

# ASSOCIATION PROPERTY MANAGEMENT AGREEMENT

HIS AGREEMENT is made as of the \_\_\_\_\_ by, and between \_\_\_\_\_ “Association”) whose address is \_\_\_\_\_, and Spinnaker Cay Management, Inc. whose address is P.O. Box 2397 Marco Island, FL. 34146 (the “Manager”).

## RECITALS:

A. The Association is a condominium association and Florida Statutes Chapter 718 applies to its operation. The Association was created to maintain and operate certain common elements and/or limited common elements as more particularly described in the Declaration of Condominium, recorded at Official Records Book, of Collier County, Florida.

B. Association wishes to employ the Manager to perform the services described hereinafter and any and all services described in the Declaration, articles and by-laws of the Association.

NOW, THEREFORE, good and valuable consideration, receipt of which is hereby acknowledged, the parties agree that the above Recitals are true and correct and further 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 set forth below, as exclusive manager for the Association, to perform the services and duties hereinafter described and any and all services and duties and described in the Declaration, Articles and by-laws of the Association as the duties and services of the board of directors (“Board”) of the Association, which duties and services are limited to those in (Association Property”) which property includes the Common Elements (as defined in the Declaration) of the Association.

2. **TERM.** The term of this agreement shall be for one year, commencing 1<sup>st</sup> Day of January, 2013 unless terminated earlier according to the procedures provided in Paragraph 13 below. This agreement will be considered renewed unless either party notifies the other 30 days prior to expiration of their intention not to renew. Furthermore this agreement will be extended via a yearly addendum.

3. **MANAGER’S DUTIES:** The Manager shall perform or engage independent third party contractors to perform the following services, when and if needed, and as often as may reasonably be required in order to accomplish the purposes of this Agreement or as otherwise specified in the Agreement;

- a) **Hiring.** Engage, train and supervise all persons necessary to properly maintain and operate the Association Property. This agreement consists of a full time manager, a full time janitorial person, a part time maintenance person and a part time office assistant. All personnel so engaged shall be employees of the Manager provided, however, that no person shall be so engaged over the objection of the Board.

Prepare and timely file all necessary forms for unemployment insurance, withholding and social security taxes, and all other taxes and forms relating to all of the Manager’s

employees and the maintenance and operation of the Association Property, as and when required by federal, state or by local law.

- b) **Collections.** Collect all Association assessments for common expenses, charges, rentals or other payments from unit owners all of which are members of the Association (“Members”) and concessionaires, and all other monies and debts which may become due the Association. In the event of default in such payment, the Manager shall advise the Board of Association’s counsel, whether any legal or other action shall be taken. At the Board’s direction, appropriate action may be initiated by Manager to collect any payments or monies due. All funds collected from the Members or from other sources shall be deposited into accounts at one or more financial institutions established by the Manager as custodian for the Association funds as contemplated herein. This activity shall also be subject to the requirements of paragraph 6 below.
  
- c) **Care of Property.** Maintain, repair and replace the Association Property to the same extent that the Association and the Board are required to maintain, repair and replace the same, as provided by the Declaration, the Association articles and by-laws, but only pursuant to instructions by the Board unless otherwise provided herein. In addition, the Manager shall make available such persons as necessary to be on call and respond to the emergencies or problems in connection with the Association Property on a 24-hour per day basis. Further, Manager’s supervisory personnel shall be available by answering service 24 hours per day.
  
- d) **Purchase of Service and Supplies.** Purchase all services, equipment, supplies and materials as may be necessary or desirable and engage properly licensed, qualified third party independent contractors to provide services for the maintenance and upkeep of the Association Property, including but not limited to the following services:
  - 1) Pest control;
  - 2) General maintenance and repair;
  - 3) Landscaping;
  - 4) Elevator maintenance and repair;
  - 5) Maintenance of fire alarm, fire extinguishers, fire lines, fire pressure pumps and generators

Such purchases shall be subject to the consent of the Board unless provided for in the approved budget of the Association, and shall also be subject to the terms of paragraph 6 below. The Manager shall operate under the level of funding provided in the budgets prepared by the Board and approved by the Members as those budgets are from time to time amended.

The Manager may enter into contracts on behalf of the Association for services that the Association shall require, but any such contract may be entered into only with prior consent of the Board, unless it is terminable by the Board without penalty upon thirty (30) days notice or upon termination of this Agreement. The Manager shall supervise the work performed under any contracts for services as required by the Association and shall obtain

appropriate certifications of insurance from all parties performing such work. Said insurance shall be in amounts as specified from time to time by the Board to the Manager.

For all purchases of goods or services in excess of \$2500, Manager shall obtain competitive bids and accept the lowest available bid, except where the Manager reasonably believes the lowest bid will not provide an acceptable level of quality, or when it is not possible, after reasonable effort, to obtain competitive bids, and in either such case, Manager may exercise good faith discretion in making such purchase. This provision is subject to the limitations in paragraph 6 below.

- e) **Payment of Bills and Costs.** Check for accuracy all bills or invoices received by the Association or by the Board on the Association's behalf for services, work and supplies in connection with maintaining and operating the Association Property; provide the day-to-day bookkeeping services and procedures necessary to pay the proper bills and costs of the Association, taking advantage of prompt payment discounts when available. This service shall include, but not be limited to, keeping all accounts payable records for the Association and performing all services in connection with the payment of bills and such other items as may be provided for in the Association budget.
- f) **Insurance.** Cause all required insurance to be carried and maintained in full force and effect including but not limited to liability, property damage, flood insurance and fidelity bond; maintain appropriate records of all insurance coverage carried by the Association; and assist the Board in making appropriate adjustments with the insurance companies and causing all of said insurance proceeds to be promptly paid when due.
- g) **Notices, Meetings.** Prepare and send all letters, reports and notices as may be reasonably requested by the Board; attend all meetings of the Members; and prepare and distribute minutes thereof to the Board and to members by request.
- h) **Member's Roster.** Maintain a current Member's roster.
- i) **Financial Records and Reports.** Maintain the Association's financial books, records, accounts, and other records as required by the Declaration and any applicable laws, and in accordance with good business practices, and issue certificates of account to Members, their mortgagees and lienors, without liability for errors unless as a result of negligence. In addition, the Manager shall maintain a comprehensive system of office records, books and accounts relative to all activities undertaken by the Manager hereunder. The financial records shall provide information adequate to trace all collections and disbursements of Association funds made by the Manager. Such records shall be kept within twenty-five (25) miles of the Association Property and shall be available for inspection, and photocopying by Members or their authorized representatives or applicable government agencies at all reasonable times.

The Manager shall also submit to the Board, on or about the 15<sup>th</sup> day of each month, a report, which shall describe the Manager's activities and financial transactions for the previous month in respect to the Association or Association Property, including, but not limited to:

- 1) Cash disbursement statement (check register);
  - 2) Budget variance report;
  - 3) Activity report and maintenance status;
  - 4) List of accounts payable and receivable;
  - 5) Income statement and balance sheet.
- j) **Year-end Report.** Within sixty (60) days following the end of the fiscal or calendar year a financial report will be available upon request.
- k) **Budget.** Compile cost estimates and propose a recommended budget for the fiscal year, setting forth anticipated income and expenses of the Association for the year and each Member's share thereof. The suggested budget shall be submitted to the Board for consideration at least 30 days prior to the beginning of the fiscal/calendar year. After the Board has reviewed the suggested budget, a copy of the proposed budget shall be mailed to all Members. The proposed budget shall fully comply with all applicable laws, including without limitation in inclusion of provisions for the reserves for capital expenditures and deferred maintenance.
- l) **Tax Returns and Audits.** Assist the Association's accountants in preparing, in a timely manner, all required tax returns or audits as necessary for the Association.
- m) **Official Books and Records.** Be responsible for the keeping of the official book and records of the association and make such records available for inspection and photocopying by Member or their authorized representatives.
- n) **Compliance with Laws, Covenants and Rules.** Take such actions as may be necessary to assist the Association, the Board and the Members to comply with all laws, statutes, ordinances and rules of all appropriate governmental authorities having jurisdiction and with Declaration, the Articles of Incorporation and By-Laws of the Association, and the applicable rules and regulations of the Association, in connection with the operation of the Association Property and the performance of this Agreement.
- o) **General.** Generally, do all things deemed reasonably necessary or desirable by the Board to attend the proper maintenance, operation and management of the Association Property. Notwithstanding the express authority given to the Manager in this Agreement, it is understood and agreed that the Manager shall at all times consult fully and freely with the Board in the performance of the services set forth hereunder.
- p) **Accident Reports.** Manager shall promptly investigate and make full written report to the Board as to all claims for accidental damage or destruction of the Association Property or relating to the ownership, operation and maintenance of the Association and the estimated cost of repair thereof; and Manager shall prepare for approval by the Board any and all reports required by any insurance company in connection therewith. All such reports shall be filed with the Board promptly and shall cooperate and make any and all repairs required by the Association and by any insurance company in connection therewith.
- q) Maintain an adequate number of copies of condominium documents, rules and regulations which copies shall be provided to Members for the actual cost of such copies. Prepare and

update a "Question and Answer" sheet when such is prescribed by the Division of Land Sales, Condominiums and Mobile Homes of the State of Florida.

- r) In addition to the Manager's other duties, Manager shall perform the following
- 1) Clerical or secretarial services necessary to:  
Prepare, print, and distribute member directory  
Print, duplicate, and distribute Rules and Regulations and  
Type and distribute Meeting Agendas and Minutes.
  - 2) Duplication of monthly or quarterly statements and delinquent notices
  - 3) Condominium document duplication for Members.
  - 4) Notices, letters, newsletters, etc. Approved by the Board to be mailed to Members.
  - 5) Duplication of any reports, forms, letters, correspondence, or whatever not specifically mentioned herein and being provided by the Manager.

4. **JANITORIAL, GENERAL MAINTENANCE AND POOL SERVICES.**

- a) **Janitorial.** Manager shall provide all necessary cleaning, pressure cleaning, sweeping, washing and the like to keep and maintain the following areas in a clean, neat and orderly condition:

All exterior walkways, stairs and railings; Interior hallways; elevator interiors and doors including bright work, tracks and light bulbs; sidewalks; parking garage; driveways; the trash rooms and its adjacent areas; any and all other Association Property.

- b) **Trash Removal.** Manager shall make available trash and garbage collection and removal facilities for all Members or their lessees. Manager shall contract with third parties for a dumpster to be placed in the trash room and for the regular pick-up thereof as necessary at the cost of the Association, based on the approved budget.
- c) **Maintenance.** Manager shall make any and all minor repairs, shall perform any minor painting necessary on the Association Property and shall maintain equipment in good working order. Manager shall replace and maintain all light bulbs on the Association Property.
- d) **Pool.** Routine maintenance of pool includes arranging chairs and tables, and washing same whenever necessary. Pool decks to be kept free of debris and cleaned as needed. Complete maintenance and sanitation of pool to include: cleaning of tiles, etc. testing water balance (as required by Collier County Health Department), submission of water samples and forms to Collier County Health Department and submission of re-checks (if needed), introducing all chemicals needed to insure a sanitary and chemically safe pool. Heat levels of the pools to be kept as prescribed by the Association. Pool bathrooms will be cleaned on a daily basis.
- e) **Pest Control.** Manager shall engage a qualified licensed and insured independent contractor to perform pest control services as needed.

All of the foregoing janitorial, general maintenance and pool services shall be promptly and efficiently undertaken and shall be done safely and in a good workmanlike manner. The cost of all parts and materials shall not exceed the budget for such items as promulgated by the Association.

5. **DEPOSITS.** All funds collected by the Manager on account of the Association shall be deposited in one or more banks or savings and loan associations, the deposits of which are insured by an agency of the United States, or in other accounts as the Board shall direct. Such accounts or other investments 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. The Manager shall not be liable for any loss resulting from insolvency of such depository or the loss of such investments if directed to invest by the Association. Reserve funds shall be maintained in separate accounts from operations funds. All checks drawn on and all withdrawals from Association accounts shall require (a) the signature of one director of the Board or (b) may, at the Board's Option, require only the signature of the Manager. Reference paragraph 10.

6. **LIMITATIONS ON EXPENDITURES.** Except for the payment of insurance premiums or utility bills, and except as specifically authorized in any approved operating budget or plan of operation approved by the Board, for any one item of repair or replacement, the expenditure incurred by the Manager shall not exceed the sum of \$2500.00 except for emergency repairs involving manifest danger to life or property, or immediately necessary for the preservation and safety of the Association Property or for the safety of the Members, and such emergency repairs may be made by Manager irrespective of the cost limitation imposed by this paragraph. Notwithstanding this authority as to emergency matters, it is understood and agreed that Manager will, if reasonably possible, consult immediately with the Board regarding such expenditure.

7. **RESPONSIBILITIES OF BOARD.** In order for the Manager to effectively perform its duties, the Board shall:

- a) Initially supply the Manager with an accurate Member Roster.
- b) Provide Manager with a current set of Association Rules and Regulations and the Declaration.
- c) Consult with the Manager as requested in the performance of its duties under this Agreement

8. **AUTHORITY.** The function of the Association is the operation and maintenance of the Association Property. The Manager agrees, notwithstanding the authority given to the Manager in this Agreement, to consult fully and freely with the Board in the performance of its duties as set forth herein. It is further understood and agreed that the authority and duties conferred upon the Manager hereunder are confined to the Association Property as defined in the Declaration.

9. **RELATIONSHIP OF PARTIES.**

- a) All obligations or expenses incurred in the performance of the Manager's duties and obligations hereunder shall be for the account of, on behalf of, and at the expense of the

Association. The Manager shall not be obligated to make any advances to or for the account of the Association, or to pay any obligations by the Association, or by the Board on behalf of the Association, nor shall the Manager be obligated to incur any liability or obligation on behalf of the Association without reasonable assurance that the necessary funds for the discharge thereof will be provided

- b) **Independent Manager.** The Manager, its employees and agents, shall be deemed to be independent contractors and not employees of the Association. The Association shall not be responsible for the payment of any employee withholding taxes or other taxes, charges or costs, or any other expenses of the nature, except for the fees and costs specifically provided by this Agreement. The Manager shall be free to contract for similar services to be performed for other entities while it is under contract with the Association.
- c) **Licensing.** The Manager is responsible, at its own expense for obtaining all licenses, permits, and other governmental approvals necessary to conduct its business, including the licensing of all employees as community association manager to the extent require by Chapter 468, Florida Statues.

10. **EXCULPATION, BOND, INSURANCE.**

- a) The Manager shall be liable to the Board, Association or its Members for any loss or damage caused by the Manager's own negligence or willful misconduct or failure to perform under this Agreement

Manager covenant and agrees to indemnify and hold harmless the Association and the directors of the Board, individually, from and against all claims, liabilities, action or damages resulting from performance of the duties of the Manager and from any injuries sustained by an employee, agent, or service of Manager during the performance of the duties of Manager hereunder.

- b) All persons who control or disburse funds belonging to the Association shall be bonded or insured at the Manager's expense. Manager agrees to indemnify the Association against the loss of Association funds through dishonesty of Manager's employees. The Manager agrees to maintain such insurance at its own expense in the amount of at least \$100,000.00 per occurrence.
- c) The individual directors of the Board are not personally liable hereunder.
- d) Manager shall obtain general liability, property damage, professional liability, fidelity bond and automobile insurance including automobile insurance for vehicles owned or rented by the Manager, its employees, or third parties, which vehicles are used for the performance of any duties, responsibilities or obligations hereunder. Such insurance shall be in the amount of \$1,000,000 per occurrence. Further, Manager shall obtain workers' compensation insurance as required by Florida law. Manager shall furnish the Board with certificates evidencing such insurance coverage.

11. **FEES AND COSTS.**

**Management Fee.** As a fee for its services under this agreement, Manager shall be paid \_\_\_\_\_ per month payable in monthly installments on the 1 of the month. Further, the association shall reimburse manager the cost of office supplies upon presentation of proper documentation of the expenditure. All official association postage shall be reimbursed to Manager by the association upon proper documentation of expenditures.

12. **TERMINATION.**

- a) **By the Manager.** If the Association, Board or the Members unreasonably interfere with the Manager to perform its duties and obligations under this Agreement, the Board retains the right to cancel this agreement without penalty and without notice.
- b) **By either Party.** This Agreement may be terminated, by either party giving to the other written notice, ninety (90) days in advance of the termination, without cause.
- c) **Procedure.** In the event of termination the Manager shall cooperate fully with the Board and any new Manager in causing an orderly transition, and shall turn over all funds, records and property of the Association to the new Manager, if any, at the direction of the Board, and any monies which have been paid in advance for the Manager’s services hereunder shall be refunded by the Manager.

13. **ASSIGNMENT.** The Manager may not assign its rights and duties under this Agreement.

14. **SEVERABILITY.** In the event that any portion of this Agreement is held to be illegal, void or otherwise inoperative by a court of law or other tribunal having jurisdiction, any remaining portions of this Agreement shall remain in full force and effect.

15. **NOTICES.** All notices required or allowed to be given hereunder shall be delivered by hand or sent by first class mail to the address of the parties at above-described addresses may be designated by giving written notice thereof to the other party. Such notices shall be deemed given at the time shown by postal authority receipt as having been deposited in the U.S. Mail, postage prepaid, as first class mail and addressed as herein provided.

IN WITNESS WHEREOF, the parties hereby execute this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

WITNESSES:

As to: ASSOCIATION

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Name and Title:

CONDOMINIUM



ASSOCIATION

\_\_\_\_\_  
Print Name:

WITNESSES:

As to: MANAGER

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Name and Title:  
SPINNAKER CAY MANAGEMENT, INC.

\_\_\_\_\_  
Print Name: