



# PRIME MANAGEMENT GROUP

PRIME MANAGEMENT GROUP  
An ABBO Group of Companies

PROPERTY SERVICES

4651 Sheridan Street, Suite 480  
Hollywood, Florida 33021  
Phone: (954) 392-8788  
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## MASTER HOA MANAGEMENT CONTRACT

**THIS CONTRACT** ("Contract") is made and entered into on this day of December 1, 2008, by and between **Portofino Vista HOA, Inc.**, a Florida not-for-profit corporation ("Association"), and **Prime Management Group** a Florida Corporation ("Manager").

### WITNESSETH:

A. The Association is the entity responsible for the operation of the residential community known as **Portofino Vista** ("Community"), located at **3400 Canoe Creek Road, St. Cloud FL 34772** in **Osceola** County, which Community includes **262** lots ("Lots").

B. The Association desires to retain the Manager, and the Manager desires to be so retained, to manage the "Common Property" of the Community (as used herein, the term "Common Property" means those portions of the Community dedicated to the common use and enjoyment of the owners of the Lots ["Owners"]). The Common Property includes, without limitation, any and all entrance features, pool and recreation areas, lighting equipment, private streets, perimeter walls, easements, paths, fire lanes and green belts, but, unless and to the extent otherwise expressly provided herein, specifically excludes the Lots.

**NOW, THEREFORE**, in consideration of the premises, and 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 the Manager, and the Manager hereby accepts such retainer and appointment, on the terms and conditions hereinafter set forth, as exclusive manager of the Association. 2.

**2. TERM.** This Contract shall commence on the 1 day of December, 2008 and shall continue for a term ending three (3) years thereafter, subject to termination by either party as provided in Paragraph 11 herein. The fees set forth in Schedule I of this Contract shall automatically increase by four percent (4%) at each anniversary date above the prior year. Upon expiration of the term of this Contract, or any renewal term, the Contract shall automatically be extended on a month-to-month basis. During the period of time when the Contract has been so extended, either party shall have the right to terminate the Contract without cause upon thirty (30) days' written notice to the other party.

**3. MANAGER'S DUTIES.** During the term hereof, the Manager shall assist the Association in performing the following services as requested by the Association, when and if needed, or as otherwise specified herein, to assist the Association:

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3.1 In addition to those employees of Manager stipulated in Schedule I of this Contract, Manager shall employ and supervise such persons as needed (which person or persons may be employed on a part-time or full-time basis) or engage as independent contractors working on behalf of the Association such persons, firms or companies necessary to properly maintain and operate the Common Property, according to the Manager's reasonable judgment, the budget of the Association and the directives of the Board of Directors. The Association understands that all personnel so employed and any persons, firms or companies engaged as independent contractors shall be employed by the Manager as agents for the Association. Manager 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 Manager or an employee of Manager be designated to serve as the Association's Representative in any contract.

3.2 Provide the day-to-day bookkeeping services, as needed or monthly, necessary to pay the bills of the Association. This service shall include, but not be limited to, keeping all records of and performing 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 of the Association ("Board of Directors") or, with the approval of the Board of Directors and the President of Manager, by one designee of the Board of Directors and one designee of the Manager.

3.3 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 the Manager to request, demand, collect, receive and receipt for any and all assessments and charges which may be due the Association and to advise the Association's attorney to take such 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 as the Manager shall deem necessary or appropriate, in its reasonable judgment, subject to the Association's approval, for the collection of such assessments.

3.4 Cause the Common Property and other improvements for which the Association is responsible to be maintained and repaired including, but not limited to, landscaping, painting, paving, cleaning and such other ordinary and extraordinary maintenance and repair work as may be necessary consistent with the approved budget or as requested by the Association; provided, however, the Manager shall not obligate the Association for any single item of repair, replacement, refurbishing or refurbishing, the cost of which exceeds the sum of Two Hundred Fifty Dollars (\$250.00) without the prior approval of the Board of Directors, unless provided for in the approved budget of the Association. Notwithstanding anything contained herein to the contrary, the Manager 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 the Manager's reasonable belief, are required to eliminate or avoid danger to persons or to property, or as are necessary in the Manager'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.

3.5 Take such actions as may be reasonably necessary to advise the Association, Lot 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, Lot owners and/or occupants of any violations thereof actually known by the Manager. Furthermore, the Manager shall advise Lot owners and occupants of the Lots of the need to comply with the document establishing covenants, conditions and restrictions pertaining to the Community ("Declarations"), Articles of Incorporation and By-Laws of the Association and applicable rules and regulations, in connection with the operation of the Community and any violations thereof actually known by the Manager. Notwithstanding anything contained in this Contract to the contrary, the Association hereby acknowledges that in no event shall the Manager be liable for the failure of the Association, the Lot owners and occupants of Lots.. comply with all

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such laws, statutes, ordinances and rules of governmental authorities and the Declaration, Articles of Incorporation, By-Laws of the Association and applicable rules and regulations of the Association. Notwithstanding anything to the contrary contained herein, Manager 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.

3.6 Purchase, as needed, on behalf of the Association, all supplies and materials as may be necessary or desirable for the maintenance, upkeep, repair, replacement and preservation of the Common Property. Such purchases shall be made in the name of the Association. Any such purchases in excess of Two Hundred Fifty Dollars (\$250.00) shall be subject to the prior consent of the Board of Directors unless provided for in the approved budget of the Association.

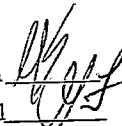
3.7 Solicit, analyze and negotiate contracts on behalf of the Association, as needed or monthly, for services reasonably necessary with respect to the operation, maintenance, upkeep, repair, replacement, and preservation of the Common Property. All contracts shall be approved and executed by the Board of Directors. 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, the Manager is acting solely as an agent for the Association and, accordingly, any expenses or liabilities incurred by the Manager hereunder, whether in its name or that of the Association, shall be the sole obligation of the Association and not that of the Manager. Neither the Manager 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 Association shall defend, indemnify and hold the Manager harmless from any such liability as provided in Paragraphs 4 and 15 of this Contract and shall procure contractual liability insurance covering this obligation. The parties hereto acknowledge and agree that notwithstanding anything to the contrary contained herein or elsewhere in this Contract, the Manager 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.

3.8 Approve all bills received by the Association, as needed or monthly, for services, work and supplies ordered in connection with maintaining the Common Property and operating the Association, and cause to be paid by the Association all such proper bills as and when the same shall become due and payable, but pursuant to Paragraphs 4 and 15 of this Contract, Manager shall not be liable for the failure to pay any such bills.

3.9 Maintain, as needed, the Association's financial record books, accounts and other financial related records as provided by the Association's By-Laws and pursuant to Chapter 720, Florida Statutes and issue certificates of account to Lot 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 or interests therein, without liability of the Manager for errors and/ or omissions unless as a result solely of its gross negligence or willful misconduct. Manager may charge reasonable fees to Lot owners, purchasers of lots, their mortgagees and lienors as additional compensation to Manager 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 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. The records shall be kept at the office of the Manager or at a location designated by the Manager in accordance with Chapter 720, Florida Statutes, and shall be available for inspection pursuant to applicable law, and for review and audit by the Association. 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, the Manager 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 Manager to oversee the

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inspection.

3.10 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 at least thirty (30) days prior to the budget meeting. The budget shall serve as a supporting document for the schedule of assessments.

3.11 Retain and employ, 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.

3.12 Maintain, as needed, appropriate records of all insurance coverage carried by the Association.

3.13 Accept applications and references of prospective Lot purchasers and facilitate transfers and leases of 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 to the extent such approval is required by the governing documents.

3.14 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 Manager who provide services to the Association under this Contract.)

3.15 Prepare and send, as needed, all letters, reports and notices as may be reasonably requested by the Board of Directors of the Association, and attend monthly meetings of the Board of Directors, annual meeting, budget meeting and any other general membership meetings of the Association and file minutes thereof, which minutes shall be prepared and recorded by the Association or its designee.

3.16 Deposit, as needed or weekly, all funds collected from Lot owners and others into a bank account ("Account") established by the Association as custodian for the Association so that said funds may be withdrawn therefrom to pay all expenses of operation of the Association and maintenance of the Common Property 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 the Manager as agents for others or otherwise. The Manager shall not be liable for any loss resulting from the insolvency of such depository.

3.17 Perform routine visual property inspections and make recommendations to the Board of Directors as to maintenance and improvements to the Common Property.

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

4. **AGENCY.** All actions taken by the Manager with respect to management and maintenance under the provisions of this Contract shall be taken solely as an agent of the Association. Accordingly, all obligations or expenses incurred in the performance of the Manager's duties and obligations shall be for the account, on behalf of, in assistance to and at the expense of the Association, except as is otherwise expressly provided herein. The Manager 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 or occupants of Lots, nor shall the Manager 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. With respect to any liabilities that shall arise under this paragraph and/or under this Contract, the Association shall defend, indemnify and hold the Manager harmless from any such liability (including reasonable attorneys' fees and costs whether pre-trial, at trial, mediation or arbitration and/or in connection with any appeal) as provided in Paragraph 15 of this Contract and the Association shall procure contractual liability insurance covering this obligation.

5. **INSURANCE.** The insurance requirements set out in the following sub-paragraphs 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.

5.1 The Association hereby agrees to maintain at all times and to provide evidence of the following insurance coverages:

A. Commercial General Liability Insurance extended to include: 1) \$1,000,000.00 limit each occurrence for bodily injury and property damage, \$2,000,000.00 general aggregate limit, \$1,000,000.00 products and completed operations limit; 2) contractual liability coverage, 3) \$1,000,000.00 limit for non-owned and hired automobile liability, 4) coverage for any claims alleging bodily injury or property damage due to mold, mildew, indoor air quality or similar claims, 5) "your real estate manager" included within the definition of "Insured" in the policy language, and 6) "Prime Management Group 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 an endorsement providing equivalent or broader coverage to the additional insureds. Coverage for additional insureds shall apply as primary and non-contributing insurance before any other insurance or self insurance, including any deductible, maintained by or provided to the additional insureds.

B. Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000.00 per claim and aggregate, providing a retroactive date back to the inception date of the Association, and naming Prime Management Group 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 employer's liability limits of not less than \$500,000.00 each accident for bodily injury, \$500,000.00 each employee for bodily injury caused by disease, and \$500,000.00 policy limit for bodily injury caused by disease. Said policy shall be endorsed to include a waiver of subrogation in favor of the Manager.

D. Umbrella or Excess Liability Insurance: 1) with limits of not less than \$3,000,000.00 each occurrence and aggregate, 2) providing follow-form coverage over the General Liability, Directors' and Officers' Liability and Employer's Liability policies, 3) coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy, and 4) coverage for such additional insureds shall apply as primary before any other insurance of self-insurance, including any deductible, maintained by or provided to the additional insured other than the Commercial General Liability, Directors' and Officers' Liability and Employer's Liability coverages maintained by the Association.

E. Fidelity Bond with limits of not less than \$500,000.00 or such other minimum amount as may be required by applicable law including the Manager as a named insured.

F. The insurance carriers providing the coverages outlined above must be financially sound, be rated A VII or better by A.M. Best Company, and must be licensed 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. Said certificate shall show "Prime Management Group 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' 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. In the "Cancellation" provision of the certificate it shall read as follows: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to certificate holder named in the certificate". 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 the Manager. No later than the renewal date of any insurance policies required by this Contract, the Association will supply the Manager with a new, original Certificate of Insurance in compliance with the terms of this Contract.

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

A. Commercial General Liability Insurance extended to include: 1) \$1,000,000.00 limit each occurrence for bodily injury and property damage, \$1,000,000.00 general aggregate limit, \$1,000,000.00 limit for personal and advertising injury, and \$1,000,000.00 products and completed operations limit; 2) contractual liability coverage.

B. Commercial Auto Liability with a combined single limit of \$1,000,000.00 and \$1,000,000.00 limit for non-owned and hired automobile liability.

C. Workers' Compensation Insurance according to State statutory limits covering all employees or subcontractors of the Manager, with employer's liability limits of not less than \$500,000.00 each accident for bodily injury, \$500,000.00 each employee for bodily injury caused by disease, and \$500,000.00 policy limit for bodily injury caused by disease.

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

E. Prior to the commencement of work under this Contract, the Manager shall provide a current and original Certificate of Insurance showing the coverages outlined above. On the renewal date of any insurance policies required by this Contract, the Manager will supply the Association with a new, original Certificate of Insurance in compliance with all terms of this Contract.

## 6. COST REIMBURSEMENT.

6.1 Except as is otherwise expressly provided herein, the Association shall pay or reimburse the Manager for all costs (as are more specifically set forth by illustration only in Exhibit "A" hereto, made a part hereof by this reference and Paragraph 3.14) which may be incurred by the Manager in providing services, materials and supplies immediately upon receipt of an invoice therefore, except that the Manager shall not be entitled to reimbursement for salaries of officers of the Manager and general office overhead of the Manager, as said items are actually included within the Contract Price, as that term is defined under Paragraph 9 hereof.

6.2 Without limiting the provisions of Paragraph 6.1, for restoration of Common Property after Acts of God and other insurable claims such as, without limitation, hurricanes, fire or floods, the Association agrees to reimburse Manager five percent (5%) of the total cost of the

project for the additional administrative burden the Manager will incur in coordinating the repair and restoration process by contractors engaged by the Association with the day to day activities of the Association. The Manager may also charge such a cost to the Association for other construction projects undertaken by the Association which the Manager reasonably determines will create additional administrative burdens.

**7. MANAGER'S UNDERTAKING.** The Manager, by the execution of this Contract, assumes and undertakes to perform, carry out and administer all management, operational and maintenance responsibilities set forth in Paragraph 3 hereof. Such assumption of obligations is limited, however, to operation, management and maintenance as agent and does not require the Manager to pay any of the costs and expenses which are the obligation of the Association, except as specifically assumed by the Manager in this Contract.

**8. RIGHT OF ACCESS.** The Manager shall have access to the Common Property at all times as may be necessary so as to perform its duties hereunder.

**9. COMPENSATION.** In addition to all actual costs for which the Association shall pay the Manager, pursuant to Paragraph 6 and other pertinent paragraphs hereof, the Association agrees to pay the Manager 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, until the expiration or termination of this Contract, as provided under Paragraphs 2 and 11 hereof. Association agrees that all outstanding balances due in excess of thirty (30) days will be assessed interest at the maximum rate as allowed by law on the unpaid balance.

**10. DESIGNATION.** The Association shall designate in writing a single individual who shall be authorized to deal with the Manager 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 Manager in the performance of its duties or in the exercise of any of its powers hereunder.

**11. TERMINATION.** This Contract may be canceled, without cause, by either party with thirty (30) days' written notice. Upon the effective date of any termination or cancellation, the Association shall not be obligated for any additional fees to the Manager, but shall be responsible for all accrued and unpaid fees and all costs incurred or contracted for by Manager pursuant to this Agreement through such date.

**12. ENGAGEMENT OF EMPLOYEES BY ASSOCIATION.** The Association recognizes that the Manager is engaged in the specialized and competitive property management and maintenance business and Manager 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 Manager 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 Manager presents for consideration, or former employees of the Manager while this Contract remains in force and continuing for a period of twelve (12) months following the expiration or earlier termination of this Contract. For this purpose, "employees, prospective employees Manager presents for consideration, and former employees" are those individuals employed by Manager who provided services to the Association, or prospective employees who were presented to the Association for consideration, at any time during the twelve (12) month period prior to the termination or expiration of this Contract. The provisions set forth in this paragraph do not apply to any personnel employed by the Association at the inception of this Contract, which personnel are delineated in Exhibit "B" attached hereto and incorporated herein. This provision shall survive the termination or expiration of this Contract.

**13. NOTICES.** All notices required hereunder shall be in writing d s 'all be effective

when deposited in the United States mail, with proper postage prepaid, certified mail, return receipt requested, and shall be properly addressed:

If to the Association:

To the current President  
At the Association's address of record

If to the Manager:

Prime Management Group  
4651 Sheridan Street, Suite  
480  
Hollywood, FL 33021

Attn.: Nicole Thorpe

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.

**14. INDEPENDENT CONTRACTOR.** Except to the extent otherwise expressly provided herein, the Manager shall be deemed to be an independent contractor and not an employee, of the Association. The Manager 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 the Association, or any of its members, officers, directors, agents or employees, look to the Manager as its or their employer, or a partner or principal. Nothing herein contained shall be deemed to create or be construed as constituting a joint venture or partnership between the Association and the Manager. The Association, its members, officers, directors, agents or employees shall not be entitled to, nor shall they make any claim for, any benefits accorded to the Manager's employees, including, but not limited to, workers' compensation, vacation or sick pay.

**15. LIABILITY.** The Association hereby expressly agrees and understands that the Manager shall not be liable to the Association, its members or to Lot owners, their guests and invitees for any injury, loss or damage to person or property, unless caused solely by the Manager's own gross negligence or willful misconduct, or arising solely out of a material breach by Manager 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 the Manager, 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 the Manager's performance of services hereunder, including without limitation any and all losses arising out of the Manager's own or sole negligent acts or omissions, unless such liability shall result solely from the Manager's own gross negligence or willful misconduct or solely from a material breach of this Contract by Manager. All personal property placed or moved into the Common Property will be at the risk of the Association or the Lot owner or occupant. Manager 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 Lot owner or occupant of the Lot or of any other person. However, the foregoing will not relieve Manager of liability for damage or injury resulting solely from Manager's gross negligence or willful misconduct. To the extent that such liability results solely from the Manager's gross negligence or willful misconduct, Manager shall indemnify and hold harmless the Association. In no event will Manager be liable for consequential damages to the Association, a Lot owner or any third-party. The provisions set forth in this Paragraph 15 shall survive the expiration or earlier termination of this Contract. The Association shall procure contractual liability insurance covering its

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.

**16. WAIVER OF SUBROGATION.** The Association expressly waives all rights of subrogation against the Manager 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 other wise, 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.

**17. MISCELLANEOUS.**

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

17.2 In any litigation arising from this Contract, venue shall be Broward County, Florida

17.3 Association and Manager 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 agreement or transactions contemplated hereby, and for any counterclaim in connection herewith.

17.4 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.

17.5 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.

17.6 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.

17.7 The Manager shall cause to be paid periodically, as required, all financial obligations of the Association, to the extent that the Association has provided funds for the payment thereof, including, but not limited to, the following:

- A. Insurance premiums on insurance carried by the Association;
- B. All taxes required to be paid by the Association;
- C. Utilities chargeable against the Association;
- D. Building inspection fees, elevator fees, water rates and other governmental charges;

- E. Manager's fees;
- F. Such sums which shall become due and payable for expenses or other obligations incurred by the Manager on behalf of the Association in accordance with the budget;
- G. Monthly contracted services; and
- H. Such other amounts or charges as may be authorized by the Association;

provided, however, that Manager shall not be liable for the failure to make any such payments.

17.8 Manager represents and warrants that the person or persons employed by Manager to directly provide the management services under this Contract shall have at all times a Community Association Manager's License from the Florida Department of Business & Professional Regulation, and that Manager shall otherwise comply with provisions of Section 468.432, Florida Statutes.

17.9 Manager 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.

17.10 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. This Contract shall be binding upon the parties hereto and their respective successors and assigns.

17.11 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.

17.12 Manager shall not in any way be considered an insurer or guarantor of security within the property. Neither shall Manager be held liable for any loss or damage by reason of failure to provide adequate security nor ineffectiveness of security measures undertaken. The Board of Directors on behalf of the Association, owners and occupants of any dwelling, tenants, guests and invitees of any owner, as applicable, acknowledge that Manager 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 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 Manager is not an insurer and that each owner and occupant of any Lot and each tenant, guest and invitee of any owner assumes all risks for loss or damage to persons, to lots and to the contents of lots and further acknowledges that Manager has made no



## SCHEDULE I

### Portofino Vista HOA, Inc.

(262 Lots)

	<u>MONTHLY</u>	<u>ANNUALLY</u>
<u>ADMINISTRATIVE MANAGEMENT</u> *	Minimum \$500.00 after first closing;	after 70
Supervising Property Manager	closed units - \$7.00 per unit;	after 129 closed
Bookkeeping Services	units - \$8.00 per unit	

\* Subject to annual increase as set forth in Paragraph 2 of this Contract.

#### ON-SITE STAFF

All on-site administrative, maintenance and housekeeping personnel shall be employees of the Manager. Schedule I-A of this Contract stipulates the minimum number of staff positions to be provided by Manager. Association shall reimburse Manager bi-weekly, in arrears, for actual wages paid plus a labor burden of 25% for on-site manager, administrative assistant and receptionist/secretary, and 35% for all other personnel. Labor burden includes social security tax, federal/state unemployment tax, workers' compensation insurance, Manager's contribution to employee 401(k), benefit, drug testing, Florida criminal background checks, recruitment expense, payroll processing and human resource administration. The labor burden 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. Any terminations, new hires or salary adjustments shall be approved by the Board of Directors, except as to terminations for cause as deemed necessary by Manager pursuant to its standard employment policies.

#### MEDICAL BENEFITS

Single HMO medical benefits shall be provided to all eligible on-site staff members who are employees of Manager at a cost to the Association of \$300.00 per month, per employee. Rates are guaranteed through June 30, 2009.


The fees stipulated in this Schedule I are inclusive of on-site personnel receiving the following minimum benefits:

1. Six (6) days of annual sick pay;
2. Six (6) paid holidays (New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day);
3. Five (5) days of paid vacation for maintenance personnel and ten (10) days paid vacation for administrative personnel and front desk managers.

In addition, the on-site property manager and maintenance supervisor, if any, will be required to attend periodic off-site continuing education programs or training sessions arranged by Manager. Manager will attempt to arrange such sessions to minimize any inconvenience to the Association, and such sessions shall be kept to a minimum.

Increases in benefits based on employee's length of employment with Manager, and additional benefits shall be in accordance with Manager's standard employment policies and/or governing law. Any additional benefits beyond those provided by Manager shall be at the discretion of the Association and shall be approved by the Board of Directors.

(03-13-06; revised 06-06-06; 11-06-06)



**SCHEDULE I - A**  
**Portofino Vista HOA, Inc.**

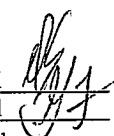
The On-Site Staff, as stipulated in Schedule I herein, shall consist of the following number of positions. These are minimum staffing positions and may only be increased upon prior written approval of the Association:

Maintenance Man	40 hours per week
Janitorial	40 hours per week

**Any hours over 40 per week for non-exempt employees will be charged at time and one half.**

(06-06-06)

*The above hours will vary (higher or lower) as may be necessary for proper maintenance and as approved by the Board.*



## EXHIBIT "A"

The following office expenses will be charged to and become a cost of the Association and will be reimbursed to the Manager in accordance with Paragraph 6 of the Contract:

1. Photocopying and faxes;
2. Postage;
3. Long distance phone calls;
4. Maintenance fee and special assessment coupons/statements;
5. Courier services;
6. Record storage and retrieval costs;
7. Customized Association laser checks (billed every 3 months);
8. Annual \$60.00 fee for miscellaneous office expenses (i.e. trans file boxes, annual file folder updates, etc.);
9. Special assessment processing shall be charged at \$1.50 per Lot per assessment payment period throughout the payment term of the assessment;
10. Administrative fees for production and inspection of records by Association members per Paragraph 3.9 of this Contract;
11. Administrative fees for litigation support services, including, but not limited to, court appearances and preparation, production of documents, discovery, meetings with counsel, etc.

Any and all such office expenses shall be substantiated with back-up documentation itemizing each charge.

The following expense shall become a cost of the Association and shall be reimbursed to the Manager in accordance with Paragraph 6 of the contract if authorized by a separate written agreement executed by the Association:

Any fees and costs charged to provide a unified communications system/resident alert system.

**EXHIBIT "B"**

**NOT APPLICABLE**

