

CROWN HARBOR

MASSINGHAM AND ASSOCIATES MANAGEMENT INC.  
42840 CHRISTY ST. SUITE 201  
FREMONT, CA. 94538  
510-490-8587

July 2, 1996

Mr. Winston Churchill  
539 Kings Road  
Alameda, California 94501  
re: Management Services for Crown Harbor Homeowners Association

Dear Sir:

It was a pleasure to meet with you and other members of the Board, to view the community and discuss the possibility of managing the Crown Harbor Homeowners Association. It was very helpful to have briefly viewed the community -- it appears to be a well maintained complex, one we would be proud to manage.

As promised, I'm enclosing terms of the contract which has a specific price stated, for services we would provide your homeowners association. I have included sample copies of the contract for all five (5) Board members. We trust you will review the language of the proposed contract, and further that it will meet with your approval. As I described during our conversations the contract is lengthy, however please don't be overwhelmed by the extensive detail. We believe that this industry approved format will soon become a standard for all professional management firms.

We are pleased to present a quote of \$ 912.00 ( for level I service ), which would include all postage, copies, and fax charges for day- to-day business .

Please feel free to contact us with any further questions you may have.

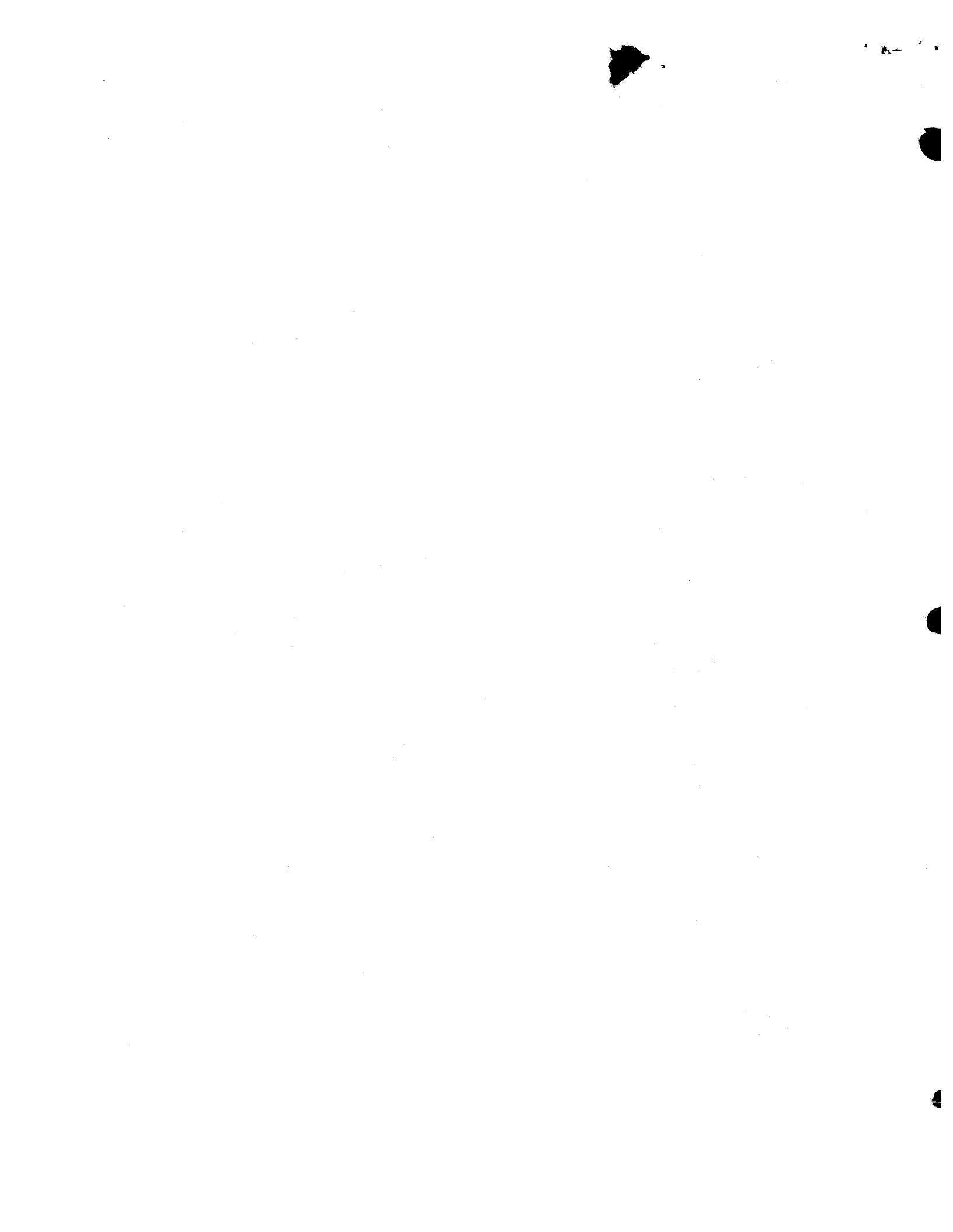
Thank you for your consideration; I look forward to speaking with you soon.

Very truly yours,



Ric Perez, — Ext 308  
Senior Association Manager  
Massingham & Associates Management, Inc.

encl.



# COMMUNITY ASSOCIATION AGENCY AGREEMENT

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**ARTICLE I**  
**PRELIMINARY RECITALS**

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

Common Interest Development (CID):

Location:

Declaration Recordation No.

Tract No:

# Residential Living Units:

Public Report No.:

Development Type:

Developer:

Address:

**B. ASSOCIATION AS PARTY:**

Association:

Address:

Federal Tax I.D. No.:

State Tax I.D. No.:

Corporation No.:

Year Turned Over to HOA:

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AS APPROVED BY THE CALIFORNIA ASSOCIATION OF COMMUNITY MANAGERS FOR USE AS AN  
INDUSTRY STANDARD IN THE STATE OF CALIFORNIA.



**D. DEFINITIONS:**

1. "Association" shall mean a corporation formed under the Nonprofit Mutual Benefit Corporation Law of the State of California, or an unincorporated California Association, its successors and assigns.
2. "Base Fee" shall mean the monthly fee as identified in Section 8, A, and covers agent's basic contractual services exclusive of all extra-ordinary services which may occur by board direction and exclusive of those services identified in Section 9, and Exhibit A of this Agreement.
3. "Board" or "Board of Directors" shall mean the Board of Directors of the Association, elected pursuant to the By-Laws of the Association.
4. "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under its Declaration and By-Laws.
5. "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 by the Association for the common use and enjoyment of all the Owners.
6. "Common Interest Development" means any of the following:
  - (1) A community apartment project
  - (2) A condominium project
  - (3) A planned development
  - (4) A stock cooperative
7. "Definitions". The terms "Association", "Owner", or "Professional 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.
8. "Governing Documents" shall mean the Declaration of Covenants, Conditions and Restrictions and other documents, such as By-Laws, operating rules of the association, which govern the operation of the common interest development or association.

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**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 Service", Terms and Conditions set forth hereafter which are Pages 6 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 the Association, is a Director thereof and has corporate authority to execute contracts. If the Association is unincorporated, and this Agreement is signed by both parties prior to the first (organization) 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 Covenants, Conditions and Restrictions or By-Laws.

  
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## 2. FINANCIAL MANAGEMENT

2.1 Maintenance Assessments. The Agent will provide for the collection of all maintenance assessments as prescribed by the Board of Directors of the Association, set up a separate checking account or accounts, with any federally insured institution or institutions, as is customary with other Associations or Cooperatives managed by Agent at its sole discretion.

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 the Association for the deposit of the monies of the 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 pay the expenses for the operation of the Association in accordance with the approved budget or as otherwise authorized by the Association's Board of Directors.

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 Assessment 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 for collection, accounting, payment plan monitoring and legal proceedings. 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 in accordance with Exhibit A.

2.4 Disbursement Authorization. Agent is authorized and shall make all disbursements from Association Funds for liabilities incurred on behalf of the Association. 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 necessary herein with the approval of the Board of Directors, except in cases of emergency requiring prompt action to avoid further loss. Agent will obtain approval for any extraordinary expenses of the Association as they occur.

Agent will establish Association's reserve accounts in federally insured institutions at the Association's direction. Except for the disbursements provided for above, all disbursements from reserve accounts will be signed pursuant to the requirements of California Civil Code.

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 Member, 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.

  
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2.5 Association Employee Taxes. Agent will pay from Association's funds employee taxes and file necessary state and federal reports when due. Association further agrees to furnish Agent with Association employer identification number for employee income tax withholding purposes. If Association does not have an employer identification number, Agent is hereby given authority to obtain an identification number on behalf of the Association. Association further agrees to hold the Agent harmless in accordance with Paragraph 7.5 of this Agreement for any noncompliance with the minimum wage and record keeping requirements of any governmental act or agency requirement.

2.6 Accounting and Financial Statements. Agent will maintain a set of accounting records in accordance with generally accepted accounting principles.

- a. As directed, Agent will distribute monthly to all members of the Association's Board of Directors, a financial statement for the previous month, including copies of the Balance Sheet, Statement of Income and Expenses for month and year-to-date, Statement of Income and Expenses versus budget, schedules of cash investments, reserve allocations, year-to-date reserve expenses, and a check register of disbursements.
- b. Agent shall reconcile all banks statements and shall provide to the Board of Directors copies of bank statements and bank 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's expense, copies of annual financial reports, budgets, collection policies, and all other publications and reports required by the California Civil Code.

2.7 Budget Preparation. Agent will prepare and submit to the Board of Directors a proposed budget. Any budget draft prepared by the Agent will be subject to final approval by the Board of Directors and the Board of Directors shall retain full responsibility for the appropriateness of data contained in the budget. Such proposed budget prepared by Agent does not purport to be in complete adherence with the California Civil Code or other rulings or statutes, nor will such budget specifically address reserve replacement and/or deferred maintenance costs. Any decision to adopt Agent's proposed budget, or to amend it for adoption will be reserved to and exercised by the Association's Board of Directors.

The Association's Board of Directors acknowledges their awareness of the California Civil Code and the Board shall levy regular and special assessments sufficient to perform its obligations under the governing documents and the Code.

2.8 In the event the 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. Agent shall be compensated in accordance with Exhibit A for this consultation.

  
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### 3. PHYSICAL MANAGEMENT

3.1 Maintenance. Agent will assist the Board of Directors in its responsibilities for the upkeep, maintenance, and management of the Common Area and the equipment, pursuant to the Association's documents.

3.2 Agent will receive maintenance requests and/or complaints, concerning the Association's Common Areas, and communicate them to appropriate contractors and vendors for correction, repairs and maintenance.

3.3 Agent will provide 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 or for the purpose of receiving further instructions from the Board on how to proceed.

3.4 Agent will provide monthly inspections of the Association Common Areas and facilities, and will submit a written report of findings, action taken and recommendations to the Board of Directors.

3.5 Bids for Hiring, Supervising, and Discharging Third Party Subcontractors.

- a. Agent will, upon receipt of written instructions or upon resolution of the Board of Directors, request bids, from insured vendors of Agent's selection, not less than three (3) bids for the types of third party goods or services that Agent believes, in Agent's sole discretion, are likely to cost \$1,000.00 or more. Those items for which the Board of Directors requests bids that in Agent's sole discretion are likely to cost less than \$1,000.00, will not be let out for bid, and Agent shall be under no duty to solicit bids for those items. Specifications for all bids shall be included with the Board of Directors' request, and the Board of Directors shall be solely responsible for establishing the standards or 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 or criteria shall be the Association's. Agent will, upon receipt of the Board of Directors' written instructions or resolution, discharge subcontractors 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 subcontractors will be a direct contract between the Association and the third party subcontractor, and Agent will act solely as the Agent of the Association negotiations and maintenance of said contract and not as a contracting party. Compensation for the services of all third party subcontractors shall be paid by the Association.

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3.6 Hiring, Monitoring and Discharging the Association's Employees.

- a. In the event the Association directly employs or contracts for personnel in connection with the operation of the Association, the Association shall be solely responsible for adhering to all federal and state laws governing the employer, employee and sub-contractor relationship, including, but not limited to tax withholding, labor standards, and insurance requirements. Agent may assist the Association in such matters and will advise the Association on such matters that Agent from time to time is requested by the Board of Directors to handle. However, the ultimate responsibility for compliance shall be with the Association.

**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/or obtain estimated cost of performing such services.

4.2 Agent will write or delegate letters and communicate as necessary to assist the Board of Directors in carrying out its responsibilities.

- a. Receive and write letters to homeowners and others concerning violations of Association documents and rules, homeowner's requests, architectural and maintenance matters, etc. Agent shall be entitled to a fee for preparing and/or mailing letters in excess of ten percent (10%) of the total Association Units per month, in accordance with Exhibit A.

4.3 Agent will counsel and advise the 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 appropriate 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.).

4.6 Meeting Notices. At the request of the Board of Directors, and at the Association's sole cost and expense, Agent will send notices of Association meetings, prepare the Agenda therefore, circulate minutes of any such meetings as prepared by the Secretary, and effect instructions as approved by the Board of Directors.



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4.7 Agent will attend one regular monthly meeting of the Board of Directors. Time in excess of two (2) hours per meeting or fraction thereof that lasts after 9:30 P.M., shall be charged at the rate schedule in accordance with Exhibit A.

4.8 Agent will attend meetings scheduled Mondays through Thursdays, except holidays. Meetings held on days other than those identified herein will be charged at the rate on Exhibit A.

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 Exhibit A, 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.

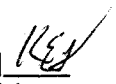
4.11 Agent will take minutes of regular meetings of the Board of Directors and the Annual Meeting of the Association, transcribe and mail them to the Board of Directors in the standard Board of Directors report.

4.12 Association Records. Agent will keep all records of the affairs of the Association.

4.13 Owner Review of Records. Agent will make allowable Association records available for review. Association agrees that Agent shall charge a fee in accordance with Exhibit A for records research and for the scheduling and monitoring of such a review.

4.14 Special mailings and newsletters requested by the Board of Directors 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.

4.15 Agent shall not be responsible for any contractor, subcontractor or Association employee's work performance or adherence to specifications or schedules.

  
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## 5. TERMINATION OF AGREEMENT

5.1 Termination. If there arises a dispute between Association and Agent, and if in the opinion of the aggrieved party the offending party has committed a material breach of this agreement, the aggrieved party will notify the offending party of the alleged breach. If the offending party does not, within 30 days after mailing of such notice by certified mail with return receipt requested, cure such breach, or if such breach is of a nature that it cannot be cured within the 30 day period commenced and at all times thereafter continue diligently to proceed with all acts required to cure such breach, this contract may be terminated without prejudice after 60 days written notice by certified mail with return receipt requested, subject however, to any and all rights and remedies available to the aggrieved party. In the event that any party disagrees with the termination for cause or the curing or undertaking to cure the same, this shall be the subject for arbitration as provided herein. In the event that a conflict arises between this section and the Association's Declarations, this document will prevail.

5.2 Arbitration Provision. Either party to a dispute shall have the right to demand an arbitration of a dispute including the termination as set forth in Section 5.1.

Upon making a written demand for arbitration, the dispute shall be submitted promptly to an arbitrator mutually selected by the parties from a list of five (5) arbitrators submitted by the American Arbitration Association 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 cost and expenses incurred in the arbitration. In the event that the parties cannot mutually select a single arbitrator, the parties will select a single arbitrator from the list submitted by the American Arbitration Association by striking alternate names from the list. The arbitrator shall award the prevailing party its costs including reasonable attorneys 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 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 or 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, the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs for services rendered to such prevailing party.

  
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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 Agent's office. Such records shall be available for inspection and copying during Agent's normal business hours, in accordance with California Civil Code and California Corporation Code 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 Homeowners 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 discover transfers of ownership that are not reported directly to it, nor obligated to search official records for such transfers of ownership unless specifically requested to do so by the Board of Directors at hourly rates set forth in this agreement. Agent will record changes of address or ownership upon advice from owners, 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 Associations records and correspondence at Association's sole cost and expense in accordance with schedule Exhibit A.

  
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## 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, minimum of \$250,000.00:

- a. A fidelity Bond with coverage for all Agent's employees to protect Association funds.
- 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 \$3,000,000 property damage and liability.
- c. Errors and Omissions Insurance/Professional Liability.
- d. Workers' Compensation Insurance in the statutory amount, covering Agent's employees.

### ASSOCIATION INSURANCE

7.2 Association will maintain at its sole expense a policy of comprehensive general liability insurance in accordance with the Association's Declarations and the California Civil Code.

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 said 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 insured showing the amount of coverage to be furnished to the Agent.

7.4 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 the adequacy of such coverage.

### INDEMNIFICATION

7.5 Association hereby agrees to indemnify, hold harmless and defend at its own cost and expense the Agent and its employees, agents, officers and directors, shareholders or representatives from and against any and all loss, liability, cost, expenses, or damage (including attorneys fees) in connection with or arising out of Agent's performance and/or nonperformance of Agent's duties, in connection with and/or arising out of all contractual liabilities which may be alleged or imposed against Agent. Association further agrees to indemnify, defend and hold harmless Agent and its employees, agents, officers, directors, shareholders, or representatives from any and all liability in connection with or arising from the management of the Association, the Association's property, Association employees, directors officers, agents, vendors, members, guests, invitees, or trespassers. This provision shall survive any termination of this agreement.

7.6 Agent will be responsible only for any willful misconduct, 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.

  
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## 8. COMPENSATION

In consideration of Agent's acceptance of its appointment hereunder and the performance of services as set forth herein incorporated, 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 on the first day of each month without prior Association approval per the following schedule:

\$ 12.00 per lot/unit per month or \$ 912.00 minimum base fee for 76 lots/units, for a total monthly fee of \$ 912.00.

- 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.

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 ten percent (10%) per annum late fee which will be added to the balance due and will be subject to further late charges until paid. Interest at a legal rate to be charged thirty (30) days after any amounts are delinquent.

8.2 Reimbursable Administrative Operating Expenses. The Association shall reimburse Agent for all postage costs incurred by Agent on Association's behalf. In addition, Association will reimburse Agent for all reasonable expenses incurred on behalf of the Association including, but not limited to, those expense listed in Exhibit A attached hereto and included herein. Said cost 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 required by 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: C.E.O., Principals \$50.00 per 1/2 hour, Chief Financial Officer \$40.00 per 1/2 hour, Accounting Personnel \$40.00, Senior Community Manager \$50.00 per hour, Associate Community Manager \$40.00 per hour, or a specific rate as given below, for services performed on behalf of the Association that are not considered part of Agent's general contractual obligations.

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9.2 Agent coordinates the use of the C.E.O., Principals, Chief Financial Officer, Senior Community Managers, Associate Community Managers to utilize them efficiently and to provide Association with the economical benefits of a "blended rate". By combining the services of these professionals the effective rate charged is reduced. Examples of such services are, but not limited to:

- a. Assistance in adhering to requirements of laws and regulations, such as Title 6 of the Civil Code, or other such laws or 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 each court appearance by Agent on behalf of Association, in court, at hearings, depositions, claims negotiations and processing of insurance losses ore reconstruction, performing committee functions, such as monitoring, reporting and updating of any architectural progress, chart listing current status of development on lots within the community, bank loans, investment, maintenance, construction defect matters, financial reconstruction, discover on Association's acts prior to the original commencement date of this agreement.

### 10. ASSOCIATION SET UP FEE

10.1 Agent shall be paid a one-time, non-refundable fee of \$ N/A at the commencement of this agreement to off-set the cost of setting up the Association's records. Not included in such set-up fee are bank charges or independent accountant's fees 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 Commencing Sept 1, 1996 and ending Aug 31, 1997 and hereinafter from year to year. If notification by either party of their intent not to renew this Agreement for one year is not received by the other party in writing at least sixty (60) days prior to the expiration date of this agreement, this agreement shall automatically renew in full force and effect for the ensuing one year period.

11.3 If this agreement is entered into prior to the first annual meeting of the Community Association, the term of this Agreement shall be for a period of one (1) year beginning on the first day of the month in which the first escrow closes and will be subject to the renewal provisions as stated in Paragraph 11.2.

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## 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, sub-contractor, partner, officer or co-owner of agent or its parent company or divisions in any capacity whatsoever for a period of two years 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. Association agrees it will use due diligence in insuring that this provision is upheld. 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 SECRETES

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.

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 herunder 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 therefore by Agent, the Association shall make immediate arrangements to make funds available to cover the insufficiency.

13.2 One Board Member to Deal with Agent. The Board of Directors will designate one of its members who will be authorized to deal with Agent on any matter relating to the Association. Agent will not accept directions or instructions from anyone else. In the absence of any other designation by the Board of Directors, the President of the Board of Directors shall be deemed to have this authority. The board of Directors appoints \_\_\_\_\_ as the alternate should the President be unavailable. 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.

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13.3 Successors and Assigns. This Agency Agreement will be binding upon and inure to the benefit of the successors and assigns of the Agent and the heirs, administrators, executors, 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 purpose of the Association and Agent with respect to the service agreement.

#### 14. DISCLAIMER

No representation or recommendation is made by the California Association of Community Managers or by the Agent or its agents or employees 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.

**AGENT:**

**ASSOCIATION:**

BY: 

BY: 

TITLE: General Mgr.

TITLE: President

DATE: 9-1-96

DATE: 9-1-96

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# EXHIBIT A

## Reimbursable Association Administrative Operating Costs/Expenses

The following charges are reimbursable Administrative Operating Expenses incurred on behalf of the Association and are in addition to the basic monthly compensation agreed to between the parties in the Agency Agreement. An invoice to substantiate each charge at the time of payment will be provided.

*Filing and appearing in Small Claims Court & other court appearance or as provided herein		See hourly rate per 9.1
*Processing returned checks	\$ 10.00	plus bank charges
*Photocopies	\$ <del>15</del>	each
*Fax charges	\$ <del>1.00</del>	per page
*Postage	At Current U.S. Postage Rate	
*Certified/UPS/Fed Ex Mailing	\$ <del>.50</del>	plus postage
*Homeowners' Lists	At Copy Cost	
*Envelopes	\$ <del>.05</del>	each
*Labels	Free to Client	
*Parking Stickers	\$ <del>.50</del>	each
*Telephone Toll Calls	Free to Client	
*Out of Town Travel/Board Request	IRS Rate	per mile
*Statement Enclosures	At Copy Charge	per page
*Year End Preparation for CPA Examination and Tax Filings	No Charge	
*Year -end 1099's Payroll - Tax Returns	\$ 10.00	each
*Attendance at additional board meetings - in excess of one per month		See hourly rates per 9.1
*Manager overtime (meeting over 2 hours)		See 9.1
*Special Meetings		See 9.1
*Secretarial Services (Not regular correspondence)	\$ 30.00	1st hour
	\$ 20.00	2nd hour
*Consulting and Research Projects, tasks not included in contract		See 9.1
*Courier Service	Cost	plus mileage
*Document Storage	\$ 3.00	per box per month
*Additional Budget Change in Fiscal Year (one budget per year at no charge)	\$ 120.00	
*Additional Assessment Change in Fiscal Year	RP \$ <del>.35</del>	per unit
*Special Assessment		
First Month	RP \$ <del>.35</del>	per unit
Each Additional Month	RP \$ <del>.10</del>	per unit
*Special Emergency Check Request (outside of pay schedule)	RP \$ <del>5.00</del>	each

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*Check Stock	\$ .10	each check
*Set-Up Fee (one time charge)	\$ N/A	per unit
*Assessment Payment Plan Administration	\$ N/A	per unit/per month
*Payroll Processing Fee	\$ 15%	percent of gross P/R

Agent is authorized to purchase supplies for Association. These shall include, but are not limited to, supplies such as: association envelopes, new checks, deposit slips, data disks, copier use, and long distance telephone calls made for Association business.

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

A. Escrow Transactions - Compliance with Civil Code 1368

1. Escrow Demands regarding sales	\$ 75.00
2. Refinance Fee - Escrow Compliance	\$ 50.00
3. Preparation of Civil Code Document Compliance	\$ 15.00
4. Association Documents - CC&R's, By-Laws, Articles of Incorporation, Rules & Regulations	\$ 50.00
5. Change of Ownership Recordation	\$ 75.00

B. Collection Charges (Billed to Property Owner for Association Reimbursement)

1. Delinquency Processing (Mgmt. Letter)	\$ 20.00
2. Payment Plan Monitoring (Assessed to Owner)	\$ 15.00
3. Preparation of "Intent to Lien" (Notice/Letter)	\$ 35.00
4. Recording of Lien/Delinquent Assessment Lien Letter, Final Demand for Payment	\$ 135.00
5. Notice of Intent to Commence Foreclosure (Letter), Preparation of documents/transfer of delinquent file to attorney or trustee service (after lien recordation) for processing and coordination of collection and/or foreclosure. (Notice of Sale, Publication of Sale and Trustee Sale Guarantee)	\$ 1,222.00
6. Payment Plan Administration	\$ N/A per unit/per month

NOTE: The foregoing list is intended to identify the major areas of service which are extraordinary expenses. There may be additional charges for which the Association will be charged. In such cases the Agent will provide cost estimates prior to engaging any additional service.

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**EXHIBIT B**  
**DIRECTORS' ACTION BY**  
**UNANIMOUS WRITTEN CONSENT**

Pursuant to California Corporations Code 307(b), the Directors of \_\_\_\_\_, acting by written consent, pursuant to the adopted Association legal documents, unanimously adopt, approve and consent to the following action without a meeting:

WHEREAS, the Board of Directors has the authority and responsibility to collect and disburse funds on behalf of the Association, and see to the orderly management of its business affairs; and

WHEREAS, the Board of Directors has the authority to appoint a Manager/Agent to act on its behalf;

NOW, THEREFORE, be it resolved that the Board of Directors hereby retains Massingham & Associates Management, Inc., as its management agent to prepare and disburse payments on behalf of the Association for charges incurred as follows:

1. Compensation due and payable to employees or to independent contractors as stated in established contracts,
2. Taxes payable,
3. Insurance premiums,
4. The amounts specified for allocation to any reserve fund for replacements or any other reserve accounts,
5. Common area utilities,
6. Sums otherwise due and payable as operating expenses authorized to be incurred under the terms of this Agency Agreement.

RESOLVED, FURTHER, that the agency agreement dated \_\_\_\_\_, 19\_\_\_\_, is approved and the President of the Association is authorized to execute it on behalf of the Association.

DATED: \_\_\_\_\_

9/10/46

Kenneth E. Lewis  
PRESIDENT

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