

MANAGEMENT AGREEMENT

BETWEEN

HOMEOWNERS' ASSOCIATION, INC.

AND

VESTA PROPERTY SERVICES, INC.



VestaTM

Vested in your community.

MANAGEMENT AGREEMENT

This Management Agreement (“Agreement”) is made and entered into as of _____, (the “Effective Date”) by and between a Florida not-for-profit corporation, _____ **Homeowners Association, Inc.** (“Association”), in _____ County, and Vesta Property Services, Inc., a Florida corporation (“Vesta” or “Agent”). Association and Agent shall each be a ‘party’ or collectively the ‘parties.’

RECITALS

WHEREAS the Association is a homeowners association incorporated as a not-for-profit corporation under the laws of the State of Florida that is responsible for the operation of the community known as _____ (the “Community”) located in _____ County, Florida, pursuant to that certain Declaration of Restrictions, Covenants, and Easements for _____, recorded in the Public Records of _____ County, Florida (the “Declaration); and

WHEREAS Vesta is a licensed Community Association Manager and is in the business of providing property management, maintenance, administrative, and compliance services to community associations; and

WHEREAS the Association desires to retain Vesta to provide the management, administrative and other services described in this Agreement, to manage the Common Elements of the Community, and to provide the services as set forth in the Scope of Services outlined herein (collectively, the “Services”). The term “Common Elements” means those portions of the Community dedicated to the common use and enjoyment of the property owners (“Owners”) as defined in the Declaration and the other governing documents for the Association, except as otherwise provided in this Agreement; and

WHEREAS Vesta is willing to act as manager for the Community and to act in that capacity and to perform the functions on behalf of the Association as set forth in and upon the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. General

1. **Incorporation.** The recitals stated above, and the schedules attached hereto are true and correct and by this reference are incorporated into this Agreement.

2. **Defined Terms.** All capitalized terms used but not defined in this Agreement or the Scope of Services attached as **Schedule A and B** shall have the meanings given to such terms in the Declaration.

Initial _____

3. **Exclusive Manager.** Association hereby retains and appoints Vesta, and Vesta hereby accepts such retainer and appointment, on the terms and conditions set forth in this Agreement, as the exclusive manager for the Community and the Common Elements.

B. Term and Termination. Notice.

Term. The Association hereby employs the Agent exclusively to manage the Association for three (3) years, beginning on the Effective Date. The “Initial Term” shall be the first year of the Agreement, which will automatically renew for subsequent years on each anniversary of the Effective Date (each a “Subsequent Term”), unless earlier terminated according to the terms of the Agreement.

1. Termination. The Agreement shall only be terminable for cause during the Initial Term, which cause shall be defined as the gross negligence or the willful or intentional misconduct of a party (“Cause”), and management fee(s) shall be due and owing for the entirety of the Initial Term for any attempted termination other than for Cause. Thereafter, during any Subsequent Term, either party may propose to terminate this Agreement with ninety (90) days written Notice delivered by certified mail to the other party. The Notice shall provide a detailed, written and itemized list of the reasons for the proposed termination and the other party shall have thirty (30) days to cure each item listed in the Notice. If the items are not satisfactorily cured, then the Agreement shall terminate on the ninetieth (90th) day following receipt of the Notice.

2. Post Termination Assistance. For a period of six (6) months subsequent to the Termination Date, Vesta, upon request of the Association, and at a charge of seventy-five dollars per hour (\$75.00/hour) to be paid in advance, shall (a) meet and confer with any Association Professionals, including its CPAs, in order for the CPAs to complete their reviews, audit and financial reports, and (b) cooperate and take such action as is reasonably requested, as to financial matters and otherwise, as required for the Association to comply with the Association’s governing documents and Applicable Laws.

3. Notice.

Any notice required or permitted to be served hereunder may be served by registered mail or in person as follows:

1. If to the AGENT:
Vesta Property Services, Inc.
[ADDRESS]
2. If to the ASSOCIATION,
(To the President of the
Association at his/her home address)

Either party may change the address for notice by notice to the other party. Notice served by mail shall be deemed to have been served when deposited in the mail.

C. Compensation

Initial _____

In addition to all reimbursable costs, for which the Association shall pay the Agent pursuant to Schedule A and B attached hereto, the Association agrees to pay the Agent the below applicable monthly fees in advance on the first day of each month via ACH payment until the expiration or termination of this Agreement, as provided herein. If the Schedule A and B is amended, a new Schedule A and B will be prepared and signed by both parties.

The management fee will be _____ per month during the Initial Term. A one-time fee of \$xxx will be charged to transfer and set up the Association's database.

The management fee will increase by four percent (4%) for each Subsequent Term as compared to the prior Initial Term or Subsequent Term.

D. Agent's Services

During the Term hereof, and any renewal or extension thereof, the Agent shall perform the following Services when and if needed, or as otherwise specified herein, in the name and on behalf of the Association as directed by its board of directors ("Board").

Financial Services

1. Provide the day-to-day bookkeeping services, as needed, compiled, in complete detail, on a monthly basis, necessary to pay the bills of the Association. This bookkeeping service shall include, but not be limited to, keeping all records of, and performing all services in connection with, the reconciliation and payment of bills, and such other items, accounts, and elements as may be provided for in the Budget.

2. Bill and Collect from the Owners all regular and special assessments, and other revenues, which may be due the Association as needed or required.

3. Process, reconcile, and pay all accounts payable from the Association's Bank Accounts. The Agent will have the decision authority regarding the Bank selected for the Operating Account due to the technology required for the efficient operation of the day-to-day management of the Association finances. Any other bank accounts will be selected with the Board's input and approval. The Agent is authorized to prepare and sign checks, to pay any amounts owed by Association. Agent shall have no obligation to advance funds to Association for any purpose whatsoever. Agent shall not make any expenditure, nor incur any non-budgeted contractual obligation exceeding One Thousand (\$1,000.00) Dollars without the prior consent of Association except in emergency situations. From the funds of the Association, Agent shall pay all expenses of management of the Association, including taxes, building and inspection fees, utilities, licensing and other governmental charges, and all other charges or obligations incurred by the Association or by Agent on behalf of Association with respect to the maintenance or operation of the Community or pursuant to the terms of this Agreement or pursuant to other authority granted by the Board on behalf of the Association.

4. Receive, deposit, disburse and account for all Association's funds. Deposits and disbursements shall be made as needed and funds collected shall be deposited in a custodial account in a state or national bank where deposits are insured by the Federal Deposit Insurance Corporation, separate and apart from Agent's own funds. Assessments shall be deposited via a

lockbox payment center to ensure daily deposit of Association funds. Agent shall handle all association funds in accordance with all applicable laws.

5. Prepare a monthly financial statement package by the 21st of all months except year-end financial statements. Board approval will be required to close each fiscal year and subsequent months may be delivered after the 21st depending on year end closing. Financial packages will include at minimum:

- i. Balance sheet;
- ii. Income and expense statement;
- iii. Monthly delinquency report;
- iv. Open accounts payable report;
- v. General ledger

Managerial Services

1. Operate the Common Elements and other property owned by the Association (the “Property”) according to the approved budget of the Association and consistent with the direction of the Board of Directors, subject to proper funding being provided to the Agent to operate in accordance with the budget and governing documents.

2. Engage and supervise all persons and/or entities, as needed (which persons or entities may be engaged on a part-time or full-time basis), necessary to properly maintain and operate the Property in accordance with the Community’s Declarations, Rules and Regulations.

3. Solicit and negotiate bids for purchases of services and materials to the Association at the direction of the Board.

4. Solicit, analyze and negotiate recurring contracts on behalf of the Association, as needed, for recurring services reasonably necessary with respect to the operation, maintenance, upkeep, repair, replacement, and preservation of the Property.

5. Prepare, annually in respect of the next succeeding fiscal year, a proposed operating Budget for the Association. The Budget shall be submitted to the Board for comments/changes, and only becomes a binding after approval by the Board. The Budget shall serve as a supporting document for the schedule of Assessments.

6. Perform routine inspections and make recommendations to the Board as to the maintenance of and improvements to the Property as well as assist the Association in the enforcement of the provisions of the Association’s governing documents, the Rules and Regulations, and architectural guidelines.

7. Make or cause to be made, such repair work or normal maintenance to common elements as may be required for the operation and physical protection of the common elements not to exceed One Thousand (\$1,000.00) Dollars for any one item. Emergency repairs exceeding One Thousand (\$1,000.00) Dollars to avert danger to life, maintain safe operations or prevent an

interruption of services may be made with the approval of the President or other officer if the President is unavailable. If no officer is available, the Agent is authorized to take such action as is needed to avert danger to life, maintain safe operations or prevent an interruption of services.

8. Organize up to twelve (12) Board meetings, an annual budget meeting and the annual meeting of the membership of the Association, including, but not limited to, coordination with the Association attorney to prepare the meeting notices, voting certificates, proxy forms, and agenda, all under the direction of the Board or its designee. Agent may charge the fee prescribed in Schedule A and B for attendance of any additional meetings not specified in this agreement. Any meetings requiring Agent participation scheduled on holidays or weekends will be billed at \$75 per hour. Any meeting over 2 hours will be billed at \$75 per hour for the time over the two-hour limit. Lastly, any meeting requiring Agent participation that extends beyond 8pm will be billed at \$75 per hour. For example, if a meeting were to start at 7pm and close at 9pm, the time from 8 - 9pm will be billed at \$75 per hour.

9. Supervise and support Agent's Community Association Manager (CAM) in their efforts to provide management services to the Association.

10. In the event the Association is granted a Certificate of Title for a Property and requests the services of the Agent in the care and maintenance of the property and leasing or sale services, the Agent will submit a separate addendum to this agreement outlining the terms and conditions for this additional service.

Administrative Services

1. Maintain and update, on a current basis, all Owner files. Agent shall not be held liable for closings which occur if Agent has not been properly notified.

2. Establish and execute, in accordance with the Association governing documents and Board approved procedures on a non-discriminatory basis, procedures to be uniformly followed in the collection of Assessments, and Other Charges to Owners including, but not limited to, the sending of delinquency notices and letters of intent to lien to Owners in arrears, and follow up with the Association's attorneys on delinquent accounts according to procedures and time-tables to be approved, in advance, by the Board.

3. As directed by Association, Agent shall arrange for Association's attorney to prepare liens for delinquent assessments and, when appropriate, prepare satisfactions of lien. Also, as directed by Association, Agent will forward necessary documentation to attorney of Association's choice for legal collection and/or foreclosure action. Agent will act as liaison between attorney and Association. If appointed as Registered Agent for the Association, the Agent will accept service of summons and complaints on behalf of Association and forward same to attorney of Association's choice for answer within the time frame dictated by law to ensure Association's interest in the lawsuit is protected.

4. Assist the Treasurer and/or the Board appointed independent certified public accountants hired by the Association by supplying requested information for audits, financial reviews, and the filing of local, state and federal tax forms.

5. Obtain and maintain any and all permits, licenses, insurance or approvals required of Association by any applicable federal, state, county, municipal authority and Association's Governing Documents.

6. Produce and maintain appropriate and official records of the Association including all insurance coverage carried by the Association and the Agent.

7. Accept applications and references of prospective Owners and Renters as provided, however, the actual approval or disapproval thereof shall be given and executed only by an authorized officer of the Association, or the Board.

8. Maintain a 24 hour, seven-days-a-week, emergency call system.

E. Agency

All actions taken by the Agent with respect to the Agent's Services under the provisions of this Agreement shall be taken as agent for the Association and all obligations or expenses incurred in the performance of the Agent's Services shall be for the account, on behalf, and at the expense of the Association, except as is otherwise expressly provided herein. The Agent shall not be obligated to make any advances to or for the account of the Association or to pay any sum, except out of funds held or provided by the Association or by its members, nor shall the Agent be obligated to incur any liability or obligation on behalf of the Association without absolute and unconditional assurance that the necessary funds for the discharge thereof are immediately and presently available. It is understood and acknowledged that the Agent does not have any power-of-attorney to sign for, or execute any document in the name of, the Association or the Board.

F. Right of Access

The Agent shall have access to all elements of the Property at all reasonable times as may be necessary for the maintenance, repair or replacement of any portion of the Property, or for the making of emergency repairs necessary to prevent damage to any portion thereof.

G. Designations

The Association shall designate, in writing, a single individual who, except as specified herein as to certain approvals, consents, and authorizations, shall be authorized to deal with the Agent on any matter relating to this Agreement. In the absence of any such designation, the President of the Association shall have such authority.

H. Website

If requested or required to provide a community web portal, the Agent will assist in administering the web portal during the term of this agreement. Agent shall upload various documents as requested by the Board or its designated representative on a monthly basis. Fees for such services will be outlined in Schedule A and B of this agreement.

I. Independent Contractor

Initial _____

The Agent is and shall be deemed to be an independent contractor, and not an employee of the Association. The Agent shall be free to contract for similar services to be performed for other entities, wherever located, while it is under contract with the Association.

J. Liability and Indemnification of Agent and Association

The Agent shall not be liable to the Association, the Owners or other occupants for any loss or damage to person or property, unless caused by the Agent's own gross negligence, willful misconduct or unauthorized acts. The Association shall, and does hereby agree to, indemnify, save, defend and hold harmless the Agent and its officers, directors, agents and employees for any liability for damages, costs and expenses, including, but not limited to, reasonable attorneys' and paraprofessional fees and associated costs on the trial and appellate levels, in connection with the administration and carrying out of Agent's Services hereunder, unless such liability shall result from the Agent's gross negligence, willful misconduct or unauthorized act. All personal property placed or moved into the Community will be at the risk of the Association or the Owner, as the case may be. Agent will not be liable to the Association for any damage to or injury to person or property, real or personal, arising from theft, vandalism, HVAC malfunction, the bursting or leaking of water pipes, any act or omission of any owner or occupant of a Home; however, the foregoing will not relieve Agent from any such liability for damage or injury resulting from Agent's gross negligence, willful misconduct or unauthorized act. In no event will Agent be liable for consequential damages to the Association.

Agent agrees to indemnify, defend and hold harmless the Association, its Directors Officers and employees for any liability from damages, costs and expenses, including (but not limited to) reasonable attorneys' fees (including paralegal fees) at trial, appellate, and administrative adjudicatory level arising out of Agent's gross negligence, willful misconduct, or unauthorized act. The provisions set forth in this Section J shall survive the expiration or earlier termination of this Agreement.

The Association shall not interfere, nor permit, allow or cause any of its individual Officers, Directors or Members to interfere with the Agent in the performance of their duties or the exercise of any of their powers hereunder.

K. Related Entity Disclosure. Preferred Vendor Network.

It is understood and agreed by the parties that Vesta and/or its affiliates hold licenses for and/or perform services in a variety of areas related to the provision of the Services, including but not limited to insurance, real estate sales, collections, wireless technology, network integration & maintenance, website creation and maintenance, data connection and digital video services, security services using a Class B license, transportation services, event planning, food & beverage services, grounds maintenance, building maintenance, and residential services and/or maintenance (the "Related Services"). It is further understood and agreed that such Related Services may be provided to the Association by affiliated vendors. Accordingly, Santa Rosa Island Company, Mortgage Advisors, Inc, Community Cable Finance, LLC, Association Finance, LLC, Broadband CTI, LLC and ECO Energy LLC are all disclosed as affiliates of Vesta.

In addition, the Association further understands and agrees that Vesta may enter preferred vendor relationships, including through membership in a cooperative, network or other grouping of vendors or providers (collectively the "Preferred Vendor Network"). In conjunction, Agent may (i) negotiate partnerships with the Preferred Vendor Network, including financial institution(s) that provide cash management services to Associations, in an effort to reduce overall costs to Associations and (ii) be provided marketing credits or other consideration that can be used to upgrade Agent's infrastructure, software, hardware, and/or other products that assist in the efficient provision of the Services and therefore benefit the Association.

L. Force Majeure and Similar Acts

Any costs incurred by Vesta pursuant to the terms of this Agreement due to emergencies, acts of God, similar situation constituting force majeure or at the written direction of the Association that are outside the scope of Services and/or the other terms of this Agreement shall be reimbursed to Vesta.

Agent agrees to provide such force majeure services as may be needed. Both parties understand and acknowledge that following a hurricane or other Acts of God, the Agent's resources will be in high demand and the Agent will use its best efforts to assist and support the Association.

The Association agrees in such extraordinary circumstances the Agent will be compensated at a rate of 5% of the value of any claim or contracts. The 5% will be in addition to the contracted management fee.

M. Manager as Agent

All authorized actions taken by the manager with respect to the management and maintenance of the Association shall be taken, as Agent for the Association and all obligations or expenses incurred shall be for the account, on behalf and at the expense of the Association. It is understood that the public liability insurance carried by the Association shall extend to and cover the Agent, its agents and employees, as well as the Association, all at the expense of the Association.

N. Miscellaneous Items

1. Prevailing Party. In any litigation or arbitration arising from or pursuant to this Agreement or the provision of the Services, the prevailing party shall be entitled to recover all costs and reasonable attorneys' and paraprofessional fees (including fees and costs for appellate proceedings, post-trial proceedings and proceedings to determine entitlement and reasonableness of attorney fees) incurred, in addition to all other damages and relief at law, or in equity. Any litigation, arbitration or other formal proceedings arising out of, or related to, this Agreement shall be brought, exclusively, in the State or Federal Courts in and for the County identified on page 2 of this agreement.

2. Waiver. No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any succeeding or other breach of the same, or any other covenant.

3. Modification. No modification, release, discharge or waiver of any provision hereof shall be of any force or effect, unless in writing, signed by both parties to this Agreement.

4. Non-Solicitation. The Association hereby agrees that they will not hire, employ or otherwise recruit, solicit or induce any person employed, formerly employed or supplied by the Agent during any Term of the Agreement for a period of two years from the last day the Services are provided. Furthermore, it is understood that an employee of the Agent who was terminated prior to the last day of Services provided to the Association would fall under the restrictions outlined above. In any legal proceeding brought by the Agent to enforce the terms of this non-solicitation covenant, the Agent shall be entitled to recover all reasonable attorney's fees and costs incurred.

5. Entire Agreement. No Third-Party Beneficiaries. This Agreement constitutes the entire understanding and agreement between the parties hereto, and supersedes all prior written or oral agreements, with respect to its subject matter. This Agreement shall be binding upon the parties hereto. Nothing contained herein shall be deemed to create third-party beneficiary rights in persons or entities not parties hereto, except as specifically set forth herein.

6. Independent Contractor Licensing. The Agent will require that all independent contractors performing services for the Association provide a copy of license and certificates of insurance for workers compensation, general liability, and property damage. Any independent contractors hired directly by the Association without appropriate license and insurance will require a written waiver of liability to the Agent. In addition, the association agrees to include the Agent for coverage under the Association's Liability Policy.

7. Arbitration of Disputes Required (in lieu of litigation). To the greatest extent possible under applicable law, any dispute or claim that arises out of or that relates to this management agreement, or that relates to the breach of this agreement, or that arises out of or that is based in any way upon the association management relationship described in the management agreement, including but not limited to tort claims, shall be resolved by binding arbitration in accordance with the then effective arbitration rules of the Revised Florida Arbitration Code and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

8. Counterparts. This agreement may be signed in counterparts, a complete set of which shall constitute a single document.

9. Assignment. Neither the Association nor Vesta may assign this Agreement or any monies to become due hereunder without the prior written approval of the other, which approval may be withheld for any reason or no reason. Any purported assignment without such written approval is void.

10. Negotiation of Agreement. This Agreement has been negotiated fully between the Parties in an arm's length transaction. The Parties participated fully in the preparation of this Agreement and received, or had the opportunity to receive, the advice of counsel. In a dispute concerning the interpretation of any provision of this Agreement, all Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed strictly in favor or, or against either party.

11. Confidentiality. Other than as required or permitted by applicable law, neither Party shall, without the other Party's prior written approval, which approval may be withheld for any reason or no reason, make any general or other public announcements, nor announce in any media publicity, or solicitation communications, the terms and conditions of this Agreement, the names of the Parties, or the transactions contemplated in this Agreement.

12. Waiver of Right to Jury Trial. The parties hereby expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding relating to, directly or indirectly, or concerning this agreement or the conduct, omission, action, obligation, duty, right, benefit, privilege or liability of a party under this agreement to the full extent permitted by law. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the parties. The parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The parties further certify and represent to each other that no party, representative or agent of the purchaser or the seller (including, but not limited to, their respective counsel) has represented, expressly or otherwise to either of the parties or to any agent or representative of the parties (including, but not limited to, their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This provision is a material inducement of all parties entering into this agreement. This waiver shall apply to this agreement and any future amendments, supplements or modifications of this agreement. This provision shall survive the expiration or any termination.

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Initial _____

[SIGNATURE PAGE TO MANAGEMENT AGREEMENT]

IN WITNESS WHEREOF, the Parties have caused these presents to be validly executed as of the Effective Date.

**HOMEOWNERS
ASSOCIATION, INC.**

VESTA PROPERTY SERVICES, INC.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

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SCHEDULE A AND B

Initial _____