

Vacation Management Agreement

**Rental Property Management Agreement
Standard Provisions**

Owner(s) _____

Property _____ TMK _____

1. APPOINTMENT

The Owner hereby appoints and employs HawaiiVacationRentalOnline.com, hereby known as Agent, and the Agent hereby accepts such appointment and employment, on the terms and conditions hereinafter provided, to serve as the exclusive agent of the Owner to lease, rent and manage the Owner's property described above, with the authority to act at the expense of the Owner, pursuant to the terms of this Agreement. It is understood and agreed that the authority and duties conferred upon the Agent under this Agreement are confined to the property described above. The Agent shall have no duties or responsibilities except as expressly set forth in this Agreement.

2. AGENT'S DUTIES AND AUTHORITY

The agent is directed to accept directions or instructions with regard to the management and/or rental property only from the Owner, except in an emergency, in which case the Agent is authorized to take such action, as it deems necessary and appropriate to protect the property and/or the Owner. Agent agrees to perform the following services in the name and in behalf of the Owner, and the Owner grants the Agent the authority and powers required to perform the services:

- A.** Agent shall use due diligence and Agent's best efforts in the performance of this Agreement and in obtaining rental occupants for the property.
- B.** Agent shall collect and account for rents, deposits, fees and reimbursements from Owner's tenants. Agent shall be empowered (but not required) to do all things necessary to enforce the payment of rent and/or seek reimbursement for damage or loss to the property, including instituting summary possession proceedings for the removal of the Owner's tenants and to secure a judgment of the nonpayment of rent or damage or loss to property. Such actions by the agent shall be at the Agent's option and upon request by and at the sole cost and expense of Owner. Agent may accept the following forms of payment from tenants: cash, personal checks, money orders and credit cards. Credit card fees shall be incurred by Owner as an operating expense.
- C.** Agent shall render a periodic statement of receipts, disbursements and charges prepared on a cash basis, by the 15th of each month for the preceding month's rental activity, and shall remit to Owner the receipts less disbursements and charges with said statement. In no event shall Agent be liable to Owner for the ultimate collection of any rental payments so long as Agent uses its best efforts to effect collection, nor shall Agent be liable for personal checks or guarantee the same.
- D.** Agent shall maintain in accordance with customary accounting practices, records and receipts pertaining to the management of the property including copies of all correspondence.
- E.** All funds collected by the Agent shall be deposited in Agent's trust account in a federally insured financial institution. Any interest earned on such funds while in the Agent's trust account shall be the property of the Agent.
- F.** Agent shall enforce the terms of the rental agreement, house rules and other occupancy instructions mutually agreed upon between Agent and Owner.

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- G.** Agent shall undertake such advertising and promotion of the property as Agent may deem necessary in Agent's sole discretion to attract tenants. Such advertising shall include taking pictures of the Owner's unit which will be utilized for Agent's web page that will link to other web sites, brochures and local newspaper ads. Advertising or marketing activities specifically requested by Owner for Owner's own benefit shall be billed entirely to the Owner in addition to all other costs and/or commissions. Agent may hire, on a commission basis, booking agents, travel agents, tour agents and other similar agents or independent contractors as deemed necessary by the Agent for maximum production of income from the property. Any commissions paid to such agents and contractors shall be at owner's expense and treated as operating expenses not to exceed 10% of the gross rental rate charge to the tenant.
- H.** Agent shall cause to be made and supervise such repairs, alterations and maintenance of the property as the Owner may request and/or the agent shall deem necessary or appropriate to preserve the property and maximize the income, as well as purchase supplies and pay all costs therefore, as operating expenses of the property. The Agent agrees to secure the prior written approval of the Owner on all expenditures in excess of Two Hundred Fifty Dollars (\$250) for any one item, except monthly or recurring operation charges. Additionally, any emergency repairs in excess of the maximum amount shall be at the sole discretion of Agent to prevent and protect owner and/or guests from any damage to person, personal property or rental property or to avoid suspension of service to guests. Owner understands that due to the rapid turnover that takes place with vacation rentals, inventorying at each change of tenancy would be impractical. The property will be closely monitored by the Agent and any damage or theft will be charged, if possible, to the tenant.
- I.** Agent shall negotiate and execute, in the name of the owner and for the benefit of the property, necessary contracts for repair, maintenance, electricity, gas, water, telephone, cable, pest control, cleaning, trash removal, linen service and other similar services, or such of them as the Agent shall deem advisable. The costs of which shall be paid by Owner as operating expenses of the property. Owner agrees to assume the obligation of such contracts so entered into at the termination of the Agreement.

3. OPERATING EXPENSES AND RESERVE:

The agent shall deduct all operating expenses related to the rental operation of the property and the Agent's services under this Agreement from the rental revenue received on account of the property, subject to the provisions of Paragraphs 2.D above and 4 below.

Agent shall pay the Owner's Gross Excise and Transient Accommodation taxes. If designated by the Owner, Agent shall pay Insurance premiums, Homeowner's Association fees, and utilities such as electric, cable, phone and water and other operating expenses of the property. For such services, the Agent shall receive the additional fees set forth on the attached Terms Sheet. Agent shall be entitled to deduct, as a reserve, during the course of the year, a sum equal to the amount set forth on the attached Terms Sheet to cover anticipated operating expenses for the property, such sum to be held in the Agent's trust account for use as provided for in this Agreement.

4. ADVANCES BY AGENT:

Under this Agreement any payments to be made by the Agent shall be made from such sums as are available in the account of Owner. Agent shall not be obligated to make any advance nor incur any liability for the account of the Owner; and Agent shall not be liable for loss sustained by the Owner by reason of nonpayment of late payments of any expenses. In the event the disbursements and charges shall be in excess of the rents collected by the agent, the Owner hereby agrees to pay such excess promptly upon demand by Agent.

5. SALE OF PROPERTY:

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If, during the term of this Agreement, property is offered for sale by Owner, Owner agrees to (a) give Agent immediate notice of intent to sell and provide copy of listing contract; (b) not contact tenants directly or infringe on their right of enjoyment; (c) make arrangements through Agent for showing of property in such a manner that rental agreements with tenants are not jeopardized or made liable for cancellation of good cause. Sale of the property shall be subject to existing rental agreements. Sale of the property will automatically cancel this agreement subject to any applicable termination expense.

6. DUTIES OF OWNER: (Subject to inspection and acceptance of property: Refer to "Exhibit A")

A. Insurance

At all times during the term of this Agreement, Owner shall, at Owner's sole expense and cost, obtain and maintain general liability insurance in an amount not less than \$300,000.00 and in such form as Agent shall deem sufficient to protect the interests of the Owner and Agent under this Agreement. All such policies shall name Agent as an additional insured and shall be written so as to protect Agent from any and all liability except liability arising by reason of willful acts of Agent. Evidence of such insurance shall be supplied to Agent prior to rental of the property and shall be updated as necessary.

Owner shall carry such other hazard, personal property, rental income or other insurance, as Owner shall desire. Owner shall provide evidence of such other insurance to the Agent. Agent may, at Owner's discretion, pay insurance premiums for a fee as stated in Attached Terms Sheet.

B. Inventory List

Owner shall maintain a standard set of furnishings and amenities as defined by Agent and on "Exhibit A". Owner shall provide Agent with an inventory of furnishings and fixtures, or Agent will provide one for a fee listed on Attached Terms Sheet. Included should be copies of all service contracts or warranties in effect for property including equipment or fixtures. We recommend Owner should remove all valuables from property or store in a locked cabinet/closet on property.

C. Keys, House Rules

Owner shall furnish a copy of the house rules, four (4) sets of keys and a lockbox for entry to the property. Lockboxes may be purchased from Agent. The Agent is authorized to sign for and/or purchase, as an operating expense, all keys necessary for the rental operating of the property. If necessary, Agent may install a deadbolt lock or change key/locks at Owner's expense to provide extra security for the property.

7. RENTAL RATE/LEASE TERM:

With the objective of maximizing the return to the owner, Agent shall set the rental rate and lease term of the property in accordance with competition and market conditions and shall change the rate and/or term as necessary, in light of the Agent's experience in managing the property, to meet competition and to adjust to seasonal changes in demand. The agent shall have the right to grant discounts at the sole discretion of the Agent. The Owner may designate, upon written notice to agent, a discounted rate for selected tenants. Agent agrees not to obtain a lesser rate and/or shorter/longer term for the property than as set forth on the Attached Terms Sheet except upon the consent of the Owner.

Agent reserves the right to move guest from Owner's property (without Owner's compensation) due to renter dissatisfaction and unforeseen circumstances. Agent reserves the right to adjust rates due to these circumstances.

8. AGENT'S COMMISSION AND FEES:

The fee, which the agent shall receive for services performed under this Agreement, as set forth on the attached Terms Sheet, shall be net to the Agent above operating expenses of the property. Such fees shall be in the amount set forth on the attached Term Sheet, plus any compensation to which the Agent is entitled under the terms of this Agreement for additional services and Hawaii gross excise tax on such fees and compensation. All fees, commissions and compensation are subject to change with thirty (30) days written notice to the Owner.

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For payment of the Agent's fee, "gross rents received" shall include all receipts by Agent on behalf of the Owner including, but not limited to, rent and other similar tenant payments and/or reimbursements, excluding, however, (i) tenant's security deposits unless retained or applied by Owner for Owner's own purposes, and (ii) Owner's gross excise and transient accommodation taxes if reimbursed by tenant to Owner. Agent agrees not to collect or charge any undisclosed fees, rebates or discounts unless the same are disclosed to and agreed upon by the Owner and credited to the Owner's account.

If the Owner elects to terminate this Agreement or the property is sold or otherwise transferred, the Agent shall be paid a lump sum termination fee in an amount equal to Agent management fees as stated in the attached Terms Sheet or rents contracted to be paid under the existing tenant rental agreement(s) "existing tenant rental agreement(s)" is defined as a written reservation or rental contract for which a monetary deposit has been received by the Agent, including reservations which extend beyond the termination date of the Agreement. Owner further agrees to honor all tenant rental agreement(s) existing at the termination of this Agreement and Agent may hold all funds in its possession on account of such agreements until all obligations of the Owner under this Agreement and the tenant rental agreements have been discharged.

9. ACTS BY AGENT/INDEMNIFICATION:

Any action taken by the Agent pursuant to the terms of this Agreement shall be done as the Agent of the Owner and all obligations or expenses incurred hereunder will be for the account of, on behalf of, and at the expense of the Owner and not the Agent. Owner understands and agrees to indemnify and defend the Agent from and against any and all claims, demands, causes of action, losses, costs, fees and/or damages, arising from or on account of any cause whatsoever including, but not limited to, claims, demands, causes of action, losses, costs, fees and/or damages for breach or interference with contract, personal injury, wrongful death or property damages or for loss or theft of property, when Agent is acting within the provisions of this Agreement or acting under the direction of the Owner. Owner will reimburse Agent for all costs and expenses, including attorney's fees and costs of court, paid or incurred by Agent in connection with the defense of any such claims, demands, causes of action, etc. Without limitation, the provisions of this Paragraph shall survive the termination of this Agreement.

- A. The Owner shall pay all expenses incurred by Agent, including, without limitation, attorney's fees for counsel employed to represent Agent or Owner, in any proceeding or suit involving an alleged violation by Agent or Owner of any law, ordinance or regulation, including, without limitation, fair employment and discrimination laws, unless Agent is finally adjudicated to have personally, and not in an Agent's representative capacity, violated such statute, ordinance or regulations; nothing herein contained, however, shall require Agent to employ counsel to represent Owner in any such proceeding or suit.
- B. Agent shall not be required to comply with any direction of the Owner or to take, prosecute or defend any action, which, in the Agent's judgment, may subject Agent to liability or expense, unless Agent shall be indemnified in a manner and amount satisfactory to Agent. In the event Agent considers that any act or failure to act by the Owner may result in damage or liability to the Agent, Agent shall have the right to cancel this Agreement at any time by written notice to the Owner of its election to do so, which cancellation shall be effective upon notice to Owner. Cancellation of this Agreement shall not terminate any liability or obligation of the Owner as set forth herein and the Owner shall remain liable to Agent for any payments, reimbursements or other sums of money then due and payable to Agent under this Agreement.

10. GENERAL EXCISE AND TRANSIENT ACCOMMODATION TAXES:

Owner understands that Hawaii law requires the payment of a 4.166% (subject to change) general excise tax on all gross rents collected by any person renting real property in the State of Hawaii. Owner also understands that Hawaii law requires a payment of 7.25% (subject to change) transient accommodation tax on all gross income or gross proceeds derived from the furnishing of "transient accommodations", as that term is defined in Chapter 237D of the Hawaii revised statutes.

Owner acknowledges that Chapter 237D and the Hawaii gross tax law impose an obligation upon the Agent to file certain disclosure with the Hawaii Department of Taxation concerning the rents and proceeds received by the Owner under this Agreement. Notwithstanding such filings, the Owner understands that it is the obligation of the owner to obtain a Hawaii General Excise Tax license and a Hawaii Transient Accommodation Tax Certificate of Registration. Agent shall collect, report and pay general excise and transient accommodation taxes for the Owner to the State of Hawaii.

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11. OWNER'S USE:

Utilization of the property by Owner for personal use or rental will be subject to all prior commitments made by Agent. Owner will pay no management fee for personal use of property for up to a total of 60 days per year. Owner agrees to pay for professional cleaning services used by Agent for that property after each owner stay. When the property is returned to Agent it shall be in condition for immediate rental use and Agent reserves the right to refuse to accept custody of the property if, in the Agent's judgment, the property is not in a condition for rental use. Owner and Agent may agree from time to time to have the Agent return the property to rental use and any expenses incurred on behalf of the Owner, as well as any agreed upon additional fee(s), shall be paid by the Owner prior to such use. See attached Terms Sheet for more information on Owner usage and booking of own property.

12. PARTNERSHIP DISCLAIMER

Nothing contained in the Agreement shall be deemed or construed to create a partnership or joint venture between the parties hereto, or between any other owners of the property and Agent. Agent shall perform its duties under this Agreement as an independent contractor and shall be treated as such for all purposes, including federal and state income taxes.

13. DISCLOSURE BY AGENT:

- A. Agent hereby discloses, and Owner acknowledges and understands, that agent acts as a rental property manager for other owners of property within and around the same area as Owner's property. Owner hereby consents to such activities by Agent on behalf of other Owners.
- B. Agent is a licensed real estate brokerage firm in the State of Hawaii.
- C. Owner acknowledges and agrees that the Agent may from time to time receive commissions, rebates or other form of payment for the provisions of other services to the Owner and/or tenant unrelated to the leasing or management of the property. Such services might be car rentals, tour scheduling, leisure activities reservations and other similar items performed at the request of the Owner or tenant.
- D. Agent hereby discloses and Owner acknowledges and understands that Agent may collect from the guest's reservation fees and other administrative fees for the benefit of the Agent that are separate from the rental amount. Owner hereby consents to such activities by Agent.

14. ASSIGNMENT:

This Agreement shall be deemed a personal service contract and neither party hereto shall have the right to assign any benefit, burden, privilege or right under this Agreement.

15. MEDIATION AND ARBITRATION:

In the event of any disputes or differences arising out of or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle such disputes or differences. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of fourteen (14) days, then upon notice by either party to the other, such disputes, claims, questions, or differences shall be submitted to mediation administered by Dispute Prevention and Resolution, Inc. ("DPR"), before resorting to arbitration. Thereafter, if the parties are unable to settle any disputes or differences arising under, out of, in connection with, or in relation to this Agreement, or any agreement incidental or ancillary to this Agreement, or any other aspect of the relationship between the parties hereto, by mediation such dispute or controversy shall be submitted to and resolved by arbitration. A demand for arbitration shall be made within a reasonable time after a dispute or difference has arisen. Within ten (10)

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days after a demand for arbitration has been made to the other party, the parties shall request that DPR designate one arbitrator, who is not affiliated with any party in the arbitration. The arbitrator shall consider the dispute at issue in Kailua-Kona, Hawaii, at a mutually agreed upon time within thirty (30) days (or such longer period as may be acceptable to the parties hereto in dispute) of the designation of the arbitrator. The arbitration proceeding shall be held in accordance with the rules for commercial arbitration of DPR then in effect on the date of commencement of such arbitration. Notwithstanding the foregoing, the parties hereto agree that they will attempt, and they intend that they and the arbitrator should use their best efforts in that attempt, to conclude the arbitration proceeding and have a final decision from the arbitrator within ninety (90) days from the date of selection of the arbitrator; provided, however, that the arbitrator shall be entitled to extend such 90 day period one or more times to the extent necessary for such arbitrator to place a dollar value on any claim that may be unliquidated. The arbitrator shall promptly deliver to each of the parties a written decision with respect to the dispute that reveals the essential findings and conclusions upon which the decision is based, and each party shall promptly act in accordance therewith. Each party to such arbitration agrees that any decision of the arbitrator shall be final, conclusive and binding. The cost of the arbitration proceeding and any proceeding in court to confirm or vacate any arbitration award, as applicable (including, without limitation, attorneys' fees and costs), shall be borne by the unsuccessful party and shall be awarded as part of the Arbitrator's award. It is specifically understood and agreed that any party may enforce any award rendered pursuant to the arbitration provisions of this Agreement by bringing suit in any court of competent jurisdiction. The parties hereto agree that the arbitrator shall have the authority to grant injunctive of other forms of equitable relief to any party that prevails in any such arbitration. This provision shall survive the termination or cancellation of this Agreement.

16. GOVERNING LAW:

This agreement shall be construed in accordance with and governed by the laws of the State of Hawaii, as from to time amended.

17. ENTIRE AGREEMENT:

This agreement and the attached Terms Sheet contain the entire Agreement of the parties hereto concerning the subject matter hereof, and this Agreement shall supersede and replace all other agreements and understandings (whether written or oral) made by the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____ day of _____, 20_____

AGENT: HAWAIIVACATIONRENTALONLINE.COM

OWNERS:

Linda M. Kelly
Print Name

Print Name

Signature Date

Signature Date

President
Title

Print Name

Signature Date

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