



**FirstService**  
RESIDENTIAL

**ASSOCIATION MANAGEMENT CONTRACT**

**THIS CONTRACT ("Contract")** is made and entered into on 3/7/2019, 2019, by and between **AQUAVISTA OF PANAMA CITY BEACH OWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation ("**Association**"), and **FIRSTSERVICE RESIDENTIAL FLORIDA, INC.**, a Florida Corporation ("**FirstService**").

A. The Association is the entity responsible for the operation of **AQUAVISTA OF PANAMA CITY BEACH OWNERS ("Community")**, located at **17155 Front Beach Road, Panama City Beach, FL 32413**, established by the documents thereof recorded in the Public Records of **Bay County, Florida ("Declaration")**, which Community consists of **84** units or lots ("**Units/Lots**").

B. The Association desires to retain FirstService, and FirstService desires to be so retained, to manage the Community.

**NOW, THEREFORE**, for other good and valuable consideration received by each party from the other, the receipt, adequacy and sufficiency of which are hereby acknowledged, and in further consideration of the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows:

1. **EXCLUSIVE MANAGER**. The Association hereby retains and appoints FirstService, and FirstService hereby accepts such retainer and appointment, on the terms and conditions hereinafter set forth, as exclusive manager of the Association.

2. **TERM AND TERMINATION**.

2.1 This Contract will commence on **March 1, 2019** and will continue for a term ending on the last day of **December, 2019 ("Initial Term")**, subject to termination as provided herein.

2.2 In the event that either party defaults by failing to perform its obligations set forth in this Contract, the other may give 30 days' written notice of its intent to cancel with specific detail as to the alleged breach. Should the default not be cured within the 30 day period (or in the case of a default requiring more than 30 days to cure, unless reasonable steps have been taken to cure such default and such cure is diligently pursued thereafter), the non-defaulting party will have the right to cancel this Contract and/or the right to institute appropriate legal proceedings to recover such damages as allowed by law. In addition, this Contract may be cancelled by either party, without cause, with 90 days written notice to the other party.

2.3 If allowed by applicable law, this Contract will automatically be extended after the Initial Term on an annual basis for successive 1 year renewal terms ("**Extended Term**").

A. If either party desires that the Contract not automatically extend for another year, they will provide written notice of their intent to cancel at least 90 days prior to the expiration of the Initial Term or any Extended Term of this Contract.

B. If an automatic annual extension is not allowed by law, the Contract will automatically be extended on a month-to-month basis until the termination of the contract. During the period of time when the Contract has been extended on a month-to-month basis, either party will have the right to terminate the Contract without cause upon 30 days' written notice to the other party.

3. **SERVICES**. During the term hereof, FirstService will assist the Association in performing the following services as requested by the Association, when and if needed and as limited by the hours as stipulated in Schedule I of this Contract, or as otherwise specified herein, to assist the Association, and will appoint at least 1 employee (i.e. the Community Association Manager ("**CAM**")) to effectuate same:

3.1 In addition to those employees of FirstService stipulated in Schedule I of this Contract, FirstService will employ and supervise such persons as needed (which person or persons employed by FirstService may be on a part-time or full-time basis) or assist the Association in engaging as independent contractors or employees working on behalf of the Association such persons, firms or companies necessary to properly operate the Community and maintain the common areas/elements of the Community ("**Common Areas**"), according to FirstService's reasonable judgment, the budget of the Association and the directives of the Board of Directors of the Association ("**Board of Directors**" or

Initial  Initial 

"Board"). The Association understands that all personnel so employed by FirstService and any persons, firms or companies engaged by the Association as independent contractors will be employed or engaged as agents for the Association. FirstService will also assist the Association in coordinating the work of any independent contractors engaged by the Association with the day to day activities of the Association. However, under no circumstances will FirstService or an employee of FirstService be designated to serve as the Association's representative in any contract.

3.2 Cause those portions of the Common Areas to be maintained and repaired including, but not limited to, landscaping, painting, roofing, cleaning and such other ordinary maintenance and repair together with the purchase of materials, equipment and supplies consistent with the approved budget or as requested by the Association; provided, however, FirstService will not obligate the Association for any single item of repair, replacement, refurbishing, materials, equipment or supplies the cost of which exceeds the sum of \$1,000.00 without the prior approval of the Association, unless provided for in the approved budget of the Association. Notwithstanding anything contained herein to the contrary, FirstService will have the right, but not the duty, without first obtaining the approval of the Association, to make emergency repairs and replacements which, according to FirstService's reasonable belief, are required to eliminate or avoid danger to persons or to property, for the preservation and safety of the Association, for the safety of persons, or in order to avoid suspension of any necessary service to the Association.

3.3 Take such actions as may be reasonably necessary to advise the Association, owners of Units/Lots ("Owners"), and/or occupants of the need to comply with all pertinent laws, statutes, ordinances and rules of appropriate governmental authorities having jurisdiction, and advise the Association, Owners and/or occupants of any violations thereof actually known by FirstService. Furthermore, FirstService will advise Owners and occupants of the need to comply with the Declaration, Articles of Incorporation and Bylaws of the Association and applicable rules and regulations, in connection with the operation of the Community and any violations thereof actually known by FirstService. Notwithstanding anything contained in this Contract to the contrary, the Association hereby acknowledges that in no event will FirstService be liable for the failure of the Association, the Owners and occupants to comply with all such laws, statutes, ordinances and rules of governmental authorities and the Declaration, Articles of Incorporation, Bylaws of the Association and applicable rules and regulations of the Community. Notwithstanding anything to the contrary contained herein, FirstService does not have the authority to provide and will not be responsible for providing legal advice to the Association regarding the interpretation or application of law.

3.4 Subject to the direction of the Association and the Association budget, FirstService will solicit contracts on behalf of the Association as needed for services reasonably necessary with respect to the operation, maintenance, upkeep, repair, replacement, and preservation of the Common Areas. All contracts will be approved and executed by an officer of the Association. The Association acknowledges that within the scope of this Contract and in carrying out all of its duties and responsibilities hereunder, including but not limited to those set forth in this paragraph, FirstService is acting solely as an agent for the Association and, accordingly, any expenses or liabilities incurred by FirstService hereunder, whether in its name or that of the Association, will be the sole obligation of the Association and not that of FirstService. Neither FirstService nor any of its partners, stockholders, officers, directors, employees, servants or agents will be personally liable in any fashion for any contract made in compliance with the provisions of this Contract. The parties hereto acknowledge and agree that notwithstanding anything to the contrary contained herein or elsewhere in this Contract, FirstService will not perform, nor be expected to perform, the services which would normally be performed by a construction manager and/or an engineer on construction projects undertaken, or to be undertaken, by the Association.

3.5 Engage a payroll processing service or other entity, at the Association's direction and expense, to prepare, as needed, all payroll and file the necessary forms, as needed, for employment insurance, withholding and social security taxes and all other forms relating to employment of the Association's employees, if any, required by federal, state or municipal authorities. (This subparagraph relates only to those direct employees of the Association, if any, not to employees of FirstService who provide services to the Association under this Contract.)

3.6 Retain and engage, as needed, at the Association's direction, approval and expense and as agents of the Association, such attorneys, accountants, insurance consultants, tax consultants and other experts and professionals, whose services the Association may reasonably require.

3.7 Maintain, as needed, appropriate records of all insurance coverage carried by the Association, including, but not limited to, current policy information, certificates of insurance, and procurement of loss runs.

3.8 Accept applications and references of prospective Unit/Lot purchasers and facilitate transfers and leases of Units/Lots, all as needed; provided, however, that the actual approval or disapproval of the same will be given and executed by a proper officer of the Association as and if required by the Declaration.

3.9 Prepare and send, as needed, all letters, reports and notices as may be reasonably requested by the Association, and attend **quarterly** meetings of the Board of Directors, annual meeting and budget meeting of the Association and file minutes thereof, which minutes will be prepared and recorded by the Association or its designee.

3.10 Perform periodic visual property inspections and make recommendations to the Board of Directors as to maintenance and improvements to the Common Areas.

3.11 Provide regular reports to the Board of Directors of the status of pending and completed operations affecting the Association.

3.12 Provide the day-to-day bookkeeping services, as needed or monthly, necessary to pay the bills of the Association. This service will consist of the following:

A. Keep all records of and perform all services in connection with the payment of bills, payrolls and such other items as may be provided for in the budget.

B. Collect all regular and special assessments levied by the Board of Directors, as needed or monthly, from the Association's members and other revenues, which may be due the Association. The Association hereby authorizes FirstService to request, demand, collect, receive and receipt for any and all assessments and charges which may be due the Association and to alert the Association's attorney of the status of receivables where they may need to take action in the name, and on behalf, of the Association by way of making, recording, satisfying or foreclosing the Association's liens therefore, initiating legal process or taking such other action necessary or appropriate, in its reasonable judgment, subject to the Association's approval, for the collection of such assessments.

C. Cause all bills received and approved by the Association, as needed or monthly, for services, work and supplies ordered in connection with maintaining and operating the Community, to be paid by the Association from Association's available funds all such proper bills as and when the same will become due and payable.

D. Maintain, as needed, the Association's financial record books, accounts and other financial related records as provided by the Association's Bylaws and pursuant to applicable law and issue certificates of account to Owners and their mortgagees and lienors together with such other documents as may be generally requested or provided in connection with sales, mortgages, or other transfers of Units/Lots or interests therein. FirstService may charge reasonable fees to Owners, purchasers of Units/Lots, their mortgagees and lienors as additional compensation to FirstService for the preparation of a certificate of account and for such other documents as may be generally requested or provided in connection with sales, mortgages, or other transfers of Units/Lots or interests therein, to the extent not prohibited by applicable law, and for preparation and delivery of documents to be delivered to a purchaser in connection with the sale of a Unit/Lot. The parties agree that an annual compilation, review or audit of the financial records will be made by an independent certified public accountant employed by, and at the cost, expense and approval of the Association and at such times as determined by the Association.

E. Prepare, annually, a suggested operating budget for the Association setting forth an itemized statement of anticipated receipts and disbursements based upon the then current schedule for assessments and taking into account the general condition of the Association and the Community. Said budget, together with an explanatory statement, will be submitted to the Association for final approval. The budget will serve as a supporting document for the schedule of assessments.

F. Deposit, as needed or weekly, all funds collected from Owners and others into a bank account established and maintained by FirstService, in FirstService's chosen bank, an operating account ("**Account**") in the name of the Association. Such account will be separate from all other accounts of FirstService and will identify FirstService as agent or custodian of said account with signatory authority, as designated by Board resolution. FirstService may establish the Association's reserve account(s) and any other accounts in the name of the Association at a financial institution(s) chosen by FirstService and FirstService will have signatory authority over all reserve accounts except as designated by the Association. FirstService will have no liability or responsibility for the rate of interest earned, if any, on such funds. FirstService will be under no liability or responsibility for any loss resulting from the insolvency of such depository. Following the termination of the contract relationship between the Association and FirstService, any account that has had its balance transferred from the account will be closed.

G. FirstService will render to the Board of Directors on a monthly basis statements of receipts, expenses, disbursements, financial charges, reserves and bank reconciliations. These statements will include a general analysis comparing the actual receipts and expenses to the Association's approved budget. In the event the Association cannot provide accurate financial information at the commencement of bookkeeping services which would include, but is not limited to, accurate general ledger beginning balances, Owners' ledgers, financial statement packages and supporting documents or schedules, FirstService will only be responsible to produce a cash management report, an accounts payable report and an accounts receivable report reflecting information from and after the commencement of the bookkeeping services.

3.13 FirstService will have access to the Common Areas at all times as may be necessary so as to perform its duties hereunder.

3.14 FirstService represents and warrants that the person or persons employed by FirstService to directly provide any community association management services as defined in Chapter 468, Florida Statutes as required under this Contract will have at all times a Community Association Manager's license from the Florida Department of

Business & Professional Regulation, and that FirstService will otherwise comply with provisions of Section 468.432, Florida Statutes.

3.15 The assumption of obligations by FirstService under this Contract is as agent of the Association and does not require FirstService to pay any of the costs and expenses which are the obligation of the Association, except as specifically assumed by FirstService in this Contract.

3.16 The records of the Association that are in FirstService's possession will be kept at the office of FirstService or at a location designated by FirstService, and will be available for inspection, and for review and audit all as required by applicable law. For extraordinary or repeated records inspection or production requests, FirstService may charge the Association a reasonable administrative fee for the time required to produce documents and for the time of a representative of FirstService to oversee the inspection.

4. **DESIGNATION.** The Association will designate in writing a single individual who will be authorized to deal with FirstService on any matter relating to this Contract. In the absence of any such designation, the President of the Association will have this authority. The Association will not interfere nor permit, allow or cause any of its Officers, Directors or members to interfere with FirstService in the performance of its duties or in the exercise of any of its powers hereunder.

5. **INSURANCE.** The Association and FirstService agree to obtain and maintain the respective insurance policies as set forth in this Contract (the "**Required Policies**"). The insurance requirements set out in the following subparagraphs are independent from all other obligations of the parties to this Contract and apply whether or not required by any other provision of the Contract, and regardless of the enforceability of any other provisions of this Contract. If, at any time, either party hereto allows any of its Required Policies to lapse, the other party may immediately terminate this Contract upon delivery of written notice to the other party.

5.1 By the Association. The Association hereby agrees to maintain at all times and to provide evidence of the following insurance. Coverage for FirstService as an insured will apply as non-contributing insurance before any other insurance or self-insurance, including any deductible or retention maintained by, or provided to, FirstService:

A. Commercial General Liability Insurance covering all premises and operations, including and with limits not less than: (1) \$1,000,000.00 each occurrence for bodily injury, property damage and personal and advertising injury; (2) \$2,000,000.00 general aggregate; (3) \$1,000,000.00 products and completed operations, (4) \$1,000,000.00 non-owned and hired auto liability; (5) contractual liability; (6) assault and battery covered as a regular occurrence; (7) "your real estate manager" included as an insured in the "Who Is An Insured" section of the policy language; and (8) ISO Additional Insured Endorsement CG 20 26 11 85 or endorsements providing equivalent or broader coverage to the additional insureds.

B. Directors' and Officers'/Employment Practices Liability Insurance, including and with limits not less than: (1) \$1,000,000.00 per claim and aggregate applicable to the D&O coverage section; (2) \$1,000,000.00 per claim and aggregate applicable to the third-party EPL coverage section; (3) retroactive date back to the inception date of the Association or coverage for full prior acts; and (4) FirstService as "property manager" must be included within the policy's definition of "insured" to the extent acting on behalf of the Association pursuant to the terms of this Contract.

C. Workers' Compensation Insurance providing state statutory coverage for all employees, subcontractors, or volunteers of the Association, with employers' liability with limits not less than: (1) \$500,000.00 each accident for bodily injury; (2) \$500,000.00 each employee for bodily injury caused by disease; and (3) \$500,000.00 bodily injury caused by disease.

D. Umbrella or Excess Liability Insurance, including and with limits not less than: (1) \$5,000,000.00 each occurrence and aggregate; (2) providing follow-form coverage sitting over the Association's Commercial General Liability, Directors' and Officers'/Employment Practices Liability and Employers' Liability policies; and (3) coverage for FirstService and additional insureds will be primary before any other insurance or self-insurance, including any deductible maintained by or provided to the additional insured other than the Commercial General Liability, Directors' and Officers'/Employment Practices Liability and Employer's Liability coverages maintained by the Association.

E. Fidelity Insurance written on a "discovery form" (and not on a "loss sustained" form) with a policy limit not less than the higher of the amount stated in the Association's governing documents or the minimum amount as may be required by applicable law or any regulatory requirements. Must include FirstService as a definitional insured.

F. All insurance carriers must be rated "A IX" or better by A.M. Best Company or "Substantial" or better by Demotech, and must be licensed or authorized to do business in the state in which the Community is located.

G. Prior to the commencement of work under this Contract, the Association will provide a current Certificate of insurance providing evidence of the aforementioned insurance requirements. The Association and FirstService agree that no work will commence under the terms of this Contract until a copy of the Certificate of Insurance is received and approved by FirstService. The Association will supply FirstService with a copy of the Certificate of Insurance showing evidence of renewal coverage in compliance with the terms of this Contract.

5.2 By FirstService. FirstService hereby agrees to maintain at all times and to provide evidence of the following insurance coverages:

A. Commercial General Liability Insurance, including and with limits not less than: (1) \$1,000,000.00 each occurrence for bodily injury, property damage and personal and advertising injury; (2) \$2,000,000.00 general aggregate; (3) \$1,000,000.00 products and completed operations; (4) contractual liability coverage; and (5) assault and battery covered as a regular occurrence.

B. Commercial Auto Liability Insurance, including and with limits not less than: (1) \$1,000,000.00 combined single limit and (2) \$1,000,000.00 non-owned and hired automobile liability.

C. Workers' Compensation Insurance providing state statutory coverage for all employees or subcontractors of FirstService, with employers' liability including and with limits not less than: (1) \$500,000.00 each accident for bodily injury; (2) \$500,000.00 each employee for bodily injury caused by disease; and (3) \$500,000.00 bodily injury caused by disease.

D. Umbrella or Excess Liability Insurance, including and with limits not less than: (1) \$5,000,000.00 each occurrence and aggregate and (2) providing follow-form coverage over the Commercial General Liability and Employers' Liability policies.

E. Prior to the commencement of work under this Contract, FirstService will provide a current Certificate of insurance providing evidence of the aforementioned insurance requirements. FirstService will supply the Association with a copy of the Certificate of Insurance showing evidence of renewal coverage in compliance with the terms of this Contract.

5.3 The Association expressly waives all rights of subrogation against FirstService and additional insureds for damages or losses, regardless of whether or not covered by any insurance obtained by the Association or required to be obtained by the Association pursuant to this Contract. The Association's Required Policies will include an express waiver of subrogation either by endorsement or policy language. The waiver of subrogation will be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity has an insurable interest in the property damaged.

## 6. COMPENSATION AND COST REIMBURSEMENT.

6.1 The Association agrees to pay FirstService the sum(s) stipulated in Schedule I of this Contract per month ("**Contract Price**"), in advance on the first day of each month or as otherwise stated in this paragraph to be paid bi-weekly in arrears. The Contract Price may be increased due to any increases in social security, Medicare, unemployment or other governmental imposed taxes or charges, and/or due to any increases in workers' compensation insurance rates as stipulated by NCCI, and will be a direct pass through to the Association as of the effective date of any such increase. By agreement in writing by both parties, the management fee payable to FirstService may be increased to the amount reflected each year in the operating budget as adopted and approved for the ensuing year. The Association will establish and properly fund an account with such federally-insured bank to be designated for ACH withdrawal by FirstService to meet the Association's obligations for all amounts owed to FirstService under this Contract. Association will reimburse FirstService bi-weekly, in arrears, for actual wages paid (as per agreement by both parties) plus any labor rate and accrued benefits as stipulated in Schedule I if labor is provided on that basis. Association agrees that all outstanding balances due in excess of 30 days will be assessed interest at the maximum rate as allowed by law on the unpaid balance. Further, if payments for on-site staff are more than 15 days delinquent, FirstService will have the ability, notwithstanding anything to the contrary contained in this Contract, to remove on-site staff members upon 7 days' written notice to the Association. During the period of time that on-site staff members have been removed from the property, FirstService will have no responsibility for performance of services under this Contract that would be performed by on-site staff members. Further, FirstService will not be liable to the Association, its members or to Owners, their guests and invitees for any injury, losses, costs, penalties, fines, fees, suits, demands, causes of action, judgments, obligations, claims or expenses incurred, sustained, arising out of and/or related to FirstService's inability and/or failure to perform any of its duties and obligations under the Contract during the period of time when FirstService's on-site staff members have been removed from the property.

6.2 Any additional hours or staff, including, but not limited to staff needed to work for employees who take provided PTO, vacation or holiday time, or bonuses requested by the Association will be paid for at the individual's compensation plus labor rate as stipulated in Schedule I. Any employees of FirstService that are required to remain on-site will be paid during their break. Any non-exempt employee working in excess of 40 hours per week will be paid at time and one half.

6.3 In addition, any on-site Community Association Manager or maintenance supervisor who is an employee of FirstService will be required to attend periodic off-site continuing education programs or training sessions arranged by FirstService. FirstService will attempt to arrange such sessions to minimize any inconvenience to the Association, and such sessions will be kept to a minimum.

6.4 Except as is otherwise expressly provided herein, the Association will pay or reimburse FirstService for all costs (as are more specifically set forth by illustration only in Schedule II hereto, made a part hereof by this reference) which may be incurred by FirstService in providing services, materials and supplies immediately upon receipt of an invoice thereof, except that FirstService will not be entitled to reimbursement for salaries of officers of FirstService and general office overhead of FirstService, as said items are actually included within the Contract Price.

6.5 Without limiting the provisions of Paragraph 6.4, if the Association requests in writing that FirstService provide project coordination services to coordinate the project with the day-to-day affairs of the Association, FirstService may charge as follows:

A. For restoration of Common Areas after Acts of God and other insurable claims such as, without limitation, hurricanes, fire or floods, the Association agrees to reimburse FirstService 5% of the total cost of the project for the additional administrative burden FirstService will incur in coordinating the repair and restoration process by contractors engaged by the Association with the day to day activities of the Association. FirstService may also charge such a cost to the Association for other construction projects undertaken by the Association which FirstService reasonably determines will create additional administrative burdens.

B. In the event of a natural disaster or other catastrophe, the Association will be billed at \$50.00 per hour for additional time the Community Association Manager spends on the property over and above his or her regularly scheduled hours. Any amounts billed hereunder will be credited against the fee FirstService is entitled to receive under paragraph 6.5A.

7. **ENGAGEMENT OF EMPLOYEES BY ASSOCIATION.** The Association recognizes that FirstService (i) is engaged in the competitive community association management business, (ii) invests time and money in the hiring, training and development of its employees at all levels, which promotes productivity, efficiency and the employment of a competent and specialized workforce, and (iii) has a legitimate business interest in protecting its employee resources and the investment it makes to develop and enhance those resources. Accordingly, the Association covenants and agrees that it will not, directly or indirectly, hire, employ, or otherwise engage any employees, prospective employees FirstService presents for consideration or former employees ("**FirstService Employees**"), or contract with, or in any way engage, the services of any firms employing any FirstService Employees during the term of this Contract and for a period of 12 months following the end of the Contract relationship between the parties hereto. Should the Association violate this paragraph, it agrees to pay, as liquidated damages, and not a penalty or buyout, the sum of 30% of the annual salary/wages of said employee(s) at time of termination or resignation of said employee(s) from FirstService. The Association agrees that the afore-described liquidated damages are fair, equitable, and reasonable sums not disproportionate to the anticipated and probable injuries which would result from breach by the Association and appropriate to compensate FirstService for such contemplated injuries, the actual value of which are not certain and are currently difficult to ascertain. This paragraph will survive the termination or expiration of this Contract.

8. **NOTICES.** All notices required hereunder will be in writing and will be effective when deposited in the United States mail, with proper postage prepaid, certified mail, return receipt requested, or by national carrier delivery (FEDEX or UPS) and will be properly addressed:

To Association:

To the current President  
At the Association's address of record or the mailing address FirstService has on file for the President.

To FirstService:

FIRSTSERVICE RESIDENTIAL FLORIDA, INC.  
2950 North 28 Terrace  
Hollywood, FL 33020  
Attention: David Diestel, President

or to such other address or person as either party will, from time to time, designate for itself, in writing, to the other party, provided that notice of any change of address or contact person will not be effective until received.

9. **LIABILITY.** FirstService is not liable to the Association (or to its directors, members, tenants, shareholders or their guests and invitees) for any Claims (defined below) unless the Claim is caused solely by FirstService's willful misconduct or gross negligence. "**Claims**" means any loss, claim, demand, liability, damages, injunctive relief, fines, penalties, costs and expenses (including reasonable legal fees). FirstService is not liable for consequential, exemplary or punitive damages. The "**Indemnified Parties**" means FirstService and its affiliates, their respective shareholders, members, directors, officers, partners, employees, representatives, assigns and agents. The Association will defend, indemnify and hold the Indemnified Parties harmless from Claims arising from any of the following: personal injuries or property damage; acts performed by FirstService under this Contract; liens filed against the Community, the Association, or the Indemnified Parties; liability based on FirstService's status under applicable law as a "managing agent" (or similar characterization); acts of the Association or its employees or third parties hired by the Association; events that either occurred prior to FirstService's appointment or after the termination of this Contract; or FirstService's negligence (but not if caused solely by FirstService's gross negligence or willful misconduct). If any applicable legal limitations affect the enforceability of the indemnification under this Contract, such legal limitations will operate to amend the indemnification only to the minimum extent necessary to bring the provisions of this Contract into conformity

with the requirements of such limitations. This indemnification is not limited to amounts payable under insurance policies. This paragraph does not abrogate FirstService's rights to coverage under any Association insurance policy, or modify the provisions of Paragraph 5. This paragraph survives the expiration or termination of this Contract.

10. **MISCELLANEOUS.**

10.1 In any legal action arising from this Contract or connected herewith the prevailing party will be entitled to recover all costs and reasonable attorneys' fees incurred (whether pre-trial, at mediation, arbitration or trial and in any appeals).

10.2 In any litigation arising from this Contract, venue will be solely in **Bay County, Florida.**

10.3 Association and FirstService hereby irrevocably and unconditionally waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal action or proceeding arising out of or relating to this Contract or any contract or transactions contemplated hereby, and for any counterclaim in connection herewith.

10.4 No waiver of a breach of any of the covenants contained in this Contract will be construed to be a waiver of any succeeding breach of the same or any other covenant.

10.5 No modification, release, discharge or waiver of any provision hereof will be of any force, effect or value, unless in writing, signed by both of the parties to this Contract, their respective successors and assigns. This Contract may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. A signed copy of this Contract or any addendum transmitted by e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original executed copy of this Contract or addendum hereto for all purposes. Execution by FirstService must be by a president or any other executive officer as reflected in the records maintained by the Secretary of State.

10.6 If any term or condition of this Contract is, to any extent, invalid or unenforceable, the remainder of this Contract is not to be affected thereby and each term and condition of this Contract is to be valid and enforceable to the fullest extent permitted by law. This Contract will be construed in accordance with the laws of the State of Florida.

10.7 FirstService will be free to contract for similar services to be performed for other entities, wherever located, while it is under contract with the Association. Under no circumstances will this Contract provide the basis for the Association, or any of its members, officers, directors, agents or employees, to look to FirstService as its or their employer, or a partner or principal. Nothing in this Contract will be deemed to create or be construed as constituting a joint venture or partnership between the Association and FirstService. The Association, its members, officers, directors, agents or employees who are not direct employees of FirstService will not be entitled to, nor will they make any claim for, any benefits accorded to FirstService's employees, including, but not limited to, workers' compensation, vacation or sick pay.

10.8 Except as otherwise set forth herein, this Contract constitutes the entire understanding and agreement between the parties hereto, supersedes all prior written or oral agreements with respect to its subject matter. Notwithstanding the foregoing, this Contract will not act to excuse any amounts due and unpaid under a previous contract between the parties, nor will this Contract act to extinguish any obligations from a previous contract between the parties which specifically survive the termination or expiration thereof. This Contract will be binding upon the parties hereto and their respective successors and assigns.

10.9 The Association represents and warrants that the execution, delivery and performance of this Contract by the Association will not conflict with, nor result in the breach of, any agreement, whether oral or written, document, indenture or other instrument to which the Association is a party or under which it is bound. The Association further represents and warrants that it has full power and authority to execute and deliver this Contract, and to perform the obligations hereunder, and that it has taken all actions necessary to authorize the execution, delivery and performance of this Contract. The Association also represents that it is not bound by the terms of any collective bargaining agreement and there has been no action taken by its employees which would subject the Association to the collective bargaining process under applicable labor laws. The Association is not aware of any labor organizing efforts involving its employees.

10.10 To the extent Chapter 718 is applicable to this Community, the parties hereto hereby acknowledge and agree that this Contract complies with Section 718.3025, Florida Statutes.

10.11 The Association agrees to provide a safe and healthy work environment for all employees provided by FirstService. If FirstService, in the exercise of its reasonable discretion, determines that there are conditions on or about the property which pose a hazard to the safety and/or health of its employees, FirstService will have the ability, notwithstanding anything to the contrary contained in this Contract, to remove on-site staff members upon written notice to the Association. During the period of time that on-site staff members have been removed from the property, FirstService will have no responsibility for performance of services under this Contract that would be performed by on-site staff members. Further, FirstService will not be liable to the Association, its members or to Owners, their guests and invitees for any injury, losses, costs, penalties, fines, fees, suits, demands, causes of action, judgments,

obligations, claims or expenses incurred, sustained, arising out of and/or related to FirstService's inability and/or failure to perform any of its duties and obligations under the Contract during the period of time when FirstService's on-site staff members have been removed from the property.

10.12 FirstService is not a landscape architect, architect or an engineer and does not provide these types of professional services under this Contract. Notwithstanding anything to the contrary in this Contract, it is not FirstService's responsibility to determine whether the height and location of the hedges, foliage, and/or other landscaping on the property is in compliance with all federal, state and local laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction over the property. FirstService disclaims any and all liability related to, arising out of or associated with the height and/or location of any hedges, foliage, or landscaping on or around the property and FirstService will have no liability for any claims or lawsuits related to, arising out of, or associated with the height and/or location of any hedges, foliage, or landscaping on or around the property.

10.13 In the event that FirstService will be required under any law or by any governmental agency to collect sales tax on any fees payable to FirstService hereunder, the amount of any such sales tax will be charged to and will be payable by the Association. In the event the governing municipality imposes a charge for a business tax receipt, occupational license or similar charge related to FirstService's performance of services for the Association from Association's on-site management office, the actual charge will be paid by the Association.

10.14 During the term of this Contract and to the extent not prohibited by the governing documents, FirstService reserves the right to affix and maintain a sign in a prominent location on the property to identify FirstService ("Professionally Managed by ..."). Said sign will be in a location likely to come to the attention of those entering the property, and will have approximate dimensions of 15"w x 12"h.

10.15 Association acknowledges and agrees that it and/or Owners may from time to time receive email contact or other communication from FirstService regarding topics including, but not limited to, discounts obtained by FirstService for various services which are being made available to Owners, promotions being offered by FirstService or services being offered by FirstService and/or its affiliated or related companies or subsidiaries.

## 11. DISCLOSURE.

11.1 In General. The Association is the ultimate decision maker for the purchase of goods and services and the selection of the vendors for the property. In connection with its duties under this Contract, FirstService will recommend to the Association the purchase of goods and services from various vendors, some of whom may be affiliates of FirstService or businesses with which FirstService has a contractual or other relationship under preferred vendor programs. The Association is not obligated to engage FirstService's preferred vendors or any other recommended provider. FirstService endeavors to develop affiliated and preferred vendor programs which address the needs of its clients and which focus on bringing value to its clients. FirstService and the current subsidiary/related companies providing services in Florida are: FirstService Financial, Inc.; FS Insurance Brokers, Inc.; Luke Brothers, Inc.; Luke's Landscaping, Inc.; Luke's Landscaping, Inc. d/b/a All Florida Pest Control and Fertilization; Service America Enterprise, Inc.; APS of Hollywood LLC d/b/a American Pool Service; LIV unLtd, LLC; American Leisure, LLC; California Closets operating under various fictitious names and/or related entities; College Pro Painters (U.S.) Ltd.; Floorcoverings, Ltd.; College Pro Window Cleaning, Inc.; Certa ProPainters Ltd.; Paul Davis Restoration, Inc. and all franchisees and related entities; Advanced Fire and Security, Inc.; Century Fire Protection, LLC; Super Restoration Service Co., LLC d/b/a Super Restoration; Condominium Concepts Management, Inc. d/b/a FirstService Residential; DeltaForce Realty, Inc.; and Heartline Fitness Systems.

11.2 FirstService Financial. FirstService Financial, Inc. and its subsidiary FS Insurance Brokers, Inc. (collectively "**FirstService Financial**") are affiliates of FirstService that were formed for the purpose of aggregating the buying power of properties managed by FirstService and its affiliates. FirstService Financial develop banking and insurance programs that are offered exclusively to clients of FirstService and its affiliates. FirstService Financial may receive fees or commissions from their banking and insurance partners for their assistance with the development, placement, servicing and maintenance of these programs.


**SECURITY DISCLAIMER.** FirstService will not in any way be considered an insurer or guarantor of security within the property. Neither will FirstService be held liable for any loss or damage by reason of failure to provide adequate security nor for ineffectiveness of security measures undertaken. The Board of Directors on behalf of the Association, Owners and occupants, tenants, guests and invitees, as applicable, acknowledge that FirstService does not represent or warrant that any fire protection, burglar alarm systems, access control systems, perimeter walls or fencing, patrol services, surveillance equipment, monitoring devices, security systems (if any are present) will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, nor that fire protection, burglar alarm systems, access control systems, perimeter walls or fencing, patrol services, surveillance equipment, monitoring devices or other security systems or services will provide the detection or protection for which the system is designed or intended. The Board of Directors on behalf of the Association, each Owner and occupant of any dwelling and each tenant, guest and invitee of an Owner,



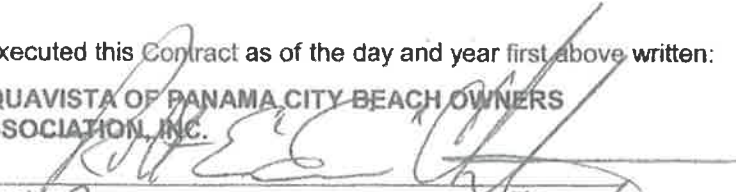
as applicable, acknowledges and understands that FirstService is not an insurer and that each Owner and occupant of any Unit/Lot and each tenant, guest and invitee of any Owner assumes all risks for loss or damage to persons, to Units/Lots and to the contents of Units/Lots and further acknowledges that FirstService has made no representations or warranties nor has the Association, any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire protection, burglar alarm systems, access control systems, perimeter walls or fencing, patrol services, surveillance equipment, monitoring devices or other security systems or services recommended or installed or any security measures undertaken within the property.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract as of the day and year first above written:

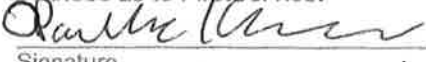
Witness as to Association:

  
Signature  
GORDON BREEN  
Printed Name

AQUAVISTA OF PANAMA CITY BEACH OWNERS ASSOCIATION, INC.

  
Signature  
Robert F. "Gene" Christian  
Printed Title  
President

Witness as to FirstService:

  
Signature  
Pascale Kowalski  
Printed Name

FIRSTSERVICE RESIDENTIAL FLORIDA, INC.

  
Signature  
PRES NO'FL  
Printed Title

**SCHEDULE I – CONTRACT PRICE**  
**AQUAVISTA OF PANAMA CITY BEACH OWNERS ASSOCIATION, INC.**  
**84 Units/Lots**

**MANAGEMENT FEE**

Includes supervising regional director and bookkeeping services

**EFFECTIVE**

**March 2019**

**MONTHLY**

**\$764.00**

**Post term 4% annual increase if Contract is extended after Initial Term (rounded to nearest dollar)**

**ON-SITE STAFF (IF APPLICABLE)**

The on-site staff will consist of the following positions to be provided by FirstService. This is the minimum staffing and may only be increased upon prior written approval of the Association and FirstService:

<u>Position</u>	<u>Minimum Hours Per Week</u>	<u>Monthly Fee</u>
Licensed CAM	20	<b>\$2,605.00</b>
Maintenance	80	<b>\$7,057.00</b>

<u>Position</u>	<u>Minimum Hours Per Week</u>	<u>Labor Rate</u>
Any additional administrative	Per mutual approval	25 %
Any additional concierge/front desk	Per mutual approval	35 %
Any additional non-administrative	Per mutual approval	35 %

The labor rate as stipulated above is a percentage of and is added to the wages paid and includes, but is not limited to, social security tax, federal/state unemployment tax, workers' compensation insurance, FirstService's contribution to employee 401(k) benefit, drug testing, criminal background checks, recruitment expense, payroll processing and human resource administration.

Eligible on-site staff will receive the following minimum benefits (if the Association elects eligible full-time employees of FirstService for a part-time position at the Association, these benefits will be on a pro rata basis):

- Standard health care benefits will be offered to all eligible on-site staff members who are employees of FirstService at a shared cost between the Association and the employees. The monthly amount the Association will be responsible for in 2019 for each eligible on-site staff member who elects coverage is \$509.00, which is inclusive of the costs associated with the benefits. This amount will be referred to as the "**Monthly Benefit Payment**" and is subject to increase on an annual basis and is due in full as to any employees that elects coverage and are employed as of the first of the month. There is no credit or pro rata return of any portion of the Monthly Benefit Payment should an employee be on FMLA leave, resign, be terminated or transferred after the first of the month. Employees who elect coverage will have the option to select alternate medical plans offered by FirstService and/or add dependents.
- The Association is responsible to pay for employees paid time off for holidays, accrued vacation, and personal time off ("**PTO**") as stipulated in FirstService's standard employment policies, up to and including the termination of this Contract or transfer of the employee from this Community.

**SCHEDULE II**  
**AQUAVISTA OF PANAMA CITY BEACH OWNERS ASSOCIATION, INC.**

- A. The following office expenses will be charged to and become a cost of the Association and will be reimbursed to FirstService. These office expenses will be substantiated with back-up documentation itemizing each charge. These office expenses are subject to increase upon 30 days' written notice to the Association.
1. Black & White copies at \$0.19 per page; color copies at \$0.40 per page.
  2. Paper at \$0.05 per page; envelopes at \$0.25 each; and labels at \$0.15 per label.
  3. Postage at actual cost.
  4. Long distance phone calls at actual cost.
  5. Maintenance fee payment handling of \$0.97 per Unit/Lot per month, regardless of payment frequency or method of payment (includes coupons, statements/direct debit letter, or other form of non-delinquent assessment communication).
  6. Special assessment coupons at \$10.00 per Unit/Lot per complete coupon book.
  7. Annual \$180.00 fee for miscellaneous office expenses (i.e., trans file boxes, annual file folder updates, off-site document storage, customized association laser checks, 1099 forms and preparation, etc.).
  8. Special assessment processing will be charged at \$2.50 per Unit/Lot per assessment installment period throughout the payment term of the assessment.
  9. Administrative fees for production and inspection of records by Association members (billed at \$50.00 per hour for staff and \$100.00 per hour for senior staff).
  10. Administrative fees for litigation support services, including, but not limited to, court appearances and preparation, production of documents, discovery, meetings with counsel, depositions, etc. (billed at \$75.00 per hour for staff, \$250.00 per hour for senior staff, and \$300.00 per hour for any officers of FirstService). This provision will survive the termination or expiration of this Contract.
  11. Additional Accounting Services (i.e., Audit Services, Manual Check Processing, Customized Statements, Cash Management, Additional Bank Accounts (over 2), Other Accounting Services and 1099 Research, Preparation and Transmittal (billed at \$50.00 per hour for staff and \$100.00 per hour for senior staff).
  12. Any fees/costs to install, to service and operate a time clock or other time capture device in the Community.
  13. Payroll and benefits system technology cost of \$11.00 per person per on-site employee of FirstService, per month.
  14. In the event the governing municipality imposes a charge for a business tax receipt, occupational license or similar charge related to FirstService's performance of services for the Association from Association's on-site management office, the actual charge will be paid by the Association.
  15. In the event the Association cannot provide accurate financial information at the commencement of bookkeeping services which would include, but is not limited to, accurate general ledger beginning balances, Owners' ledgers, financial statement packages and supporting documents or schedules, any additional time of FirstService to assist in the process of obtaining accurate financial information will be charged to the Association at the rate of \$50.00 per hour for accounting employees and \$100.00 per hour for any of FirstService's vice-presidents or accounting directors.
- B. The following office expenses will be billed to the Association and charged to the delinquent Owner for reimbursement to the Association:
1. Delinquent account reminder letters at \$10.00 each; collection demand letters at \$50.00 each, attorney transfer packages on collection matters at \$150.00 each; and assistance with obtaining documents regarding small claims matters at \$275.00 each. These amounts will be billed to the Association and charged to the delinquent Owner.
  2. If the Association elects to have FirstService send out the statutorily required pre-lien letter, and governing law or regulation does not preclude FirstService from preparing this letter, a reasonable charge may be billed to the Association and charged to the delinquent Owner.
- C. The following office expenses will be charged to the Owner or third party:
1. Should the Association select a screening company which uses FirstService to assist in the screening process and/or the secure storage of screening reports, FirstService may be reimbursed by the screening company in an amount as FirstService and the screening company may mutually determine.
  2. FirstService may charge, collect and retain NSF check costs as authorized by applicable law to compensate FirstService for the preparation of the statutorily required notice.
  3. FirstService may charge, collect and retain a lease and resale application processing fee of \$100.00 to the extent not prohibited by law.