



**ASSOCIATION MANAGEMENT CONTRACT**

THIS CONTRACT ("Contract") is made and entered into on MAY 4, 2016, 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" or "Condominium"), 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/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 shall commence on **May 9, 2016** and shall continue for a term ending on the last day of **May, 2017** ("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 shall 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 shall automatically be extended on an annual basis for successive 1 year renewal terms ("Extended Term"). If either party desires that the Contract not automatically extend for another year, they shall provide written notice at least 90 days prior to the expiration of the Initial Term or any Extended Term of this Contract ("Non-Annual Renewal Notice"). If either party desires that the Contract terminate as of the end of either the Initial Term or any Extended Term, they shall provide written notice of its intent to cancel at least 90 days prior to the expiration of the Initial Term or any Extended Term of this Contract ("Intent to Cancel") specifically so indicating.

2.4 Should the Contract reach the expiration of the Initial Term or an Extended Term, and should an Intent to Cancel not have been timely provided, the Contract shall 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 shall 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 shall 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 shall 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 shall employ and supervise such persons as needed (which person or persons employed by FirstService may be on a

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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 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"). The Association understands that all personnel so employed by FirstService and any persons, firms or companies engaged by the Association as independent contractors shall be employed or engaged as agents for the Association. FirstService shall 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 shall 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 and extraordinary maintenance and repair work together with the purchase of materials, equipment and supplies as may be necessary consistent with the approved budget or as requested by the Association; provided, however, FirstService shall 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 shall 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, or as are necessary in FirstService's reasonable belief for the preservation and safety of the Association or 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 shall 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 shall 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 shall 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 shall 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 shall 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, shall 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 shall 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 shall 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 shall 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 shall be prepared and recorded by FirstService.

A. Should the Association require the attendance of administrative support staff in addition to the CAM at any of the aforementioned meetings, the Association shall pay FirstService \$40.00 per hour for each administrative support staff member (with a 3 hour minimum).

B. Any additional meetings not held during normal business hours (i.e. 8 AM to 5 PM, Monday through Friday), or any meetings held between the hours of 5 PM Friday through 8 AM Monday, or on holidays, shall be at an additional expense to the Association of \$200.00 per meeting for attendance of the CAM and \$40.00 per hour (with a 3 hour minimum) for the time of administrative support staff, if needed.

C. Should the CAM be required to attend any meeting which extends beyond 3 hours, there shall be an additional expense to the Association of \$50.00 per hour for any time in excess of the 3 hours.

3.10 Perform routine 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 shall 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. Checks shall be executed by two designees of the Board of Directors or, with the approval of the Board of Directors and either the chief executive officer or chief operating officer of FirstService, by one designee of the Board of Directors and one designee of FirstService.

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. Approve all bills received by the Association, as needed or monthly, for services, work and supplies ordered in connection with maintaining and operating the Community, and cause to be paid by the Association from Association's available funds all such proper bills as and when the same shall 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. If FirstService is limited in the amounts it may charge for certificates of account and/or related documents by statute or administrative rule, the Association shall be responsible for the difference between the amount prescribed by statute or administrative rule and the amount charged by FirstService immediately prior to the effective date of the statute or rule. If, pursuant to applicable law or administrative rule, the charge for a certificate of account and/or related documents is not paid to FirstService at the time the certificate is prepared, the charge will be billed to the Association, and reimbursed to the Association upon payment by, or on behalf of, an owner. The records shall be kept at the office of FirstService or at a location designated by FirstService, and shall be available for inspection, and for review and audit all as required by applicable law. The parties agree that an annual compilation, review or audit of the financial records shall 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. For extraordinary or repeated records inspection requests, FirstService may charge the Association a reasonable administrative fee for the time required to produce documents for inspection by a member of the Association and for the time of a representative of FirstService to oversee the inspection.

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, shall be submitted to the Association for final approval. The budget shall 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 ("Account") selected by by the Association from one of FirstService's preferred banking partners so that said funds may be withdrawn therefrom to pay all expenses of operation and maintenance of the Community as contemplated herein. The Account will be styled so as to indicate the custodial nature thereof and the funds therein will not be commingled with other funds collected by FirstService as agents for others or otherwise. FirstService shall not be liable for any loss resulting from the insolvency of such depository.

G. FirstService shall render to the Board of Directors on a monthly basis statements of receipts, expenses, disbursements, financial charges, reserves and bank reconciliations. These statements shall 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 shall 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 shall 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 shall have at all times a Community Association Manager's License from the Florida Department of Business & Professional Regulation, and that FirstService shall 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.

4. **DESIGNATION.** The Association shall designate in writing a single individual who shall 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 shall have this authority. The Association shall 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 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 insurance policies to lapse, the other party may immediately terminate this Contract upon delivery of written notice to the other party.

5.1 The Association hereby agrees to maintain at all times and to provide evidence of the following insurance. Coverage for FirstService as an insured shall apply as primary 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: (1) a minimum of \$1,000,000.00 each occurrence for bodily injury and property damage, (2) a minimum of \$2,000,000.00 general aggregate, (3) a minimum of \$1,000,000.00 products and completed operations, (4) a minimum of \$1,000,000.00 non-owned and hired auto liability, (5) coverage must include contractual liability; assault and battery must be covered as a regular occurrence, (6) "your real estate manager" included within the definition of "Insured" in the policy language, and (7) "FIRSTSERVICE RESIDENTIAL FLORIDA, INC. and any and all of its affiliated or related entities, directors, officers, employees, servants and agents" to be specifically designated as "additional insured" using 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: (1) a minimum of \$1,000,000.00 per claim and aggregate for the D&O coverage section, (2) a minimum of \$1,000,000.00 per claim and aggregate for the EPL coverage section, (3) retroactive date back to the inception date of the Association or coverage for full prior acts, (4) must cover third party EPL claims, and (5) "FIRSTSERVICE RESIDENTIAL FLORIDA, INC. and any and all of its affiliated or related entities, directors, officers, employees, servants and agents" to be specifically designated as "additional insureds".

C. Workers' Compensation Insurance according to state statutory limits covering all employees, subcontractors, or volunteers of the Association, with employers' liability including: (1) a minimum of \$500,000.00 each accident for bodily injury, (2) a minimum of \$500,000.00 each employee for bodily injury caused by disease, and (3) a minimum of \$500,000.00 bodily injury caused by disease.

D. Umbrella or Excess Liability Insurance, including: (1) a minimum of \$5,000,000.00 each occurrence and aggregate, (2) providing follow-form coverage over the General Liability, Directors' and Officers'/Employment Practices Liability and Employers' Liability policies, and (3) coverage for additional insureds shall 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 Bond or crime coverage with a minimum of \$500,000.00 or such other minimum amount as may be required by applicable law, including FirstService as a named insured.

F. All insurance carriers must be rated A IX or better by A.M. Best Company, and must be licensed or authorized to do business in the State of Florida.

G. Prior to the commencement of work under this Contract, the Association shall provide a current and original certificate of insurance providing evidence of the aforementioned insurance requirements. The insurance certificate must show "FIRSTSERVICE RESIDENTIAL FLORIDA, INC. and any and all of its affiliated or related entities, directors, officers, employees, servants and agents" as "additional insureds" on the Commercial General Liability, Directors' and Officers'/Employment Practices Liability, Umbrella and Excess Liability policies, and not merely a certificate holder. A copy of the additional insured endorsement to the Commercial General Liability policy indicated in Paragraph 5.1 A. shall be appended to the certificate of insurance. It is agreed by all parties that no work shall commence under the terms of this Contract until the original Certificate of Insurance is received and approved by FirstService. No later than the renewal date of any insurance policies required by this Contract, the Association will supply FirstService with an original Certificate of Insurance showing evidence of renewal coverage in compliance with the terms of this Contract.

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

A. Commercial General Liability Insurance, including: (1) a minimum of \$1,000,000.00 each occurrence for bodily injury and property damage, (2) a minimum of \$2,000,000.00 general aggregate, (3) a minimum of \$1,000,000.00 personal and advertising injury, (4) a minimum of \$1,000,000.00 products and completed operations, and (5) contractual liability coverage.

B. Commercial Auto Liability Insurance, including: (1) a minimum of \$1,000,000.00 combined single limit and (2) a minimum of \$1,000,000.00 non-owned and hired automobile liability.

C. Workers' Compensation Insurance according to state statutory limits covering all employees or subcontractors of FirstService, with employers' liability including: (1) a minimum of \$500,000.00 each accident for bodily injury, (2) a minimum of \$500,000.00 each employee for bodily injury caused by disease, and (3) a minimum of \$500,000.00 bodily injury caused by disease.

D. Umbrella or Excess Liability Insurance, including: (1) a minimum of \$5,000,000.00 each occurrence and aggregate and (2) providing follow-form coverage over the General Liability and Employers' Liability policies.

E. Prior to the commencement of work under this Contract, FirstService shall provide a current and original Certificate of Insurance showing the coverages outlined above. The Association shall be named as an additional insured on FirstService's Commercial General Liability and Commercial Auto Liability policies to the extent that the Association is entitled to be indemnified under this Contract. On the renewal date of any insurance policies required by this Contract, FirstService will supply the Association with a new, original Certificate of Insurance in compliance with all terms of this Contract.

5.3 The Association expressly waives all rights of subrogation against FirstService for damages caused by perils, 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 policies of insurance required to be carried by the Association pursuant to this Contract shall include an express waiver of subrogation either by endorsement or policy language. The waiver of subrogation shall 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 Schedule I. 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 shall 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 administrative 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 shall 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 shall reimburse FirstService bi-weekly, in arrears, for actual wages paid (as per agreement by both parties) plus any labor burden 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 shall 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 shall have no responsibility for performance of services under this Contract that would be performed by on-site staff members. Further, FirstService shall 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 sick, vacation or holiday time, or bonuses requested by the Association shall be paid for at the individual's compensation plus labor burden as stipulated in Schedule I. 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 shall be kept to a minimum.

6.4 Except as is otherwise expressly provided herein, the Association shall 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 properly incurred by FirstService in providing services, materials and supplies immediately upon receipt of an invoice therefore, except that FirstService shall 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 in an amount as mutually agreed by the parties 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 shall be billed at \$50.00 per hour for additional time the Community Association Manager spends on the property. Any amounts billed hereunder shall be credited against the fee FirstService is entitled to receive under this paragraph.

7. **ENGAGEMENT OF EMPLOYEES BY ASSOCIATION.** The Association recognizes that FirstService is engaged in the specialized and competitive property management and maintenance business and FirstService 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. Accordingly, the Association covenants and agrees that it shall not hire, employ, or otherwise engage any employees, prospective employees FirstService presents for consideration, or former employees who provided services to the Association, or contract with or in any way engage the services of any firms employing any such employees, prospective employees FirstService presents for consideration, or former employees of FirstService while this Contract remains in force and continuing for a period of 12 months following the end of the Contract relationship between the parties hereto. For this purpose, "employees, prospective employees FirstService presents for consideration, and former employees" are those individuals currently or formerly employed by FirstService who provided services to the Association or prospective employees who were presented to the Association for consideration, at any time during the 12 month period prior to 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, the sum of 30% of the annual salary/wages of said employee(s) at time of termination or resignation of said employee(s) by or from FirstService. The provisions set forth in this paragraph shall survive the termination or expiration of this Contract.



8. **NOTICES.** All notices required hereunder shall be in writing and shall be effective when deposited in the United States mail, with proper postage prepaid, certified mail, return receipt requested, and shall 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: Anthony A. Kalliche,

Executive Vice President & General Counsel

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

9. **LIABILITY.** The Association hereby expressly agrees and understands that FirstService shall not be liable to the Association, its members or to Owners, their guests and invitees for any injury, loss or damage to person or property, except to the extent caused by FirstService's negligence or willful misconduct or material breach of this Contract. To the fullest extent of the law, the Association and its members will, and do hereby agree to indemnify, save, defend and forever hold harmless FirstService, its affiliated or related entities, partners, officers, directors, agents, servants and employees from any liabilities, damages, costs, penalties, fines, fees, losses, suits, demands, causes of action, judgments, obligations, claims and expenses, including but not limited to reasonable attorneys' fees and associated costs (whether pre-trial, at trial, mediation or at arbitration and/or in connection with any appeals) incurred, sustained, arising out of or connected with any injury to person or property however caused, or from any matter whatsoever arising from or in connection with FirstService's performance of services hereunder except to the extent that such liability resulted from FirstService's negligence or willful misconduct or from a material breach of this Contract. All personal property placed or moved into the Condominium will be at the risk of the Association or the Owner or occupant. FirstService will not be liable to the Association or others for any damage or injury to person or property, real or personal, arising from theft, vandalism, HVAC malfunction, the bursting or leaking of water pipes, the presence of mold, mildew or any pollutant, and any act or omission of any Owner or occupant or of any other person. However, the foregoing will not relieve FirstService of liability for damage to the extent resulted from FirstService's negligence or willful misconduct. To the extent that such liability resulted from FirstService's negligence or willful misconduct, FirstService shall indemnify and hold harmless the Association. Both parties shall procure contractual liability insurance covering their respective obligations arising out of this paragraph; however the indemnification shall not be limited to damages, compensation or benefits payable under insurance policies. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Contract, such legal limitations are made a part of the indemnification obligations and shall operate to amend the indemnification obligations to the minimum extent necessary to bring the provisions into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. Nothing herein shall be interpreted to modify the obligations in paragraph 5 which provide for FirstService to be a definitional insured on the Association's Commercial General Liability, Excess Liability and Directors and Officers Liability policies on a primary basis. The provisions set forth in this paragraph shall survive 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 shall 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 shall 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 shall 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 shall be of any force, effect or value, unless in writing, signed by both of the parties to this Contract, their respective successors and assigns.

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 shall 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 shall 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 shall 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 shall not be entitled to, nor shall 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 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 shall not act to excuse any amounts due and unpaid under a previous contract between the parties, nor shall this Contract act to extinguish any obligations from a previous contract between the parties which specifically survive the termination or expiration thereof. This Contract shall 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 shall 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 shall have no responsibility for performance of services under this Contract that would be performed by on-site staff members. Further, FirstService shall 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 shall 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 shall be charged to and shall be payable 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 shall be in a location likely to come to the attention of those entering the property, and shall have approximate dimensions of 15"w x 12"h.

10.15 Association acknowledges and agrees that it 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**. FirstService, through its affiliated or related companies, or divisions, offers certain goods or services to community associations. FirstService hereby wishes to ensure that these relationships are disclosed to the Association. 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; Luke's Landscaping, Inc. d/b/a Luke's-Sawgrass Landscape; Luke's



Landscaping, Inc. d/b/a Sawgrass Landscape Services; Service America Enterprise, Inc.; Uhlig LLC; WelcomeLink, Inc.; APS of Hollywood LLC; APS of Hollywood, Inc. d/b/a American Pool Service; Paul Davis Restoration, Inc.; and Custom Property Management, Inc. The Association is not obligated in any manner to use any of the aforementioned affiliated or related companies or divisions to perform services other than those provided by FirstService under this Contract, nor is FirstService precluded from obtaining competitive bids, when required, to present to the Board of Directors for approval.

**SECURITY DISCLAIMER.** FirstService shall not in any way be considered an insurer or guarantor of security within the property. Neither shall 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, 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, 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, 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:

*Julie Hite*  
Signature  
Julie Hite  
Printed Name

**AQUAVISTA OF PANAMA CITY BEACH OWNERS ASSOCIATION, INC.**  
*[Signature]*  
Signature  
President  
Printed Title

Witness as to FirstService:

*[Signature]*  
Signature  
BARBARA CARROLL  
Printed Name

**FIRSTSERVICE RESIDENTIAL FLORIDA, INC.**  
*[Signature]*  
Signature  
Dist. No. FL  
Printed Title



**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 shall 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 and special assessment coupons/statements at \$10.00 per Unit/Lot per complete coupon book and \$7.00 per Unit/Lot per statement.
  6. 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.).
  7. Special assessment processing shall be charged at \$2.50 per Unit/Lot per assessment installment period throughout the payment term of the assessment.
  8. 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).
  9. 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 shall survive the termination or expiration of this Contract.
  10. 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).
  11. Any fees/costs to install, to service and operate a time clock or other time capture device in the Community.
  12. Payroll and benefits system technology cost of \$11.00 per person per on-site employee of FirstService, per month.
  13. 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 shall be paid by the Association.
  14. 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 shall 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 \$125.00 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.