

## **MANAGEMENT AGREEMENT**

This Management Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of **October, 2021** by and between FCS Community Management, a dba of Future Community Services, Inc., ("FCS" or "Agent") and the **Loma Vista HOA, Inc.** (the "Association"). Agent and Association are hereinafter also referred to as the "Parties" and individually as "Party". In consideration of the covenants herein, the Association Described in "B" below, enters into the Management Agreement with the Agent to manage the property described in "A" below for the compensation provided in "E" below and for the terms as set forth in "F" below, and subject to the terms and conditions set forth hereinafter (Paragraphs A through F inclusive) which are incorporated herein by reference and made a part hereof. Association agrees that it has read and understands all the terms and conditions set forth above and hereafter, including the Terms and Conditions, which are a part of this Agreement.

- A. DESCRIPTION OF PROPERTY: The Association hereby exclusively contracts with Agent to operate, manage, and supervise the operation of the association described below ("Association")

Common Name: Loma Vista  
Address: Upland Drive, Tooele, Utah 84074  
Total Units: 94

- B. INFORMATION CONCERNING ASSOCIATION

Association Name: Loma Vista HOA, Inc.  
President: Charlie Sturges  
Address: 1233 Upland Drive, Tooele, Utah 84074  
Email: lomavistahoa@outlook.com

- C. INFORMATION CONCERNING AGENT

Name: Future Community Services, Inc (FCS)  
Dba: FCS Community Management  
CEO: Michael D. Johnson  
DRAPER: 12227 S. Business Park Drive, Suite 200  
Draper, UT 84020  
Telephone: 801-256-0465 (Draper)

- D. TERMS OF CONTRACT

Commencement Date: **DECEMBER 1, 2021**

Agreement End Date: **NOVEMBER 30, 2023**

**AUTOMATICALLY RENEW:** for two-year periods, unless written notice of cancellation is given by either party, sixty (60) days prior to the end of each term.

- E. COMPENSATION OF AGENT

See Addendum A; payable in advance by the first day of each billed assessment period.

F. SERVICES

All services included in attached "Terms and Conditions," and Addendum A: Specific Management Fees. In addition to the services and responsibilities set forth in the attached Terms and Conditions, Agent also agrees to provide the following:

1. Online Owner Account Portal
2. Accounts Payable & Accounts Receivable services
3. Monthly financial reports (BS, A/R, P&L, Transaction Detail)
4. Annual/Board/Special Remote Meeting Attendance; Total Meeting Hours per year (Including annual)=8; Meetings shall be held non-holiday, Monday–Thursday's
5. Video Conferencing/Communication for Annual/Board/Special Meetings.
6. Any other previously agreed upon duties agreed to in writing and attached hereto.
7. Association acknowledges that Agent does not provide gratuitous or free services.

All services performed by Agent are listed in this Agreement. Any other services must be agreed to in writing by the parties.

ASSOCIATION: \_\_\_\_\_

*signature*

AGENT: \_\_\_\_\_

*signature*

\_\_\_\_\_  
print name

Michael D. Johnson, CEO  
\_\_\_\_\_  
print name

OF: Loma Vista HOA, Inc.

OF: HOALiving/FCS Community Management, Inc.

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **TERMS AND CONDITIONS**

The Agent shall, for the term of the Agreement, do all things reasonably necessary to provide the Association with attentive management under the supervision and direction of the Board of Trustees or Management Committee of the Association (hereinafter called "Board"), and the Association and/or the board hereby authorizes Agent to perform the following services and incidental thereto, including:

### **1. FISCAL MANAGEMENT**

- 1.1. Association Fees: The Agent shall collect all Association Fees.
- 1.2. Delinquent Accounts: Additional fees for delinquency work shall be billed to the delinquent owner.
- 1.3. Monthly Financial Reports: Agent shall, monthly, post financials for the review of the Board and, as approved by the Board, financials for the review of the Owners.
- 1.4. Annual Budget: At the request of the Association, Agent shall prepare and submit to the Association for approval an Annual Budget to be used for the determination of Association Fees (including the Management Fee) for the ensuing year.

### **2. ADMINISTRATION**

- 2.1. Fidelity Bond: Agent shall maintain a Fidelity Bond on each of Agent's Employees who handle Association Funds, in the amount of \$2,000,000 in favor of agent, for the protection of the Association.
- 2.2. Transfer of Title: Agent may charge a fee to the requesting party for providing Association payoff information needed in connection with the financing, refinancing, or closing of any home/lot/unit owner's sale of the home/lot/unit, as provided for in Utah Code. Agent shall be compensated, by buyer unless otherwise negotiated, as part of closing settlement, an Administrative Set-up Fee (see Addendum A) per transfer of title of any kind, for any home/lot/unit.
- 2.3. Statement Fees: A statement fee will be assessed per Unit, per produced statement (See Addendum A). No fee will not be charged if no statements are sent.
- 2.4. NSF Fees: An NSF fee up to the maximum allowed by state law will be assessed to homeowners that are returned for any reason.
- 2.5. Insurance: Association shall be properly insured, and as its own expense carry liability insurance and shall name Agent as an additional insured. Such insurance must insure the Agent for all claims and/or losses of any nature arising out of this Agreement and for claims and/or losses arising from the sole negligence or responsibility of Agent and/or its employees. Such insurance must specify that its coverage is primary and non-contributory. Association hereby waives the right of subrogation. Agent shall carry a Commercial General Liability policy and Workers Compensation Insurance. If the Association obtains excess (umbrella) insurance, then Agent will be listed as an additional insured on that policy as well. Any such policies listed herein shall provide coverage for the Agent for claims and/or losses (including its officers, members, managers, and employees) for contractually assumed liability and for completed operations.
- 2.6. Banking & Auto-Draft: Association shall use Agent's preferred FDIC bank for their primary operating account. Association shall enroll in Agent's Auto-Draft, direct assessment withdrawal program at a fee as defined in Addendum A.

### 3. MISCELLANEOUS

- 3.1. Advances and Charges: Agent shall not be required to pay any Association expenses out of Agent's corporation funds.
- 3.2. Agent's Compensation: The Association shall be obligated to pay, and Agent shall receive as compensation for its services under this Agreement, the sum provided for in Addendum A at the times therein set forth. All governmental taxes, if any, for services rendered under this Agreement, shall be the responsibility of the Association, and are additional to the stated compensation. Said amount shall be debited via electronic means on the 1<sup>st</sup> day of each month. Payments not made by the 5<sup>th</sup> day of each month shall accrue a late fee of 10% of the invoice total and interest of 18% APR on the last day of each month. Agent's compensation shall increase by 2.5% annually on the Commencement Date anniversary. Additionally, Agent shall be compensated 50% of Association billed Late Fees & Interest.
- 3.3. Conflict of Interest Disclosure: FCS discloses and hereby notifies Association that Michael Johnson is the sole shareholder of Future Community Services, Inc., dba FCS Community Management. Association is also hereby notified that Michael Johnson owns a percentage of interest in the following companies: A+ Association Accounting, Splash Pool Services, Western Collection of Utah and MAX Maintenance.
- 3.4. Hold Harmless: The Association shall release, forever acquit, discharge, defend, protect and indemnify and hold Agent harmless (including its employees, directors, officers, and other agents) from all manner of losses, demands, claims, actions, damages, costs, expenses, interest, penalties, suits, attorneys' fees, and expert fees incurred arising from, related to, or connected with Agent's action or inaction in the performance of its duties under this agreement, including, but not limited to, loses, demands, claims, actions, damages, costs, expenses, interest, penalties, suits, attorney's fees, and expert fees for personal injury or death, bodily damage, or property damage relating to or arising out of any claim. The Association's duty to indemnify does not apply to the extent that agent under this clause includes payment of all attorney's fees, court costs, judgements, settlements, interest and other expenses of litigation arising out of such claims of suits.
- 3.5. Emergency Expenditures: Agent may, but is not required to, on behalf of the Association and without prior consent, expend any reasonable amount or incur a contractual obligation in any reasonable amount required to deal with emergency conditions which may involve danger of life or property, may threaten the safety of the Association or occupants, or may threaten suspension of any necessary service to the Association.
- 3.6. Maintenance and Repairs: Notwithstanding any other provision in this Agreement, Agent has no authority or responsibility for maintenance and repairs to common or non-common elements in the Association. Agent's obligation to inspect is limited to the common areas. The inspection does not constitute a warranty of any condition on the property. Agent shall not be expected or obligated to identify any condition that requires specialized knowledge or expertise or that is not open and obvious to the naked eye of a layman.
- 3.7. Compliance with Laws: Agent shall have no liability with regard to the compliance or the non-compliance of the Association, or any Association member or equipment, with the requirements of any ordinance, law, rule or regulation of any city, county, state or federal government, or any public authority or official having jurisdiction over the same, except that the Agent shall notify the Association promptly and where applicable forward to the Association promptly any complaints, warnings, notices, or summons received by it relating to such matters. The Association hereby represents to the Agent that the Association now complies and will continue to comply in the future with all governmental requirements and agrees to hold the Agent harmless from all expenses to liability, including attorney's fees which may be imposed by reason of past, present or future violations or alleged violations.

- 3.8. Agency: It is agreed that Agent is the agent of the Association and shall not be liable to third parties for any debt liability or obligations of the Association or arising in the course of business of the Association or by virtue of Agent's management, supervision, control or operation of the Association.

#### 4. TERMINATION OF AGREEMENT

- 4.1. Termination for cause: If there arises a dispute between the Association and Agent, and if in the opinion of the aggrieved party, the offending party has committed a material breach of this Agreement, the aggrieved party shall serve written notice upon the offending party, setting forth the details of such alleged breach. If the offending party does not, within 30 days after the mailing of such notice, cure such breach, or if such breach is of a nature that it cannot be cured within the 30 day period, and if the offending party has not within the 30 day period commenced and at all times thereafter continue diligently to proceed with all acts required to cure such breach, then this contract may be terminated without prejudice after 30 days written notice by certified mail with return receipt requested, subject however, to any and all rights and remedies available to the aggrieved party. Within thirty (30) days after termination of this Agreement for cause, for the reasons set forth in the initial written notice, as set forth herein, the Association shall pay to Agent all undisputed fees for services provided hereunder up to the effective date of such termination. In the event that any party disagrees with the termination for cause or the curing or undertaking to cure the same, this shall be the subject of arbitration as provided herein. Strict compliance with this paragraph is required. The Agreement shall remain in force during the pendency of the arbitration
- 4.2. Records: At the termination of agreement for any reason, Agent agrees to provide Association with any and all records concerning Association or control of Agent within thirty (30) days of said termination.

#### 5. OTHER

- 5.1. Waiver: Rights under this Agreement are cumulative and a party's failure to exercise any rights given hereunder shall not operate to forfeit or waive any of those rights, and any extension, indulgences, or change by either party in the method, manner, mode of payment or in any other right shall not be construed as a waiver of any rights under this agreement.
- 5.2. Photographs/Videos: Agent reserves the right to use any Agent taken photograph/video taken at any Association meetings/events.
- 5.3. Liability: In no event shall Agent's liability for damages arising out of, related to, or connected with this Agreement exceed the lesser of the remaining unpaid installments of the current, unexpired term of this Agreement or the fees paid to Agent during the prior three (3) month period under this Agreement, whichever is less. In no event shall Agent be liable to Association for the costs of procurement of substitute services. Agent shall not be liable to the Association for any act or omission of any representative or employee of Agent or Association in the performance of this Agreement, except for the gross negligence of Agent. In no event, shall either party be liable for any consequential or punitive/exemplary damages.
- 5.4. Enforceability: In no event any portion of this agreement is deemed invalid or unenforceable by a court of law, public policy or statute, such finding shall not affect the validity or enforceability of any other portion of this Agreement, and the Agreement shall be construed to be enforceable to the fullest extent permitted by law.
- 5.5. Attorney's Fees: In the event either party is required to enforce, construe, defend any of the terms of this Agreement, to terminate, cancel, or rescind the Agreement, or to collect monies due hereunder, either with or without arbitration, the prevailing party shall be entitled to recover all costs, expenses, interest, and reasonable attorney's fees.

- 5.6. Notice: Any notice required or permitted to be served under this Agreement shall be in writing, served by registered mail, certified mail, or hand-delivery as follows:
- If notice is being served on Agent: To the name and address listed in Section C above
  - If notice is being served on Association: To the name and address listed in Section B above.
  - Either party may change the address for notice by notice as provided herein to the other party. Notice served by mail shall be deemed to have been given three (3) days following the date the notice was deposited in the mail.
- 5.7. Construction: The parties acknowledge that the rule of construction requiring that ambiguities be constructed against the drafting party does not apply to this Agreement.
- 5.8. Successors: This Agreement binds the heirs, successors and assigns of the parties.
- 5.9. Assignment: Either party may assign this agreement or any right or obligation of this agreement, by operation of law or otherwise.
- 5.10. Counterpart Execution: This Agreement may be executed in counterparts, each of which shall be considered an original of the same instrument when each of the signatories has executed and delivered a counterpart.
- 5.11. Headings: The headings contained in the Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this agreement.
- 5.12. Force Majeure: Neither party shall be responsible for any failure to perform its obligations hereunder (other than obligations to pay money), if such failure is caused by acts of nature, war, strikes, power outages, computer viruses, hackers, terrorism, lack of failure of transportation facilities, changes to laws or governmental regulations, or other causes that are beyond the reasonable control of the parties.
- 5.13. Authority: Each of the parties here to represents and warrants that it has proper authority to enter into this agreement and to bind the party as set forth herein. The Association warrants that this Agreement is entered into pursuant to resolution and in accordance with the Association's governing documents.
- 5.14. Entire Agreement: This Agreement contains the entire agreement and understanding between Association and Agent with respect to the Agreement and the services, rights, and obligations set forth herein, and, as of the date this Agreement is executed, it supersedes, replaces, supplants, and merges all other agreements between Association and Agent with regard to the Agreement. This Agreement shall not be changed unless in writing and signed by the parties. This Agreement shall not be constructed against or in favor of either party.
- 5.15. Acknowledgement: THE ASSOCIATION ACKNOWLEDGES THAT NO REPRESENTATION, PROMISE OR INDUCEMENT HAS BEEN MADE OTHER THAN AS SET FORTH IN THIS AGREEMENT, AND THAT IT ENTERS INTO THIS AGREEMENT WITHOUT RELIANCE UPON ANY OTHER REPRESENTATION, PROMISE OR INDUCEMENT NOT SET FORTH HEREIN. THE ASSOCIATION FURTHER ACKNOWLEDGES AND REPRESENTS THAT IT UNDERSTANDS THE SIGNIFICANCES OF THIS AGREEMENT AND IS FULLY AWARE OF ITS LEGAL EFFECT, AND HAS ENTERED INTO IT FREELY AND VOLUNTARILY BASED ON ITS OWN JUDGEMENT. THE ASSOCIATION REPRESENTS THAT THE TERMS ARE FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED. THE ASSOCIATION ACKNOWLEDGES THAT IT HAS BEEN GIVEN A REASONABLE TIME TO CONSIDER THE TERMS OF THIS AGREEMENT.

## **ADDENDUM A**

### **SPECIFIC MANAGEMENT FEES (a la carte)**

***through November 30, 2023***

<b>F. Compensation of Agent:</b>	<b>\$9/month/unit</b>
<b>New Account Fee:</b>	<b>\$425/one-time</b>
<b>2.2 Administrative Set-up Fee:</b>	<b>\$350/each* (on resales)</b>
<b>2.3 Statement Fee (mailed):</b>	<b>\$1.50/each</b>
<b>2.3 Statement Fee (emailed):</b>	<b>NO CHARGE</b>
<b>2.6 Banking &amp; Auto-Draft Fee:</b>	<b>\$25/association/month</b>
 Non-Contracted Services (as requested):	<b>\$95/hour</b>
Governing Documents; Legal Matters (FCS involvement)	<b>\$150/hour</b>
 FCS Conference Rooms; Board Member Trainings:	<b>NO CHARGE</b>
Corporate Annual Filing; 1120H; TC20HA; Utah HOA Registry:	<b>\$500/year</b>
Delinquent Accounts, Collection, Lien, Attorney Fees:	<b>Billed to Owner</b>
 Copies/Images – White Paper:	<b>\$0.15/each</b>
Copies/Images – Colored Paper:	<b>\$0.20/each</b>
Copies/Images – Colored Ink:	<b>\$0.40/each</b>
Compliance/Violation Letters:	<b>\$10.00/each (Billed to Owner)</b>
Accounts Payable Payments Made:	<b>\$1.00/each</b>

*\*The Administrative Set-up Fee will be charged to the buyer on all new real estate transactions and will be separate and in addition to the reinvestment fee collected by the title/escrow company.*

