall pay Company for these services in accordance with the rate set forth Exhibit A.

As an accommodation to Association, Company will seek collection of the aforementioned fees from the owner through escrow/the escrow process. Association understands and agrees that in the event the fees are not collected from the owner, Association is responsible for payment of the fees to Company.

- 6.3 Company will maintain documents and complete files for all current correspondence relating to Association, such as incoming unit owner correspondence, violation and architectural control letters, contracts, purchase orders, filing with public agencies, insurance policies and information and other related documents.
- 6.4 All records and correspondence regarding Association are and will remain the sole property of Association. Company agrees to return any and all such records and correspondence to the Association, or to an entity or person designated by the Board upon termination of this Agreement. Such records will be available for pick up at Company's office or such other designated location as may be agreed upon. Electronic media, such as computer tape, discs, and general electronically stored databases are the sole property of the Company and any duplication or transference of information shall be at the sole discretion of the Company with all costs and charges to be paid by the requesting party.
- 6.5 Company agrees to maintain storage of Association records and correspondence at Association's sole cost and expense as set forth in Exhibit A.

7. INSURANCE AND INDEMNIFICATION

- 7.1 **Management Insurance:** Company will, throughout the term of this Agreement, and at Company's sole expense, maintain the following insurance coverage:
 - a. Fidelity insurance with coverage for all Company's employees, when applicable, to protect Association funds, if any;
 - b. Company's liability insurance and comprehensive general liability coverage, including automobile liability, completed operations, blanket contractual and personal injury coverage, with combined single limits of \$1,000,000 property damage and liability;
 - c. Workers' Compensation Insurance in the statutory amount, covering any of Company's employees; and
 - d. Errors and Omissions coverage with limits of \$1,000,000.
- 7.2 **Association Insurance:** The Association will, throughout the term of the Agreement and at the Association's sole expense, maintain the following insurance coverage:
 - a. Occurrence-based Commercial General Liability insurance with limits of at least \$1,000,000 each occurrence and aggregate. The policy will include "your real estate manager" within the definition of insured;
 - b. Directors' and Officers' Liability insurance with limits of at least \$1,000,000 per claim and aggregate. This coverage will be maintained for a period of three years following the termination of this Agreement.
 - c. Commercial Crime Insurance (or fidelity bond) including computer fraud and funds transfer fraud with limits of not less than the balance of the Association's reserve funds plus three months' total assessment revenue; and

- d. Property and such other insurance as required by the Association's Declarations and applicable California law and as deemed appropriate to adequately protect the Association and Board.

The Association will provide a current and original certificate of insurance providing evidence of the Association's insurance, showing Company as additional insured for the Liability and Directors' and Officers' policies and also for any umbrella and automobile policies if the Association maintains these coverages such that Company is covered for any and all claims and losses indemnified by Association pursuant to Section 7.3. The policies will provide primary and non-contributing insurance to the additional insured. The liability policy and any Workers' Compensation policy will be endorsed with a waiver of subrogation naming Company.

- 7.3 **Indemnification:** The Association shall indemnify, defend at its sole cost (with counsel selected by Company) and hold Company and its employees, agents, representatives, officers, directors, and shareholders harmless from and against any and all claims, demands, actions, liabilities, losses, damages, injuries, costs and expenses (including, without limitation, actual attorney's fees and defense costs) arising directly or indirectly out of, or in connection with or related to, this Agreement or in connection with the management, operation, or condition of the Association, including any and all claims and damages and liability for injuries suffered or death or property damage incurred relating to the Property, except to the extent any such liability is due to the sole willful misconduct or gross negligence of Company and/or its employees. This provision to indemnify Manager and its employees, agents, representatives, officers, directors, and shareholders also relates to any and all acts, errors, or omissions, statements or representations made by Company in the performance and/or non-performance of this Agreement, Manager's duties, and relating to any and all contractual liabilities and non-contractual liabilities which may be alleged or imposed against Company or Association. The obligation of Association to indemnify, defend and hold harmless includes but is not limited to the obligation to pay for, on a current basis, all costs of defense of Company in any action, which costs include but are not limited to the payment of all fees and expenses for legal, expert, accounting or other professional services needed to defend any action brought by any person or entity for which indemnification and defense of Company is called for hereunder. Notwithstanding any other provision of this Agreement to the contrary, the Association's obligations under this Section shall survive the expiration and/or termination of this Agreement for any reason whatsoever and shall bind any and all of the heirs, successors, assigns and/or transferees of the Association. Further, this provision shall not be limited by any applicable insurance coverage available to the Association or Company hereunder.

Company will be responsible only for any willful misconduct and gross negligence where such liability is due to the sole conduct of Company and/or its employees in the performance of its duties under this Agreement.

8. COMPENSATION

- 8.1 In consideration of Company's acceptance of its appointment hereunder and the performance of services as set forth herein, the compensation to which the Company will be entitled will consist of fees for basic services (base fee) which are considered due upon execution of this Agreement, but are paid monthly, along with those fees and costs for special or extraordinary services as set forth in Exhibit A.
 - 8.1.1 Association shall pay Company a base monthly fee of <<\$fee>> in advance on the first day of each month. Association understands and agrees that the base monthly fee does not include payment and reimbursement for goods, supplies, materials and/or services as set forth in Exhibit A and on Company's website. Any costs incurred for such goods, supplies, materials and/or services shall be

paid by Association to Company within << days>> days of said costs/expenses being incurred by Company.

Payments, including but not limited to, payment of the Base Fee, fees due in accordance with Exhibit A and Company's website, and fees due on notice of termination of this Agreement pursuant to Section 5 of this Agreement, not made by the fifteenth (15th) of the succeeding month shall accrue a late fee of ten percent (10%) plus bear interest at a rate of ten percent (10%) per annum. Association agrees that in the event of late payment, Company will incur costs and suffer damages, the amount of which costs and damages are impossible or difficult to precisely ascertain, and that the late fee and interest set forth herein is a reasonable estimation of such costs and damages.

Company is entitled to deduct its Base Fee and expenses when due from Association funds in its possession.

8.1.2 Upon the first day, of the first month, following completion of the first year of this Agreement, and every twelve (12) months thereafter, the Base Fee payable to Company shall automatically be increased by either <<__ percent (_%)>> or the cumulative measure of increase in the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U), whichever is greater. Notwithstanding anything contained herein, Company retains the right to a higher increase at anytime an increased workload can be documented or anticipated.

8.1.3 Company and Association agree that the Base Fee is based upon the estimated time necessary to fulfill Company's duties defined by this Agreement. Association and Company agree that time in excess of «Hours» hours in the aggregate, shall be billed to Association in accordance with Section 9.1 herein.

Company understands the time investment necessary to assist Association at the inception of this Agreement. Accordingly, Company will not charge for excessive time for a period of four months from the date of commencement.

9. SPECIAL OR EXTRAORDINARY SERVICES

9.1 Association shall pay Company compensation as follows:

Principals \$<<rate>> per hour, Community Administrator \$<<rate>> per hour, Accounting and Clerical Personnel \$<<rate>> per hour, or a specific rate as given below, for services performed on behalf of Association outside the normal course of operation or outside the parameters of this agreement.

9.2 Company may be required to perform additional services beyond the scope of this Agreement, for which the above fees, or the current rates that are then applicable, will be charged by the work performed. Examples of such services include, but are not limited to:

- a. Assistance in adhering to requirements of laws and regulations which may be passed during the term of the Agreement that require Company participation.
- b. Company will be paid per hour, portal to portal, for work performed by Company on behalf of Association, including but not limited to, appearance at court, at hearings, depositions, claims negotiations and processing of insurance losses or reconstruction, performing committee functions, such as monitoring, reporting and updating of any architectural progress and violations within the common areas, development status reports, bank loans, investments, maintenance, construction defect matters, financial reconstruction, discovery on Association's acts prior to the original commencement date of this agreement.

Company will only be paid for the services identified above if performing said services cannot be accomplished, along with Company's other duties defined herein, within the hours prescribed by Section 8.1.3 of this Agreement.

10. ASSOCIATION SET-UP FEE

10.1 Company shall be paid a one-time, non-refundable fee of \$-<<Set-up fee>> at the commencement of this Agreement to off-set the costs of setting up the Association's records. Not included in such set-up fee are bank charges or independent accountant's fee which may also be incurred.

11. TERM OF CONTRACT

11.1 This Agreement shall commence «Date» and shall continue in full force and effect for twelve months, and hereinafter from year to year. This agreement shall automatically renew for a like term at each anniversary of the commencement date, unless terminated before as set forth above in Section 5.

11.2 Company's compensation shall commence upon <<Date>>.

12. PROTECTION OF COMPANY CONFIDENTIAL INFORMATION

12.1 Association acknowledges that solely by reason of this Agreement, Association may/will come into possession of, obtain knowledge of, or contribute to Company "Confidential Information" as defined herein. "Confidential Information" means any and all information and data whether maintained in hard copy or electronic form, concerning Company's trade secrets, proprietary information, marketing and sales techniques, manuals, programs, design methods, processes, formulas, pricing, bidding methods, inventions, discoveries, improvements, research or development and test results, specifications, data, know-how, formats, marketing plans, business plans and strategies, forecasts, financial information, budgets, projections, employee compensation and benefits, and vendor/supplier lists, identities, characteristics, preferences, and agreements. Such information may be contained in lists, reports, or computer programs; or may constitute unwritten information, techniques, processes, practices or knowledge. Confidential Information includes all information that has or could have commercial value or other utility in the business in which Company is engaged or in which it contemplates engaging. Confidential Information also includes all information of which the unauthorized disclosure could be detrimental to the interests of Company, whether or not such information is identified as Confidential Information by Company.

12.2 Association agrees that at all times, during or after this Agreement, Association will hold in trust, keep confidential, and not, directly or indirectly, disclose to any third party or make any use or cause to permit the exploitation, dissemination, copying or summarizing of any Confidential Information, as defined herein, except for the benefit of Company.

12.3 Association agrees and understands that all of the Confidential Information is a valuable asset of Company and is, will be, and shall at all times remain, the sole and exclusive property of Company. Association is aware that the unauthorized disclosure of Company Confidential Information may be highly prejudicial to its interests, an invasion of privacy, and an improper disclosure. Association understands and agrees that it must maintain and preserve all of the Confidential Information and knowledge thereof as unavailable to Company's competitors, the industry, and the general public in order to protect Company's business, competitive position, and goodwill, since Company derives a competitive advantage in the marketplace by maintaining the Confidential Information and knowledge thereof as secret and unavailable to Company's competitors and the public.

- 12.4 Association also understands and agrees that but for entering into this Agreement with Company, the Confidential Information would not have been disclosed to Association.

13. NON SOLICITATION OF COMPANY STAFF

- 13.1 Association further agrees that, during and for a period of one (1) year after the term of this Agreement, Association will not, directly or indirectly, induce or attempt to induce any Company employee or consultant to discontinue its employment with Company or offer or accept for hire any of Company's employees. Association understands and agrees that Company spends a significant amount of time in hiring and training its employees and developing its relationships with its consultants.
- 13.2 Association understands and agrees that if Association, directly or indirectly, either for Association or for any other person or entity, induces or attempts to induce Company's employees or consultants to discontinue employment with Company, interferes with those relationships, or accepts for hire any of Company's employees, such conduct may cause irreparable harm. Association also understands and agrees that in addition to any equitable relief available to Company, because it may be difficult to ascertain and impractical or extremely difficult to fix an actual monetary amount of damages, Association shall be liable to Company in an amount, as liquidated damages, equal to the compensation paid to said employees/consultants for the twelve (12) months immediately preceding such event. This sum is agreed upon as compensation for the injury suffered by Company, not as a penalty, but to replace and retrain said employee and/or consultant.

14. MISCELLANEOUS

- 14.1 Company will not be required to perform any act or duty hereunder involving the expenditure of money unless Company shall have in its possession sufficient funds of the Association available. Therefore, if at any time the funds in the possession of Company are not sufficient to pay the charges incident to this Agreement, Company, shall not be responsible to advance its own funds for any reason, and the Association agrees, in such cases, that upon notice thereof by Company, the Association shall make immediate arrangements to make funds available to cover the insufficiency. Company shall promptly notify Association of any deficiency in the account necessary to pay the charges incident to this Agreement.
- 14.2 Company shall receive communications and directions from any Director and shall act with the assumption that said Director is acting on behalf of the entire Board. Should a conflict arise between Directors, Company shall consider the President as the authorized representative of the Board/Association with authority to act on behalf of Board/Association. Should the President be unavailable to resolve such a conflict, then the Vice President shall serve in this capacity. Company may, but is not required to, submit any matter, direction, instruction or the like to the Board and shall then follow the direction of the Board.

The Board understands its fiduciary duties and agrees to govern the Association in a businesslike manner, acting in good faith and in the best interest of the association and in accordance with the adopted community management plan, the Association's governing documents and applicable state and federal laws.

- 14.3 No right or remedy herein conferred upon, or reserved to either of the parties to this Agreement, is intended to be exclusive of any other right or remedy. Each and every right and remedy shall be cumulative, and in addition to any other right or remedy, given under this Agreement now or hereafter, legally existing upon the occurrence of any event of default under this Agreement. The failure of either party in the event of default under 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, shall not be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults.

Every right and remedy given by this Agreement to the parties may be exercised from time to time and as often as may be deemed appropriate by those parties.

- 14.4 The execution, interpretation and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of California. If any part of this Agreement shall be declared invalid or unenforceable, the invalid or unenforceable provisions shall be stricken from this Agreement without affecting any other provision.
- 14.5 Notices or other communications between the parties to this Agreement may be mailed by U.S. registered or certified mail with return receipt and postage prepaid, may be deposited in a U.S. Post Office or a depository regularly maintained by the post office, or sent via facsimile or email. Such notices may also be delivered by hand or by any other receipted method including common carriers such as UPS or FedEx or other means permitted by law. For purposes of this Agreement, notices shall be deemed been "given" or "delivered" upon personal delivery thereof or twenty-four (24) hours after having been sent by one of the means permitted by law.

If mailed to Company, the following address applies:

If mailed to Association, address of the Secretary of Association applies.

- 14.6 This Agreement, including any attachments/addendums, contains the entire agreement and understanding of the parties hereto and supersedes any and all prior representations, understandings and communications.
- 14.7 This Agreement may be modified only in a writing signed by both of the parties. Any oral agreements or modifications are expressly invalid.
- 14.8 Even though the date of this Agreement signed by each party may be different, the parties agree that this Agreement shall be effective as of the date set forth in Section 11.1 of this Agreement.
- 14.9 Association and Company acknowledge that they have carefully read and reviewed this Agreement and each term and provision contained herein and by execution of this Agreement show their informed and voluntary consent thereto. The parties hereby agree that, at the time this Agreement is executed, the terms of this Agreement are commercially reasonable and effectuate the intent and purposes of the Association and Company.

15. DISCLAIMER

No representation or recommendation is made by Company, its employees, or the California Association of Community Managers as to the legal sufficiency, legal effect, or other consequences of this Agreement. The parties shall rely solely upon the advice of their own legal counsel as to the legal and other consequences of this Agreement.

By affixing signatures below, both Association and Company agree to the terms, conditions and provisions specified by this Agreement.

ASSOCIATION: «**Association Name**»

BY: _____

TITLE: _____

DATE: _____

COMPANY: <<**Management Company's Name**>>

By: _____

TITLE: _____

DATE: _____

California Association of Community Managers, Inc.SM

23461 South Pointe Drive, Suite 200, Laguna Hills, CA 92653 | info@cacm.org | 949.916.2226 | www.cacm.org

Information contained in this Sample Management Retainer Agreement is intended to be used only as a guideline and is not intended to be construed as legal advice. It is recommended that parties utilizing the Agreement consult their own legal counsel before entering into any agreement.

~Revised April 2014~

SAMPLE EXHIBIT "A"

INDIVIDUAL PROPERTY OWNER CHARGES (Billed Directly to Individual Property Owners):

A. Escrow Transactions

| | | |
|---|-----------|----------------------------------|
| 1. Transfer & Set-up Fee * | \$<<fee>> | (\$<<fee>> for new developments) |
| 2. Refinance Fee * | \$<<fee>> | |
| 3. Association Documents - Complete sets only ** | \$<<fee>> | |
| 4. Homeowner Certifications | \$<<fee>> | |

* Includes statement of account, budget, fidelity bond and financial statement.
** Includes CC&Rs, Bylaws, Articles of Incorporation, Rules & Regulations.

B. Collection Charges (Billed to Association for Homeowner Reimbursement)

| | | |
|---|--|--|
| 1. Intent to Lien Letter & Tracking Fee | \$<<fee>> | |
| 2. Preparation & Recording of Lien | \$<<fee>> | |
| 3. Late Charges | 50% of amount collected from homeowner | |
| 4. Payment Plan Administration | \$<<fee>> per unit per month | |
| 5. Processing Returned Checks | \$<<fee>> per check + bank charges | |

C. Architectural Review Fees (Billed Directly to Homeowner upon Submittal)

| | | |
|--|-------------------------|--|
| 1. Plan Review and Packaging for ARC Submittal (For custom home development only) | \$<<fee>> per submittal | |
| 2. Modification and Addition Plan Review (After initial construction of home) | \$<<fee>> per submittal | |
| 3. Progress Reviews and Compliance Reports | No Charge | |

D. Reimbursable Association Administrative Operating Costs/Expenses

The following charges are reimbursable Administrative Operating Expenses incurred on behalf of the Association. An invoice to substantiate each charge at the time of payment will be provided.

| | |
|-------------------------------------|---|
| Telephone Toll Calls | Actual Cost |
| Postage | Actual Cost |
| Certified/UPS/Fed Ex | \$<<fee>> plus charges |
| Homeowners' Listings | \$<<fee>> per page |
| Fax Charges (incoming & outgoing) | \$<<fee>> per page |
| Distribution Stickers/Keys/Openers | \$<<fee>> each plus costs |
| Labels/Address Sheets | \$<<fee>> each (special mailings only) |
| Mailing Charges | \$<<fee>> (special mailings only) |
| Fold/Staple | \$<<fee>> (special mailings only) |
| Envelopes Small | \$<<fee>> (special mailings only) |
| Large | \$<<fee>>each |
| Special Check Processing | \$<<fee>> per check |
| Photocopies | \$<<fee>>per page |
| Folders/Postcards | \$<<fee>> each |
| Year-end 1099s; Payroll Tax Returns | \$<<fee>> each + costs |
| Special Assessments - First Month | \$ N/A |
| Each Add'l Month | \$ N/A |
| Check Stock/Micr Ink | \$<<fee>> per check |
| Document Storage | \$<<fee>> per box per month |
| Payroll Processing Fee | Greater - 10% of gross payroll or \$<<fee>> per check |
| EDD/Vendor Filing Fee | \$<<fee>> per vendor |
| Off-Site Document Retrieval | Actual Cost |

Information contained in this Sample Management Retainer Agreement is intended to be used only as a guideline and is not intended to be construed as legal advice. It is recommended that parties utilizing the Agreement consult their own legal counsel before entering into any agreement.

SAMPLE EXHIBIT "A" (continued)

| | |
|--|-----------------------------------|
| Verification of Good Standing with Governmental Agencies | \$<<fee>> per Agency plus charges |
| Review of Financial Statements/Preparation Of Tax Returns for CPA | \$<<fee>> plus charges |

Company is authorized to purchase supplies for Association including, but not limited to, check stock, data discs, copier use, and telephone toll calls made for Association business.

Note: The foregoing list is intended to identify the major areas of service that are extraordinary expenses. There may be additional services for which the Association will be charged. In such cases, the Company will provide cost estimates prior to engaging any additional service. The above fees may be subject to change without notice or subject to change due to implementation of new law(s).

Note: If the Company wishes to add language into their Management Contract that includes Mandatory Arbitration (Section 5.2), the paragraphs below serve as an example and are not intended to be legal advice. Please consult qualified and independent legal counsel for further advice and direction.

MANDATORY ARBITRATION

Except for any controversy, claim or dispute within the jurisdiction of the small claims court, any dispute arising out of or relating to this Agreement, or the alleged breach thereof, except as provided in this Agreement, arbitration shall be governed by and proceed in accordance with and be subject to the provisions of the Federal Arbitration Act; however, to the extent that the Federal Arbitration Act is inapplicable or held not to require arbitration of a particular dispute, the California Arbitration Act – Title 9 of Part III of the California Code of Civil Procedure (commencing at Section 1280 et seq.), or any successor or replacement statute(s), shall apply. The Parties shall be entitled to conduct discovery and take depositions pursuant to the provisions of Code of Civil Procedure Section 1283.05, without giving effect to the limitations contained in Code of Civil Procedure Section 1283.05(e).

Any arbitration shall be held in <<_____>> County, California. If the Parties are unable to agree on a neutral arbitrator ("Arbitrator") within ten (10) days of the aggrieved party giving written notice to the other party, then the arbitration will be held under the auspices of one of the following organizations: the American Arbitration Association ("AAA") or Judicial Arbitration & Mediation Services ("JAMS"), or their successor-in-interest, with the designation of the organization to be made by the party who initiates the arbitration.

Any demand for arbitration shall be in writing and must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based upon such claim, dispute or other matter would be barred by the applicable statute of limitations or the date specified in this Agreement, whichever is the earlier.

The Parties agree that, except as provided in this Agreement, the proceedings shall be conducted in accordance with the selected organization's then applicable arbitration procedures and rules. The Arbitrator shall be either a retired judge, or an attorney who is experienced in the area of dispute.

The Arbitrator shall apply the law of the state of California or federal law, or both, as applicable to the issues asserted and is without jurisdiction to apply any different substantive law or law of remedies. The Arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement.

Notwithstanding the above, either party may file a request with a court of competent jurisdiction for equitable relief, including but not limited to injunctive relief, and expedited discovery pending resolution of any claim through the arbitration procedure set forth herein; however, in such cases, the trial on the merits of the claims will occur in front of, and will be decided by, the Arbitrator, who will have the same ability to order legal or equitable remedies as could a court of general jurisdiction.

The Arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person, as the Arbitrator deems advisable. The Arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the California Rules of Civil Procedure. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

Although conformity to legal rules of evidence shall not be necessary, the Arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Arbitrator to be cumulative or irrelevant, and shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

The Arbitrator shall render an award and written opinion, which will consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim and also contain a concise written statement of the reasons of the award, stating the essential findings and conclusions of law upon which the award is based, no later than thirty (30) days from the date the arbitration hearing concludes or the post-hearing briefs (if requested) are received, whichever is later. Costs and fees of the Arbitrator shall be borne by the non-prevailing party, unless the Arbitrator determines otherwise. The award of the Arbitrator, which may include equitable relief, shall be final and binding upon the Parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Either party may bring an action in any court of competent jurisdiction to compel arbitration and to enforce an arbitration award.