

# HOMEOWNER ASSOCIATION MANAGEMENT AGREEMENT

This Agreement, made and entered into this 1<sup>st</sup> day of September, 2014 by and between **Tidewater Farm Homeowners Association** (the "Association"), not individually but on behalf of all of the owners from time to time of units in **Tidewater Farm Homeowners Association** (the "Owners") and **Phoenix Management Corporation** (the "Agent"):

## WITNESSETH:

WHEREAS, under the provisions of the Declaration of Condominium and the Bylaws required under the provisions of the Maine Condominium Act and any successive provisions, the Owners delegate the authority to manage the Association initially to the Association and thereafter to an elected Board organized by the Owners (the "Board"); and

WHEREAS, the Board of Directors of the Association voted on September , 2014 to renew the services of the Agent as independent contractor to perform management services and the Agent desires to be engaged as an independent contractor to manage the Association; and

NOW, THEREFORE, it is agreed as follows:

- 1) The Association, on behalf of the Owners, hereby employs the Agent exclusively to manage the Association for period of one (1) year, beginning on September 1<sup>st</sup> 2014 and thereafter for automatically renewing yearly periods. Prior to the end of the first fiscal year, the Agent and the Board will evaluate performance and negotiate management fees for the coming fiscal year. Performance will be evaluated annually prior to July 31<sup>st</sup> and will be done in accordance to exhibit A.
- 2) The Agent agrees to manage the Association to the extent, for the period, and upon the terms herein provided.
- 3) More particularly, the Agent agrees to perform the following services in the name of and on behalf of the Owners, and the Association hereby gives the Agent the authority and powers required to perform these services;
  - a) The Agent shall collect all monthly assessments and other charges due to the Association for operation of the Association, provided that the Agent shall have no responsibility for collection of delinquent assessments or other charges except sending notices of delinquency. The Board shall retain the responsibility for the filing of any liens.
  - b) The Agent shall maintain records showing all its receipts and expenditures relating to the Association and shall promptly submit to the Board an income and expense statement for the preceding month (including a receivable's report and condo fee aging report) and a statement indicating the balance or deficit in the Agent's account for the Association on or before the

Twentieth (20th) day of the following month.

- c) The Agent shall prepare and submit to the Board, on or before August 15th of each year, a recommended budget for the next year showing anticipated receipts and expenditures for such year.
- d) Within sixty (60) days after the end of each calendar year, the Agent shall submit to the Association a summary of all receipts and expenditures relating to the Association for the preceding year, provided that this service shall not be construed to require the Agent to supply an audit. Any audit required by the Association shall be prepared at their expense by accountants of their selection.
- e) Subject to the direction and at the expense (described in paragraph 3.f and 9) of the Association, the Agent shall cause the common elements of the Association to be maintained according to appropriate standards of maintenance consistent with the character of the Association, including cleaning, painting, decorating and such other annual maintenance and repair work as may be necessary. Agent shall perform a general inspection of the Association including all common area elements on a regular frequency (no less than once a month); and in particular, after any significant event. Agent will work with the Association and determine whether a subcontractor will be utilized in lieu of Agents staff as appropriate.
- f) On the basis of the budget, job standards and wage rates previously approved by the Association, the Agent, at the direction of and on behalf of the Association, shall hire, pay, negotiate agreements with, supervise and discharge personnel required to maintain and operate the Association properly. All such personnel shall be considered subcontractors or employees of the Agent and not under any circumstances, employees or subcontractors of the Association without the prior written consent of the Association. All salaries, taxes and other expenses payable on account of such employees or subcontractors of the Agent shall be expenses of the Agent and shall be inclusive within the contracted rate under paragraph 8 of this Agreement.
- g) The Agent shall execute and file all returns and other instruments and do and perform all acts required as an employer under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, Subtitle C of the Internal Revenue Code of 1954 and the Maine Income Tax Act with respect to wages paid by the Agent, and if applicable, on behalf of the Association, and under any similar Federal, State, or Municipal law now or hereafter in force.
- h) Subject to the direction and consent of the Board, the Agent shall negotiate and execute on behalf of the Association contracts for snow removal, grounds care, sewer, and other services for the common elements of the Association as may be necessary or advisable. Upon the approval and consent of the Board, the Agent shall also purchase on behalf of the Association such materials and supplies as are necessary for the proper operation and maintenance of the Association. All such purchases and contracts shall be in the name and at the expense of the Association. The Agent's duties are expressly limited to coordination and contract administration, including oversight of contracted services with no responsibility for the actual work performed by any third party.

- i) The Agent shall pay from the funds of the Association all taxes, water rates and other governmental charges, and all other charges or obligations incurred by the Association with respect to the maintenance or operation of the Association or incurred by the Agent on behalf of the Association pursuant to the terms of this agreement or pursuant to other authority granted by the Association.
  - j) The Agent shall maintain appropriate records of all insurance coverage carried by the Association. The Agent shall cooperate with the Board in investigating and reporting all accidents or claims for damage relating to the ownership, operation and maintenance of the common elements of the Association including any damage or destruction thereto.
  - k) The Agent shall assist in enforcement of the Rules and Regulations relative to the Association, and resident grievances pursuant to such, provided that the Agent shall have no responsibility for resolution except sending notices of such and assist the Association in documenting and assessing fines and sending notices of fines.
- 4) In discharging its responsibilities under paragraph 3 hereof, the Agent shall not make any expenditures nor incur any non-recurring contractual obligation exceeding One Thousand Dollars (\$1,000.00) without the prior consent of the Board. The Agent may, on behalf of the Association without prior consent, expend such amount, or incur a contractual obligation in such amount as is reasonably necessary to deal with emergency conditions which may involve a danger to life or property or may threaten the safety of the Association and occupants or may threaten the suspension of any necessary service to the Association.
- 5) Notwithstanding any other provision of this agreement, the Agent is given no authority or responsibility for maintenance of or repairs to the interior of individual dwelling units in the Association. Such maintenance and repairs shall be the sole responsibility of the Owners individually. Each individual dwelling unit Owner may contract with the Agent on an individual basis for the provision of certain maintenance and other related services. Such shall not be considered to be a conflict of interest or otherwise obligate the Agent to take any action except as Agent may agree to with the individual unit owner.
- 6) The Agent agrees that all monies collected by it on behalf of the Association shall be deposited in the Association's custodial account in a state or national bank where deposits are insured by the Federal Deposit Insurance Corporation separate and apart from the Agent's own funds. The Agent will work with the Board to assure all funds will be federally insured.
- 7) All expenses of operation and management may be paid from the Association's funds held by the Agent, and the Agent is authorized to pay any amounts owed to the Agent by the Association from such account at any time without prior notice to the Association. The Agent shall have no obligation to advance funds to the Association for any purpose whatsoever. The Agent shall be added to the account so as to facilitate the process of deposits and write checks.
- 8) The Association shall pay the Agent, 30 days in advance, a management fee of **\$17 per month per unit that has been built**. No further charge shall be made by or payable to the Agent for services of the Manager pursuant to paragraph 14, Agent's services pursuant to paragraph 3 and of other services of the Agent or its professional staff, except as otherwise expressly provided in

this Agreement. It is understood, however, that any clerical services performed for the Board, such as preparation and circulation of notices and newsletters and general correspondence of the Board except routine collection efforts and general administration shall be at the expense of the Association and said expense shall have the prior approval of the Board before any such work is undertaken.

Services of Agent's maintenance technicians for routine repairs or in response to Agent's 24-hour emergency maintenance service will be billed at \$36.00 per hour for regular time and \$54.00 per hour for overtime. Agent warrants that all work shall be performed by the Agent's employees will be done in an efficient, professional manner, and shall be in accordance with the Project requirements and applicable professional standards of care and practice, and shall be free from deficiencies, defects, errors and omissions in materials and/or workmanship.

- 9) The Agent will utilize an appropriate, insured contractor when the service can be provided to the Association at a more cost-effective rate.
- 10) The Agent will charge for postage and copies at the actual cost of postage and \$.15 cents per page for photocopies. Agent will not charge for the mailing of payment on bills or mailings to Board members for the monthly meetings.
- 11) The Agent will prepare notarized resale certificates for unit owners pursuant to guidelines in the Maine Condominium Act, and any successive provisions, for a fee of \$75.00 to be charged to appropriate unit Owners, with said fee payable to Phoenix Management Company.
- 12) If the Agent is required to oversee major construction or repairs, or oversee items involving insurance claims, the Agent shall be compensated (in general that fee will be 5% of any contract that is negotiated and overseen by the Agent that are above \$25,000 in value) in an amount to be agreed upon by the Board and the Agent. This includes assessment of the problem, evaluation of the scope of work and the associated risks, research of alternatives, identification of the appropriate services/vendors, and construction management of the projects, a written report to the Board and the development of project specifications.
- 13) The Agent will make every effort to collect individual unit Owner Association fees accrued prior to the starting date of this management agreement. The collection of outstanding Association fees prior to our takeover is not included in our management fee.
- 14) The Agent agrees that one of its employees shall be the designated Manager for the Association. The Manager shall, upon not less than seventy-two (72) hours notice, attend meetings of the Board as required. It is anticipated there will be twelve (12) – two (2) hour meetings per year. Should owner request manager's attendance at additional meetings, the Association will be billed for manager's time at \$75 per hour. The Manager will be in attendance for no more than two- (2) hours with the exception of the Annual Meeting for which Agent will attend in its entirety. Should attendance exceed the two- (2) hours, the Association will be billed at an hourly rate of \$75 for additional time. Agent shall be custodian of the official records of the Board and the Owners' association, but shall not be required to record the minutes of the meetings.

- 15) The Board may designate a single individual who shall be authorized to deal with the Agent on any matter relating to the management of the Association. In the event that the Board does not designate one member than , all members of the Board are authorized to deal with the Agent on any matter relating to the management of the Assocaiton.
- 16) The Agent shall have no authority to make any structural changes in the Association or to make any other major alterations or additions in or to any building or equipment therein, except such emergency repairs as may be required because of danger to life or property or which are immediately necessary for the preservation and safety of the Association or the safety of the Owners and occupants or are required to avoid the suspension of any necessary service to the Association.
- 17) The Agent is given no responsibility for compliance of the Association or any of its equipment with the requirements of any ordinances, laws, rules, or regulations (including those relating to the disposal of solid, liquid and gaseous wastes) of the City, County, State, or Federal Government, or any public authority or official thereof having jurisdiction over it, except to notify the Board promptly, or forward to the Board promptly, any complaints, warnings, notices, or summonses received by it relating to such matters. The Association represents that to the best of its knowledge the Association complies with all such requirements, and authorizes the Agent to disclose the ownership of the Association to any such officials, and agree to indemnify and hold harmless the Agent, its representatives, servants and employees, of and from all loss, cost, expense and liability whatsoever which may be imposed on them or any of them by reason of any present or future violation or alleged violation of such laws, ordinances, rules or regulations.
- 18) Prior to the start of Agent's work, Agent shall purchase and maintain in force such insurance as will protect Agent and Association. At a minimum, Agent shall maintain throughout the term of this Agreement, the following insurance coverage:

**Worker's Compensation/Employers' Liability.** Statutory requirements for the State of Maine;

**Comprehensive Automobile Liability.** Combined Single Limit for Bodily Injury and Property Damage for owned, non-owned and hired automobiles of not less than \$1,000,000;

**Comprehensive General Liability.** Combined Single Limit for Bodily Injury, Property Damage, Personal Injury/Advertising Injury, to include Blanket Contractual coverage, of not less than \$1,000,000 aggregate, \$500,000 per occurrence and shall name Association as an additional insured.

**Fidelity Bond Insurance** in the amount of \$450,000

In addition, all Subcontractors shall furnish certificate(s) of such insurance, as evidence of coverage with insurance companies acceptable to the Association. Such certificate(s) shall be filed with the Association and Agent prior to commencement of the work. The certificate and the insurance policies required by this Article shall contain provisions that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Association. The Association shall be named as additional insured on each of the foregoing policies, except for worker's compensation insurance and professional liability insurance.

Property insurance for the Subcontractor's materials and equipment required for the work, stored off site or in transit shall be obtained and paid for by Subcontractor.

In performing its work, Agent, employees and any subcontractor of Agent, will comply with all applicable Federal, state, and local laws, regulations, ordinances, codes, and administrative orders, including without limitation those for the safety of persons and property under the control of Subcontractor. The Agent, employees and any subcontractor, shall take reasonable safety precautions with respect to performance of this Agreement and shall comply with safety measures initiated by Association or required by law. The Association shall have no responsibility for the exercise of safety precautions that may be necessary or appropriate in connection with the Agent or any Subcontractor's work.

- 19) **INDEMNIFICATION**. The Agent and the Association agree to mutually indemnify and hold harmless each other and each other's employees, officers, agents of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of work under this Agreement by the Agent or Association, as applicable, the Agents or Association's employees, subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, and also for any losses incurred by the Agent or Association, directly or indirectly, as a consequence of the Agents or Associations breach of this Agreement or its breach by Agents or Associations employees, subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they are liable. In claims against any person or entity indemnified under this Article by an employee of the Agent or Association, the Agents or Associations subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Agent or Association, or employee, or the Agents or Associations subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 20) The Association agrees to pay all expenses incurred by the Agent including, without limitation, attorney's fees for counsel employed to represent the Association in any proceeding or suit involving an alleged violation by the Association of any constitutional provision, statute, ordinance, law or regulation of any governmental body pertaining to environmental protection, fair housing or fair employment including, without limitation, those prohibiting or making illegal discrimination on the basis of race, creed, color, religion or national origin in the sale, rental or other disposition of housing or any services rendered in connection therewith or in connection with employment practices (unless, in either case, the Agent is finally adjudicated to have personally and not in a representative capacity violated such constitutional provision, statute, ordinance, law or regulation), but nothing contained shall require the Agent to employ counsel to represent the Owners in any such proceeding or suit without the Associations prior written consent.
- 21) Should Agent or any employee, agent or subcontractor of Agent fail to satisfy contractual defaults within seven (7) days from receipt of written notice from Association regarding such defaults, then Association, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct said defaults and deduct the cost thereof from

payments then or thereafter due to the Agent or charge the cost thereof to Agent , who shall be liable for payment of same.

- 22) Either party upon thirty (30) days written notice may terminate this agreement for any reason before the termination date specified in Paragraph 1. In the event of termination for convenience by the Agent, the Agent is obligated to complete all work authorized by the Association under contracts. The Association, at its sole discretion, may release the Agent from its obligations for those contracts. Agent shall be paid for all services performed to the satisfaction of the Association. Upon termination of this Agreement for any reason by either party, the Agent shall promptly deliver the following to the Association: (i) a final accounting, reflecting the balance of income and expenses of the Association as of the date of termination; (ii) an balance of monies of the Association held or controlled by the Agent including the funds held in the custodial account reference in paragraph 6; (iii) all written data and materials belonging to the Association including all records, contracts, receipts, unpaid bills, copies of all contracts in Agent's custody and control at the time of termination that relate to the Association and its property.
- 23) **ASSIGNMENT.** The Agent shall not assign its rights or subcontract any of its obligations under this Agreement without the prior written consent of the Association. The Association's consent to an assignment by Agent shall not operate to release Agent from any obligations under the Agreement. Any assignment by the Agent without prior written consent of the Association shall be null and void.
- 24) **MISCELLANEOUS.** No modification or other change in any term or condition of this Agreement shall be binding or effective unless the same is embodied in a writing signed by the party to be charged. No standard terms and conditions contained in or referenced by a quote approved by the Association that are inconsistent with this Agreement shall be valid, and this Agreement shall control over any such terms and conditions. No delay or neglect in the enforcement of any rights hereunder shall be deemed to be a waiver of such rights and the waiver of any right on one occasion shall not be deemed to be a waiver of same right on a different occasion or the waiver of other rights hereunder. This Agreement shall be binding on the heirs, successors and assigns of the parties hereto. In witness whereof, the parties have executed this Agreement under Seal, the day and year first written above.
- 25) Any notice to be served hereunder may be served as applicable by registered mail to Aaron D Bateman, President, Phoenix Management Company, 40 Water Street, Saco, Maine 04072 or
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This Agreement is made under and shall be governed by and construed under the laws of the State of Maine.

Executed this \_\_\_\_\_

**WITNESS:**

**BY:**

**Phoenix Management Corporation**

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Aaron Bateman, President

**Tidewater Farm Homeowners Association**

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Name: Clifford Gilpin  
Its: President