



CACM adopted a new standardized management agreement that follows the ***Retainer Agreement concept***. That is, the base management fee provides for a defined number of man hours per month for the management firm to assist the client association. It also provides for an hourly fee for every hour spent in excess of the defined monthly hours. This is a subtle, yet profound change to our traditional standard operating procedure. Try asking your attorney, engineer, architect, landscaper or pool man for more service - for the same fee - and the folly of this condition becomes apparent.

Though converting to a retainer based agreement is both simple and logical, it will require a cultural change within the management firms as well as an understanding on the part of your clients.

For the management firm, the most important and perhaps difficult task will simply lie in quantifying the time spent on each client. There are numerous time-tracking software packages, such as those used by law firms, that are simple to use and relatively inexpensive.

The second challenge for the management firm is to determine the man hours each client will require. Calculating the man hours begins with understanding the overhead costs of the firm itself. In other words, what is the cost to have an office, insurance, an accounting staff, and executive leadership. The overhead should be deducted from the base fee to arrive at an adjusted fee from which you can calculate the actual community management time. The management costs should include, at a minimum, the community manager and the manager's assistant and/or customer service support, plus appropriate overhead costs, benefits, and profit.

Whatever type of contract used by the Management Firm, CACM recommends the Firm retain strong indemnification language in the contract with their client(s).



**SAMPLE  
Management Retainer Agreement**

**Article I  
Preliminary Recitals**

**A. REAL PROPERTY COVERED BY THIS AGREEMENT:**

Common Interest Development: «CID NAME»

Location: «Location of CID»

Declaration Recordation No.: «CC&R for CID»

Tract No.: «Tract»

# of CID Units: «#»

Development Type: «Type» (i.e. Condo, PD )

Developer: «Developer» (if any)

Address: «Address of CID»

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

Association: «Assoc», a California Mutual Benefit, Non-Profit Corporation

Address: «Address»

**C. MANAGING AGENT ("AGENT") AS PARTY TO THIS AGREEMENT:**

Name: <<Managing Agent Name>>

Address: «Address»

Principal: «Principal Name»

**D. DEFINITIONS**

**"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, (A, B, and C) and covers agent's basic contractual services and usual and customary office expenses, exclusive of all extraordinary services which may occur by Board direction as identified in Section 9 and Exhibit A of this agreement.

**"Board" or "Board of Directors"** 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 Area"** 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

**"Definitions"** The terms **"Association"**, **"Owner"**, or **"Managing Agent"**, 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 mean the Declaration of Covenants, Conditions and Restrictions and other documents, such as Bylaws, and operating rules of the association, which govern the operation of the common interest development or association.

**"Maintenance Assessments"** As used in this Agreement, the term **"Assessments"** shall mean those rates established and approved by the Board of Directors, which the Association members are bound to pay as their share of the common expenses. The term "Association" as used herein shall mean an association consisting of all the Owners of units in the Common Interest Development (CID) organized under the laws of the State of California for the purpose of administering the Common Interest Development (CID) established by the Declaration of Covenants, Conditions and Restrictions ("Declarations") for the real property.

## **E. MISCELLANEOUS**

In consideration of the covenants herein, the Association as described in "B" above enters into this Agreement with the Agent to manage the property described in "A" above for the compensation provided in Section 8 and for the term as set forth in Section 11 and subject to the Agency Agreement, "Scope of Services," Terms and Conditions set forth hereafter which are Pages 3 through 18 incorporated and made a part of this Agreement. These documents are to be construed as one integrated written Agreement between the parties, and include the recitals.

This written 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 the TERM OF CONTRACT. (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 contracts. If 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 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 Covenants, Conditions and Restrictions or Bylaws.

## **ARTICLE II**

### **Scope of Services**

#### **APPOINTMENT AND ACCEPTANCE**

The Association hereby exclusively engages the Agent and appoints the Agent to manage the Association under the sole direction of the Board of Directors upon the terms and conditions hereinafter set forth. The relationship between the Association and Agent is one of Principal and Agent.

The Managing Agent (hereinafter called "Agent"), will deliver services reasonably necessary to provide Association with management services on behalf of the Association's Board of Directors, and strictly within the scope of this agreement.

#### **1. MANAGING AGENT'S SERVICES AND RESPONSIBILITIES**

- 1.1 The Association hereby appoints the Agent and the Agent hereby accepts appointment, on the terms and conditions hereinafter provided, as the Agent for the Association.
- 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 real property covered by this contract.
- 1.3 Agent 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. Agent will not be obligated to implement any decision which:
  - a) is contrary to the terms of this Agreement, applicable laws or governing documents,
  - b) would involve transactions or services outside the Agent's expertise, knowledge or licenses,
  - c) would involve transactions or services which are not set forth in this Agreement.
- 1.4 It will be the responsibility of Agent, 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 Board of Directors, and to perform such other acts as are reasonably necessary to discharge Agent's responsibilities.

#### **2. FINANCIAL MANAGEMENT**

- 2.1 **Maintenance Assessments.** The Agent will provide for the collection and deposit of all maintenance assessments, and establish, at its sole discretion, a separate checking account or accounts, with any federally insured institution(s), as is customary with other Associations managed by Agent for the deposit and protection of Association's operating funds.
- 2.2 **Association Operating Funds.** Agent will establish and maintain Association funds, in a bank of Agent's choice, whose deposits are federally insured, and in a manner to indicate the custodial nature thereof, a separate bank account as Agent of Association for the deposit of monies of Association, with authority to draw thereon for any payments to be made by the Agent to discharge any liabilities or obligations incurred pursuant to this Agreement and for the payment of the Agent's fee, all of which payments are subject to the limitations of this Agreement. From funds collected, Agent will cause to be paid the expenses for the operation of Association in accordance with the approved budget or as otherwise authorized by Association's Board of Directors. Any service fees charged for banking services or account maintenance by the bank 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.** Agent is authorized to take reasonable steps for collection of delinquent accounts. In the event such efforts fail, Agent will have authority to record a lien against the delinquent owner's unit in accordance with the Declarations and the approved collection policy. The

Agent is authorized to assess the delinquent account a late charge and a delinquent processing charge, along with other charges for collection & 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. Agent shall be paid 50% of any late charges paid by homeowners. 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.

- 2.4 Disbursement Authorization. Agent is authorized and shall make all disbursements from Association funds for liabilities incurred on behalf of Association. Association acknowledges Agent's role as Paymaster, accordingly, such disbursements may be made via paper drafts or electronically at the discretion of Agent. Agent is authorized to utilize all fraud control systems and methods available to Agent for the protection of Association's funds. Agent is hereby granted authority to make any non-budget expenditures as provided in this section at its own discretion up to \$1,000.00 In addition, Agent shall have the authority to make normal and usual expenditures as prescribed by the Board of Directors and/or by the Association's approved operating budget. Agent 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 Agent irrespective of the cost limitation imposed by this section.

Agent will establish Association's reserve accounts at Association's direction. Agent 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 of Directors.

- 2.5 Accounting and Financial Statements. Agent will maintain a set of accounting records in accordance with generally accepted industry standards.
- a. Agent will distribute monthly to all members of the Board of Directors 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.
  - b. Agent shall reconcile all bank statements received by Agent and shall provide to the Board copies of both statements and reconciliations.
  - c. Agent will cooperate with auditors in their performance of audits and reviews of Association's records and their preparation of applicable tax returns in accordance with Exhibit A.
  - d. Agent will, upon direction from the Board of Directors, distribute to all members, at Association expense, copies of annual financial reports, budgets, collection policies, and all other publications and reports deemed necessary by the Board of Directors and applicable laws.
- 2.6 Budget Preparation. Agent will prepare and submit to the Board of Directors a proposed budget. Any budget draft will be subject to final approval by the Board of Directors and the Board shall retain full responsibility for the appropriateness of data contained in the budget. Any decision to adopt Agent's proposed budget, or to amend it for adoption will be reserved to and exercised solely by the Association's Board of Directors.
- 2.7 In the event Association elects to have an outside firm perform a reserve study, Agent agrees to cooperate with said outside firm and to furnish any and all necessary forms and documents in Agent's possession, upon request.

### 3. PHYSICAL MANAGEMENT

- 3.1 Maintenance. Agent will assist the Board of Directors in its responsibilities for the upkeep, maintenance and management of Common Area and the equipment, pursuant to the Association's documents and within the scope of this Agreement.
- 3.2 Agent will receive maintenance requests and/or complaints concerning the Association's Common Areas, and communicate them to appropriate Association contractors and vendors for correction, repairs and maintenance.
- 3.3 Agent will provide a 24-hours per day, 7 days per week call center to assist or refer emergencies in the Common Areas of the Association. Serious matters will be reported to the Association's Board of Directors with appropriate recommendations for the purpose of receiving further instructions from the Board on how to proceed.
- 3.4 Agent will perform monthly general reviews of the Association 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. Agent 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 Agent shall not be required to review the Common Areas during its reviews from any other perspective than from ground level. Agent 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 for Hiring, Supervising and Discharging Third Party Contractors.
- a. Agent will, upon receipt of instructions or upon resolution of the Board of Directors, request bids from insured vendors of Agent's 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 Agent believes, in his sole discretion, are likely to cost \$<<amount>> or more. Those items for which the Board requests bids that are in the Agent's sole discretion likely to less than \$<<amount>> will not be let out for bid, and Agent shall be under no duty to solicit bids for those items. Should the Board wish for Agent to solicit bids for an item costing less than \$<<amount>>, Agent 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. Agent will endeavor to make helpful suggestions; however, the final decision in establishing standards, specifications and criteria shall be the Association Board's.
- b. Agent will, upon receipt of the Board's instructions or resolution, discharge Association contractors that the Board decides are not performing up to the standards, specifications or criteria established by the Board of Directors. Agent, 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 contractors will be a direct contract between the Association and the third party contractor, and Agent will act solely as the Agent of the Association in negotiations and maintenance of said contract, 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 Agent make any representations or warranties for the work performed by any third party contractor.

#### 4. ADMINISTRATIVE MANAGEMENT AND CONSULTING

- 4.1 Agent will organize the records and documents it receives from the Association or their prior manager or management company in accordance with its normal procedures. Within sixty (60) days from receipt of complete records, Agent shall render financial statements in their usual form showing the financial status of Association, or, if the records are inadequate to prepare such financial statements, Agent shall submit a written recommendation to Association. If such recommendation suggests a review or audit by a third party, or additional investigation and organization of information that will permit the publication of financial statements, Agent will provide estimated cost of performing such services.
- 4.2 Agent will write or delegate letters and communicate as necessary to assist the Board in carrying out its responsibilities.
- 4.3 Agent will counsel and advise Board of Directors and its committees in their day-to-day operations.
- 4.4 Agent will assist in interpretation of the rules of the Association and suggest possible steps of enforcement.
- 4.5 Agent will provide, at Association's sole cost and expense, material and expertise in the development of methods of communication to the homeowners (rules and regulations, etc.), as necessary.
- 4.6 Meeting Notices. At the request of the Board, and at the Association's sole cost and expense, Agent 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 effect instructions as approved by the Board of Directors.
- 4.7 Agent will attend up to twelve (12) monthly meetings of the Board of Directors in any calendar year. Time in excess of two (2) hours per meeting or fraction thereof that lasts after 9:00 p.m. shall be charged at the rate schedule in accordance with Section 9.1 of this agreement.
- 4.8 Agent will attend meetings scheduled Monday through Thursday, except holidays. Meetings held on days other than those identified herein, and which the Agent agrees to attend, will be charged at the rate on Section 9.1 of this agreement.
- 4.9 Agent will not be obligated to attend special meetings of the membership or of the Board of Directors or the Association's committees. However, if Agent is requested to attend and accepts, Association will pay Agent 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 IRS rate per mile as applicable.
- 4.10 At the Association's sole cost and expense, Agent will assist in preparation for Association Annual Membership Meeting, including notices, proxies and agenda, and will attend and participate in conducting the meeting if so requested by the Board of Directors.
- 4.11 Agent will not be responsible to record and/or type minutes of regular meetings of the Board of Directors or the Annual Meeting of the Association. Upon request by the Board of Directors, Agent shall coordinate a third party to serve as recording secretary, the costs for which shall be borne by the Association.
- 4.12 Association Records. Agent will maintain possession of all records of the affairs of the Association throughout the term of this Agreement. While Agent will put forth every effort to maintain association records in good order, Agent makes no representation or warranty as to the accuracy and/or completeness of such records. Accuracy and/or completeness of the Association records remains the responsibility of the Association.

- 4.13 Owner Review of Records. Agent will make allowable Association records available for review to Association members. Association agrees that Agent shall charge a fee to the homeowner in accordance with Section 9.1 for records research and for the scheduling and monitoring of such a review.
- 4.14 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 Termination. 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, both parties agree that this agreement shall remain in full force and effect for the entire sixty (60) days.
- 5.2 Arbitration Provision. 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 Termination Fee. The Association acknowledges that Agent 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 Agent'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 Agent 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 Contract.
- 5.4 Attorney Fees and Costs. Should any party hereto retain counsel for the purpose of enforcing or preventing the breach of any provision hereof, including, but not limited to, instituting any action of proceeding 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 Condemnation. Upon taking of the entire or a substantial portion of the Project 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 Agent's office. Such records shall be available for inspection and copying during Agent's normal business hours in accordance with California state laws and Association document provisions, Monday through Friday. Agent 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. Agent shall be entitled to reasonable notice prior to such inspection or copying of records.
- 6.2 Homeowner Lists. Agent shall maintain a current list of homeowners in the Association in accordance with the information supplied to Agent. Reasonable efforts will be made to keep this list accurate, but it shall be the responsibility of the Association to advise Agent of address or ownership changes. Agent 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. Agent will record changes of address of ownership upon advice from owners or escrow, with supporting documentation.
- 6.3 Correspondence. Agent 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. Agent agrees to return any and all such records and correspondence to the Association, or to an entity or person designated by the Board of Directors upon termination of this Agreement. Such records will be available for pick up at Agent's office or such other designated location as may be agreed upon. Electronic media, such as computer tape, discs, and general electronically stored data bases are the sole property of the Agent and any duplication or transference of information shall be at the sole discretion of the Agent with all costs and charges to be paid by the requesting party.
- 6.5 Agent agrees to maintain storage of Association records and correspondence at Association sole cost and expense per Exhibit A.

## 7. INSURANCE AND INDEMNIFICATION

### AGENT'S INSURANCE

- 7.1 Agent will, throughout the term of this Agreement, and at Agent's expense, maintain the following insurance coverage:
- a. Fidelity Bond with coverage for all Agent's employees, when applicable, to protect Association funds, if any.
  - b. Agent'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 Agent's employees.
  - d. Errors and Omissions coverage with limits of \$1,000,000.00

### ASSOCIATION INSURANCE

- 7.2 Association will maintain at its sole expense a policy of comprehensive general liability, Directors and Officers, worker's compensation and property insurance (as necessary) in accordance with the Association's Declarations and applicable California law.

- 7.3 Association shall name Agent as an additional named insured on the Association's policies of comprehensive general liability and directors and officers insurance, and the insurance policies will cover Agent for any and all claims and losses indemnified by Association pursuant to Section 7.5. Agent will be provided with insurance certificates identifying Agent as additional named insured showing the amount of coverage to be furnished to the Agent.
- 7.4 In the mutual interest of Association and Agent, both parties agree that fidelity insurance coverage protecting Association funds shall be placed with The Hartford Insurance's Master Fidelity, so long as such coverage is available. The limits of the Master Fidelity policy shall be no less than the total amount of the Association's reserve funds plus three (3) months total assessment income.
- 7.5 Agent will maintain reasonable communication with Association's insurance agent and will assist the Board in reviewing and renewing insurance coverage, including solicitation of bids for such coverage. The Board of Directors is solely responsible for maintaining insurance coverage for the Association, and for ensuring the adequacy of coverage.

#### INDEMNIFICATION

- 7.6 Association shall indemnify, defend at its sole cost, and hold harmless Agent and its employees, agents, officers and directors from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, judgments, orders and damages, including interest, penalties and attorney's fees, that Agent shall incur or suffer which arise, result from, or relate to the performance by Agent of its duties under this agreement, except for the willful misconduct or gross negligence of Agent. This provision shall survive any termination of this Agreement.
- 7.7 Agent will be responsible only for any willful misconduct and gross negligence where such liability is due to the sole conduct of Agent and/or its employees in the performance of its duties under this Agreement.

#### **8. COMPENSATION**

In consideration of Agent's acceptance of its appointment hereunder and the performance of services as set forth herein, the compensation to which the Agent 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.

- A. Agent shall be paid in advance on the first day of each month without prior Association approval Agent's base monthly fee of «Base» .
- B. The base fee, as defined, shall be net to Agent and is exclusive of the Association's operating expenses and costs. The base fee shall be superseded by the adoption of a new annual association budget indicating an adjusted base fee for management services. Adoption of the annual budget by the Association's Board of Directors shall constitute an approval of a base fee change under this agreement, but in no event shall the base fee be less than the amount stated in A of this section.
- C. Agent and Association agree that the base fee for services identified in paragraph A above, is based upon the estimated time necessary to fulfill Agent's duties defined by this Agreement. Association and Agent agree that time in excess of «Hours» hours in the aggregate, shall be billed to Association in accordance with Section 9.1 herein. In the event Agent performs its duties under this Agreement in fewer hours than identified herein in any given month, the remaining hours will be carried forward to the following month.

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

- 8.1 Agent's Fees and Costs. Any base fees and costs due the Agent will be paid promptly each month on the first of each month. Any monies due and billed and not paid to Agent by the fifteenth (15th) of each month will carry a 1.5% per month late fee which will be added to the balance due and will be subject to further late charges until paid. Interest at the maximum legal rate to be charged thirty (30) days after any amounts are delinquent.
- 8.2 Reimbursable Administrative Operating Expenses. The Association shall be responsible to reimburse Agent for all postage, copying, fax and other usual office expenses incurred by Agent on Association's behalf. Association will also reimburse Agent for all reasonable expenses incurred on behalf of the Association including, but not limited to, those expenses listed in Exhibit A attached hereto as utilized in special projects (special mailings, newsletters, etc.), as may be amended from time to time, and included herein. Said costs will be reimbursed on a monthly basis as incurred and billed.
- 8.3 Deduction of Agent's Compensation. Association will be obligated to pay, and Agent shall receive as compensation for its services under this Agreement the sum provided for in this section herein and above at the times therein set forth. Agent is entitled to deduct such compensation when due from the funds then in its possession. Agent's compensation covers normal and usual administration expenses of Agent related to actions of the Board of Directors including costs of travel, as authorized by the Board of Directors.

## **9. SPECIAL OR EXTRAORDINARY SERVICES**

- 9.1 Association shall pay Agent 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 Agent may be required to perform additional services beyond the scope of these services, 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 Agent participation.
- b. Agent will be paid per hour, portal to portal, for work performed by Agent 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.

Agent will only be paid for the services identified above if performing said services cannot be accomplished, along with Agent's other duties defined herein, within the hours prescribed by Section 8, paragraph C of this Agreement.

## **10. ASSOCIATION SET-UP FEE**

- 10.1 Agent shall be paid a one-time, non-refundable fee of \$<<Set-up>> 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 Commencement Date. After execution of this contract by the Association's Board of Directors, Agent's compensation shall commence upon the day indicated in the following paragraph.
- 11.2 This Agreement shall commence «Commence» 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, subject to the termination provisions contained in this agreement.

## 12. AGENT AND ASSOCIATION PROTECTION

### AGENT EMPLOYEES

- 12.1 Agent spends significant amounts of time and money to hire and train employees for the operation of this and other Associations. Association derives and benefits from Agent's experience in managing, and their hiring and training procedures. Association agrees it will not hire, retain, or contract with any past or present employee, partner, officer, or co-owner of agent or its parent company or divisions in any capacity whatsoever for a period of six (6) months following the termination of this agreement or any extension thereof. Association agrees to pay Agent the sum of Ten Thousand Dollars (\$10,000.00) as liquidated damages if it breaches this provision of the contract. Both parties agree that this is a reasonable sum due to the extensive training and trade secrets that Agent provides, as well as expectation of continued income and allotment of resources, and further with respect to the difficulty in establishing the amount of actual damages.

### COMPANY TRADE SECRETS

- 12.2 Association will have access to and be dealing with trade secrets of Agent, such as: confidential information pertaining to client lists; procedures, processes and documentation relating to management of Agent's client Associations; and programs, software, procedures and techniques relating to data processing and financial reporting. Association agrees to hold any such trade secrets or confidential information, attained during the course of this Agreement, in the strictest confidence, and shall retain a total confidentiality, giving value to protecting them from Agent's competitors. This provision shall survive the termination of this Agreement.
- 12.3 All materials of a confidential nature, prepared and utilized in Agent's performance of their duties under this Agreement, shall remain the exclusive property of Agent and shall be retained in Agent's possession.

## 13. MISCELLANEOUS

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

The Association Board of Directors understands its fiduciary duties and agrees to govern the Association in a business like 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.

- 13.3 Successors and Assigns. This Agency Agreement will be binding upon and inure to the benefit of the successors and assigns of the Association. This Agency Agreement shall be binding on the parties hereto, their heirs, executors, administrators, successors and assignees, and constitutes the full agreement except that subsequent changes or additional provisions must be in writing and executed by both parties.

Notwithstanding the preceding sentence, the Agent shall not assign its interest under this Agreement except in connection with the sale of all or substantially all of the assets of its management business. In the event of such a sale, Agent shall be released from all liability by the Association.

- 13.4 Association and Agent 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 Agent with respect to the service agreement.

**14. DISCLAIMER**

No representation or recommendation is made by the Agent, 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 Management agree to the terms, conditions and provisions specified by this Management Service Agreement, dated «Commence».

ASSOCIATION: **«*Association Name*»**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

AGENT: **<<*Management Firm Name*>>**

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

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## 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&R's, 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 1099's; 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 Contract is intended to be used as a guideline and is not intended to be construed as legal advice. It is recommended that an attorney who specializes in contract law review the Management Firm contract on behalf of the Management Firm.

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

Note: The foregoing list is intended to identify the major areas of service which are extraordinary expenses. There may be additional services for which the Association will be charged. In such cases, the Agent 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).