

**MAMMOTH RESERVATIONS, INC.  
RENTAL AGENCY AGREEMENT**

THIS AGREEMENT is made at the Town of Mammoth Lakes, County of Mono, California, this \_\_\_ this day of \_\_\_\_\_, 2007, by and between MAMMOTH RESERVATIONS, INC, a California corporation ("Agent") and the owner(s) identified below (individually or collectively as "Owner") of the unit ("Unit"), described as follows:

**Project Name:**

**Unit Number:**

**Name** \_\_\_\_\_ **of** \_\_\_\_\_ **Unit** \_\_\_\_\_ **Owner:**

*(If multiple Owners, please attach to this Agreement a list of the names and complete mailing and E-mail addresses of all Owners. Identify on this page the applicable information for a primary contact who is authorized to act on behalf of all Owners and make and receive payments on behalf of all Owners.)*

**Home Address of Unit Owner:**

\_\_\_\_\_

**Home Phone:** (\_\_\_\_) \_\_\_\_\_

**Work Phone:** (\_\_\_\_) \_\_\_\_\_

**E-mail address:** \_\_\_\_\_

**Soc. Sec. or Taxpayer ID #:** \_\_\_\_\_

**Recitals**

A. Owner wishes to engage Agent as the exclusive transient occupancy rental Agent for the Unit in accordance with the terms and provisions of this Agreement.

B. Agent has experience and expertise in securing guests for transient occupancy of rental and resort lodging units ("Rental Guests"). Manager owns and operates a resort lodging rental and reservation service, and owner desires to place the unit in and under the authority of Agent's inventory and system. Agent's inventory includes units from other projects.

C. All rentals pursuant to this Agreement shall be on a transient occupancy basis, defined as occupancy by rental guests not to exceed 30 days in length. This Agreement is not intended to create a property management arrangement whereby Agent manages the unit for the benefit of Owner for leasing or any purpose other than a transient occupancy basis as specifically provided for herein.

**Agreement**

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, TERMS, AND PROVISIONS OF THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. Exclusive Rental Agency Appointment and Rental Authority.

1.1. Subject to the terms and conditions set forth herein, Owner hereby appoints Agent as the exclusive transient occupancy rental Agent for the Unit, and Agent hereby accepts such appointment.

1.2. Subject to Owner's use of the Unit pursuant to Section 2, Agent shall have absolute discretion to determine whether to allow a Rental Guest's transient occupancy of the Unit.

1.3. Agent shall use best efforts to apportion reservations and available Rental Guests on a fair and equitable basis within the discretion of Agent between the Unit and all other units for which Agent serves as a rental Agent. Agent need not, however, adhere to a strict rotation system and may vary the frequency of rental of the Unit for reasons including but not limited to the following: (a) preferences for a particular size, feature, view, location or type of unit expressed by potential Rental Guests; (b) prior reservations or other occurrences making a Unit unavailable for the duration of occupancy desired by potential Rental Guests; (c) restrictions placed upon the rental of the Unit by Owner; (d) needed or ongoing repair or replacement activities or unsuitability of the Unit for rental; (e) physical condition and amenities, (f) personal usage of the Unit by Owner, and (g) any other factors affecting demand for or desirability of the Unit.

## 2. Reservation and Use by Owner.

2.1. Owner may reserve the Unit for Owner's personal use at any time and from time to time during the term of this Agreement provided that Owner makes an advance reservation by completing and submitting to Agent an Owner usage calendar (the "Owner Usage Calendar"), a sample copy of which will be provided to Owner. Agent shall establish deadlines for Owner to return the Owner Usage Calendar.

2.1.1. The Owner's Usage Calendar shall specify all Owner's personal reservation dates for the upcoming twelve (12) month period, including all dates when the Unit will be occupied by the Owner, Owner's family, and Owner's non-rental guests, being those persons to whom the owner intends to make the Unit available without charge.

2.1.2. If Owner fails to deliver the Owner Usage Calendar to Agent as required above, Agent may assume that the Unit is available for occupancy for all dates during the six (6) month period.

2.1.3. Notwithstanding these provisions, Owner shall submit to Agent an initial Owner Usage Calendar within thirty (30) days of executing this Agreement, and such initial Owner Usage Calendar shall specify all Owner's personal reservation dates through to the next May 31. Should Owner fail to submit an initial Owner Usage Calendar, Agent may assume that the Unit is available for occupancy for all dates through to the next May 31.

2.2. Notwithstanding the reservation requirements in Section 2.1, if Owner desires to personally use the Unit on a date other than as set forth on the Owner Usage Calendar, Owner shall notify Agent of the desire to personally use the Unit. If Agent has not received a tentative or confirmed reservation for the Unit on the dates requested by Owner, Agent shall make every reasonable effort to accommodate such a request.

2.3. Owner and Owner's guests shall: (a) comply with any applicable arrival / departure requirements established by Agent; (b) comply with any established check-in and check-out procedures and times; and (c) pay for any applicable linen and housekeeping service fees.

2.4. Owner shall not enter the Unit, nor use any common areas appurtenant to the Unit, nor permit any person, whether family member, repairman, or Owner's non-rental guest to do so, other than during previously reserved dates of occupancy by Owner, without prior notification to, approval of, and coordination with Agent.

2.5. Owner understands that any personal property or possessions stored in or left in the Unit should not be left unsecured and Agent assumes no liability for any loss or damage thereto. Owner further agrees not to leave materials of a nature unsuitable for rental occupancy in the Unit.

## 3. Rental Rates.

3.1. Rack Rate. Agent shall establish, from time to time, a rental rate ("Rack Rate") for the Unit. Agent may also establish special rates or discounted rates for the Unit that vary from its established Rack Rate. All rent collected shall be subject to a deduction for, among other items, the following charges: surcharges, commissions (e.g., travel agents and tour brokers). All rents charged do not include any applicable taxes (e.g. transient occupancy taxes), which will be added to the rates.

3.2. Refunds. Owner permits Agent to offer a refund of the rent paid to any Rental Guest due to weather conditions or other circumstances beyond the control of Agent. Rental Guest transfers, or refunds, as a result of the dissatisfaction of the Rental Guest, are to be made at the sole discretion of Agent.

3.3. Promotional Occupancy. In order to promote the short-term occupancy of the Unit and other units, Agent shall have the right to allow persons to use the Unit on a complimentary or discounted basis when such use, in Agent's sole discretion, may contribute to the success of the short-term occupancy of the Unit or other units on Agent's program. Complimentary use of the Unit will not exceed three (3) days per calendar year.

#### 4. Agent Responsibilities and Obligations.

4.1. Rental of Unit. Agent shall place the unit into Agent's rental pool and use best efforts to rent the unit on a transient occupancy basis as provided for in this Agreement.

4.2. Credit, Collection and Management Services. Agent shall collect rent from all Rental Guests and shall provide all accounting services necessary for the collection of such rental revenue. In providing accounting services necessary for the collection of rental revenue, Agent shall maintain written books of account, kept in accordance with generally accepted accounting principles. The books of account shall include, at minimum, (1) all reservations made, (2) all money received, and (3) all money spent, with respect to each unit. Agent further agrees to bear all in-house costs associated with the collection of outstanding amounts due from Rental Guests. Agent shall keep all money received in a trust account maintained for the benefit of Owner at a federally insured institution (the "Owner's Trust Account"), provided that the Owner's Trust Account may be used to keep money received on behalf of multiple Owners. Other services the Agent agrees to perform include, without limitation, check-in and check-out of all occupants, distribution of keys, reservations, accounting services, and marketing and advertising.

4.3. Linen Service, Housekeeping Service and Supplies. Agent shall provide linen service and housekeeping service for all Rental Guests of the Unit. After Owner has personally used (or Owner's non-rental guest has used) the Unit, Owner shall remove all personal effects from the Unit or place them in the owner storage locker, closet, or other similar facility. Upon Owner's check-out, Agent shall be responsible for departure cleaning of the Unit and returning it to a condition ready for short-term occupancy operation. Owner shall pay any and all fees attributable thereto as established by Agent. Should the Owner or Owner's non-rental guest require housekeeping or cleaning services in addition to departure cleaning, they may order additional cleaning and shall pay any and all fees attributed thereto.

4.4. Annual Interior Deep Cleaning. In addition to the housekeeping service provided pursuant to Section 4.3, and if requested by Owner, Agent shall arrange and undertake a scheduled Annual Interior Deep Cleaning of the Unit including, but not limited to, carpet and upholstery steam cleaning, floor waxing, external window washing and other cleaning services. Owner shall pay for the costs of such services at the rates as established by Agent.

4.5. Unit Painting. If requested by Owner, Agent shall undertake a scheduled painting of the interior of the Unit from time to time. Owner shall pay for the costs of such services at rates as established by Agent.

4.6. Maintenance and Maintenance Fees.

4.6.1. Agent shall perform, at Owner's expense, such routine maintenance services which are, in the sole discretion of Agent, necessary to keep the Unit suitable for occupancy. Such routine maintenance shall include, without limitation, tasks that are normally performed by property management and other semi-skilled personnel. Owner authorizes Agent, its agents, and employees to enter the Unit to perform such routine maintenance services. Agent shall undertake such services and improvements and bill Owner for the associated costs, which Agent shall bill Owner at the current hourly billing rate plus 15% for skilled employees of Agent.

4.6.2. If Agent determines that the Unit requires maintenance services and/or materials that require skilled labor, trades people or subcontractors, that are considered to result in permanent improvement to, or upgrading or replacement of, any material aspect or feature of the Unit, then Agent shall undertake such services and improvements and bill Owner for the associated costs plus 15%. Except for emergency repairs as provided in Section 4.6.3, Agent shall obtain Owner's approval for any such chargeable services or improvements in excess of One Hundred Dollars (\$100.00) for any one service or improvement.

4.6.3. Owner hereby authorizes Agent, its agents, and employees, to enter the Unit to perform emergency maintenance or repair work should Agent discover an emergency condition in the Unit which, in Agent's sole discretion, requires immediate attention in order to prevent further damage to the Unit, other units, or the common area.

4.7. Accounting and Disbursement of Rental Revenue.

4.7.1. Gross Rental Revenue shall be deposited in the Owner's Trust Account. Agent shall have the right to withdraw from the Owners' Trust Account, in the Agent's sole and absolute discretion, (a) Agent's compensation (as defined in Section 5); and (b) any amounts that may be due to Agent pursuant to Sections 2, 4.4 through 4.7, 5, and 6.1.

4.7.2. Agent shall furnish Owner with a monthly accounting statement identifying for the previous month: (a) the Unit's Gross Rental Revenue (as defined in Section 5.1); (b) Agent's compensation (as defined in Section 5.1); and (c) any amounts that are charged to Owner and deducted by Agent pursuant to Sections 2, 4.4 through 4.7, 5, 6.1 or otherwise set forth in this Agreement.

4.7.3. If the monthly accounting statement reflects a balance to Owner, Agent shall include with the statement, a check made payable to Owner, drawn on the Owners' Trust Account, for any amounts due to Owner for the period reflected. If the monthly accounting statement reflects a balance due Agent, Owner shall pay to Agent the balance due within 20 days of the date of the invoice.

4.7.4. Owner shall have the right to inspect and copy all books of account pertaining to the rental of Owner's Unit. Such right to inspect and copy shall be conditioned upon Owner providing reasonable notice of Owner's request to inspect and copy. Notice shall be deemed to be reasonable if provided a minimum of ten (10) business days in advance.

4.7.5. Agent shall maintain all books of account for a minimum of three years. Agent retains the right to destroy, without prior notice to Owner, all books of account which have been closed for three years.

4.7.6. Agent shall comply fully with all collection, payment and record keeping requirements of any applicable transient occupancy tax ordinances, including those adopted by the Town of Mammoth Lakes.

4.8. Marketing. All marketing of units on the rental program of Agent shall be left to the sole discretion of Agent.

4.9. Agent's Insurance and Waiver. Agent shall maintain a broad form of comprehensive public liability insurance covering Agent services in an amount not less than one million dollars (\$1,000,000). A copy of such insurance will be maintained at Agent's office for inspection. Owner and Agent waive any right that each may have against the other for loss or damage to its property or property in which it may have an interest where such loss is caused by a peril covered by insurance held by Owner or Agent, as the case may be, or arising from any cause which the claiming party was obligated to insure against under this Agreement.

4.10. No Guaranty or Warranty of Income. Agent makes no representation, guaranty, warranty, or otherwise, whether express or implied, regarding income potential, profitability, occupancy, or profitability regarding, relating or pertaining to any revenue Owner might anticipate realizing by placing the Unit on the rental program of Agent pursuant to this Agreement.

5. Agent Compensation and Fees.

5.1. Management Fee. As compensation for Agent's services provided under this Agreement, Agent shall retain thirty-nine percent (39%) of all gross rental revenue.

5.2. Change in Management Fee. Agent shall notify Owner in writing of any proposed changes to Agent's compensation. If Agent gives Owner such notice of any changes on or before the fifteenth (15th) day of any month, then the changes shall be effective on the first day of the following month unless Owner gives Agent written notice that Owner wishes to not accept such changes on or before the first day of the month following Agent's notice. In the event Owner provides such notice, this Agreement shall automatically terminate in accordance with Section 9.

5.3. Internet Fee. Agent assesses a monthly Internet fee of \$15 which is deducted from amounts due Owner as provided for in this Agreement.

6. Owner Responsibilities.

6.1. Furnishing of Units.

6.1.1. Owner shall, at Owner's sole expense, furnish and maintain the Unit in a first-class condition, with complete furniture, fixtures, and equipment. Agent may make recommendations to Owner from time to time.

6.1.2. Owner shall provide in the Unit, utensils, dishes, cookware, and other necessary expendables as may be recommended by Agent from time to time at Owner's sole expense,

6.1.3. Owner shall be responsible for the cost of replacing any item of furniture, fixtures and equipment as necessary. Owner shall not hold Agent responsible for repair, restoration, redecorating or other expenses arising as the result of the rental or use of the Unit including wear and tear, and acknowledges that such expenditures are Owner's responsibility.

6.1.4. Agent shall, at least once annually, or more frequently as needed, inventory all furniture, fixtures, and equipment in the Unit, inspect the general condition of the Unit, and provide Owner with a written statement regarding the general condition of the Unit.

6.1.5. Owner shall pay on a timely basis all assessments and utility charges, including electricity, water, sewer, telephone and cable service fees (to the extent any of the foregoing are billed to Owner), and homeowner association fees and assessments, (HOA fees), to ensure that the Unit is rentable at all times.

6.2. Damage / Theft. Owner understands and agrees that as a result of rentals, damage to the Unit and its contents may occur, inadvertently or otherwise. Agent shall take reasonable steps to insure that Rental Guests leave the Unit in the same condition as received, normal wear and tear excepted. In the event of damage, breakage or theft by Rental Guests, Agent shall take reasonable steps to see that the Rental Guests responsible restore the breakage or damage as necessary, in a timely manner.

6.3. Pets. Owner shall notify Agent as to whether or not pets are permitted in the Unit.

6.4. Owner's Insurance, Indemnification and Waiver.

6.4.1. Owner shall maintain a broad form of comprehensive public liability insurance covering the Unit in an amount not less than One Million Dollars (\$1,000,000). Additionally, Agent recommends that Owner maintain personal property insurance covering the contents of the Unit.

6.4.2. Owner and Agent waive any right (including rights of subrogation) that each may have against the other for loss or damage to its property or property in which it may have an interest where such loss is caused by a peril covered by insurance held by Owner or Agent, as the case may be, or arising from any cause which the claiming party was obligated to insure against under this Agreement.

6.4.3. Owner agrees to indemnify and hold financially free and harmless Agent, its employees or agents, from and against all claims, suits, damages, costs, losses or expenses arising in connection with the use, occupancy, or ownership of the Unit, except if the result of gross negligence or intentional misconduct on the part of Agent.

6.5. Sale of Unit and Assignment of Owner Rights.

6.5.1. If Owner sells the Unit, Owner shall make the sale subject to all tentative and confirmed reservations held by Agent as of the date of the sale. Owner shall also obtain the written agreement of any buyer that all confirmed or tentative reservations for the Unit existing as of the date of the sale will be honored. Agent shall attempt to accommodate such showings commensurate with Rental Guest use.

6.5.2. Nothing in this Agreement shall prohibit Owner from assigning this Agreement provided that Owner obtains Agent's prior written approval and includes in such an assignment a delegation of all Owner's duties under this Agreement.

7. Term of Agreement. This Agreement shall become effective as of the date set forth in the first paragraph of this Agreement and shall continue in full force and effect for a period of one (1) year, subject to the provisions of Section 9. This Agreement shall be renewed automatically for succeeding terms of one (1) year each, unless either party gives written notice to the other at least ninety (90) days prior to the expiration of any term hereof of an intention not to renew this Agreement.

8. Schedules. From time to time, Agent may provide Owner with miscellaneous schedules containing information contemplated and provided for in this Agreement, including, without limitation: recommended inventory of furniture, furnishings, and equipment, recommended inventory of expendables, fee and cost schedules for maintenance services, miscellaneous policies and procedures pertaining to use of the Unit by Owner and guests of Owner as provided for in Section 2, miscellaneous rules, policies and procedures regarding general use of the Unit and which are posted in the Unit. All such schedules shall be deemed a part of this Agreement.

9. Termination of Rental Agreement.

9.1. Termination for Cause. Agent may terminate this Agreement upon forty-eight (48) hours prior written notice if Owner fails to comply with any provision of this Agreement or any term or condition of any rules or regulations Agent may adopt applicable to the Unit. Agent's determination of non-compliance shall be final and binding on Agent and Owner.

9.2. Confirmed and Existing Reservations. If this Agreement is terminated for any reason, Agent may honor all tentative and confirmed Unit reservations held by Agent as of the effective date of the termination. Upon the effective date of such termination, Agent shall not accept any reservations for the Unit and Agent shall use reasonable efforts to relocate Rental Guests' reservations from the Unit to other units under the rental management of Agent.

10. General Provisions.

10.1. Notices. Any notices to be given by either party to the other shall be in writing and shall be transmitted either by (1) personal delivery, (2) mail, registered or certified, postage prepaid with return receipt requested, (3) by an overnight delivery service (e.g., Federal Express), or (4) by facsimile transmission with a confirmation copy by regular mail, first class postage prepaid. Overnight delivery or mailed notices shall be addressed to the parties at the addresses listed below. Facsimile notices shall be transmitted to the telephone numbers listed below. Each party may change that address and facsimile telephone number by giving written notice in accordance with this paragraph. In the event of any mailing, notice shall be deemed given on the 3rd day after deposit. The addresses and facsimile telephone numbers of the parties are as follows:

If to Agent:	Mammoth Reservations, Inc. Attention: Lanie Somers P.O. Box 3006 Mammoth Lakes, CA 93546 Facsimile Telephone No.: (760) 934-4251
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If to Owner:	_____
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\_\_\_\_\_  
\_\_\_\_\_  
Facsimile Telephone No.:

10.2. Governing Law. This Agreement shall be construed in accordance with and governed by the substantive and procedural laws of the State of California. Proper venue for any dispute arising out of or pertaining to this Agreement shall be in Mono County, California.

10.3. Effect of Waiver. No waiver of any breach of any term, covenant, agreement, restriction, or condition of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other covenant, agreement, term, restriction, or condition of this Agreement. The consent or approval of either party to or of any action or matter requiring consent or approval shall not be deemed to waive or render unnecessary any consent to or approval of any subsequent or similar act or matter.

10.4. Attorneys' Fees. In the event any action at law or in equity is initiated to enforce or interpret the terms of this Agreement, or arises out of or pertains to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

10.5. Binding Effect. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of each of the parties hereto.

10.6. Entire Agreement. This Agreement constitutes the sole and only agreement by and between the parties and supersedes any prior agreements, whether oral or written. Any modifications to this Agreement shall be of no force or effect unless made in writing and signed by the party to be charged.

10.7. Facsimile Signature. Facsimile signature pages shall be deemed original signature pages.

10.8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

**Agent:**  
**MAMMOTH RESERVATIONS, INC.**

By: \_\_\_\_\_  
Signature, Title

Date: \_\_\_\_\_

**OWNER:**

By: \_\_\_\_\_  
Signature of individual whose name appears on  
page 1 of this Agreement

Date: \_\_\_\_\_

**Smoking / Non-smoking Unit Designation**

I would like to designate my unit # \_\_\_\_\_ as a (check one):

Smoking Unit

Non-smoking Unit

AGENCY AGMT