

posted

ACCOUNTING, BOOKKEEPING AND ADMINISTRATIVE SERVICES AGREEMENT

This agreement (the "Agreement") is made and entered into this 3rd day of January 2020, by and between the unit owner's association known as **The Marina at Queen's Grant, Inc.**, a North Carolina Non-Profit Corporation, (the "Association"), which is established in accordance with the laws of the State of North Carolina for the property known as The Marina at Queen's Grant, located at 926 North Anderson Blvd, Topsail, NC (the "Property"), and **Tide First Management Company, LLC**, a North Carolina limited liability company, (the "Agent").

AUTHORITY OF THE AGREEMENT

Kim Quinn, registered agent of the association, and on behalf of the Association, hereby appoints Agent to provide accounting, bookkeeping, and administrative services, and Agent accepts appointment to provide accounting, bookkeeping, and administrative services. For purposes of this agreement, Kim Quinn will serve as the "Board" until a Board of Directors is selected.

The parties further agree as follows:

SECTION 1. TERM OF AGREEMENT.

The Board appoints Agent exclusively to provide accounting, bookkeeping, and administrative services for a period of seven months, beginning **January 1st, 2020** and ending **December 31, 2020**, and thereafter for periods of one year unless this Agreement is terminated as provided in this section or in **Section 11**. Either party may terminate this Agreement at the end of the initial term or at the end of any one-year renewal period provided that written notice is given to the other party on or before the sixtieth (60th) day prior to the expiration of the initial term or on or before the sixtieth (60th) day prior to the expiration of such one-year renewal period.

SECTION 2. SERVICES OF AGENT.

Agent shall perform accounting, bookkeeping, and administrative services in the name of and on behalf of the Association, and the Association hereby gives Agent the authority and powers required to perform these services. Agent shall not provide property management services requiring a firm license from the North Carolina Real Estate Commission.

Section 2.1 Assessment Accounting

Agent shall collect (and give receipts for, if necessary) all annual and other assessments and other monies that are due the Association with respect to the Property and for all rental or other payments from concessionaires, if any.

HOWEVER, Agent shall have no authority or responsibility to collect delinquent assessments or other charges except to send notices of delinquency and to communicate the Association's instructions regarding collection action to those designated by the Association to take formal collection action on its behalf.

Section 2.2, Records Of Income And Expenditures

Agent shall maintain records of all income and expenses relating to the Property, and shall submit monthly to the Association, a statement of receipts and disbursements for the preceding month, including a statement of the balance in the operating account and reserves account for the Property.

Section 2.3. Preparation Of Annual Budget

Prior to the beginning of each fiscal year, which begins on **January 1**, Agent shall prepare and submit to the Board a recommended Annual Budget for the next year showing anticipated income and expenses for such year.

Section 2.4. Submission Of Annual Report

Within 30 days after the end of each fiscal year, Agent shall submit to the Association a summary of all receipts and disbursements relating to the Property for the preceding year. HOWEVER, submission of such annual report shall

not be construed to require Agent to supply an audit or review. Any third-party audit or review required by the Association shall be prepared at the Association's expense by an auditor of its selection.

Section 2.5. Agent Employees And Independent Contractors

Agent may hire, retain, supervise, and discharge employees or independent contractors that may be required to provide accounting, bookkeeping and administrative services. Agent shall not be responsible or otherwise involved to hire, retain, supervise or otherwise become engaged to repair, maintain, or operate the Property on behalf of the Association.. Agent shall not enter into any agreement to provide goods or services to the Association with any other party, partnership, corporation, or other entity related to or affiliated with Agent, without prior written approval of the Board of Directors.

Section 2.6. Payment Of Expenses

From the funds of the Association, Agent shall pay all expenses of the Property, including taxes, building and elevator inspection fees, water rates and other governmental charges, and all other charges or obligations incurred by the Association or by Agent on behalf of the Association with respect to the maintenance or operation of the Property or pursuant to the terms of this Agreement or pursuant to other authority granted by the Board on behalf of the Association.

Section 2.7. Records Of Insurance.

Agent shall maintain appropriate records of all insurance coverage for the Property carried by the Association as specified in paragraph 10. Agent shall have no responsibility with regard to investigating and reporting all accidents or claims for damage relating to the ownership, operation, and maintenance of the common elements of the Property, including any damage or destruction to them.

SECTION 3. LIMITATION ON EXPENDITURES BY AGENT.

In discharging its responsibilities under section 2 of the Agreement, Agent shall not make any unbudgeted expenditures or incur any nonrecurring contractual obligation exceeding **\$500.00** without the prior written consent of the Association through the Board's authorized representative. HOWEVER, no such consent shall be required to repay any advances made by Agent.

Notwithstanding these limitations, Agent may, on behalf of the Association and without prior consent of the Board, expend any amount to comply with a contractual obligation required to deal with emergency conditions which may involve a danger to life or property or which may threaten the safety of the Property or the individual owners and occupants or which may threaten the suspension of any necessary service to the Property. The Association agrees that it will be responsible for payment of such expenditures subject to its right to recover any such expenditures from any person or entity which may be ultimately responsible, excluding Agent.

SECTION 4. AGENT NOT RESPONSIBLE FOR MAINTENANCE OF INDIVIDUAL UNITS.

Agent shall have no authority or responsibility for maintenance or repairs to the Property. Such maintenance and repairs shall be the sole responsibility of the owners individually or the Association.

SECTION 5. DISPOSITION OF FUNDS

Agent shall, on behalf of the Association, deposit collections and pay expenses of the Property as stated below.

Section 5.1. DEPOSIT OF COLLECTIONS

Agent shall deposit all monies collected on behalf of the Association in a bank or other financial institution whose deposits are insured by the federal government or such other depository as directed by the Association in writing. The funds of the Association shall at all times be maintained separate and apart from Agent's own funds and from the funds of any others. Agent's designees shall be the only parties authorized to draw upon such accounts. Agent shall not be held liable in the event of bankruptcy or failure of such depository. Such operating account shall not be required to bear interest.

Section 5.2. Payment Of Expenses.

Agent shall pay all expenses of operation and management of the Property from the Association's funds held in account by Agent. Any amounts owed to Agent by the Association shall also be paid from such account at any time without prior notice to the Association.

Section 5.3. Agent Not Required To Advance Funds.

Agent shall have no obligation to advance funds to the Association for any purpose whatsoever.

Section 5.4. Bonding Of Employees.

All employees of Agent who handle or are responsible for the safekeeping of any monies of the Association shall be covered by a bond protecting the Association. Such bond shall be in an amount and with a company determined by Agent and may be a blanket or umbrella bond. The expense of such bonding shall be paid by Agent.

SECTION 6. ATTENDANCE AT BOARD MEETINGS

Agent, or a designated employee or other representative of Agent, shall attend up to 4 regular meeting(s) of the Board during the first year, including one annual meeting of the Association. Upon not less than seven (7) days notice, **Agent or its designated representative shall attend additional meetings of the Board or of the Association as requested, provided that the Association shall pay Agent \$ 80.00 per hour for each individual's attendance at each meeting.** Agent or its representative shall not be expected to attend meetings on weekends, holidays or evenings after 9:00 P.M.; for such meetings, should they occur, the Association shall pay Agent \$180.00 per hour for each individual's attendance. Agent or its representative shall be custodian of the official records of the Board and the Association. HOWEVER, neither Agent nor its representative shall be required to record the minutes of such meetings.

SECTION 7. ONE BOARD MEMBER TO DEAL WITH AGENT

The Board shall designate one of its members who shall be authorized to deal with Agent on any matter relating to the management of the Property. Agent shall not accept directions or instructions with regard to the management of the Property from anyone else. In the absence of any other designation by the Board, the President of the Board shall be deemed to have this authority. Board appoints current board vice president as alternate should the President be unavailable. Agent may, but is not required to, submit any matter, direction, instruction or the like to the Board and shall then follow the direction of the Board.

SECTION 8. LIMITATION OF AGENT'S AUTHORITY AND RESPONSIBILITY

Agent's authority to act and responsibility for the Property shall be subject to the limitations set forth below.

Section 8.1. Structural Changes

Agent shall have no responsibility or authority to make any structural changes in the Property or to make any other major alterations or additions in or to any building equipment therein.

Section 8.2. Building Compliance

Agent shall not be responsible for the compliance of the Property or any of its equipment including but not limited to the requirements of any building codes or with any statutes, ordinances, laws, rules, or regulations (including those relating to the existence and disposal of solid, liquid, and gaseous wastes, and toxic or hazardous substances) of any city, county, state, or federal governments or agencies, or any public authority or official thereof having jurisdiction over it.

HOWEVER, Agent shall notify the Association promptly or forward to the Association promptly any complaints, warnings, notices, or summonses received by Agent relating to such matters. The Association represents that to the

best of its collective knowledge the Property complies with all such requirements, and the Association authorizes Agent to disclose the ownership of the Property to any such officials and agrees to indemnify, defend, and hold Agent, its representatives, servants, and employees, harmless of and from all loss, cost, expense, and liability whatsoever which may be imposed on them by reason of any present or future violation or alleged violation of such laws, ordinances, rules, or regulations.

Section 8.3. Agent Assumes No Liability

Agent assumes no liability whatsoever for any acts or omissions of the Board or the Association, or any previous boards or current or previous owners of the Property, or any previous management or other agent of either. Agent assumes no liability for any failure of or default by any individual unit owner in the payment of any assessment or other charges due the Association or in the performance of any obligations owed by any individual unit owner to the Association, pursuant to any lease or otherwise. Agent likewise assumes no liability for any failure of or default by concessionaires in any rental or other payments to the Association. Nor does Agent assume any liability for previously unknown violations of environmental or other regulations which may become known during the period this Agreement is in effect. Any such regulatory violations or hazards discovered by Agent shall be brought to the attention of the Association in writing, and the Association shall promptly cure them.

SECTION 9. AGENT'S COMPENSATION

Agent shall be compensated for specific services as stated below.

Section 9.1. For Accounting, Bookkeeping And Administrative Services

The Association shall pay Agent a **fee of \$175 per month** for accounting, bookkeeping and administrative services. The accounting, bookkeeping and administrative services fee shall be paid monthly in advance. No further charge shall be made by Agent for Agent's services and other services of Agent's professional staff, except as otherwise expressly provided in the Agreement. **Postage and other expenses incurred by agent in connection with clerical services performed for the Association, such as preparation and circulation of notices and newsletters and general correspondence shall be paid by the Association.**

The accounting, bookkeeping, and administrative services to be provided for the monthly fee of \$175.00 include (i) preparing and submitting for payment annual dues invoices to 25 association members (when required); (ii) receiving, depositing, and recording annual dues payments from 25 association members; (iii) preparing and submitting quarterly past due invoices to association members with delinquent accounts; (iv) processing up to 5 payments per month to vendors; (v) providing bookkeeping services by entering transactions, including receipts and disbursements into an accounting system; (vi) maintain financial records on an accrual basis; (vii) prepare and submit to the Board monthly financial statement of income and disbursements and balance sheet; (viii) and attend quarterly Board meetings, if requested by the Board, and consistent with Section 6.

Section 9.2. For Other Services.

The Association shall pay Agent an **additional fee of \$80.00 per hour** for each hour or portion thereof for (i) any work performed in relation to special assessments beyond annual dues, including past, current, and future special assessments; (ii) any and all tax filings (except Form 990 annual filings); (iii) any and all management advisory services and any and all other services not specifically stated in Section 9.1.

Section 9.3. For Late Fees and Fines.

In the event the Association shall impose any late charge for assessments not paid by the due date, **the Association and the Agent shall share equally in any late charges collected. If fines are imposed by the Association, the Agent shall be paid 25% of the fines collected by the Association.**

Agent shall also be entitled to be paid for miscellaneous services outside the scope of this section and Sections 2.0 - 2.8 and for materials and supplies used by Agent in connection with carrying out its duties.

Section 9.4. Annual Adjustments

Adjustments in fees shall be negotiated on an annual basis between the Agent and the Board of Directors.

SECTION 10. OBLIGATIONS OF THE ASSOCIATION TO AGENT

Within thirty (30) days of receiving the recommended Annual Budget from Agent, the Board shall:

- (i) approve said Annual Budget, or;
- (ii) submit notice of unacceptable items contained in the Annual Budget, or;
- (iii) request additional information about specific items contained in the Annual Budget.

All approvals, notices and requests shall be in writing, and the failure to provide such documentation will be deemed as approval of the Annual Budget by the Board. Upon approval, Agent shall be authorized to operate and provide accounting, bookkeeping, and administrative services in accordance with the Annual Budget.

The Association shall be required to indemnify, defend, reimburse and save Agent harmless from all claims, investigations, lawsuits and other adverse actions including, but not limited to, any one of the following situations relating to the Agent and the property, whether actual or alleged: (i) alleged or actual negligence by the Agent or its employees in connection with the Property and its management; (ii) damage to the property; (iii) personal injury and/or death of any person occurring in connection with the Property; and (iv) violation of any law, regulation or other ruling from any governmental body pertaining to the areas of environmental protection, fair housing, fair employment, discriminatory actions, and/or labor law. The Association acknowledges that this list is merely illustrative and does not strictly limit the Association's obligation to indemnify, defend, reimburse and save Agent harmless in the event of other adverse proceedings.

The Association acknowledges that it shall be responsible for all costs and expenses, including but not limited to, attorney's fees and litigation expenses, court costs, settlements, fines, penalties, judgments, damages, liquidated damages, forfeitures, back pay awards, and any other expenses which may arise in the course of defending, negotiating or otherwise disposing of any adverse action relating to the Agent and the property. The Association will not be responsible to Agent for any expenses in the event Agent is finally adjudged to have been acting in a non-representative capacity. Before Agent incurs any expenses for which the Association may be required to indemnify Agent, Agent agrees to allow any insurance carrier who may be obligated to defend Agent in such adverse action the opportunity to do so.

The Association shall also furnish at its own expense public liability, boiler, fire and extended coverage, elevator liability (if applicable) and workers' compensation insurance, and other insurance that may be necessary or appropriate in the determination of the Agent and the Association. All such policies shall include both the Agent and Association as insured parties. The coverage under the policies shall be adequate to protect the interests of both parties. The Agent shall have the right to approve all such insurance policies and require that the coverage be in all ways reasonably satisfactory to the Agent. The Association shall provide to the Agent within 30 days after the execution of this Agreement copies of said policies. All policies shall provide that written notice of modification, default or cancellation of said policies shall be sent to the Agent at least 30 days prior to the effective date of such modification, default, or cancellation.

SECTION 11. TERMINATION FOR CAUSE

Agent shall have the right to cancel this Agreement at any time in the event that any insurance required of the Association is not maintained without any lapse. Agent shall also have the right to cancel this Agreement at any time in the event it is alleged or charged that the Property or any equipment therein or any act or failure to act by the Board of the Association with respect to the Property or the sale, rental, or other disposition thereof or with respect to the hiring of employees to manage it fails to comply with or is in violation of any requirements of any constitutional provision, statute, ordinance, law, or regulation of any governmental body or any order or ruling of any public authority or official thereof having or claiming to have jurisdiction over it, and Agent in its sole and absolute discretion considers that the action or position of the Association or the Board with respect thereto may result in damage or liability to Agent, or disciplinary proceeding with respect to Agent's license. Agent shall provide

written notice to the Association of its election to terminate this Agreement, in which case termination shall be effective upon the service of such notice.

Association shall have the right to cancel this Agreement, which cancellation shall be effective sixty (60) days after written notice of cancellation is given by Association to Agent.

SECTION 12. ASSOCIATION RESPONSIBLE FOR PAYMENTS

Upon termination of or withdrawal from this Agreement by either party, the Association shall assume the obligations of any contract or outstanding bill executed by Agent under this Agreement for and on behalf of the Association and responsibility for payment of all unpaid bills. In addition, the Association shall furnish Agent security, in an amount satisfactory to Agent, against any obligations or liabilities which Agent may have properly incurred on the Association's behalf under this Agreement. Agent may withhold funds for thirty (30) days after the end of the month in which this Agreement is terminated, in order to pay bills previously incurred but not yet invoiced and to close accounts. Agent shall deliver to the Association, within thirty (30) days after the end of the month in which this Agreement is terminated, any balance of monies due the Association which were held by Agent with respect to the Property, as well as a final accounting reflecting the balance of income and expenses with respect to the Property as of the date of termination or withdrawal, and all records, contracts, leases, receipts for deposits, and other papers or documents which pertain to the Property.

SECTION 13. RELATIONSHIP OF AGENT TO THE ASSOCIATION

The relationship of the parties of this Agreement shall be that of Principal and Agent, and all duties to be performed by Agent under this Agreement shall be for and on behalf of, in the name of and for the account of the Association. In taking any action under this Agreement, Agent shall be acting only as Agent for the Association, and nothing in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement except that of Principal and Agent, or as requiring Agent to bear any portion of losses arising out of or connected with the ownership or operation of the Property. Nor shall Agent at any time during the period of this Agreement be considered a direct employee of the Association. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement, except that Agent is authorized to act with such additional authority and power as may be necessary to carry out the spirit and intent of this Agreement.

SECTION 14. INDEMNIFICATION SURVIVES TERMINATION

All representations and warranties of the parties contained herein shall survive the termination of this Agreement. All provisions of this Agreement that require the Association to have insured or to defend, reimburse, or indemnify Agent shall survive any termination; and if Agent is or becomes involved in any proceeding or litigation by reason of having been the Association's Agent, such provisions shall apply as if this Agreement were still in effect.

SECTION 15. HEADINGS

All headings and subheadings employed within this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

SECTION 16. FORCE MAJEURE

Any delays in the performance of any obligation of Agent under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Agent, and any time periods required for performance shall be extended accordingly.

SECTION 17. COMPLETE AGREEMENT

This Agreement, including any specified attachments, constitutes the entire agreement between the Association and Agent with respect to the management and operation of the Property and supersedes and replaces any and all previous management agreements entered into or/and negotiated between the Association and Agent relating to the

Property covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by the Association and Agent. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by the Association and Agent in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein.

SECTION 18. RIGHTS CUMULATIVE; NO WAIVER

No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties to it may be exercised from time to time and as often as may be deemed expedient by those parties.

SECTION 19. APPLICABLE LAW AND PARTIAL INVALIDITY

The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of North Carolina. If any part of this Agreement shall be declared invalid or unenforceable, Agent shall have the option to terminate this Agreement by notice to the Association.

SECTION 20. NOTICES

Any notice required or provided for in this Agreement shall be in writing and shall be addressed as indicated below or to such other address as Agent or the Association may specify hereafter in writing.

Section 20.1. To Agent.

TIDE FIRST MANAGEMENT COMPANY, LLC
PO Box 879
Wallace, NC 28466
james@tidefirst.com

Section 20.2. To The Association.

The Marina at Queen's Grant, Inc.
Kim Quinn, Registered Agent
116 Sea Oaks Dr
Surf City, NC 28445

Section 20.3. Delivery Of Notices.

Notices or other communications between the parties to this Agreement may be mailed by United States registered or certified mail, return receipt requested, postage prepaid, and may be deposited in a United States Post Office or a depository regularly maintained by the post office. Such notices may also be delivered by hand or by any other receipted method or means permitted by law. For purposes of this Agreement, notices shall be deemed to have been "given" or "delivered" upon personal delivery thereof or 3 days after having been deposited in the United States mails as provided herein.

SECTION 21. AGREEMENT BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Agent and the heirs, administrators, successors, and assigns of the Association. Notwithstanding the preceding sentence, Agent shall not assign its interest under this Agreement except in connection with the sale of all or substantially all of the assets of its business. In the event of such sale, Agent shall be released from all liability under this Agreement upon the express assumption of such liability by its assignee.

SECTION 22. CONFLICT OF INTEREST

Agent shall not accept from any party providing goods and services to the Association, including vendors and independent contractors, any remuneration or consideration in any manner or form, as consideration for or inducement to Agent for using the party's goods or retaining their services on behalf of the Association, all such benefits being rightly due to the Association.

[Signatures on Following Page]

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have affixed or caused to be affixed their respective signatures this 6 day of JUN, 2020

ASSOCIATION: THE MARINA AT QUEEN'S GRANT, INC.

By: Kim Quinn, Registered Agent: Shuff agent for Kim Quinn

AGENT: TIDE FIRST MANAGEMENT COMPANY, LLC,

By: J. D. Matthis II
J. D. Matthis & Company
Managing Member