

# Moss Creek Condominiums

## MANAGEMENT AGREEMENT

THIS AGREEMENT made and entered into this 0<sup>th</sup> day of November 2018 by and between Kentucky Realty Corporation herein called "Management Agent" and Moss Creek Condominiums Council of Co-Owners, Inc. (HOA) a Kentucky Corporation and its successors and assigns, herein called "Moss Creek Condominiums Board" or "Moss Creek Board".

### WITNESSETH:

FOR AND IN CONSIDERATION of these premises and of the mutual promises and covenants herein contained, Management Agent and the Moss Creek Board agree as follows:

I. **EMPLOYMENT.** The Moss Creek Condominiums Board does hereby engage the services of Management Agent as the exclusive property manager of Moss Creek Condominiums and the property (hereinafter called "the Property") known as: Moss Creek Condominiums Council of Co-Owners, Inc. located at 5900 Dewitt Drive Louisville, Kentucky 40258 consisting of the following improvements:

- Common Elements
- Limited Common Elements
- Roadways
- Parking Areas
- Other Facilities within and on the property and the Management

Agent does hereby accept such engagement.

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II. **TERM.** The commencement date of this Agreement shall be the 1st day of January 2019 unless sooner terminated or renewed as elsewhere herein provided, this Agreement shall be in effect until the 31st day of December 2019.

III. **SERVICES OF MANAGEMENT AGENT.** The services of the Management Agent shall include:

A. **General Administration.** The Management Agent will provide general administrative and community service management to the Moss Creek Condominiums Board. The Management Agent will assist the Moss Creek Condominiums Board to insure proper operational management and maintenance, and to promote a meaningful Board / Homeowner / Management Agent relationship.

B. **Maintain the Moss Creek Condominiums Board Files.** The Management Agent shall collect, organize and maintain complete files for Moss Creek Condominiums of all legal documents, owners lists, correspondence, house rules, site plans, blueprints and specifications, etc.

C. **Assist with Communications.** The Management Agent shall assist Moss Creek Condominiums Board with special notices, questionnaires, etc. The office will prepare and mail the notices (postage and supplies billed separately at actual cost per parcel).

D. **Resolve Problems.** The Management Agent shall assist in resolving problems as they pertain to the Moss Creek Condominiums Board and governing rules and regulations. Copies of correspondence sent to co-owners along of corrective action taken by Management will be submitted to the Moss Creek Condominiums Board.

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E. Property Inspections. The Management Company Agents shall make periodic inspections of the property of not more than 60 days and make recommendations as necessary concerning the property.

F. Assistance to Moss Creek Condominiums Board. The Management Agent or authorized representative shall provide administrative support services to the Moss Creek Condominiums Board to include notifying the Directors of Board Meetings and circulating the Minutes of the preceding meeting as prepared by the Secretary. The Management Agent or authorized representative shall assist in outlining and amending rules and regulations, and will attend all Board meetings not in conflict with other previously scheduled Board Meetings or commitments of the Operations Manager.

G. Emergency Call System. The Management Agent shall establish a grievance and emergency call system for Moss Creek Condominiums. The Management Agent shall implement and inform residents of the 24-hour, 7 days week emergency call service.

H. General Meeting. The Management Agent shall assist with the annual and special meetings of Moss Creek Condominiums Owners, including the preparation and delivery of the meeting notice. The Management Agent will assist with preparation of the agenda for this meeting and will assist in overseeing the election of any new directors.

I. Financial Management Services. The Management Agent will provide financial management services to the Moss Creek Condominiums Board, including an effective accounting/financial system.

1. Annual Budgeting. The Management Agent shall assist the Moss Creek Board in preparing an annual cash flow budget, detailed to reflect expected operations for each month during the twelve-month period. The budget will be established to illustrate expected, recurring receipts and

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disbursements. It will also be used for comparison of actual monthly income with expenditures.

The Management Agent shall analyze and compare operating receipts and disbursements against the Board approved budgets (cash-flow budgets). Where applicable, suggested corrective recommendations will be made.

2. Financial Statements. The Management Agent shall prepare monthly financial statements to be delivered to the Board Treasurer by the 15<sup>th</sup> day of each month and shall include:

- a. disbursements during previous month including all invoices
- b. amount collected during the previous month;
- c. funds withheld as reserves to cover later expenditures for which current income may be insufficient;
- d. compensation retained by Management Agent;
- e. bank reconciliation to include copies of bank account statements
- f. cash receipts and disbursements statement;
- g. delinquency reports to include copies of delinquency notices sent to co-owners
- h. additional financials for owner(s) available upon request at the expense of the association
- i. balance & income statement

3. Year-End Statements. The Management Agent shall prepare a Year-End Statement of the operations for the Moss Creek Board.

The Management Agent shall assist the CPA, selected by the Board, to perform audit, prepare forms, pay taxes, and to file local, state and federal reports as required.

4. Maintenance Fee Collections. The Management Agent shall collect all maintenance fees monthly. The Management Agent will set up

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checking, savings, or other account(s) as is customary with the Moss Creek Condominiums Board.

The Management Agent will keep accounting records to reflect the status of owners' interest in any account or accounts set up by the Management Agent. The Management Agent shall mail delinquency notices to any owner in arrears. In the event of failure to collect delinquent accounts, and at the discretion of the Board/ the Management Agent shall pursue payment through the management's attorney (at the expense of the Moss Creek Condominiums Board). The Management Agent shall comply with the applicable collection laws when engaging in any collection activity on behalf of the Moss Creek Condominiums Board. In the event of a claim or suit against the Moss Creek Condominiums Board for failure to comply with any law governing collection activity, the Management Agent shall indemnify and hold the Board harmless for all damages which may arise.

5. Make Disbursements. The Management Agent shall make all required disbursements for the Moss Creek Condominiums Board with bills or disbursement vouchers. The Management Agent shall make all disbursements from maintenance fees collected for normal recurring expenses as provided in the Board approved budget. The Management Agent will be granted authority to make any budget expenditures as provided in the approved budget at the Management Agent's own discretion. All non-budgeted expenditures (exceeding \$500.00) and variations above the approved budget (exceeding \$500.00) will be made only with the prior approval of the Board President or Treasurer except in the cases of an emergency which requires prompt action to avoid further loss.

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J. Contractual and Physical Administration. The Management Agent will supervise the maintenance of the common areas, improvements, and equipment of Moss Creek Condominiums.

1. Service Contracting. The Management Agent will solicit/ collect, analyze and compare bids. They will negotiate contracts for execution by the Board for the services and contractors for any requisite grounds, maintenance, landscaping, lighting, security services, audit and legal services required by the Moss Creek Condominiums Board. A minimum of (3) three bids should be submitted from contractors, unless waived by the Moss Creek Condominiums Board.

#### IV. COMPENSATION.

A. Ordinary Compensation. The Board shall pay to the Management Agent a service of fee \$13.00 per unit x ( 64 ) = \$ 832.00 a month with a one- time start-up fee of \$350.00. All payments made later than ten (10) days after the date provided in the preceding sentence shall bear a service charge of 5% per month. There shall be no penalty provision for late payments if the Management Agent is responsible for making such payments.

B. Compensation for Other Services. In the event that the Moss Creek Condominiums Board requests the Management Agent to provide services other than those required of Management Agent as described herein, then such services shall be performed at a rate negotiated by and between Moss Creek Condominiums Board and the Management Agent. Note addendum A of this agreement.

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V. EMPLOYEES AND SUBCONTRACTORS. The Management Agent is free to hire employees and/or subcontractors, except as such authority may be subject to review by the Moss Creek Condominiums Board and specified in this section.

A. Extra Maintenance personnel provided by Rapp and Associates will be at a prevailing hourly rate for skilled maintenance. This shall include labor and full insurance coverage for personnel while on the property at the rate of \$45.00 per hour plus a \$40.00 truck service charge. If increases in hourly rates should change with market conditions, you will be notified 30 days in advance of such increase.

VI. AUTHORIZED AGENTS OF the Moss Creek Condominiums Board. The Moss Creek Condominiums Board hereby designates the following individuals who shall be authorized to deal with the Management Agent on any matter pertaining to the obligations of either party to this Agreement:

- A. President for Moss Creek Condominiums
- B. Treasurer for Moss Creek Condominiums

VII. TERMINATION. This Agreement may be canceled with or without cause by either party before the termination date specified in Paragraph II herein on not less than thirty (30) days' notice to the other party.

VIII. TERMINATION PROCEDURES. Upon termination by either party for any reason whatsoever, whether or not such termination shall be for cause, the parties shall observe the following termination procedures:

A. Turnover of Records. The following records shall be provided to the Moss Creek Condominiums Board by the Management Agent within thirty (30) days of the date of the termination of this Agreement:

1. Copies of all tax returns of Moss Creek Condominiums retained by the Management Agent;

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2. All bank statements canceled checks and other bank records of Moss Creek Condominiums retained by the Management Agent;
3. Copies of all financial statements not previously provided to the Moss Creek Condominiums;
4. All accounting and legal records of Moss Creek Condominiums Board including by way of example but not limited to: general ledger, general journal, accounts payable information (including copies of unpaid invoices), monthly assessment records, corporate minute book, unit owner roster and contracts, and other documents to which the Moss Creek Condominiums Board is a party.
5. All records received from previous Management which include plans and specifications.

B. **Certified Audit.** Upon the termination of this Agreement, the Moss Creek Condominiums Board, at its expense, may engage the services of a duly licensed Certified Public Accountant to render a certified audit of the financial statement of Moss Creek Condominiums for the current financial period ending on the termination date and commencing at the beginning of the latest fiscal year of Moss Creek Condominiums or six (6) months from the termination date, whichever period shall be longer.

C. **Moss Creek Condominiums Funds and Bank Accounts.** Any funds belonging to Moss Creek Condominiums shall be returned to the Moss Creek Condominiums Board on the termination date of this Agreement, with the exception Agent may, at its discretion, retain in an escrow account the sum of money which is necessary to pay accounts payable which are the obligation of Moss Creek Condominiums Board to pay but which have been contracted for in the name of the Management Agent. The Management Agent in the event it retains any of the sums described herein, shall provide Moss Creek

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Condominiums Board with an accounting showing the purposes of the retention at the time it returns the remaining funds to Moss Creek Condominiums Board.

D. Bank Accounts. Upon termination of this Agreement, the Management Agent shall terminate all signature authority it may have in any bank account of Moss Creek Condominiums.

IX. DISPUTE PROCEDURE. Any dispute arising between the Management Agent and The Moss Creek Condominiums Board concerning the terms of this Agreement shall be submitted to binding arbitration, according to the Rules of the American Arbitration Association and the Moss Creek Condominiums Board, unless this provision is waived by the Moss Creek Condominiums Board, in which event any litigation shall be commenced in the appropriate court. .

X. ACCOUNTING AND LEGAL SERVICES. Moss Creek Condominiums Board shall be responsible for the engagement of attorneys and accountants to provide, at Moss Creek Condominiums Board's expense, any legal and accounting services not required to be performed by the Management Agent pursuant to the terms of this Agreement. Such services which shall be paid by Moss Creek Condominiums shall include, but not be limited to, payment for any annual certified audits required pursuant to the terms of this Agreement, and any attorneys' fees required to be paid for legal activities required to be taken in order to collect any of Moss Creek Condominiums maintenance fees or to bring suit on behalf of or defend any suit filed against Moss Creek Condominiums, unless such litigation is the result of a wrongful act on the part of the Management Agent.

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XI. ANNUAL CERTIFIED AUDIT. Moss Creek Condominiums shall conduct, at its expense, an annual certified audit of the financial statement prepared by the Management Agent and of the system of internal control employed by the Management Agent in maintaining Moss Creek Condominiums records. (This provision may be waived upon the consent of Moss Creek Condominiums Board.)

XII. PROPERTY RIGHTS AND LIEN RIGHTS OF THE PARTIES. The Management Agent shall not have any lien rights whatsoever upon termination, of this Agreement.

XIII. DISCLOSURE OF FINANCIAL INTERESTS. The Management Agent hereby discloses to Moss Creek Condominiums that it has the following financial interest or ownership interests in companies with which Moss Creek Condominiums presently does business or with which the Management Agent does business, and which will provide Moss Creek Condominiums with certain good and/or services: none

Also, in the event the Management Agent establishes any such financial or ownership interests as these terms are described herein at a future date, such interests shall be disclosed immediately, to the Moss Creek Condominiums Board.

XIV. FIDELITY BOND. In the event, that the Management Agent has control over the funds of Moss Creek Condominiums , the Management Agent shall obtain a fidelity bond covering all personnel of the Management Agent, who has access to the funds. This should be obtained from a company rated A or better by Bests Insurance Guide, or the equivalent, in an amount equivalent to at least three (3) months of Moss Creek receipts based upon its current operating Budget plus an

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amount equal to the total of all Moss Creek reserve funds on hand to which the Management Agent has independent access. Moss Creek Condominiums shall be specifically named as an insured or as an officary on the Fidelity Bond, and a copy of the Bond shall be provided to Moss Creek Condominium on or before the date of the commencement of services by the Management Agent. In the event of termination of the Fidelity Bond by the Management Agent or the insurance company, the Management Agent shall provide notification of such cancellation to Moss Creek Condominiums Board at least fifteen (15) days prior to its cancellation. In the event of cancellation, however, the Management Agent shall immediately obtain a substitute Fidelity Bond.

XV. NON-INCLUDED SERVICES. The following services shall not be provided by the Management Agent as part of the services which it shall perform pursuant to the terms of this agreement/ and, consequently these services shall constitute "other services" as described in Paragraph IV B of this Agreement:

- A. Court appearances, depositions or consultations, legal preparation of records to provide attorneys in connection with litigation filed or proposed on behalf/ of or directed at/ Moss Creek Condominiums Board of Directors or their employees.
- B. Insurance claim administration, for which the Agent may be compensated directly by Moss Creek Condominiums Board, or by way of Moss Creek Condominiums including in the claim Agent's fee for such administration.
- C. Warranty or punch list work, either in connection with claims arising against the developer or against contractors under proposals, begun prior to the management contract.

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XVI. RENEWAL. Unless otherwise terminated in accordance with Paragraph VII, herein, this Agreement shall be automatically renewed for a like period at a rate agreed upon by both parties.

XVII. NOTICE. Notice which either party desires to give or is required to give to the other under this Agreement shall be given by Certified Mail, return receipt requested, and it shall be deemed given when it shall have been deposited in the United States Mail/ addressed to the party for whom it is intended, as follows:

FOR MOSS CREEK CONDOMINIUMS BOARD:

Micheal R Queen, Board President

6004 DeWitt Dr

Louisville, Kentucky 40258

FOR THE MANAGEMENT AGENT OR MAINTENANCE:

Kentucky Realty Corporation

C/O Dan Rapp

3944 Bardstown Rd

Louisville, Kentucky 40218 (502-473-0003) Fax (502-473-7269)

XVIII. GOVERNING LAW. The laws of the State in which the property is located shall govern this Agreement. In the event/ however, that any provision contained in this Agreement, is in conflict with the laws of said State, such provision shall be deemed invalid and superseded by the governing state laws; but in such event, the remaining provisions of this Agreement shall remain in full force and effect.

XIX. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and insure to the benefit of the heirs, the personal representatives, successors and

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assigns of Moss Creek Condominiums Board and of the Management Agent. Notwithstanding the preceding sentence, neither party shall assign its rights under this Agreement without the prior written consent of the other party.

XX. INDEMNIFICATION. The parties agree to indemnify, defend and save the other harmless from all suits in connection with the property and from liability for damage to property and injuries to or death of any employee or other persons whomsoever, other than caused by the negligent conduct of Management Agent or its personnel.

XXI. INTEGRATION CLAUSE. This Agreement plus the introductory brochure and interviews constitute the full understanding of the parties hereto, and no prior or contemporaneous oral representations or prior written representations made by either party shall still be binding. This Agreement may be modified only in writing signed by both parties.

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IN WITNESS WHEREOF, the parties have affixed or caused to be affixed their respective signatures on this 8<sup>th</sup> day of November 2018.

Signed sealed and delivered in the presence of:

A handwritten signature in black ink, appearing to read "Micheal R Queen", written over a horizontal line.

Micheal R Queen

Moss Creek Condominiums Board President

A handwritten signature in black ink, appearing to read "Dan Rapp", written over a horizontal line.

Dan Rapp

Operations Manager