

A Model Condominium Unit Rental Management Agreement

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By Robert S. Freedman

A management agreement can save your client time and trouble—if it covers all of the right bases.

AS THE ECONOMY EDGES closer to a recession, the real estate industry has taken a dramatic hit. With the mortgage crisis and the credit crunch, the owners of condominium units are finding themselves stuck with properties they no longer want, but without anyone who wants to, or can, buy. Owners are turning to the rental concept to make the best of a bad situation, hoping to make some money and ride out the wave until the market comes back and sales are more viable and likely. So, management companies and agents are springing up as a vehicle to help and represent these owners. Many of these representatives are real estate brokers and agents who have seen their original sources of income dry up, and they are retooling to match the market. Initially, of course, you need to determine if a management company can do what the unit owners want it to do. If the owners have reasonable views of how the responsibilities with respect to the units will be carried out, then the thing to do is to discuss the specifics—and come up with an enforceable agreement. Doing this from scratch can take a lot of time and cost everyone a lot of money. So in the interest of delivering the best possible value, it is a good idea to start with a model. The one that follows covers many of the most important points. Keep in mind that the model that follows is just a starting point. Your client—and the unit owners—might have different ideas.

CONDOMINIUM UNIT RENTAL MANAGEMENT AGREEMENT

THIS CONDOMINIUM UNIT RENTAL MANAGEMENT AGREEMENT (“Agreement”) is made this day of _____, 200_, and shall be effective from _____, 200_ (“Effective Date”), by and between _____, a corporation (“Manager”) having a mailing address of _____, and _____, whose address is _____ (“Owner”).

WHEREAS, in connection with the real property known as Unit _____ of _____ Condominium (“Unit”), Manager desires to provide rental management services for the benefit of Owner and Owner desires to engage Manager to provide such services in exchange for payment of management fees and expenses to Manager, as more fully described hereinafter;

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties, it is hereby agreed as follows:

1. MANAGER SERVICES. Manager shall have the exclusive right to rent the Unit on behalf of Owner and, pursuant to such right, Manager shall provide and perform the following services in relation to the Unit:

a. Arrange for the Unit to comply with all relevant statutory requirements (including obtaining all necessary permits in the name of Owner) to enable the Unit to be licensed for short-term rentals;

b. Advertise, list, and promote the Unit for rental purposes (either directly or as part of an overall marketing strategy employed by Manager in connection with services being provided to other units in the same project or in neighboring projects) as Manager deems appropriate in its sole discretion from time to time;

c. Manage reservations for the Unit;

d. Provide housekeeping services for the Unit;

e. Administer payment of Owner’s bills in connection with the Unit, except for those bills related to Owner’s debt service, mortgage payments, ad valorem real estate taxes, or insurance on the Unit;

f. Oversee maintenance and housekeeping of the Unit as set forth in Section 11 of this Agreement;

g. Submit monthly (or as otherwise may be required) to the appropriate tax collection authority all applicable sales and use taxes required to be paid in connection with the use of the Unit for short-term rentals pursuant to this Agreement; and

h. Conduct a monthly general inspection of the Unit and its internal components (including, but not limited to, all items of personal property placed or existing within the Unit).

Notwithstanding the foregoing or anything else in this Agreement to the contrary, it is hereby acknowledged and agreed that although Manager may place or post within the Unit a copy of any restrictions on use set forth in the Declaration of Condominium and the Rules and Regulations governing Owner’s use of the Unit, Manager shall have no obligation to ensure that persons occupying the Unit comply with any such restrictions on use. Subject to the provisions of Section 15 of this Agreement, Owner hereby agrees to indemnify, defend, and hold harmless Manager, its owners, officers, managers, employees, agents, and representatives (collectively, the “Indemnitees”) from any and all damages, claims, suits, actions, losses, and judgments that may be suffered or incurred by Manager, including all costs and expenses incident thereto (including reasonable attorneys’ fees), arising from such violations, except to the extent such damages, claims, suits, actions, losses, and judgments, and costs and expenses incident thereto, are caused by the negligence or willful misconduct of the Indemnitees.

2. RENTAL PAYMENTS AND APPORTIONMENTS. Manager shall market the Unit for rental and shall use its

best efforts to maximize income from the Unit. Manager shall be solely responsible for determining the room rental rates for the Unit during the term of this Agreement. Upon its receipt of any rental payment in relation to the Unit, Manager shall first deduct from the amount of such payment Manager's commission in an amount equal to _____ percent (___%) thereof, and thereafter shall credit the balance to the escrow account maintained on behalf of Owner (as described hereinafter). In calculating this commission, the rental deemed received shall be (a) the amount of payment actually received by Manager less any applicable sales and resort taxes, (b) resort fees and (c) franchise fees payable in relation thereto; Owner shall be credited on a "receipts" basis. In addition, Manager shall bear no more than _____ percent (___%) of any (a) franchise, licensing or marketing fees, (b) travel agent commissions paid in connection with a reservation being made, or (c) charges and/or fees incurred by Manager when reservations are paid by credit card based upon a flat percentage rate of _____ percent (___%), adjusted periodically; the remainder of such amounts shall be borne by Owner. Finally, a \$_____ per reservation fee will be charged if Owner is the party making a reservation, or otherwise causes a reservation to be made, for a particular and specified guest who is to occupy the Unit. In the event Owner makes a referral leading to a confirmed reservation at another property managed by Manager, however, Owner will be eligible for a \$_____ referral fee payable by Manager.

3. OWNER OBLIGATIONS. Owner agrees to timely pay all mortgage obligations, ad valorem real estate taxes, property assessments, charges and fees, owners' association fees, other fees required to be paid pursuant to any instruments of record to which the Unit is subject, management fees, and all other expenses associated with the Unit as same become due and owing. Owner agrees to abide by all condominium association documents and other restrictive covenants and instruments of record. Owner also agrees to pay for all charges in connection with the installation, connection, and/or initiation of telephone, electricity, gas (when needed), water, cable, satellite or other telecommunications services, Internet accessibility, and any other relevant services and benefits for the Unit as may exist or which in the future come into existence (either pursuant to reserved rights in favor of the project developer, any applicable Owners' association, or other third party), and agrees to make all deposits required by the relevant service providers in connection therewith. Owner also agrees to pay all costs involved in Manager obtaining all licenses, permits, or other governmental approvals as may be necessary for short-term rental of the Unit for the benefit of Owner, along with any and all expenses incurred in bringing the Unit up to the standard required for obtaining such licenses, permits, or other governmental approvals. Owner agrees to maintain at all times with Manager an escrow account balance in an amount no less than _____ Dollars (\$_____) so as to ensure that sufficient monies are readily available at all times to permit Manager to undertake all actions deemed necessary and appropriate by Manager pursuant to this paragraph.

Notwithstanding the foregoing or anything else in this Agreement to the contrary, Owner expressly agrees that Owner shall not display any signage or other advertising in the Unit promoting its rental, nor shall Owner use Manager's name or that of any affiliate or subsidiary of Manager in connection with any such promotional activity. Owner acknowledges and agrees that any breach of its obligations under this paragraph shall be grounds entitling Manager to terminate this Agreement immediately, in its sole discretion, without prior notice, and without waiving any other remedy available to Manager in connection with such breach.

4. PAYMENT OF BILLS. In the event charges for utilities (such as, but not necessarily limited to,