

**CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT
THE HMA CONSISTS OF THE 2013 AGREEMENT, 2017 AMENDMENT AND
THE 2022 AMENDMENT**

**THE WESTIN RESORT & SPA, WHISTLER
4090 WHISTLER WAY**

**AMENDED AND RESTATED
HOTEL MANAGEMENT AND RENTAL POOL AGREEMENT**

This Agreement dated for reference February 26, 2022.

BETWEEN:

EACH OF THE PERSONS who are the owners of Strata Lots 3 – 421, inclusive, District Lots 3020, 3865, 4893, 5946, 7885, and 7888, Group 1 New Westminster District, Strata Plan LMS 4089 from time to time, who are party to this Agreement in accordance with Article 16 hereof

(individually an “Owner” and collectively the “Owners”)

AND:

OHR WHISTLER MANAGEMENT LTD., a Corporation duly incorporated under the laws of British Columbia

(the “Manager”)

WHEREAS:

- A. The Manager and each of the Owners are parties to an Amended and Restated Hotel Management and Rental Pool Agreement for the provision of management services respecting the Hotel operations dated December 4, 2013, which agreements had been previously amended by amending agreements approved by Special Resolutions, and subsequently amended by Special Resolutions effective January 1, 2017 (individually an “HMA” and collectively the “HMAs”);
- B. The Hotel Owners Council and the Manager have reviewed certain operational and administrative matters and agreed that it is prudent to make additional amendments to the HMAs;
- C. Pursuant to article 4.1 of the HMAs, any amendment or modification to the HMAs must be approved by the Owners by Special Resolution;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- D. Pursuant to article 4.2 of the HMAs, once the amendments or modifications are approved by Special Resolution of the Owners, they are binding on all Owners; and
- E. The terms and conditions set out in this Amendment to the Amended and Restated Hotel Management and Rental Pool Agreement were approved by the Owners by Special Resolution passed at a general meeting held on February 26, 2022.

THEREFORE the parties agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions. The following terms as used in this Agreement have the following meanings, except as otherwise expressly provided or unless the context otherwise requires:

- (1) “Above-Line Costs” means all Hotel Expenses other than Below Line Costs;
- (2) “Affiliate” means, with respect to any person:
 - (a) any person which is Controlled by that particular person; or
 - (b) any person which Controls that particular person, whether such Control be direct or indirect;
- (3) “Annual General Meeting” means the annual general meeting of the Strata Corporation pursuant to the Strata Property Act;
- (4) “Annual Statement” has the meaning set forth in subsection 8.2(3);
- (4.1) “Approved Capital Upgrade Plan and Budget” means any Capital Upgrade Plan and Budget approved pursuant to subsection 5.3(3);
- (5) “Approved Operating Plan and Budget” means any Operating Plan and Budget approved pursuant to subsection 5.1(3);
- (6) “Audited Annual Financial Statements” means comparative financial statements for the Rental Pool prepared in accordance with sections 145(1) and (2) of the Securities Rules, BC Reg. 479/95, as if the Rental Pool were a reporting issuer, together with an auditor’s report on the comparative financial statements prepared by a person that is qualified under the Securities Act (British Columbia) to make the auditor’s report;
- (7) “Arm’s Length” means “arm’s length” according to the Income Tax Act (Canada), determined in accordance with such Act, the interpretation bulletins issued in connection therewith and all relevant case law, all as from time to time in effect;
- (8) INTENTIONALLY DELETED

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

(8.1) “Below-Line Costs” means:

- (a) Manager’s Fees;
- (b) the Franchisor Fees;
- (c) all Owner’s Strata Lot Expenses, and any other amounts payable in respect of Strata Lots to the Resort Municipality of Whistler for property taxes, levies or other assessments or to Tourism Whistler;
- (d) all rent, property tax, Tourism Whistler Fees and governmental or regulatory levies or assessments payable pursuant to the Lobby Strata Lot Lease, Restaurant Strata Lot Lease, Convention Strata Lot Lease and the Employee Housing Lot Lease, or any other lease payments to the Owner-Developer (or its successor) for administration and staff areas including amounts payable under the staff cafeteria and office lease;
- (e) insurance premiums and other insurance expense;
- (f) strata administration expenses, including audit, legal or consulting expenses, bank charges, meeting expenses, postage, copying and other administrative disbursements, remuneration of the Owners’ representative(s), including salary, benefits and expenses, and payments in respect of the contingency reserve fund;
- (g) equipment lease expenses and other operating lease expenses;
- (h) capital lease expenses (including both interest and principal as an expense);
- (i) interest expense;
- (j) the FF&E Reserve; and
- (k) depreciation and amortization expense;

(8.2) “Benchmark Hotels” means The Fairmont Chateau Whistler and The Hilton Whistler or such other First Class Hotels as may be designated as the Benchmark Hotels pursuant to section 2.4;

(9) “Business Day” means any day which is not a Saturday, Sunday, statutory holiday in Whistler, British Columbia, Easter Monday or Boxing Day;

(10) “Capital Expenditures” means all expenditures of the Hotel of a capital nature which are not expensed, as determined in accordance with Generally Accepted Hotel Accounting Principles;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (10.1) “Capital Upgrade Deduction” means an amount reserved from each Individual Owner’s Distribution Share in each Operating Year for the establishment and maintenance of the Capital Upgrade Reserve pursuant to section 6.7;
- (10.2) “Capital Upgrade Reserve” means the fund established for the funding of an Approved Capital Upgrade Plan and Budget pursuant to section 6.7;
- (10.3) “Capital Upgrade Plan and Budget” means any multi-year capital improvement plan and budget for the Hotel, established pursuant to section 5.3;
- (10.4) “Capital Upgrade Bank Account” has the meaning ascribed to such term in section 6.7;
- (10.5) “Cash Available for Distribution” means an amount equal to Gross Revenue for any Operating Year less the aggregate (without duplication) of:
- (a) Above-Line Costs;
 - (b) Below-Line Costs;
 - (c) interest earned on the FF&E Reserve bank account during that Operating Year;
 - (d) the Incentive Fee on Distribution (if applicable);
 - (e) any Shortfall; and
 - (f) any additional amount not otherwise set out in the HMAs and agreed between the Manager and the Hotel Owners Council, acting reasonably and prudently, as an additional collective reserve for future adverse plan variances;
- (11) “Chartered Professional Accountants” means the firm of chartered professional accountants who, with the mutual approval of the Manager and the Hotel Owners Council given in accordance with section 8.3, are engaged to audit the Annual Statements, and any successor firm who may be engaged to act in such capacity with the mutual approval of the Manager and the Hotel Owners Council given in accordance with section 8.3;
- (12) “Commencement Date” means the date that the Hotel (including the parking areas contained therein) is opened to the general public by the Manager for business as a hotel;
- (13) “Commercial Strata Lots” means all strata lots within the Strata Plan other than the Strata Lots and the Lobby, Restaurant and Convention Strata Lots;
- (14) “Common Assets” means the common assets (as defined in the Strata Property Act) within the Strata Plan;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (15) “Common Property” means the common property (as defined in the Strata Property Act) within the Strata Plan, other than any limited common property designated for the exclusive use of any of the Strata Lots, the Lobby Strata Lot or the Commercial Strata Lots or otherwise allocated or designated for the exclusive use of the strata Lots, the Lobby Strata Lot or the Commercial Strata Lots;
- (16) INTENTIONALLY DELETED
- (17) “Control” means:
- (a) the right to exercise a majority of the votes which may be put at a meeting of the shareholders of a corporation; and
 - (b) the right to elect or appoint, directly or indirectly, a majority of the directors of a corporation or other persons who have the right to manage or supervise the management of the affairs and business of a person;
- (18) “Convention Strata Lot” means the strata lot or strata lots within the Strata Plan leased and occupied by the Manager for the purpose of carrying out its duties hereunder as the convention facilities operator together with its or their interest in the Common Property and its or their interest in any limited common property designated for the use of such strata lot or strata lots;
- (19) “Convention Strata Lot Lease” means the lease of the Convention Strata Lot made by the Owner-Developer for the Convention Strata Lot Owner in favour of the Strata Corporation and to be subleased to the Manager;
- (20) “Development” means the development being developed by the Owner-Developer on the lands situated in the Resort Municipality of Whistler and legally described as of December 31, 1999 as:
- Resort Municipality of Whistler
Lot A
District Lots 3020, 3865, 4893, 5946, 7885 and 7888
Group 1 NWD,
Plan LMP37292;
- (20.1) “Effective Date” means July 1, 2008;
- (21) “Employee Housing Lots” means the two strata lots within the Strata Plan built for use as housing for Employees;
- (22) “Employee Housing Lot Lease” means the lease of the Employee Housing Lots made by the Owner-Developer for the Employee Housing Lot Owners in favour of the Strata Corporation and to be subleased to the Manager;
- (23) “Employees” means the employees of the Hotel hired by the Manager pursuant to section 9.7;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (24) “Escalation Factor” means the fraction (which may be greater than, equal to or less than one) of which:
- (a) the numerator is the All-Items (Excluding Energy) Consumer Price Index for Vancouver, British Columbia published by Statistics Canada, or its successor, as of the date that the Escalation Factor is to be determined; and
 - (b) the denominator is the All-Items (Excluding Energy) Consumer Price Index for Vancouver, British Columbia published by Statistics Canada, or its successor, as of the prior date to which the date of the determination of the Escalation Factor is being compared,
- except that if at any time Statistics Canada no longer publishes an All-Items (Excluding Energy) Consumer Price Index for Vancouver or is no longer operated by the Canadian government, the Escalation Factor will be determined by the agreement of the Strata Corporation and the Manager or, failing such agreement, by arbitration in accordance with section 18.1;
- (24.1) “FF&E Bank Account” has the meaning ascribed to such term in section 6.6;
- (25) “FF&E Reserve” means the reserve to be established by Manager pursuant to the terms of section 6.6;
- (26) “First-Class Hotel” means the standards of a first class commercial trade hotel in accordance with hotel industry standards with regard to hotels comparable to the Hotel in Whistler, British Columbia, having regard to the facilities of the Hotel and the standards of Westin or the then current Franchisor;
- (27) “Fixed Costs” means the aggregate of those certain expenditures included in Hotel Expenses, as herein defined in any particular fiscal period, consisting of the Owner’s Strata Lot Expenses, Lobby, Restaurant, Convention and Employee Housing Strata Lot Lease expenses, office and equipment lease expense, insurance premiums and expenses, property taxes and the FF&E Reserve;
- (28) “Franchise Agreement” means the agreement in effect from time to time between the Manager and the Franchisor relating to the name and operation of the Hotel;
- (29) “Franchise Costs” means all sums, including but not limited to reimbursable expenses paid or required to be paid by the Manager to the Franchisor in pursuance of the Franchise Agreement;
- (30) “Franchisor” means Westin or such other person who from time to time is a party to the Franchise Agreement with the Manager;
- (30.1) “Franchisor Fees” means the franchise fee, the reservation fee and the sales and marketing fee payable to the Franchisor under the Franchise Agreement (which fees are, in aggregate, equal to 8% of gross revenue as at the Effective Date) or

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

such other equivalent fees as may be payable from time to time under the Franchise Agreement as it may be revised or renegotiated;

- (31) “Furniture, Fixtures and Equipment” means all furniture, equipment, furnishings and fixtures necessary for the proper operation of the Hotel and situated in the Hotel Premises, including, without limitation, office equipment and furniture, computers and computer systems, telephones and telephone systems, video machines, mini bars, kitchen appliances and equipment, carpeting, rugs and other floor coverings, draperies, curtains, works of art, pictures, paintings, prints, beds, mattresses, linens, sofas, occasional chairs, tables, lamps, armoires, mirrors, bedspreads, pillows, radios and television sets, including such items bearing the Manager’s or Franchisor’s name or identifying characteristics, excluding any of the foregoing owned or leased by the Strata Corporation;
- (32) “Generally Accepted Hotel Accounting Principles” means generally accepted accounting principles as published and observed by Chartered Professional Accountants Canada and as supplemented by the Uniform System of Accounts for Hotels published by the Hotel Association of New York City, Inc.;
- (33) “Gross Revenue” means all revenue of any kind whatsoever derived directly or indirectly from the Hotel Premises or any portion thereof and the operation of the Hotel, including, without limitation, all of the following:
- (a) all revenue from the use and enjoyment of the Hotel by Hotel Guests, including room charges, mini-bar revenue (if applicable), room service revenue (if applicable), telephone revenue, movie rental revenue and the fees and charges referred to in section 10.2;
 - (b) all revenue derived from the use of Hotel Parking by Hotel Guests, Owners and persons claiming under Owners, less agreed upon costs paid to the parking lot owner;
 - (c) all revenue derived from the management of the Lounge;
 - (d) proceeds received from any business interruption insurance;
 - (e) all other revenue from the operation of the Hotel, including revenue from any business or facility operated within the Hotel Premises, vending machine revenue and revenue and fees from licensees, lessees or concessionaires within the Lobby Strata Lot;
 - (f) gains arising from the sale or other disposition of capital assets or unwanted inventory;
 - (g) including only for purposes of calculating the Manager’s Fees and the Lobby, Convention and Restaurant Lease rates, an amount equal to the aggregate of the Usage Incentive Factors, for such fiscal period;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (h) an amount equal to the aggregate of the Owners' incidental charges including, inter alia minibar revenues, room service revenues, telephone revenues, and movie rental revenues;
- (h.1) all interest earned on the Hotel Bank Accounts during that Operating Year;

excluding, however, all of the following for purposes of calculating the Manager's Fees but not for the purpose of calculating Gross Revenue for the purposes of determining Cash Available for Distribution but provided further that the revenue from the Employee Housing Lots shall be taken into account as Gross Revenue for the purposes of calculating the Incentive Fee on Distribution:

- (i) revenue from any portion of the Development which is not included in the Hotel Premises, this to specifically include any revenue from the Employee Housing Lots;
- (j) applicable excise, sales, goods and services, income, hotel, room, entertainment and use taxes or similar government charges collected directly from Hotel Guests and Owners or as part of the sales price of any goods or services;
- (k) revenue from expropriation awards or sales or other transfers in lieu of and under the threat of expropriation;
- (l) proceeds of any insurance other than business interruption insurance;
- (m) rebates, discounts or credits of a similar nature (other than credit card discounts, which will be included as an item of revenue and considered a Hotel Expense);
- (n) gratuities paid to Employees;
- (o) interest or other income earned from time to time on monies deposited in the Hotel Bank Accounts and the FF&E Bank Account; and
- (p) any Top Up Amount paid to the Owner by the Manager pursuant to section 2.5;

(34) "Hotel" means the Hotel Premises and the hotel operation to be known initially as "The Westin Resort & Spa, Whistler" managed by the Manager for the Owner in respect of the Hotel Premises pursuant to this Agreement;

(35) "Hotel Bank Accounts" means the bank accounts established pursuant to section 8.1;

(36) "Hotel Expenses" means all expenses properly incurred in accordance with Generally Accepted Hotel Accounting Principles and the terms and conditions set

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

out in this Agreement in connection with the earning of the Gross Revenue and chargeable to the Owners in accordance with this Agreement, including, without limitation:

- (a) the Manager's Fees;
- (b) all Franchise Costs;
- (c) all Manager's Recoveries;
- (d) any amount payable to and in respect of the Employees in accordance with this Agreement, including hiring costs and expenses, fringe benefits, withholding amounts and costs of termination;
- (e) utility costs and charges;
- (f) any amount payable by Manager pursuant to the Lobby, Restaurant, Convention and Employee Housing Strata Lot Leases;
- (g) the cost of the Operating Supplies and Expendables;
- (h) expenses in connection with the maintenance and repair of the Strata Lots and the maintenance, repair and replacement of any Furniture, Fixtures and Equipment except costs chargeable to strata owner;
- (i) travel agent commissions, credit card commissions and Tourist Association commissions;
- (j) insurance premiums;
- (k) save herein expressly excepted, the Owners' Strata Lot Expenses;
- (l) capital lease payments in connection with Furniture, Fixtures and Equipment, but excluding, the following:
 - (i) the Incentive Fee;
 - (ii) depreciation and amortization;
 - (iii) Capital Expenditures;
 - (iv) any taxes personal to the Owner, including income taxes, capital taxes and large corporation taxes and any late payment penalties or interest charges chargeable in connection with the Owner's Strata Lot Expenses;
 - (v) any debt service payments payable by the Owner;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (m) INTENTIONALLY DELETED; and
- (n) the strata fees for all of the Strata Lots, with no duplication of the expenses previously listed, provided however that for the purposes of calculating the amount of Hotel Expenses and Below-Line Costs when determining the Manager’s Fees (but not for the purpose of calculating Hotel Expenses or Below-Line Costs for the purposes of determining Cash Available for Distribution), any portion of strata fees or assessments that are attributable to:
 - (i) contributions to the Strata Corporation’s contingency reserve fund or for capital repairs, replacements or expenditures in excess of 10% of the annual operating budget for the Strata Corporation; or
 - (ii) expenses incurred out of the usual and ordinary course of business that do not directly benefit the operations of the Hotel,shall be excluded from the amount of strata fees included in the calculation of Hotel Expenses;
- (37) “Hotel Guests” means the users and occupants of the Strata Lots from time to time, other than Owners using the Strata Lots in accordance with Schedule C and persons claiming under the Owners pursuant to Schedule C;
- (38) “Hotel Owners Council” means that group of people who are elected by the Owners at the Strata Corporation Annual General Meeting prior to the election of the Strata Council. Those elected to the Hotel Owners Council will stand for election to the Strata Council. The Hotel Owners Council will consist of not less than 5 and not more than 7 members. Rules of governance of the Hotel Owners’ Council will be the same as those of a Strata Council;
- (39) “Hotel Premises” means:
 - (a) the Strata Lots;
 - (b) the Lobby Strata Lot;
 - (c) the Convention Strata Lot; and
 - (d) the Restaurant Strata Lot;
- (40) “House Profit” means an amount equal to Gross Revenue for any Operating Year less Above Line Costs for that Operating Year, a sample calculation format of which is shown on Schedule E;
- (40.1) “House Profit Base” means an amount equal to:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (a) \$10,467,000 (provided that for any Operating Year that is less than 12 months, such amount shall be pro-rated based on the number of days in the Operating Year divided by 365); multiplied by
- (b) the Escalation Factor; multiplied by
- (c) the Participation Factor,

where, for the purposes of determining the Escalation Factor, the “prior date” for purposes of determining the denominator of the Escalation Factor is December 31, 2007;

- (40.2) “House Profit Dollar Fee” has the meaning set forth in section 7.3;
- (40.3) “House Profit Percentage” means the House Profit for a particular Operating Year expressed as a percentage of the Gross Revenue for that Operating Year.”
- (40.4) “House Profit Percentage Fee” has the meaning set forth in section 7.2;
- (40.5) “Incentive Fee on Distribution” has the meaning set forth in section 7.3.2;
- (40.6) “Individual Owner’s Distribution Entitlement” means, for each Owner, the Unit Revenue Share of that Owner, calculated on a cumulative basis, to the extent such amount has not previously been distributed to such Owner as a distribution of Cash Available for Distribution, and adjusted to the extent necessary to take into account any amounts due from the Owner pursuant to sections 6.2(3) and 6.2(4);
- (40.7) “Individual Owner’s Distribution Share” means, for each Owner, a fraction of the Cash Available for Distribution multiplied by a fraction whose numerator is that Owner’s Individual Owner’s Distribution Entitlement and whose denominator is the aggregate of all Owners’ Individual Owner’s Distribution Entitlements, provided that if any Individual Owner’s Distribution Entitlement is a negative amount it shall be deemed to be zero for the purposes of determining either the numerator or the denominator of such fraction;
- (41) “Initial Term” has the meaning set forth in section 2.2;
- (42) “In the Rental Pool” has the meaning set forth in section 6.3;
- (43) “Interest Upon Destruction” means the interest upon destruction of the Strata Lot as set out on the Strata Plan;
- (44) “Interim Financial Statements” means interim financial statements for the Rental Pool prepared in accordance with sections 144(1), (3) and (4) of the Securities Rules as if the Rental Pool were a reporting issuer;
- (45) “Land Title Office” means the New Westminster/Vancouver Land Title Office or the successor thereto;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (46) “Lobby Strata Lot” means the strata lot or strata lots within the Strata Plan leased and occupied by the Manager for the purpose of carrying out its duties hereunder together with its or their interest in the Common Property and its or their interest in any limited common property designated for the use of such strata lot or strata lots;
- (47) “Lobby Strata Lot Lease” means the lease of the Lobby Strata Lot made by the Owner-Developer for Owner of the Lobby Strata Lot in favour of the Strata Corporation and to be subleased to the Manager;
- (48) “Lounge” means the strata lot within the Strata Plan used for the purpose of bar and lounge and to be managed by the Manager for the Owner of the Lounge Strata Lot;
- (49) “Manager” means OHR Whistler Management Ltd. and includes its successors and permitted assigns;
- (50) “Manager Recoveries” refers to the reimbursable expenses set forth in section 7.4;
- (50.1) “Manager’s Fees” means the fees payable to the Manager pursuant to sections 7.1, 7.2, 7.3 and 7.3.2;
- (51) “Monthly Financial Statements” has the meaning set forth in section 6.1(1);
- (51.1) “Monthly Summary” has the meaning set forth in section 6.1(3)(b);
- (52) “Non-Participating Interest on Destruction” means, at any time, an amount equal to the aggregate of the Interest Upon Destruction for all of the Non-Participating Strata Lots;
- (52.1) “Non-Participating Strata Lot” means a Strata Lot which, for any reason, at any time during an Operating Year ceases to be involved in the Rental Pool as operated and administered by the Manager pursuant to this Agreement provided that for the purposes of this Agreement, the nineteen Strata Lots having an aggregate Interest Upon Destruction of 2,190 which as of June 25, 2008, were administered by Whiski Jack Resorts shall not be considered to be Non-Participating Strata Lots;
- (53) “Operating Plan and Budget” means the operating plan, marketing plan and operating budget for the operations of the Hotel for any Operating Year established pursuant to the terms of sections 5.1 and 5.2;
- (54) “Operating Supplies and Expendables” means any operating supplies used by Manager in the operation of the Hotel in accordance with this Agreement, including the terms of any Approved Operating Plan and Budget, including, without limitation, laundry supplies, linens, housekeeping supplies, engineering supplies, accounting supplies, miscellaneous general supply items, uniforms,

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

inventories, paper supplies and other such items that when used once are considered to be disposed of and all other similar items necessary or appropriate for the operation of the Hotel as contemplated by this Agreement;

- (55) “Operating Year” means:
- (a) firstly, the 12 month period from the first day of the month 50 days after the Commencement Date of all of the Strata Lots; and
 - (b) after such initial period until June 30, 2008, each successive period of 12 months from and including the first day of the month after the end of the preceding Operating Year to and including the last day of the twelfth (12th) month thereafter;
 - (c) for one time only to effect a change in the Operating Year, the 6 month period commencing on the Effective Date and ending on December 31, 2008, and
 - (d) thereafter, the calendar year, unless this Agreement terminates prior to the completion the calendar year, in which case, the Operating Year shall commence on January 1 and end on termination of this Agreement;
- (56) “Owner-Developer” means Cressey Whistler Project Corporation;
- (57) “Owners” means all of the registered owners of the Strata Lots;
- (57.1) “Owners Distribution Account” has the meaning set forth in section 8.1(3);
- (58) “Owner’s Strata Lot Expenses” means the following amounts payable in respect of the Strata Lot:
- (a) property taxes and other charges levied by the Resort Municipality of Whistler or the Whistler Resort Association and it’s successors;
- (58.1) “Participation Factor” means a fraction of which:
- (a) the numerator equals 48,238 (being the aggregate Interest on Destruction of all Strata Lots) minus the Non-Participating Interest on Destruction; and
 - (b) the denominator equals 48,238 (being the aggregate Interest on Destruction of all Strata Lots);
- (59) “person” means any individual, corporation, body corporate, partnership, joint venture, trust, unincorporated organization or other entity, government or governmental or regulatory authority, however constituted, or any trustee, executor, administrator or other legal representative;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (60) “Prime Rate” means the floating rate of interest used by the main branch in Vancouver, British Columbia of Bank of Montreal from time to time as a reference rate for establishing rates of interest for Canadian dollar loans payable on demand and commonly known as its “prime rate”, except that if at any time Bank of Montreal no longer publishes its prime rate, the Prime Rate will be the prime rate published by another chartered bank of Canada, as selected by Manager, and if there is no prime rate published by any other chartered bank of Canada, the Prime Rate will be determined by the agreement of the Owners and the Manager or, failing such agreement, by arbitration in accordance with section 18.1;
- (61) “Related Person” means, with respect to any person:
- (a) any Affiliate of such person;
 - (b) any person who is not at Arm’s Length to such person or any Affiliate of such person; and
 - (c) any person who is a director, officer, employee or agent of such person or any Affiliate of such person or any spouse, parent, child or relative (including by marriage) of any of the foregoing;
- (62) INTENTIONALLY DELETED;
- (63) “Rental Pool” means the rental management arrangement in respect of the Hotel Premises undertaken by the Manager on behalf of the Owner pursuant to this Agreement;
- (64) “Rental Pool Covenant” means the restrictive covenant or covenants charging, inter alia, the Strata Lot in favour of the Resort Municipality of Whistler, and registered in the Land Title Office under number BM72382, as the same may be amended and superseded from time to time;
- (65) “Restaurant Strata Lot” means the strata lot or strata lots within the Strata Plan leased and occupied by the Manager for the purpose of carrying out its duties as the restaurant operator hereunder together with its or their interest in the Common Property and its or their interest in any limited common property designated for the use of such strata lot or strata lots;
- (66) “Restaurant Strata Lot Lease” means the lease of the Restaurant Strata Lot made by the Owner-Developer for the Restaurant Strata Lot Owner, in favour of the Strata Corporation and to be subleased to the Manager;
- (66.1) “Revenue Incentive Fee” has the meaning set forth in section 7.1;
- (67) “RevPAR” means “Room Revenue” divided by “Available Rooms”, where

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (68) “Room Revenue” means all Gross Revenue derived from the rental of sleeping rooms (not including any revenue from the Employee Housing Lots), net of any applicable rebates and discounts and excluding any incidental revenue such as telephone charges and movie rental; and
- (69) “Available Rooms” means the total number of rooms available for rental to the public on a daily basis, and in the case of the Hotel, the Available Rooms will mean the total number of rooms in the Rental Pool on a daily basis;
- (70) INTENTIONALLY DELETED;
- (71) INTENTIONALLY DELETED;
- (71.1) “Shortfall” means any cash shortfall, as anticipated or forecast by the Manager to occur within the current Operating Year, including without limitation, any anticipated or forecasted seasonal operating cash shortfall;
- (72) “Security” has the meaning set forth in section 16.4;
- (73) “Security Holder” has the meaning set forth in section 16.4(1);
- (74) “Special Resolution” means a resolution passed at a meeting of the Strata Corporation of which at least 14 days’ notice specifying the purpose of the resolution has been given, passed by Owners present or represented by proxy and representing not less than 75% of the Strata Lots entitled to vote thereon;
- (75) “Strata Corporation” means The Owners, Strata Plan No. LMS4089, or its authorized representative from time to time;
- (76) “Strata Corporation Bylaws” means bylaws and rules and regulations of the Strata Corporation;
- (77) “Strata Lot” means the strata lot within the Strata Plan the number of which is set out on page one of this Agreement together with its undivided interest in the Common Property and its interest in any limited common property designated for the use of such strata lot;
- (77.1) “Strata Property Act” means the *Strata Property Act*, S.B.C. 1998, c. 43 (British Columbia);
- (78) “Strata Lots” means all of the strata lots in the Strata Plan which are used for accommodation (not including the Employee Housing Lots) together with their respective interests in the Common Property and their respective interests in any limited common property designated for the use of such strata lots or any of them and which are subject to a similar agreement with the Manager with respect to the operation of the Hotel;
- (79) “Strata Plan” means Strata Plan LMS4089;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (80) “Term” has the meaning set forth in section 2.2;
- (81) “Top Up Amount” means the amount defined as such in section 2.5;
- (82) “Unit Entitlement” means the unit entitlement of any Strata Lot or Strata Lots, as set out in the Strata Plan;
- (83) “Unit Revenue Share” has the meaning set forth in section 6.2;
- (84) “Unit Share Ratio” means, with respect to any Strata Lot, the fraction which has as its numerator the Interest Upon Destruction of such Strata Lot and as its denominator the aggregate of the Interest Upon Destruction of all of the Strata Lots with occupancy permits;
- (85) “Usage Incentive Factor” means a dollar amount which is the equivalent of the number of rooms that are occupied by Owners during a particular night multiplied by the average rate received by the Hotel in connection with the conduct of its operations on such night;
- (86) “Westin” means Westin Licence Company and includes its successors and assigns;
- (87) “Westin Hotel Company” means Westin Hotel Company, the parent company of Westin; and
- (88) “Working Capital Reserve” has the meaning ascribed to such term in section 6.7.1.

1.2 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (1) “this Agreement” means this hotel management and rental pool agreement, as it may from time to time be supplemented or amended by one or more agreements between the parties in accordance with the terms hereof;
- (2) all references in this Agreement to designated “Articles”, “sections” and other subdivisions are to be designated Articles, sections and other subdivisions of this Agreement;
- (3) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole or not to any particular Article, section or other subdivision;
- (4) the headings are for convenience only and do not form a part of this Agreement and they will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (5) the word “including”, when following any general statement, term or matter, will not be construed to limit the general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language is used; and
- (6) words importing the neuter gender include the masculine or feminine gender and words in the singular include the plural, and vice versa.

1.3 Applicable Law. This Agreement will be governed by and construed and enforced in accordance with the laws of the Province of British Columbia, which will be deemed to be the proper law hereof, and, subject to Article 18, the courts of British Columbia will have exclusive jurisdiction in connection with all matters under this Agreement and the interpretation and enforceability hereof.

1.4 Statutes. Any reference in this Agreement to any statute means such statute and any statute or law enacted to supersede or replace such statute.

1.5 Owner’s Liability. Notwithstanding anything else in this Agreement, the Owner’s individual liability for any obligations of the Owners as a group shall be several and shall be limited to such Owner’s unit Share Ratio of such liability.

1.6 Accounting Terms. Any accounting term used in this Agreement which is not otherwise defined herein shall have the meaning ascribed to such term under Generally Accepted Hotel Accounting Principles and, unless otherwise provided herein, any accounting functions shall be performed in accordance with such Generally Accepted Hotel Accounting Principles.

**ARTICLE 2
COMMENCEMENT DATE, TERM OF
AGREEMENT**

2.1 Commencement Date. This Agreement will be a binding agreement and bind the Strata Lot, the Manager and the Owner upon the execution and delivery hereof. The duties and obligations of the parties under this Agreement will come into full force and effect upon the Commencement Date.

2.2 Initial Term. The initial term of the appointment of the Manager as the Owner’s manager under this Agreement will be for a period commencing on the Commencement Date and thence ensuing for a period up to and including June 30, 2028 (the “Initial Term”) unless earlier terminated in accordance with the provisions hereof. For purposes of this Agreement, the word “Term” means the Initial Term and any extensions or renewals thereof pursuant to section 2.6.

2.3 INTENTIONALLY DELETED

2.4 Performance by Manager – RevPAR Test.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (1) On or before 60 days following the completion of each Operating Year during the Term commencing with the Operating Year January 1, 2013 to December 31, 2013, the Manager will deliver to the Hotel Owners Council a written notice (the “RevPAR Notice”) setting out:
 - (a) the RevPAR for the Benchmark Hotels for the most recent one year period then available, as reviewed and confirmed by an accredited independent hotel consulting firm, such as PKF Consulting Corporation; and
 - (b) RevPAR statistics for the operation of the Hotel for the same one year period referred to in subsection 2.4(1)(a) (the “Completed RevPAR Year”), as calculated by the Manager;

certified by an officer of the Manager to be true and correct, to the best of such officer's knowledge.

- (2) Notwithstanding section 2.6, and subject to section 2.5, if:
 - (a) the RevPAR for the Hotel for such Completed RevPar Year, as certified by an officer of the Manager, is below 100% of the simple average RevPAR of the Benchmark Hotels for such period (the "Target RevPAR Amount"); or
 - (b) there are no statistics as to RevPAR available and an arbitrator makes a determination under section 2.4(3) that the Hotel has not performed to the level of the Benchmark Hotels or other comparable First Class Hotels for such one year period based on the performance test determined under section 2.4(3),

then if:

- (i) the RevPAR for the Hotel for the next following Operating Year after the Completed RevPAR Year (the “Following Year”) when expressed as a percentage of the Target RevPAR Amount for such period; when averaged with
- (ii) the RevPAR for the Hotel for the Completed Year as expressed as a percentage of the Target RevPAR Amount for the Completed Year,

is not equal to 100% or greater, then within 30 days of receiving the results for the Following Year, the Hotel Owners Council will meet to discuss whether to commence proceedings to terminate the appointment of the Manager as the Owners’ manager. In the event termination is recommended to the Owners by the Hotel Owners Council, the Hotel Owners Council will give the Manager notice (the “RevPAR Termination Notice”) on or before April 30 of the then current Operating Year.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (3) If at any time statistics as to RevPAR are not available, the Owners and the Manager will agree on a similar performance test for the Hotel for the purposes of this section 2.4 and failing such agreement, such matter will be referred to and settled by arbitration in accordance with section 18.1. Any dispute as to any other matter arising under this section 2.4 will be referred to and settled by arbitration in accordance with section 18.1. Any such arbitration will be completed prior to the date which is 180 days before the end of the then current Operating Year and, if the arbitrator determines that the performance of the Hotel does not meet the performance of the Benchmark Hotels or other comparable First Class Hotels based on such performance test, the arbitrator shall also determine the RevPar Top Up Amount that should be applicable in the circumstances if the Manager elects to pay the RevPar Top Up Amount.
- (4) The choice of First-Class Hotels comprising the Benchmark Hotels will be reviewed by the Manager and the Hotel Owners Council every five Operating Years or more frequently if there are material changes in the marketplace as mutually recognized by the Manager and the Hotel Owners Council. The Manager will, if changes in the marketplace indicate that the then current Benchmark Hotels are no longer appropriate comparables to the Hotel, propose two comparable First Class Hotels in the Resort Municipality of Whistler as the new Benchmark Hotels by written notice to the Hotel Owners Council. The Hotel Owners Council will have 60 days to approve such proposal and failing such approval, the matter will be referred to and settled by arbitration in accordance with section 18.1. For greater certainty, failure to reach an agreement on whether changes in the marketplace warrant a more frequent review than once every five Operating Years may also be referred to arbitration in accordance with section 18.1.

2.5 Topping up by Manager

- (1) Notwithstanding the provisions of section 2.4, if the Hotel Owners Council has delivered a RevPAR Termination Notice then within 31 days following the delivery of the RevPAR Termination Notice, the Manager will notify the Hotel Owners Council whether or not it will not pay the RevPAR Top Up Amount, as defined at subsection 2.5(2) or such other amount as may be determined by an arbitrator under section 2.4(3), as the case may be, for the relevant two consecutive Operating Years, in order to reach the Target RevPAR Amount. If the Manager pays the RevPAR Top Up Amount or such other amount under section 2.4(3), the Owners shall have no right of termination under section 2.4 and the RevPAR Termination Notice shall be deemed to be withdrawn and of no further force or effect. Within five (5) months of receiving notification from the Manager that it will not pay the RevPAR Top Up Amount, the Hotel Owners Council will hold a general meeting whereby the Owners may by Special Resolution ratify and approve the termination of the appointment of the Manager as the Owners' manager pursuant to this Agreement, effective no earlier than six (6) months following the date of the general meeting. In the event a termination is approved by Special Resolution, the

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

Owners will give the Manager notice of such termination approval immediately following the general meeting.

- (2) The “RevPAR Top Up Amount” shall be an amount equal to the difference between the Target RevPAR Amount and the actual RevPAR for the Hotel during such two consecutive years multiplied by the number of available room nights during such two year periods and the product of which shall then be multiplied by a fraction in which the aggregate of the Cash Available for Distribution for such two year period is the numerator and the Gross Revenue for such two year period is the denominator. Payments made under section 2.5, if any, shall include accrued interest and be paid within 60 days of notification by the Manager that it will pay the RevPAR Top Up Amount.

2.6 Renewal By Agreement. The parties may agree to renew the appointment of the Manager as the Owners’ manager pursuant to this Agreement for a Renewal Term or Renewal Terms for such period or periods and upon such terms and conditions as may be approved by both:

- (1) an agreement in writing signed by the Manager; and
- (2) an agreement in writing signed by the Hotel Owners Council,

and both the Manager and all of the Owners will be bound by any such renewal.

2.6.1 Owners’ Right of Termination. Subject to section 2.6.2, the appointment of the Manager as the Owner’s manager pursuant to this Agreement will be subject to termination in the event that:

- (1) the following performance objectives are not achieved:
 - (a) during the Operating Years 2009 to 2013, inclusive, a House Profit Percentage of at least 36% in at least two of those Operating Years, and
 - (b) during the Operating Years 2014 to 2019, inclusive, a House Profit Percentage of at least 37.5% in at least three of those Operating Years;(collectively, the “Target HPPs”); and
- (2) the Owners have, by an HPP Special Resolution (as hereinafter defined), passed on or before September 30, 2020, approved the termination of the Manager pursuant to section 15.2,

in which case the appointment of the Manager shall terminate on the date specified in such HPP Special Resolution provided that such date shall be not less than 45 days nor more than 90 days following the date of the passage of the HPP Special Resolution. For the purposes of this section 2.6.1 only, an “HPP Special Resolution” means a resolution passed by the requisite majority of

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

voters at a general meeting of the Owners attended by the requisite quorum of Owners, and in order for such resolution to be approved, the following conditions must be met:

- (i) the Owners must receive at least 14 days notice of the general meeting and such notice must include a description of the matters that will be voted on at the meeting, including the proposed wording of the HPP Special Resolution;
- (ii) a quorum of eligible voters consisting of not less than 225 Owners (multiplied by the Participation Factor) must be present at the meeting in person or by proxy; and
- (iii) the resolution must garner approval by at least 2/3 of the votes cast by eligible voters who are present at the meeting in person or by proxy at the time the vote is taken and who have not abstained from voting.

2.6.2 Notwithstanding the provisions of section 2.6.1 and subject to section 2.6.3, within 30 days following production of the annual financial statements for the fiscal year ended December 31, 2019 (which statements shall be produced within 90 days of such fiscal year end) the Manager will have the right, but not the obligation, to pay to the Owners such sum by way of an additional incremental payment to be taken into account as House Profit as shall be necessary to ensure that upon a recomputation of the House Profit Percentage (including such incremental payments taken into account as additional House Profit) for the Operating Years referred to in section 2.6.1 the Target HPPs would be achieved for the actual level of Gross Revenue attained in that same year (“House Profit Top Up Amount”), in which event this Agreement will not be subject to termination under section 2.6.1. The incremental Management Fees that would be payable to the Manager in respect of the incremental House Profit relating to the House Profit Top Up Amount shall be determined and the Manager shall be entitled to deduct such incremental amount from the amount otherwise payable on account of the House Profit Top Up Amount and the Manager shall not receive any payment on account of such incremental Management Fees, it being the intent of the parties that after taking into account such House Profit Top Up Amount, the Cash Available for Distribution would be equal to the amount that would have been available if the Target HPPs had been achieved.

2.6.3 Payments made under section 2.6.2, if any, shall include interest at the Government of Canada 90-day T-bill rate accruing from the last day of each Operating Year in which the Manager failed to meet the Target HPP calculated on the amount of the shortfall for such Operating Year.

**ARTICLE 3
HOTEL RENTAL MANAGEMENT**

3.1 Management of Hotel Rental Pool. The Owner hereby appoints the Manager as exclusive manager to manage the operation of the Hotel and the Rental Pool in respect thereof in accordance with the terms and conditions set out in this Agreement and to undertake on an exclusive basis, on behalf of and for the account of the Owners, all duties and obligations coming

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

within the scope of the management and marketing of the Hotel Premises, including those specific services as set forth herein. Without limiting any of its duties or obligations set out in this Agreement, the Manager agrees to operate the Hotel Premises as a First-Class Hotel, except to the extent that the Manager is prevented from maintaining this standard of service due to any default by any Owner pursuant to this Agreement.

3.2 Hotel Rental Pool. The Manager will manage the rental of the Strata Lots in accordance with this Agreement. The Owner hereby irrevocably covenants and agrees to be bound by the rental bookings at its Strata Lot made by the Manager in accordance with this Agreement.

3.3 Use. The Strata Lot will be used only as a hotel suite and only in accordance with the Rental Pool Covenant, this Agreement and the Rental Pool and will not be used for any other purpose without the prior written consent of the Owners and Manager. Any use of the Strata Lots shall comply with the Rental Pool Covenant, all applicable laws, bylaws, rules and regulations, the Strata Corporation Bylaws and the Restrictive Covenant.

3.4 Restrictions Re: Strata Corporation Bylaws. The Owner will not vote in favour of any Strata Corporation Bylaw which conflicts with a term or condition set out in this Agreement.

3.5 Assignment of Leases. The Strata Corporation will sublease the Convention, Restaurant, Employee Housing and Lobby Strata Lots to the Manager on the same terms and conditions as the Leases except for the rent payable under the sublease which shall be in such amount, not exceeding the rent payable under the applicable head lease, as may be determined by the Hotel Owners Council and except for the length of the sublease which will be adjusted to reflect the terms set out in section 2.2 and 2.6 hereof. In addition, the subleases will be subject to termination in the event of the termination of this Agreement in accordance with the provisions hereof.

**ARTICLE 4
MAJOR DECISIONS - SPECIAL
RESOLUTIONS**

4.1 Major Decisions - Special Resolutions. The following will be subject to the approval of the Owners by Special Resolution:

- (1) any amendment to or modification of this Agreement;
- (2) the renewal of the Term pursuant to section 2.6; and
- (3) any other matter which, pursuant to the terms of this Agreement, is required to be approved by a Special Resolution.

For the purposes of Article 4.1(1) and (2) only, and notwithstanding any other provision of this Agreement, *Special Resolution* means a resolution passed at a general meeting of the Owners, providing however the following conditions are met:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (a) the Owners receive at least 14 days notice of the general meeting and must include a description of the matters that will be voted on at the meeting, including the proposed wording of any special resolutions;
- (b) a quorum, that is, eligible voters holding 1/3 of the Owners' votes present in person or by proxy, is present;
- (c) the resolution garners at least $\frac{3}{4}$ of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting.

4.2 Owners to be Bound. All of the Owners will be bound by any acts and things done by the Strata Corporation, the Owners or the Hotel Owners Council, as the case may be, in accordance with this Article 4 or in accordance with any other provision of this Agreement.

**ARTICLE 5
OPERATING PLAN AND BUDGET AND
CAPITAL UPGRADE PLAN AND BUDGET**

5.1 Operating Plan and Budget.

- (1) For the first Operating Year, the Operating Plan and Budget will be prepared by the Manager and distributed to the Owners prior to the opening of the Hotel.
- (2) After the first Operating Year, on or before November 1 of each year thereafter, the Manager will prepare and deliver to a meeting of the Hotel Owners Council duly convened in accordance with this Agreement a preliminary Operating Plan and Budget for the following Operating Year and the Manager will review such preliminary Operating Plan and Budget with the Hotel Owners Council at such meeting. For a period of 30 days after receipt by the Hotel Owners Council of the preliminary Operating Plan and Budget at such meeting of the Hotel Owners Council, the Hotel Owners Council is entitled from time to time to request further details from the Manager and to submit written comments to the Manager. If after giving consideration to the preliminary Operating Plan and Budget, the Hotel Owners Council, within such 30 day period, gives the Manager written notice of its objection and proposals for amendment of any disputed items, the Hotel Owners Council and Manager, both acting reasonably, will endeavour to resolve any such differences between them.
- (3) Each Operating Plan and Budget is subject to the approval of the Hotel Owners Council and no Operating Plan and Budget will be an Approved Operating Plan and Budget unless it is approved by the Hotel Owners Council or otherwise in accordance with this subsection 5.1(3). If any Operating Plan and Budget is not approved by the Hotel Owners Council, then:
 - (a) pending resolution of any disputed item, the specific disputed items of the Operating Plan and Budget will be suspended and replaced for the

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

Operating Year in question by an amount equal to the lesser of (i) that proposed by the Manager for such Operating Year or (ii) such budget item in the Approved Operating Plan and Budget for the Operating Year prior thereto, subject to escalation per item by the Escalation Factor, over the 12 month period immediately preceding the start of the Operating Year in question, provided that if such budget item was not in the Approved Operating Plan and Budget for the Operating Year prior thereto, such item will be suspended pending resolution of such item; and

- (b) either the Hotel Owners Council or the Manager may submit the Operating Plan and Budget to be settled by arbitration in accordance with section 18.1.

5.2 Inclusions in Operating Plan and Budget. The Operating Plan and Budget will be a reasonably detailed budget of revenue and expenses in connection with the operation of the Hotel and will include the following;

- (1) the projected Gross Revenue, detailed as to each source of revenue, together with information and background as to how the various projections have been determined;
- (2) the budgeted Hotel Expenses, by major expense category, together with information and background as to how the various projections have been determined;
- (3) the projected Unit Revenue Share for each Strata Lot;
- (4) the marketing strategy and plan for the Hotel; and
- (5) any recommended capital improvements to be made to the Hotel Premises during the Operating Year.

5.3 Capital Upgrade Plan and Budget.

- (1) The Owners acknowledge that the Hotel is required to be maintained by the Owners to certain standards including, but not limited to, those prescribed by the Franchise Agreement, therefore it may be necessary to plan for and undertake repairs or renovations to the Hotel on a multi-year basis. On or before November 1 of each year, the Manager may prepare and deliver to a meeting of the Hotel Owners Council duly convened in accordance with this Agreement a preliminary Capital Upgrade Plan and Budget for maintenance, upgrades, repairs or renovations to the Hotel to be undertaken on a multi-year basis rather than for an individual Operating Year, taking into account the nature, timing or amount of the anticipated work or expenses.
- (2) The Manager will review such preliminary Capital Upgrade Plan and Budget with the Hotel Owners Council at such duly convened meeting. For a period of 60 days after receipt by the Hotel Owners Council of the preliminary Capital Upgrade Plan

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

and Budget at such meeting of the Hotel Owners Council, the Hotel Owners Council is entitled from time to time to request further details from the Manager and to submit written comments to the Manager. If after giving consideration to the preliminary Capital Upgrade Plan and Budget, the Hotel Owners Council, within such 60 day period, gives the Manager written notice of its objection and proposals for amendment of any disputed items, the Hotel Owners Council and Manager, both acting reasonably, will endeavour to resolve any such differences between them.

- (3) Each Capital Upgrade Plan and Budget is subject to the approval of the Hotel Owners Council and no Capital Upgrade Plan and Budget will be an Approved Capital Upgrade Plan and Budget unless it is approved by the Hotel Owners Council or otherwise in accordance with this subsection 5.3(3). If any Capital Upgrade Plan and Budget is not approved by the Hotel Owners Council, then either the Hotel Owners Council or the Manager may submit the Capital Upgrade Plan and Budget to be settled by arbitration in accordance with section 18.1.
- (4) If agreed between the Manager and the Hotel Owners Council, each acting reasonably and prudently, the Manager may refund to the Owners any unused portion of the Capital Upgrade Reserve, allocated proportionately in accordance with the Unit Share Ratio of each Strata Lot.

5.4 Inclusions in Capital Upgrade Plan and Budget. The Capital Upgrade Plan and Budget will be a reasonably detailed budget of expenses in connection with the proposed maintenance, upgrades, repairs or renovations to the Hotel, including, but not limited to the following:

- (1) proposed expenses to carry out upgrades required by the Franchise Agreement or the Franchisor; and
- (2) proposed expenses to carry out long term repairs to the Hotel.

5.5 Budget Summary. The Manager will provide by electronic mail, posting on the Manager's website, or other generally accessible method to each of the Owners a summary of each Approved Operating Plan and Budget and each Approved Capital Upgrade Plan and Budget once they are approved in accordance with this Article 5.

**ARTICLE 6
OWNERS' REVENUES AND DISTRIBUTIONS
TO OWNERS**

6.1 Calculations and Reports by the Manager.

- (1) For each calendar month during the Term, the Manager will prepare or cause to be prepared, in electronic form, reasonably detailed financial statements ("Monthly Financial Statements"), prepared in accordance with Generally Accepted Hotel Accounting Principles and for each such period the Manager will calculate:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (a) the Gross Revenue ;
 - (b) the Above-Line Costs;
 - (c) the House Profit;
 - (d) the Below-Line Costs;
 - (e) the Capital Expenditures, if any;
 - (f) the FF&E Reserve;
 - (g) the Cash Available for Distribution;
 - (h) the Unit Revenue Share for each Strata Lot, determined in accordance with section 6.2; and
 - (i) the Capital Upgrade Deduction and the balance of the Capital Upgrade Reserve.
- (2) In addition to the Monthly Financial Statements, for each calendar month during the Term, the Manager will prepare or cause to be prepared:
- (a) a summary of complimentary guest rooms and complimentary services provided during the month including the room numbers or services provided, the name of the recipients and the reasons for providing the complimentary rooms and services;
 - (b) a summary of Owners accommodated during the calendar month and assigned room numbers;
 - (c) an aging of Owner accounts receivable;
 - (d) a commentary on any unexpected damage, repairs or maintenance required within the Hotel; and
 - (e) market statistics for Whistler,
- (collectively, the “Monthly Statistical Data”), for review by the Hotel Owners Council. In addition, the Manager will from time to time provide such additional reports as may be reasonably requested by the Hotel Owners Council from time to time, provided that the Manager shall be entitled to be reimbursed for its reasonable out-of-pocket expenses incurred in connection with the preparation of such additional reports;
- (3) No later than the 25th day following the end of each calendar month during the Term, the Manager will:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (a) deliver to the Hotel Owners Council the Monthly Financial Statements and, if requested, the Monthly Statistical Data; and
- (b) post on the Manager's website to be accessible by each of the Owners, a written summary statement (the "Monthly Summary"), setting out the amounts set out in subsections 6.1(1)(a) to 6.1(1)(i) above and the calculations thereof, in reasonable detail.

6.2 Calculations of Unit Revenue Share. The Owner and the Manager agree that:

- (1) for each day that a Strata Lot is in the Rental Pool, the Owner of such Strata Lot will be entitled to share, in the Room Revenue (as defined in accordance with Generally Accepted Hotel Accounting Principles) from the Hotel Premises and the operation of the Hotel earned on such day, as calculated by multiplying the Room Revenue earned on such day by the fraction which has as its numerator the Interest Upon Destruction of such Strata Lot and as its denominator the aggregate of the Interests Upon Destruction of all of the Strata Lots In the Rental Pool on such day;
- (2) for each day that a Strata Lot is or is not in the Rental Pool, the Owner of such Strata Lot will be entitled to share in the Gross Revenue less any Room Revenue (as defined in accordance with Generally Accepted Hotel Accounting Principles) from the Hotel Premises and the operation of the Hotel earned on such day, as calculated by multiplying the Gross Revenue less Room Revenue earned on such day by the Unit Share Ratio;
- (3) each Owner of a Strata Lot will be responsible for the payment of all Hotel Expenses, Capital Expenditures exceeding the FF&E Reserve (including, without limitation, all Capital Expenditures contemplated by an Approved Capital Upgrade Plan and Budget), capital lease payments and Manager's Fees payable for all days (whether or not the Strata Lot is in the Rental Pool), as calculated by multiplying the relevant Hotel Expenses, the Capital Expenditures exceeding the FF&E Reserve (including, without limitation, all Capital Expenditures contemplated by an Approved Capital Upgrade Plan and Budget), capital lease payments and Manager's Fees by the Unit Share Ratio; and
- (4) each Owner will be responsible for the FF&E Reserve in accordance with section 6.6, as calculated by multiplying each of the FF&E Reserve by the Unit Share Ratio,

For the purposes of this Agreement, the "Unit Revenue Share" for any Strata Lot in respect of any period means the amount allocated to such Strata Lot in accordance with subsection 6.2(1) and subsection 6.2(2) for such period less the amounts allocated to such Strata Lot in accordance with subsections 6.2(3) and 6.2(4) for such period.

6.3 In the Rental Pool/Exclusion of Convention, Lobby and Restaurant Strata Lots.

For the purposes of this Agreement, a Strata Lot will be considered to be "In the Rental Pool" on a particular day only if it is not booked for use by the owner in accordance with Article 10

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

(unless the Owner complies with the requirements of section 10.5 and the Manager, acting reasonably, determines that the Strata Lot is In the Rental Pool). The Manager will not share in the Gross Revenue pursuant to section 6.2 by virtue of the Interest Upon Destruction of the Lobby, Convention, Restaurant and Employee Housing Strata Lots and the Lobby, Convention, Restaurant and Employee Housing Strata Lots will not be In the Rental Pool.

6.4 Payments to Owner. By the last day of each month in which a Monthly Summary is issued, the Manager will process payments to each Owner in respect of the amounts set out in such Monthly Summary to the extent any amounts are payable, and the Manager will either:

- (1) pay by direct deposit to the Owner's designated bank account; or
- (2) mail to each Owner a cheque drawn on one of the Hotel Bank Accounts:

in an amount equal to each such Individual Owner's Distribution Share less:
 - (3) any unpaid amount then payable by the Owner to the Manager pursuant to sections 0 or 6.9;
 - (4) any amount deductible therefrom pursuant to section 6.10 or 10.2;
 - (5) the monthly pro-rated amount of the Capital Upgrade Deduction (if applicable) pursuant to section 6.7;
 - (5.1) the amount, if any, levied against that Owner to fund the Working Capital Reserve pursuant to section 6.7.1;
- (6) any other amount payable by the Owner to the Manager pursuant to this Agreement; and
- (7) withholding tax, if applicable.

If and to the extent that an Owner directs the Manager to make payments by direct deposit pursuant to section 6.4(1) above, such Owner shall provide to the Owner the necessary bank account information any duly completed banking forms or authorizations necessary to allow the Manager to make such direct deposits.

6.5 Maintenance and Repair of Strata Lots. The Manager will, for and on behalf of the Owners, keep the Strata Lots and the Lobby, Convention and Restaurant Strata Lots in substantially the same condition they were in as of the Commencement Date, normal wear and tear excepted, and the cost thereof will be a Hotel Expense. The Owners acknowledge and agree that the cost of maintaining and repairing the Strata Lots and the Convention, Lobby and Restaurant Strata Lots will be shared by all of the Owners during the Term.

6.6 FF&E Reserve/Repair of FF&E. The Manager will establish for and on behalf of the Owners a reserve in an amount equal to not less than 4.0% of Gross Revenue for each Operating Year and not more than 6.0% of Gross Revenue or in such greater amount for any

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

Operating Year as may be set forth in the Operating Plan and Budget approved by the Hotel Owners Council (the “FF&E Reserve”). The Hotel Owners Council and the Manager will review the amount of the FF&E Reserve on an annual basis when preparing the Operating Plan and Budget and, if approved by the Hotel Owners Council based on the anticipated expenditures required in order to maintain the Hotel at a standard of a First Class Hotel, the amount of the FF&E Reserve may be increased from 4.0% of Gross Revenue to an amount not exceeding 6.0% of Gross Revenue.

The FF&E Reserve will be held by the Manager in trust for the Owners, in a separate interest-bearing bank account (the “FF&E Bank Account”), as one of the Hotel Bank Accounts, as a reserve for the replacement of any Furniture, Fixtures and Equipment (by way of purchase or capital or operating lease) and as a reserve for the repair and maintenance of the Hotel's physical facilities. The FF&E Reserve shall be held, administered and applied for the benefit of all Owners and no individual Owner is entitled to receive payment of its pro rata share of the FF&E Reserve, or any portion thereof, for any reason whether upon a sale by an Owner of its Strata Lot or otherwise. The Manager will, for and on behalf of the Owners, keep the Furniture, Fixtures and Equipment in substantially the same condition, quality and scope they were in as of the Commencement Date, normal wear and tear excepted, and the Owner hereby authorizes the Manager to utilize the FF&E Reserve for such purpose, including to enter into capital or operating leases, subject to the Approved Operating Plan and Budget. The Manager will be under no obligation to use its own funds for such purpose. The Owners acknowledge and agree that the FF&E Reserve will be for the benefit of all of the Strata Lots collectively and not for each individual Strata Lot separately and that the cost of maintaining, repairing and replacing the Furniture, Fixtures and Equipment will be shared by all of the Owners during the Term. Interest and other income earned from the deposit of funds held on account of the FF&E Reserve shall be added to and constitute a part of the FF&E Reserve.

If, at any time, the FF&E Reserve is insufficient to fund approved capital expenditures set out in the Operating Plan and Budget, the Manager shall be entitled to draw upon funds from the Hotel Bank Accounts to fund the cost of such capital expenditures provided that any amounts so advanced from the Hotel Bank Accounts must be repaid to the Hotel Bank Account from amounts retained on account of the FF&E Reserve within two years from the date that such funds were advanced from the Hotel Bank Accounts to fund such capital expenditures.

6.7 Capital Upgrade Reserve and Capital Upgrade Fund.

- (1) The Manager will establish a reserve fund for the purpose of funding any Approved Capital Upgrade Plan and Budget (the “Capital Upgrade Reserve”). The Manager may deduct an amount from each Individual Owner’s Distribution Share each Operating Year (the “Capital Upgrade Deduction”) on account of the Capital Upgrade Reserve in such amounts which the Manager deems reasonably necessary to meet the requirements of any Approved Capital Upgrade Plan and Budget, together with an additional amount, if any, approved by the Hotel Owners Council, acting reasonably and prudently, based on an estimate of future Capital Upgrade Plan costs;

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- (2) The Capital Upgrade Reserve will be held by the Manager in trust for the Owners, in a separate interest-bearing bank account (the “Capital Upgrade Bank Account”), as one of the Hotel Bank Accounts, as a reserve to meet the requirements of any Approved Capital Upgrade Plan and Budget. Interest and other income earned from the deposit of funds held on account of the Capital Upgrade Reserve shall be added to and constitute a part of the Capital Upgrade Reserve.
- (3) A proportionate share of the Capital Upgrade Reserve shall be nominally allocated to each Strata Lot, calculated by multiplying the aggregate Capital Upgrade Reserve by the Unit Share Ratio for each Strata Lot, and such allocated amount shall be appurtenant to the interest of each Owner in each Strata Lot.

6.7.1 Working Capital Reserve

- (1) The Manager will establish and maintain a Working Capital Reserve from time to time for anticipated seasonal or other shortfalls in an amount approved by the Hotel Owners Council.
- (2) The Working Capital Reserve will be held by the Manager in trust for the Owners in one of the segregated interest-bearing bank accounts held on behalf of owners, until or unless transferred to the main operating Hotel Bank Account to meet working capital needs.
- (3) A proportionate share of the Working Capital Reserve shall be levied against and nominally allocated to each Strata Lot, calculated by multiplying the aggregate Working Capital Reserve by the Unit Share Ratio for each Strata Lot, and such allocated amount shall be appurtenant to the interest of each Owner in each Strata Lot.

6.8 Shortfalls. If at any time the funds in the Hotel Bank Account are not sufficient to pay when due any Hotel Expenses, Capital Expenditures, capital or operating lease payments or Management Fees payable under this Agreement, then:

- (1) the Manager may (such as in the case of seasonal operating shortfalls), but will not be obligated to, pay any such amount out of its own funds, in which case the Owners will repay such amount to the Manager forthwith upon demand and will pay interest on any amount outstanding at the rate equal to the Prime Rate plus 2% per annum, calculated from the date of advance by the Manager until the date of repayment by the Owners and the Manager may deduct the amount of any such payment by the Manager and interest thereon from the Hotel Bank Account;
- (2) the Manager will require the Owners to pay the amount of the shortfall estimated by the Manager, by mailing to the Owners a written notice setting out such amount and each Owner’s proportionate share thereof, as calculated by multiplying the amount of such shortfall by the Unit Share Ratio in each case; or

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- (3) the Manager may, with approval of the Hotel Owner's Council, withdraw funds held in the FF&E Bank Account and deposit them in the Hotel Bank Account and use such funds to pay Hotel Expenses, Capital Expenditures, capital lease payments or Management Fees payable under this Agreement. Any such funds withdrawn from the FF&E Bank Account shall be repaid to the FF&E Bank Account as cash flow permits. The Manager will promptly notify the Hotel Owners Council of any repayments made to the FF&E Bank Account from cash flow.

6.9 Payment of Owner's Strata Lot Expenses by Owners. Each of the Owners will promptly pay when due all taxes personal to the Owners in respect of such Owner's Strata Lot, including income taxes, capital taxes, large corporations taxes and goods and services taxes and all amounts owing under any financing of the Owner's Strata Lot arranged by such owner and all of such Owner's Strata Lot Expenses in respect of or relating to the Owner's Strata Lot. For administrative purposes, the Manager will pay for and on behalf of and in the name of each Owner, out of the Unit Revenue Share payable to such Owner, the following Owner's Strata Lot Expenses in respect of or relating to such Owner's Strata Lot:

- (1) any and all property taxes payable to the Resort Municipality of Whistler, or fees payable to the Whistler Resort Association, in connection with the Strata Lot.

If any Owner's Unit Revenue Share is not sufficient to pay any such amount, the Manager will notify the strata management company and request such company to collect such sums as are necessary, and such Owner, upon being notified by the strata management company, shall remit to the Manager any such shortfall.

Where any Owner's Unit Revenue Share is insufficient to pay the Owner's Strata Lot Expenses or any amounts payable to the Resort Municipality of Whistler or Tourism Whistler in respect of such Owner's Strata Lot, the Manager shall be entitled to withhold such amount from any payment to the Strata Corporation or other party entitled to receive such payment and shall advise such party that the shortfall in payment is attributable to that Owner or that Owner's Strata Lot as the case may be.

6.10 GST and Withholding Tax. The parties agree that:

- (1) each Owner will be responsible for the payment of all goods and services tax and all other applicable taxes, charges, rates and levies in connection with its Strata Lot and each Owner will become registered and maintain its registration for goods and services tax purposes, if requested by the Manager at any time, and provide the Manager with such Owner's GST registration number;
- (2) the Manager will, as agent for and on behalf of the Owners, if required under the applicable legislation, collect and remit to Canada Revenue Agency and any other applicable authority, within the required time for the remittance thereof, any goods and services tax, hotel tax and other tax collected in connection with the use of the Hotel Premises by Hotel Guests and Owners, and make any necessary filings and reports in respect thereof; and

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- (3) the Manager may withhold from any of the Owners and remit to Canada Revenue Agency or any other relevant authority any amount required to be withheld or remitted in respect of goods and services tax or withholding tax or any other applicable statutory tax, charge or levy which the Manager is required to withhold or remit.

6.11 No Separate Revenue for Manager. Except as specifically set out in this Agreement or any other agreement in writing between the Manager and the owner or the Strata Corporation, neither the Manager nor any Related Person to the Manager will receive any other revenue, profit or reward of any kind or nature from or in respect of the Hotel Premises or the Hotel or any portion thereof. Notwithstanding the foregoing, the Manager and any person Related to Manager will be entitled to receive any amount payable to the Manager or such person pursuant to this Agreement as an owner of any Strata Lot.

6.12 Reporting. The Manager will prepare or cause to be prepared, and send to the Owners the following:

- (1) at the cost of the Owners in proportion with each Owner's Unit Share Ratio, Annual Audited Financial statements for the Rental Pool on or before the 140th day after the end of each financial year of the Rental Pool; and
- (2) at the cost of the Owners, monthly statements of revenues and expenses on or before the 25th day after the date which they are made up.

6.13 Deficiencies. In the event that an Owner's Individual Owner's Distribution Entitlement less proportionate shares of the Capital Upgrade Reserve and Working Capital Reserve pursuant to sections 6.7 and 6.7.1 is a negative amount, then:

- (1) such Owner shall not be entitled to receive any distribution of Cash Available for Distribution;
- (2) upon written notice from the Manager such Owner shall promptly remit to the Manager an amount equal to such negative balance;
- (3) the Manager shall be entitled to decline any booking request received from such Owner;
- (4) the Manager shall be entitled to refuse to provide guest room services to the Owner's Strata Lot while being used by the Owner or its invitees;
- (5) the Manager shall be entitled to refuse to provide the Owner with access to its Strata Lot unless the Owner immediately remits to the Manager an amount equal to such negative balance; and
- (6) if the Owner with the negative balance is also the registered owner of a Strata Lot for which the Owner's Individual Owner's Distribution Entitlement is a positive amount, upon written request of the Owner, the Manager will set off the negative

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balance against the positive balance and provide the Owner with documentation in respect thereof.

**ARTICLE 7
MANAGEMENT AND OTHER FEES AND
REIMBURSABLE EXPENSES**

7.1 Revenue Incentive Fee. The Owner and Manager agree that during the Term, the Manager will receive, as compensation for the services rendered in accordance with this Agreement, a Revenue Incentive Fee as follows:

- (1) for the initial Operating Year following the Effective Date, being the 6 month period starting the Effective Date and ending on December 31, 2008, the Owners will pay to the Manager 1.75% of Gross Revenue;
- (2) for the second, third, fourth and fifth Operating Years after the Effective Date, the Owners will pay to the Manager 1.5% of Gross Revenue;
- (3) for the sixth, seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth Operating Years after the Effective Date, the Owners will pay to the Manager 1.0% of Gross Revenue;
- (4) thereafter, for each Operating Year, the Owners will pay to the Manager 0.5% of Gross Revenue.

7.2 House Profit Percentage Fee. Subject to sections 7.3.1 and 7.4, the Owner and Manager agree that:

- (1) if for any Operating Year during the Term after the Operating Year ending December 31, 2008, House Profit Percentage meets or exceeds 37.5%, the Owners will pay the Manager a House Profit Percentage Fee for such Operating Year equal to 5% of the House Profit;
- (2) if for any Operating Year during the Term after the Operating Year ending December 31, 2008, House Profit Percentage falls below 37.5%, the Owners will pay the Manager a House Profit Percentage Fee for such Operating Year equal to House Profit Percentage for that Operating Year less 32.5%, provided only where such calculation results in a positive percentage, otherwise the House Profit Percentage Fee shall be (0) zero.

7.3 House Profit Dollar Fee. Subject to sections 7.3.1 and 7.4, the Owner and Manager agree that if for any Operating Year after the Operating Year ending December 31, 2008, House Profit exceeds the House Profit Base the Owners will pay the Manager a House Profit Dollar Fee for such Operating Year on the following basis:

- (1) for the first, second, third, fourth, fifth and sixth Operating Years after the Operating Year ended December 31, 2008, an amount equal to:

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15% x (House Profit – House Profit Base)

- (2) for the seventh and eight full Operating Years after the Operating Year ended December 31, 2008, an amount equal to:

5% x (House Profit – House Profit Base)

- (3) for the ninth and tenth Operating Years after the Operating Year ended December 31, 2008, an amount equal to:

6.25% x (House Profit – House Profit Base)

- (4) for the eleventh and subsequent Operating Years after the Operating Year ended December 31, 2008, an amount equal to:

7.5% x (House Profit – House Profit Base)

7.3.1 No Duplication of Payment for First Six Operating Years. During the Operating Years 1 through 6, commencing with the Operating Year ended December 31, 2008, the Manager shall be entitled to the greater of the House Profit Percentage Fee and House Profit Dollar Fee, but not both. For the Operating Year ended December 31, 2014, and thereafter, the Manager shall be entitled to receive both the House Profit Percentage Fee and the House Profit Dollar Fee.

7.3.2 Incentive Fee on Distribution. The Owner and Manager agree that if for any Operating Year during the Term, Cash Available for Distribution exceeds \$5.25 million; the Owners will pay the Manager an Incentive Fee on Distribution in an amount equal to:

- (1) 15% of the Cash Available for Distribution exceeding the amount equal to \$5.25 million multiplied by the Participation Factor, up to the amount equal to \$7.5 million multiplied by the Participation Factor; plus
- (2) 25% of the Cash Available for Distribution exceeding the amount equal to \$7.5 million multiplied by the Participation Factor.

If during the Term, Cash Available for Distribution for an Operating Year exceeds the amount equal to \$5.25 million multiplied by the Participation Factor on two occasions, the \$5.25 million base applicable under section 7.3.2(1) shall be adjusted for inflation from the end of the second Operating Year that such amount is exceeded using the Escalation Factor calculated from the end of such second Operating Year. If during the Term, Cash Available for Distribution for an Operating Year exceeds the amount equal to \$7.5 million multiplied by the Participation Factor on three occasions, the \$7.5 million base applicable under section 7.3.2(2) shall be adjusted for inflation from the end of the third Operating Year that such amount is exceeded using the

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Escalation Factor calculated from the end of such third Operating Year. Notwithstanding section 6.6 and the amount of the FF&E Reserve approved by the Hotel Owner's Council for each Operating Year, for the purposes of this Section 7.3.2 and the calculation of the Incentive Fee on Distribution: (a) for Operating Years prior to 2018, for determining Cash Available for Distribution the FF&E Reserve shall be deemed to be 4%; and (b) for Operating Years 2018 and following, in determining Cash Available for Distribution the FF&E Reserve shall be deemed to be 5%. For greater certainty, the Incentive Fee on Distribution shall be calculated for Operating Years prior to 2017 in accordance with the sample calculation shown in Part A of Schedule G of this Agreement, whereby the Incentive Fee on Distribution is calculated on the gross Cash Available for Distribution (without first deducting the Incentive Fee on Distribution) and for Operating Years 2017 and following in accordance with the sample calculation shown in Part B of Schedule G whereby the Incentive Fee on Distribution paid to the Manager is calculated on the net Cash Available for Distribution (after deducting the Incentive Fee on Distribution).

7.3.3 Payment of Fees. The Owner agrees to pay the Manager:

- (1) on a monthly basis, an amount equal to 100% of the estimated amount of the fees set out at section 7.1 and 75% of the estimated amount of those fees set out at sections 7.2, 7.3 and 7.3.2 providing however the fees appear in the Approved Operating Plan and Budget.
- (2) the fees paid pursuant to paragraph 7.3.3(1) herein shall be reconciled and adjusted annually, based on actual results for that Operating Year, within 30 days after delivery of the Annual Statement.

7.4 Reimbursement of Manager Recoveries. The Owners agree to reimburse the Manager for all reasonable costs incurred by the Manager for the Owners' account in the ordinary course of business, which costs will be Hotel Expenses including, without limitation, the following:

- (1) reasonable travel and out-of-pocket expenses incurred directly in connection with the operation of the Hotel by head office personnel as is usual and customary in the hotel industry including, without limiting the generality of the foregoing, expenses incurred attending industry, franchise and other conferences;
- (2) the reasonable cost of the standard corporate services utilized by hotels affiliated with the Manager such as, but not limited to, attendance at the Manager's management seminars and other conferences, operating handbooks and manuals, purchasing services, departmental services, and corporate marketing services; and
- (3) all Franchise Costs;

and provided that each of the foregoing is set out in an Approved Operating Plan and Budget.

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**ARTICLE 8
HOTEL BANK ACCOUNTS AND BOOKS AND
RECORDS**

8.1 Hotel Bank Accounts.

- (1) The Manager will have the right to designate the Canadian Chartered bank having a branch reasonably convenient to the Hotel with which the Hotel will conduct its various banking affairs. Subject to sections 8.1(2) and (3) the Hotel Bank Accounts will be in the name of and under the control of the Manager. All funds received in the operation of the Hotel will be deposited into one or more of these accounts and cheques and other documents of withdrawal will be disbursed in accordance with this agreement and signed only by persons authorized by the Manager. The Manager is hereby authorized to pay all Hotel Expenses, Capital Expenditures, capital lease payments and all amounts payable to the Manager pursuant to article 7 from funds in the Hotel Bank Accounts. Funds held in the Hotel Bank Accounts shall be interest-bearing to the extent reasonably practical, with interest accruing to the benefit of the Owners.
- (2) A separate interest-bearing account shall be kept for the FF&E Reserve. Funds deposited to the FF&E Bank Account and interest earned on the account will be held in trust for, and belong to, the Owners and will be administered in accordance with this Agreement. Any amounts to be expended on Capital Expenditures or other expenditures properly funded from the FF&E Reserve will be transferred by the Manager to the main operating account and applied on account of such expenditures.
- (3) During each month, the Manager will transfer from the Hotel Bank Accounts to an interest-bearing account (the “Owners Distribution Account”) an amount equal to the positive Cash Available for Distribution balance from the prior month less any amounts to be retained by the Manager under section 6.4, and the Manager may, from time to time, transfer from the Owners Distribution Account to the Hotel Bank Accounts an amount equal to the negative Cash Available for Distribution balance from the prior month. In the event the Cash Available for Distribution for any month is distributed in its entirety to Owners with positive balances, the cumulative deficit for Owners with negative balances will be reflected in the Hotel Bank Accounts and not in the Owners Distribution Account. Funds deposited to the Owners Distribution Account and interest earned on the account will be held in trust for, and belong to, the Owners and will be administered in accordance with this Agreement.
- (4) A separate interest-bearing account shall be kept for the Capital Upgrade Reserve. Funds deposited to the Capital Upgrade Fund Bank Account and interest earned on the account will be held in trust for, and belong to, the Owners and will be administered in accordance with this Agreement. At the start of each Operating Year within the term of an Approved Capital Upgrade Plan and Budget, the Manager will transfer an amount from the Capital Upgrade Bank Account to the

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FF&E Bank Account that is necessary to pay for the work planned in the Approved Capital Upgrade Plan and Budget for that period.

8.2 Books, Records, Financial Statements.

- (1) The Manager agrees on behalf of the Owners, to keep on the Hotel Premises or at the Manager's offices in the City of Vancouver, proper books of account and other records relating to or reflecting the results of the operations of the Hotel in accordance with this Agreement. All books of account and other records, in both electronic and paper form, are the property of the Owners and will be available to the Hotel Owners Council and its duly authorized officers, accountants, employees, agents at all reasonable times for examination, audit, inspection and copying. Upon any termination of this Agreement, all financial books and records and client lists will be turned over forthwith to the Hotel Owners Council to ensure the orderly continuance of the operation of the Hotel.
- (2) For five (5) years after termination of this Agreement, the Hotel Owners Council must permit the Manager to exercise the same rights as the Hotel Owners Council has under subsection 8.2(1) to examine, audit, inspect and copy from the books and records of the Hotel operation applicable to the Term. Any costs and expenses incurred in providing books and records to the Manager after termination will be paid by the Manager.
- (3) Within 140 days after the end of each Operating Year, the Manager agrees to cause to be prepared and posted on the Manager's website so that it is accessible to each of the Owners, reasonably detailed financial statements in accordance with Generally Accepted Hotel Accounting Principles, together with an annual statement setting out the items referred to in subsections 6.1(1)(a) to 6.1(1)(h) and an annual statement of fees payable under sections 7.1, 7.2, 7.3 and 7.3.2 if any, and the calculation of each of them (collectively called the "Annual Statement"). The Annual Statement will be audited by the Chartered Professional Accountants and will contain a certification by the Chartered Professional Accountants to the effect that all of such items have been calculated in accordance with the terms of this Agreement.

8.3 Appointment of Chartered Professional Accountants. The Manager and the Hotel Owners Council shall mutually agree upon the firm of chartered accountants to be selected to audit the Annual Statements. Any change in the firm of chartered accountants engaged to act as the Chartered Professional Accountants and audit the Annual Statements shall be subject to the mutual approval of the Manager and the Hotel Owners Council. The Manager shall, on an annual basis, enter into an engagement letter with the Chartered Professional Accountants setting out the scope of work to be performed by the Chartered Professional Accountants in connection with the preparation and delivery of the Annual Statements. The form of engagement letter and scope of work to be performed shall be in a form recommended by the Manager and mutually approved by the Manager and the Hotel Owners Council. The Manager will liaise with the Chartered Professional Accountants with respect to the preparation and delivery of the Annual Statements and upon being satisfied with the form and content of the draft Annual Statements

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will convene a meeting between the Manager, the Hotel Owner's Council and the Chartered Professional Accountants to review the draft Annual Statements and any supplementary reports to be prepared by the Chartered Professional Accountants in accordance with the engagement letter and scope of work.

**ARTICLE 9
SERVICES TO BE RENDERED BY THE
MANAGER**

9.1 Management Services. The Manager will:

- (1) use all reasonable efforts to sell room nights in respect of the Strata Lots to Hotel Guests;
- (2) carry out and perform all such acts and things as are reasonably necessary or desirable in connection with the operation of the Hotel as a First-Class Hotel in accordance with this Agreement and any Franchise Agreement;
- (3) procure and maintain any licenses and permits which may be lawfully required in connection with the carrying out of its duties and obligations under this Agreement;
- (4) strictly observe and abide by the terms and conditions set out in the Rental Pool Covenant; and
- (5) diligently and faithfully perform its duties and obligations under this Agreement as would a reasonably prudent hotel manager in the position of the Manager.

9.1.1 Manager's Duties. The Manager undertakes to each of the Owners that it will at all times during the Term (including any renewal or extension term):

- (1) diligently and faithfully perform its duties and obligations under this Agreement and use all reasonable commercial efforts to maximize House Profit and the Cash Available for Distribution;
- (2) discharge its obligations under this Agreement in a competent manner, with the skill and care of an experienced hotel manager, to the industry standards for a First-Class Hotel in accordance with the provisions of this Agreement and any Franchise Agreement;
- (3) operate, manage or supervise all areas of Hotel operations, including but without limitation guest accommodation, food and beverages, amenities and facilities and customer service, to the standards appropriate for a First Class Hotel;
- (4) discharge its obligations under this Agreement in conformity with any requirements of applicable law;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (5) ensure that any contracts or arrangements entered into by the Manager on the Owners' behalf shall be on no less favourable terms to the Owners than arms length commercial terms;
- (6) disclose immediately to the Owners (through the Hotel Owners Council) any contracts or arrangements entered into by the Manager on the Owners' behalf with persons affiliated or connected to the Manager and ensure that the terms of such contracts and arrangements are no less favourable to the Owner than those that would be available from third parties, and where any such contracts or arrangements relate to any goods or services which are branded (including by the Franchisor except to the extent branded goods and services are required to be obtained pursuant to the terms of the Franchise Agreement), then the Manager shall ensure that the price and quality should be comparable when judged against equivalent/similar unbranded goods or services; and
- (7) any contracts entered into on behalf of the Owners with the Manager's related entities as referred to in section 9.1.1(6) should not be unusual in nature (including without limitation their length) and must not be for a term extending beyond December 31, 2028, unless otherwise approved by the Hotel Owners Council.

The Manager may, on a basis mutually approved by the Manager and the Hotel Owners Council acting reasonably, subcontract certain operations or sublease certain facilities to independent contractors where it is considered to be financially prudent, in the interests of operational efficiencies or otherwise advantageous to the operation of the Hotel, provided that if such subcontracting or subleasing would reduce the Manager's Fees while providing enhanced Cash Available on Distribution, the Manager and the Hotel Owner's Council shall agree on an appropriate adjustment to the Manager's Fees in such amount as may be mutually approved or, failing agreement, such amount as may be determined by arbitration pursuant to section 18.1.

9.2 General Management. Subject to the terms and conditions of this Agreement, any Approved Operating Plan and Budget and any Approved Capital Upgrade Plan and Budget, the Manager agrees to perform on behalf of and for the account of the Owners, all appropriate and necessary management services in connection with the operation of the Hotel as a First-Class Hotel, including but not limited to:

- (1) the general organization of the Hotel;
- (2) the development and implementation of sales, advertising, personnel, employment, purchasing and maintenance programs consistent with the provisions of this Agreement;
- (3) the implementation of administrative accounting, budgeting, and operational policies and practices of the Manager. Such policies and practices will be deemed to be in compliance with the Manager's obligations hereunder, and the Owners will accept such policies and practices, so long as they do not conflict with any term or condition of this Agreement, any Approved Operating Plan and Budget or any Approved Capital Upgrade Plan and Budget;

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- (4) the review of the conduct of hotel operations at the Hotel from time to time in accordance with the standards of a First-Class Hotel and established management practices and policies of the Manager and the Franchisor, if any;
- (5) the establishment and supervision of the Manager's standard accounting and inventory control systems which are similar to those normally used by the Manager for the hotels which are comparable to the Hotel;
- (6) the arrangement for the provision to the Hotel of all goods and services as are necessary for the proper operation and maintenance of a First-Class Hotel as contemplated by this Agreement;
- (7) the establishment of all prices, charges and rates, and in connection therewith, the supervision and control of the collection, receipt and giving of receipts for all goods or services provided or revenue of any nature derived from the operations of the Hotel;
- (8) the determination of the Hotel's purchasing policy, including the selection of the merchandise, supplies and materials and establishment and maintenance of all inventories required for the proper operation of the Hotel, and the selection of the suppliers and negotiation of supply contracts in order to assure purchases on the best terms reasonably available;
- (9) the negotiation and execution of contracts which are normally entered into within the scope of hotel operations and preparation of the corresponding legal documents;
- (10) the determination of credit practices applicable to suppliers and to the Hotel's clientele and negotiation of arrangements with credit organizations, in particular those issuing credit cards;
- (11) with the prior approval of the Strata Corporation and/or the Owners, as the case may be, (excluding the votes of any strata lots within the Strata Plan other than the Strata Lots), acting reasonably, instituting and prosecuting in the name of the Hotel any lawsuits or other legal actions having a direct relationship with the operations of the Hotel and deemed necessary or advisable by the Manager;
- (12) the supervision and control of the activities of Hotel Guests and any tenants, concessionaires and holders of privileges in respect of any portion of the Hotel Premises and their employees, including the dispossession of Hotel Guests and tenants for non-payment of rent or any other proper cause, the termination of the rights of concessionaires or licensees for proper cause, and the pursuit of any lawful remedies available to the Owners in the event of wrongful injury or damage to the Hotel Premises caused by any person; and
- (13) ensuring, pursuant to easement or other rights, that the Common Property and Common Assets are maintained to a standard befitting a First Class Hotel.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

9.3 Use of Lobby, Convention and Restaurant Strata Lots. The Manager will:

- (1) use and operate the Lobby, Convention and Restaurant Strata Lots as integrated parts of the Hotel, to the standards of a First-Class Hotel in accordance with this Agreement;
- (2) make the Lobby, Convention and Restaurant Strata Lots available as part of the Hotel at all times during the Term and not use the Lobby, Convention and Restaurant Strata Lots for any purpose other than for the operation of the Hotel in accordance with this Agreement; and
- (3) observe and abide by all of the terms and conditions set out in the Lobby, Convention and Restaurant Strata Lot Leases.

9.4 Maintenance.

- (1) The Manager agrees for the account of the Owners, to cause the Hotel Premises and the Furniture, Fixtures and Equipment to be maintained in good operating condition and repair, normal wear and tear excepted, and the Manager will replace, at the expense of the Owners, such items of the Furniture, Fixtures and Equipment and Operating Supplies and Expendables as from time to time may be appropriate in accordance with the then current Approved Operating Plan and Budget or any Approved Capital Upgrade Plan and Budget. Upon completion of construction of any change or addition to the Hotel, the Manager will furnish to the Strata Corporation any guarantees and warranties relating to any portions of the Hotel or the Furniture, Fixtures and Equipment and Operating Supplies and Expendables. The Manager agrees to cooperate with the Owners to enforce the provisions of such guarantees and warranties. The Manager will make no expenditures for the repair and replacement of the Furniture, Fixtures and Equipment or for maintenance and repair which would result in or cause a change in the general character of the interior or exterior of any portion of the Hotel Premises or make any capital improvements except if the same is included in an Approved Operating Plan and Budget, or any Approved Capital Upgrade Plan and Budget or otherwise pre-approved by the Hotel Owners Council.
- (2) The Owner acknowledges that the Hotel may be operated as a member of a franchise group and that it will therefore be mandatory for the Hotel Premises and the Furniture, Fixtures and Equipment therein to be maintained in the manner befitting a First-Class Hotel in order to continue operation of the Hotel as part of such franchise group.

9.5 Changes and Alterations. From time to time during the Term, the Manager may make, at the Owners' expense, but subject to the terms of this Agreement and the then current Approved Operating Plan and Budget or any Approved Capital Upgrade Plan and Budget reasonable changes and alterations to the Hotel Premises, or any part thereof, subject however in all cases to the following:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (1) no change or alteration will be made which would:
 - (a) change the general character or design or First Class-Hotel standard of the Hotel;
 - (b) involve the excavation of any portion of the Hotel Premises; or
 - (c) include alteration of, or result in increasing the burden upon the foundation of the Hotel Premises;without the prior consent of the Owners;
- (2) all permits, licenses and authorizations required to be procured in connection with any change or alteration will be procured (or caused to be procured) by the Manager, and the cost of the same will be a Hotel Expense;
- (3) any change or alteration will be made promptly in a good and workmanlike manner and in compliance with all applicable laws, rules, regulations and permits and insurance requirements;
- (4) the cost of any change or alteration will be promptly paid (or caused to be paid) so that the Hotel Premises will at all times be free from any lien, encumbrance, mortgage, chattel mortgage, conditional sales agreement, title retention agreement or other charge for labour, services or material supplied or claimed to have been supplied to the Hotel Premises;
- (5) if the cost of any such change or alteration which is not already included in the Approved Operating Plan and Budget or Approved Capital Upgrade Plan and Budget involves an estimated cost of more than \$10,000.00:
 - (a) the Manager agrees to obtain the specific approval (in addition to approval of the Approved Operating Plan and Budget or Approved Capital Upgrade Plan and Budget) of the Hotel Owners Council to such change or alteration prior to the Manager proceeding;
 - (b) if the Manager proposes to have such change or alteration supervised by personnel of the Manager or the Hotel, the Manager will obtain the specific approval of the Hotel Owners Council as to whether such change or alteration requires the supervision of an independent engineer or architect; and
 - (c) the Manager shall reserve the right to retain on behalf of the Owner, and at the Owner's sole expense, a qualified general contractor, architect, construction engineer, purchasing agent, and/or interior designer to oversee any such changes or alteration, it being the intent of this Agreement that the Manager not be obliged to supervise such work if it be of a significant nature.

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9.5.1 Amendment of Franchise Agreement. The Manager will use reasonable commercial efforts to negotiate amendments to the terms of the Franchise Agreement as in effect on the Effective Date to adjust the franchise fee payable to the Franchisor to 4% of Room Revenue for an interim four-year period to be determined in the course of such negotiations and to obtain from the Franchisor a contribution in the estimated amount of \$1,000,000, or such other amount as the Franchisor may approve, (the “**Renovation Contribution**”) to be used for Hotel renovations scheduled to be implemented in the Operating Years ended December 31, 2008 and December 31, 2009. In consideration of obtaining such concessions from the Franchisor, the Manager is authorized to agree to extend the term of the Franchise Agreement until December 31, 2028. If the Manager is successful in obtaining a Renovation Contribution from the Franchisor, the Manager shall expend such funds to make such renovations as the Manager and the Hotel Owners Council, each acting reasonably, mutually approve, to assist in ensuring ongoing compliance with the hotel operating standards required by the Franchisor for hotels operating under its brand.

9.6 Capital Expenditures. The Manager is authorized to make Capital Expenditures only in accordance with the terms of the then current Approved Operating Plan and Budget or any Approved Capital Upgrade Plan and Budget, or otherwise pre-approved by the Strata Corporation, except where required in an emergency to preserve property or the safety of persons in or about the Hotel Premises.

9.7 Personnel and Employees.

- (1) The selection and employment of the general manager and all such other employees and personnel necessary for the proper operation of the Hotel is the responsibility of the Manager and all such persons will be employed by the Manager as employees of the Manager. The hiring, promoting and discharging of the general manager and any other employees and personnel and the terms of their employment, including compensation, will be at the sole discretion of the Manager, acting reasonably and in the best interest of the Owners.
- (2) the Manager may delegate to the general manager of the Hotel, who in turn may delegate to others, the selection and hiring of all employees and personnel required for the operation of the Hotel.
- (3) The general manager may, during the Term be replaced by the Manager, and likewise the employment of any other Employee may be terminated by the Manager or the general manager or by the person or persons to whom the general manager delegates such authority. The decision in regard to any such discharge, whether directly or through the general manager of the Hotel, will be at the sole discretion of the Manager, acting reasonably.
- (4) The Owner agrees that all costs and expenses incurred by the Manager, acting reasonably and prudently, in connection with the employment of the Employees (including any hiring and relocation costs and expenses, fringe benefits, withholding amounts and termination costs payable, including the costs of terminating Employees at the end of the Term or earlier termination of the

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

appointment of the Manager under this Agreement), will be Hotel Expenses, payable by the Owners pursuant to this Agreement. Furthermore, the Owner agrees that all such costs and expenses shall be paid by the Manager as they fall due.

9.8 Franchise Group Advertising.

- (1) The Manager agrees to integrate the Hotel in all corporate publicity, advertising, audio visual and public relation programs, and campaigns with respect to hotels affiliated with the franchise with which the Hotel is associated, subject always to the then prevailing Operating Plan and Budget. Advertising may be implemented on an international, national or regional basis.
- (2) The Manager will cause the hotels affiliated with the Manager and the Franchisor to promote the Hotel with their own clientele in a similar manner to the other hotels affiliated with the Manager, when and in what manner it considers appropriate.

9.9 Manager's Sales and Marketing Systems.

- (1) The Manager will carry out on behalf of the Hotel all operational marketing activities and the implementation of the Manager's marketing policy as applied to the Hotel.
- (2) Marketing at the Hotel level will be established and carried out by the Manager for the market where the Hotel is located and other markets which the Manager reasonably believes relevant considering the nature of the Hotel.
- (3) The Manager agrees to establish for the Hotel, as part of the Operating Plan and Budget, an annual marketing plan for each Operating Year, including, but not limited to:
 - (a) the determination of the sales policy of the Hotel;
 - (b) the determination of yearly objectives regarding occupancy rates, revenues and clientele;
 - (c) the establishment of all Hotel rates including the rates for any ancillary revenue centres contained in the Hotel which are operated by the Manager;
 - (d) the setting of any special sales terms; and
 - (e) the establishment of sales methods and procedures relating to the various clientele segments.
- (4) The Manager agrees to make its affiliated central sales and marketing services available to the Hotel.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (5) The Manager will assist the Hotel in reaching specific market segments through the drafting of potential clientele lists, the visiting of selected travel agencies, tour operators and corporations and the following up of such activities in the processing of sales orders.
- (6) The Manager agrees to distribute to all sales outlets as determined by the Manager, the following:
 - (a) information on services and facilities offered by the Hotel and advertising literature published by the Hotel; and
 - (b) the individual and group rates established annually by the Hotel, and if necessary, any special rates offered for specific markets.
- (7) The Manager shall use its reasonable efforts to ensure that the Hotel is integrated into the marketing system of any franchise with respect to which the Hotel is associated.
- (8) The Manager Agrees to provide those sales and marketing services set out at Schedule D to this Agreement.
- (9) The Owner hereby consents to the integration of the Hotel's guest list and client list into the Manager's guest history and client listing database, which may be accessed by other hotels within the Manager Group.
- (10) The Manager agrees that the Hotel will be entitled to benefit from the sales and promotional activities planned for groups undertaken at the national or international level and intended for travel agents, tour operators, incentive groups, conventions, corporations, governmental agencies, international associations and airline companies. These activities will be performed by or through head office personnel of the Manager Group.

9.10 Third Party Reservations Systems Providers.

- (1) The Hotel may, at the Manager's sole discretion, be integrated into all reservation systems which may be established and used, from time to time, by the Manager including:
 - (a) the reciprocal reservation system among hotels with which the Manager is affiliated;
 - (b) toll free telephone and reservation systems;
 - (c) other sales and reservation systems chosen by the Hotel and available under contract with the Manager according to the same terms and conditions negotiated by the Manager for the other hotels of the Manager (including international airlines and independent reservations systems); and

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (d) any franchise organization with which the Hotel is affiliated.
- (2) The Owner agrees to abide by the reservation charges negotiated or established by the Manager with or for various reservation systems pursuant to which any of the above-mentioned services may be offered to hotels affiliated with the Manager. The method of calculation of such reservation charges will be set out in each Approval Operating Plan and Budget.
- (3) The Owner agrees to honour all reservations made by the third party reservation systems in accordance with this Agreement, after the termination of the appointment of the Manager under this Agreement.
- (4) The Owner agrees that the Hotel will abide by all commission agreements negotiated and established by the Manager in good faith with any third party who is not a Related Person to the Manager.

9.11 Other Systems. The Manager agrees to make available to the Hotel all services used by hotels managed by the Manager, with regard to the procurement of all Furniture, Fixtures and Equipment and Operating Supplies and Expendables and other goods and services required for the Hotel.

9.12 Performance of the Manager's Services. The Manager shall provide the Hotel with the benefits of volume purchasing, market research in the development of new and better equipment and supplies and design, decorating and other services, and the Manager may, subject to the Approved Operating Plan and Budget or any Approved Capital Upgrade Plan and Budget, or the prior approval of the Hotel Owners Council, purchase goods, supplies and services from or through the Manager or any of its Affiliates, so long as the prices and terms are competitive with the prices and terms of goods and services of equal quality available from others.

9.13 Meetings. The Manager agrees to attend all meetings called by the Strata Corporation, or its appointed representatives, upon reasonable written notice, to discuss general Hotel operating procedures, the Approved Operating Plan and Budget, the Operating Plan and Budget, the Approved Capital Upgrade Plan and Budget, the Capital Upgrade Plan and Budget, the results of an Operating Year, or any other matter of interest or concern.

9.14 Shared Services.

- (1) The Manager and the Owners agree that, in the discretion of the Manager, the provision of certain services may be shared with other hotels managed by the Manager or its affiliated companies ("Shared Services").
- (2) The costs and expenses associated with any Shared Services are subject to the approval of the Hotel Owners Council and must be detailed in the Operating Plan and Budget and in the Monthly Statements. The Manager shall be entitled to charge the Owners such costs as may be fairly and reasonably allocated to the Hotel from time to time based on formulas determined by the Manager provided that such cost allocation:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (a) must not exceed the amount that would be payable for such services based on market rates;
 - (b) is applied equitably to all hotels for whom such services are made available by the Manager or its affiliated companies; and
 - (c) is approved by the Hotel Owners Council pursuant to Article 5 of this Agreement.
- (3) The Manager shall provide the Hotel Owners Council with such documentation and information as may be needed and reasonably requested by the Hotel Owners Council supporting the allocation of costs and expenses for Shared Services.

9.15 Employee Housing Management. As a service to the Hotel, the Manager agrees to manage the Employee Housing Lots as a rental housing operation for the use by Employees and to follow the requirements of any rental restrictions imposed by the Resort Municipality of Whistler, for no additional remuneration other than outlined in the Agreement.

**ARTICLE 10
USE OF STRATA LOT BY OWNER**

10.1 Use of Strata Lot by Owner. The parties agree, that the terms and conditions set out in Schedule C are binding upon the Owner and the Manager and are hereby incorporated into this Agreement. Each Owner will be permitted to use and to permit others to use its Strata Lot in accordance with Schedule C and in no other manner whatsoever. The Manager will use reasonable efforts to accommodate any booking request by any Owner pursuant to Schedule C. If any Owner proposes to book the use of his or her Strata Lot in accordance with Schedule C, the Manager will not be responsible if the Strata Lot has been otherwise booked, provided that the Manager has complied with section 3.3. Notwithstanding anything contained in Schedule C, the Owners will be bound by and comply with the rules and policies of the Hotel Premises established by the Manager for the use of the Strata Lots and the Lobby, Convention and Restaurant Strata Lots.

10.2 Standard Charges. The Owner and those using the Strata Lot with the permission of the Owner in accordance with Schedule C will pay the standard charges established by the Manager with respect to Hotel services, including, inter alia, for the following:

- (1) telephone calls;
- (2) in room entertainment;
- (3) in room refreshment centre;
- (4) vending machine charges;
- (5) parking charges;
- (6) food and beverage charges; and,

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (7) purchases of other goods and services offered by the Manager.

If the Owner or any person claiming under the Owner does not pay any fee or charge set out in this section 10.2, the Manager may deduct such amount from the Owner's Unit Revenue Share. All of the fees and charges set out in this section 10.2 received by the Manager will be included in the Gross Revenue.

10.3 No Charge for Common Property or Common Assets. Except as set out in section 10.2, the Manager will not charge any Owner or any person claiming under the Owner pursuant to Schedule C for the use or enjoyment of its Strata Lot or any portion of the Hotel Premises, provided that such use is in accordance with this Article 10 and Schedule C.

10.4 Request to use Different Strata Lot. If a Strata Lot is reserved under Schedule C, the Manager may at any time request the Owner or any person claiming under such Owner to use a Strata Lot other than the Owner's Strata Lot, but such request will be subject to the agreement of the Owner or such person in his or her sole discretion.

10.5 Owner Election Not to Use. The Owner will forthwith notify the Manager in writing if the Owner determines or discovers at any time that the Owner or any person claiming under such Owner will not use the Strata Lot on any of the days for which the Owner gave notice of the Owner's use thereof pursuant to Schedule C and the Manager may then rent out the Owner's Strata Lot to Hotel Guests on such days. Such notification shall be subject to the Manager's standard room reservation cancellation policy in effect at the time.

10.6 Use by or on behalf of Owner. No Owner will use or permit any person to use the Strata Lot or the Common Property or Common Assets except in accordance with this Article 10 or with the prior written consent of the Manager in its sole discretion. The Owner will be responsible for any use of the Hotel Premises by the Owner or any person claiming under the Owner in accordance with this Article 10 and any amount payable from any Owner in respect of such use of the Hotel Premises to the Manager hereunder. Under no circumstances will the Owner during the Terms directly or indirectly charge rent or accept any form of consideration for the use of the Strata Lot except in accordance with this Agreement.

**ARTICLE 11
COVENANTS, REPRESENTATIONS AND
WARRANTIES**

11.1 Covenants. All of the terms and provisions of this Agreement will be deemed and construed to be "covenants" to be performed by the respective parties as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

11.2 Representations and Warranties of Manager. Manager represents and warrants, as representations and warranties that are true as of the date hereof and will be true at all times during the Term, as follows:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (1) it is a corporation duly incorporated and existing under the laws of the Province of British Columbia and authorized to do business in British Columbia;
- (2) it has full corporate power, authority and legal right to operate the Hotel and to perform and observe the provisions of this Agreement;
- (3) this Agreement constitutes a binding obligation of the Manager enforceable in accordance with its terms; and
- (4) it will, during the Term, preserve and keep in effect, at its own expense and not as a Hotel Expense, its corporate existence, rights and licenses as required. to carry on business in the Province of British Columbia.

11.3 Representations and Warranties of Owners. Each of the Owners represents and warrants, as representations and warranties that are true as of the date hereof and will be true at all times during the Term, as follows:

- (1) unless otherwise disclosed by the Owner to the Manager in writing, the Owner is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
- (2) if such Owner is a corporation, it is a corporation duly authorized to do business under the laws of the Province of British Columbia;
- (3) it has full power, authority and legal right to own real property in British Columbia and to execute and deliver, and to perform and observe the provisions of this Agreement;
- (4) this Agreement constitutes the valid and binding obligations of the Owner enforceable in accordance with its terms; and
- (5) covenants that if such Owner is a corporation, it will, during the term of this Agreement, preserve and keep in effect, at its own expense, its corporate existence, rights and licenses to carry on business in the Province of British Columbia.

11.4 Franchisor Indemnity. In consideration of the benefit derived by the Owner, directly or indirectly, as a result of the Franchisor entering into the Franchise Agreement with the Manager, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Owner), the Owner agrees to and does hereby indemnify and save harmless the Franchisor from and against any and all actions, causes of action, claims, costs, damages, expenses (including legal fees), liabilities, losses and obligations (together the "Franchisor Loss") suffered or incurred by the Franchisor arising directly or indirectly out of a breach by the Manager of any provision of the Franchise Agreement, save and except any such breach which is caused by the negligent act or omission or wilful misconduct of the Franchisor or any of its agents, employees, officers, directors or contractors. Notwithstanding the foregoing, any liability of the Owner to the Franchisor under this section 11.4 shall be several (and not joint with any person) and shall be limited to that proportion of the Franchisor Loss which is equal to the Unit Share Ratio for the Strata Lot.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

11.5 Indemnity of Manager. The Owner agrees to defend promptly and diligently at the Owner's expense any claim, action or proceeding brought against the Manager or its employees or the Owner, or both, arising out of or connected with the operation of a Hotel pursuant to this Agreement and the Owner agrees to and does hereby indemnify and save harmless the Manager from any action, cause of action, cost, claim, demand, obligation, loss, liability or settlement (including legal fees) on account of any claim, civil or criminal, action, proceeding, charge or prosecution made, instituted or maintained against the Manager or the Owner, jointly or severally or both, relating to or in connection with the operation of a Hotel pursuant to this Agreement, but excluding any of the foregoing which is the result, directly or indirectly, of any negligent act or omission or wilful misconduct of the Manager or any of its agents, employees, directors, officers or contractors. Notwithstanding the foregoing, any liability of the Owner to the Manager hereunder shall be several (and not joint with any person) and shall be limited to that proportion of such liability which is equal to the Unit Share Ratio for the Strata Lot.

11.6 Participation in Action.

- (1) The Owners shall not, either directly or indirectly, participate in or support, financially or otherwise, the prosecution of Action No. S036038 commenced by the Plaintiff, David Morgan and others (the "Action") in the Supreme Court of British Columbia.
- (2) Any loss, cost, damage or expense incurred by the Manager after the Effective Date arising out of or in connection with the Action shall be deemed to be a Hotel Expense.
- (3) Each Owner who is not currently a party to the Action covenants not to seek to be added as a plaintiff in such Action and will opt out of any class certification of the Action.

11.7 Release for Matters Arising Prior to the Effective Date.

The Owners hereby remise, release and forever discharge the Manager, its directors, officers, employees, servants, agents, heirs, executors, administrators, successors and assigns of and from any and all liabilities, causes of action, claims, proceedings, suits, demands, debts, duties, damages, interests and costs of whatever nature or kind, which they now have by reason of any cause, matter or thing whatsoever occurring or existing up to and inclusive of the Effective Date, and in particular, but without restricting the generality of the foregoing, any cause, matter or thing arising from the provision of management services under this Agreement in relation to the operation of the Hotel (the "Release"). The parties specifically acknowledge and agree that this Release is restricted to matters contractual and civil in nature. For greater clarity, the Release in no way affects any duties and obligations owed by the Manager to Her Majesty the Queen in Right of Canada, British Columbia, or the Resort Municipality of Whistler.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

**ARTICLE 12
TRADEMARKS**

12.1 During the Term. During the Term of this Agreement, the Hotel shall at all times be known and designated by such trade name and accompanying description, if any, as may from time to time be mutually approved by the Owners and the Manager. It is recognized however that the trademarks and service marks of the Manager, when used alone or in conjunction with some other word or words are and shall remain the exclusive property of the Manager. No right or remedy of the Owners for any default of the Manager nor any delivery of possession of the Hotel to the Owners upon the expiration or sooner termination of this Agreement will confer, nor will any provision of this Agreement confer upon the Owners, or any transferee, assignee or successor of the Owners, or any person firm or corporation claiming by or through the Owners the right to use the name of the Manager, either alone or in conjunction with some other word or words or the Manager's trademarks and service marks in the use and operation of the Hotel.

During the term of this Agreement, at the option of the Manager, the Owner shall cause to be printed on all printed matter and advertising the following:

“The Westin Resort & Spa, Whistler is operated by OHR Whistler Management Ltd.”

Such inscription may be modified to meet the requirements of the Franchise Agreement, as determined by the Manager.

12.2 After the Term. Upon the expiration or earlier termination of this Agreement, the Owner has the right to use in connection with the operation of the Hotel any and all items of operating equipment or operating supplies then on hand bearing the name of the Manager or the Manager's crest or logo but the Owners shall not reorder any such item. The Owners shall thereafter discontinue using such trademarks and service marks in the conduct of its business and shall not intentionally engage in any business or advertising practice which will lead the public to believe that there is any relationship or affiliation with the Manager.

12.3 Westin Hotels Trademark. The parties agree that Westin is the initial Franchisor in connection with the operation of the Hotel and that:

- (1) subject to section 12.4, during the Term, the Hotel will at all times be known and designated as follows:

“The Westin Resort & Spa, Whistler”

or such other name as may be agreed by Westin, the Manager and the Hotel Owners Council.

It is however, agreed between the parties hereto that the name “WESTIN”, when used alone or in conjunction with some other work or words, is and will remain the exclusive property of Westin Hotel Company, which owns in North America and, together with Westin, has the exclusive right to license names “WESTIN”,

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

“WESTIN HOTELS”, “WESTIN HOTELS & RESORTS” and “WESTIN SUITE HOTEL”;

- (2) the Owner has no license of, or any other rights to, the name “WESTIN” or the other trademarks or tradenames of Westin or Westin Hotel Company. Manager is Westin’s exclusive licensee in connection with the Hotel, and all rights and duties respecting such trademarks and tradenames are governed exclusively by the Franchise Agreement between Westin and Manager; and
- (3) upon Westin removing the “Westin” brand pursuant to section 12.4, the Owners will cooperate with and assist Manager in removing the names “WESTIN”, “WESTIN HOTELS”, “WESTIN HOTELS & RESORTS” and “WESTIN SUITE HOTEL” from all locations within the Hotel and from all advertising or other materials used by the Hotel, and will cease absolutely the use of the names “WESTIN”, “WESTIN HOTELS”, “WESTIN HOTELS & RESORTS” and - “WESTIN SUITE HOTEL” in any trademark thereof with respect to the Hotel. The Owners hereby give Westin the right to enter the Hotel Premises for any purpose, including but not limited to the removal of trademarked materials, so long as such entry is consistent with Westin’s rights under the Franchise Agreement,

12.4 Removal of "Westin" Brand. If at any time during the Term, Westin ceases to be associated with the Hotel Premises, the Owners and the Manager agree to change the name of the Hotel and the operations thereof to remove any reference to "Westin".

**ARTICLE 13
INSURANCE**

13.1 Insurance. The Manager will, for itself and the Owners, at the sole cost and expense of the Owners as a Hotel Expense, take out and maintain at all times during the Term:

- (1) insurance in respect of all the Furniture, Fixtures and Equipment, including those in the Strata Lots, against loss or damage by fire and all other reasonably insurable perils included in the broad form extended coverage endorsement available under fire policies in an amount not less than the actual replacement cost;
- (2) comprehensive public, products and innkeepers’ liability and property damage insurance against claims for personal and bodily injury or death and property damage occurring in or about the Hotel Premises, or the Common Property, with a single limit of not less than \$50,000,000.00 per occurrence, wherever practicable, or such higher amount as the Hotel Owners Council and the Manager may agree, acting prudently;
- (3) reasonable levels of business interruption insurance, as determined by the Manager, acting reasonably;
- (4) employer’s liability insurance, with a minimum liability limit of \$1,000,000.00;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (5) employee honesty insurance in the amount of \$500,000.00 per occurrence; and
- (6) reasonable levels of boiler and machinery insurance, except to the extent that the Strata Corporation is responsible thereof,

in all cases to the extent that such insurance is available. Provided that it is expressly acknowledged and agreed by the Owner that if the Manager is obliged to carry insurance of amounts or types in excess of those types and amounts set forth above in this section under the provisions of the Franchise Agreement which applies to the Hotel Premises, then the Manager may and is hereby authorized to arrange and place such additional insurance as is necessary so as to comply with the requirements of the Franchise Agreement.

13.2 Insurance For Owners Contents. The Owners will each be responsible for insuring their own personal belongings (other than any Furniture, Fixtures and Equipment) contained in their Strata Lots from time to time.

13.3 Parties Insured. All insurance policies provided for in section 13.1 will, to the extent reasonably possible, include the Owners, the Westin and Westin Hotel Company, and the Manager as parties insured as their interests may appear. All insurance policies referred to in section 13.1 will provide that the same may not be cancelled or materially modified until at least 10 days after prior notice to the Strata Corporation and the Manager. The Manager and the Strata Corporation will be provided copies of all such policies.

13.4 Insurance by the Manager. The cost of furnishing any insurance pursuant to section 13.1 will be borne by the Owners and charged by the Manager to the Owners as a Hotel Expense.

13.5 Schedules of Insurance. The Manager will provide the Strata Corporation with copies of insurance certificates for any insurance obtained pursuant to section 13.1. At least once during each Operating Year, the Manager will furnish to each of the Owners or the Strata Corporation a schedule of insurance, listing the number of the policies of insurance obtained by the Manager then outstanding and in force with respect to the Hotel Premises, or any part thereof, the names of the companies issuing such policies, or dates of such policies and the risks covered thereby.

**ARTICLE 14
TITLE**

14.1 Title. The Owner represents, warrants, covenants and agrees that:

- (1) it has, and that throughout the Term it will maintain, full ownership of the Strata Lot and the Furniture, Fixtures and Equipment therein, free and clear of all liens and encumbrances except those registered against title as of the Commencement Date, any Security and any other liens or encumbrances which do not materially affect the operation of the Hotel by the Manager, and those hereafter approved in writing by the Manager;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (2) the Owner will not remove, and will not permit any person claiming under the Owner to remove, any item of Furniture, Fixtures and Equipment in the Strata Lot except in accordance with this Agreement; and
- (3) the Manager, upon fulfilling its duties and obligations herein, will and may peaceably and quietly possess, manage and operate the Strata Lot and the Furniture, Fixtures and Equipment therein during the Term.

The Owner will, at its own expense, undertake and prosecute any appropriate action, judicial or otherwise, to assure peaceful and quiet possession of the Strata Lot by the Manager. The Owner further agrees that throughout the Term it will observe and perform all terms, covenants, conditions, duties and obligations required under any lease, mortgage, or other agreement creating a lien on the Strata Lot and the Furniture, Fixtures and Equipment therein and pay all property taxes and other charges levied by the Resort Municipality of Whistler with the property taxes.

**ARTICLE 15
DEFAULT, OBLIGATIONS ON
TERMINATION**

15.1 Events of Default. The following will constitute events of default on the part of the Manager:

- (1) the filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by the Manager,
- (2) the consent to an involuntary petition in bankruptcy or the failure to vacate with 60 days from the date of entry thereof any order approving an involuntary petition by the Manager;
- (3) the entering of an order, judgement, or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating the Manager a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgement or decree will continue unstayed and in effect for a period of 120 consecutive days; and
- (4) the failure of the Manager to perform, keep or fulfil, any of its material covenants, undertakings, obligations or conditions set forth in this Agreement and the Franchise Agreement, if any.

15.2 Remedies for Owners. Subject to section 15.7, if the Manager is in default pursuant to section 15.1, the Owners may give to the Manager notice of its intention to call a meeting of the Strata Corporation to terminate the appointment of the Manager under this Agreement after the expiration of a period of 15 days from the date of such notice. Notwithstanding the foregoing, with respect to events of default referred to in subsections 15.1(1) and (4), upon receipt of such notice if the Manager, promptly and with all due diligence,

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

proceeds to cure the default referred to in subsection 15.1(4), or if such default is not susceptible of being cured within a 15 day period, the Manager will take and continue action to cure such default with all due diligence until the same is cured, such additional period not to exceed 90 days from such notice. Once a cure has been effected the notice will be of no effect, if, following the expiration of such period such default has not been cured, the Owners by Special Resolution, terminate the appointment of the Manager pursuant to this Agreement. The remedies granted in this section 15.2 will not be in substitution for, but will be in addition to, any rights and remedies otherwise available for breach of contract or otherwise.

15.3 Termination by the Manager. Subject to section 15.7, the Manager may terminate its appointment as manager under this Agreement at any time upon 60 days written notice to the strata Corporation if the Owners fail to make or authorize the Manager to make, at the sole cost and expense of the Owners, Capital Expenditures without which the Hotel cannot be operated as a First-Class Hotel (and the Manager hereby acknowledges and agrees that as of the Commencement Date the capital improvements within the Hotel Premises are sufficient for the Hotel to be operated as a First-Class Hotel). Any termination by the Manager pursuant to this section 15.3 is without prejudice to any other rights that the Manager might otherwise have against the Owners or any of them.

15.3.1 Further Termination Right of Manager. The Manager may, in its sole discretion, by written notice given to the Hotel Owners Council at any time during the period from January 1, 2020 until May 31, 2020, terminate the HMAs. In such event, the HMAs shall terminate on September 30, 2020.

15.4 Remedies for the Manager. The Owners acknowledge and agree that if any Owner or Owners are in breach of any of their duties or obligations under this Agreement, the Manager may seek an injunction or the specific performance by such Owner or Owners of such duties or obligations, instead of or in addition to seeking damages against such Owner or Owners.

15.5 Liquidated Damages. Without restricting the Manager's entitlement to seek the remedies set forth in 15.4, the parties agree that in the event of a termination of this Agreement without proper and just cause under this Agreement, that immediately upon termination, the Owners shall pay to the Manager an amount representing liquidated damages equal to three times the greatest amount of fees paid annually to the Manager pursuant to Article 7 of this Agreement in any of the immediately preceding three Operating Years. PROVIDED HOWEVER that in the event of termination during the first three Operating Years of this Agreement, then the amount of the liquidated damages shall be an amount equal to 12 multiplied by the average monthly fees paid during the period from the Commencement Date up to and including the date of termination.

15.6 Obligations on Termination. Upon termination or expiry of the appointment of the Manager under this Agreement, the following will apply:

- (1) the Manager and the Owners will cooperate with respect to all matters relating to the transition of the management of the Hotel;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (2) all fees and payments payable to the Manager in accordance with this Agreement, other than those referred to in section 15.5 will be paid to the Manager when due, provided that the Manager will not be entitled to any Manager's Fees, or the Manager Recoveries for any period following such termination or expiry;
- (3) all fees and payments due to the Manager in accordance with this Agreement which are computed on an annual or other periodic basis will be annualized, prorated and paid within 30 days after termination of the appointment of the Manager under this Agreement, including all deferred, accrued and unpaid fees;
- (4) the Manager will peacefully vacate and surrender the Lobby, Convention and Restaurant Strata Lots and the Lobby, Convention, Restaurant and Employee Housing Strata Lot Leases to the Strata Corporation and the management of the Hotel to or to the order of the Owners; and
- (5) the Manager will deliver to the Owners all the Owners' books and records respecting the Hotel in the custody and control of the Manager, and assign and transfer to or to the order of the Owners all of the Manager's right, title and interest in and to all licenses and permits, if any, used by the Manager in the operation of the Hotel, provided that if the Manager has expended any of its own funds in the acquisition of such licenses or permits, the Owners will reimburse the Manager therefor if the Owners request assignment and transfer of such licenses and permits.

15.7 Obligation to Franchisor. This Agreement may not be terminated by either party, for so long as the Hotel is subject to the Franchise Agreement with Westin as the initial Franchisor, unless each of the following conditions has been satisfied:

- (1) the Owners have identified a new management company to replace the Manager;
- (2) the Owners have obtained the Franchisor's consent to the identity of the new management company;
- (3) the new management company has executed the then current standard form of confidentiality agreement used by the Franchisor;
- (4) the new manager has entered into a new management agreement that is in form satisfactory to the Franchisor and that is effective as of the date of termination of this Agreement; and,
- (5) the Manager has, in accordance with the terms and requirements of the Franchise Agreement then in effect, assigned to the new manager all its right, title and interest in and to the Franchise Agreement, then in effect.

Any termination other than in accordance with this section 15.7 is void. The terms of this section may not be modified without the express written consent of the Franchisor.

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15.8 Termination of Franchise Agreement. During the Term of this Agreement, the Franchise Agreement shall not be terminated except with the prior written approval of the Manager and such approval may be withheld in the Manager's sole discretion.

**ARTICLE 16
STRATA LOT DISPOSITIONS**

16.1 Limitation of Owners' Liability. Notwithstanding anything contained in this Agreement, the duties, obligations and liabilities of the Owner pursuant to this Agreement will be limited to:

- (1) with respect to the duties and obligations relating directly to the Strata Lot, to such Owner's duties and obligations arising directly in respect of any Strata Lot owned by such Owner; and
- (2) with respect to duties and obligations of the Owner under this Agreement, to such Owner's proportionate share of such duties and obligations, as calculated in accordance with the Unit Share Ratio,

and without limiting the generality of the foregoing:

- (3) the Manager will not look to any Owner for the payment of any amount in connection with this Agreement except as is expressly set out herein; and
- (4) no Owner will be liable for any act or omission of any other Owner.

The duties and obligations of the Owners are several only and not joint duties or obligations.

16.2 Disposition of Strata Lot by Owner. The Owner and the Manager agree that if at any time any Owner wishes to sell, lease or otherwise directly or indirectly dispose of its Strata Lot or any interest therein to any person (in this section 16.2 called a "Transferee") (other than by way of financing to any Security Holder):

- (1) prior to entering into any contract or agreement with any Transferee, the Owner will notify the proposed Transferee of the existence and substance of this Agreement and the fact that the ownership and use of the Strata Lot are subject to the rights of the Manager and the Hotel Guests pursuant to this Agreement and the Rental Pool, notify the proposed Transferee of any bookings of the Strata Lot by the Owner pursuant to Article 10 and provide the proposed Transferee with a true copy of this Agreement;
- (2) the Owner will not directly or indirectly sell, lease or otherwise directly or indirectly dispose of the Strata Lot or any interest therein unless prior to the completion of such transaction the proposed Transferee covenants pursuant to an agreement in writing in favour of the Manager, in the form and content of Schedule A, to fully assume and be bound by this Agreement insofar as it relates to such Strata Lot, and the Manager will provide the Owner and the Transferee with copies

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

of such agreement, duly executed by the Manager, as soon as reasonably possible thereafter;

- (3) upon written request from the Owner, the Manager will provide any prospective Transferee therein with details of any bookings of the strata Lot by the Owner pursuant to Article 10;
- (4) the Owner or the Transferee will notify the Manager of the completion of the sale, lease or other disposition of the Strata Lot and provide the Manager with reasonable evidence thereof, together with the assignment and assumption agreement in the form of Schedule A, duly executed by the Owner and the Transferee;
- (5) the Owner's interest in the Capital Upgrade Reserve, calculated pursuant to section 6.7(3) herein, and in the Working Capital Reserve calculated pursuant to section 6.7.1(3) herein, shall be transferred to the Transferee along with the interest in the Strata Lot;
- (6) the Manager will not be required to make any adjustments as between the Owner and any Transferee and the Manager will be deemed to have fully discharged its obligations hereunder if the Manager pays the Unit Revenue Share payable to such Owner in accordance with section 6.4 to or to the order of the person who was, according to the records of the Manager, the registered owner of the Strata Lot on the days such Unit Revenue Share is payable to such Owner in accordance with section 6.4; and
- (7) subject to Manager's approval, acting reasonably, the Transferee may upon not less than 30 days' notice to the Manager, reschedule the use by the Transferee pursuant to Article 10.
- (8) an owner shall notify the Manager of a proposed sale of a Hotel Lot prior to selling it, and subsequent prospective purchasers of their right to obtain the financial information about the Rental Pool described in paragraph 16.2(6) from the Manager and the applicable disclosure document described in paragraph 16.2(9) or (10) as the case may be;
- (9) the Manager will deliver to a subsequent prospective purchaser of a Hotel Lot, prior to an agreement of purchase and sale being entered into, the most recent audited annual financial statements for the Rental Pool and unaudited interim financial statements for any interim periods after the most recent financial year end;
- (10) the Manager will cause the Developer to deliver to any subsequent prospective purchaser upon reasonable notice of an intended sale by the owner of a Hotel Lot, before an agreement of purchase and sale is entered into, where the sale occurs within 12 months after, or prior to, the issuance of permission to occupy the Hotel Lot, this Disclosure statement and all amendments hereto; and

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (11) the Manager will deliver to any subsequent prospective purchaser, upon reasonable notice of an intended sale by the owner of a Hotel Lot, before an agreement of purchase and sale is entered into, where the sale occurs after 12 months from the date of the issuance of permission to occupy the Hotel Lot, a summary disclosure statement in the form described in BC Securities Commission Exemption order EOR#97/1.

16.3 Assumption and Release. Upon the execution and delivery of the assignment and assumption agreement in the form of Schedule A by the vendor and purchaser of any Strata Lot and the transfer of title of such Strata Lot to the purchaser thereof:

- (1) the vendor of such Strata Lot will be released from its duties and obligations under this Agreement insofar as such duties and obligations relate to such Strata Lot for the period from and after the date of such transfer of title, provided that the vendor of such Strata Lot will not be released from any of its duties or obligations under this Agreement in respect of any other Strata Lot owned by such vendor; and
- (2) The purchaser of such Strata Lot will be responsible for all duties and obligations under this Agreement insofar as such duties and obligations relate to such Strata Lot for the period from and after the date of such transfer of title.

16.4 Financing of the Strata Lot. If title to the Strata Lot is at any time to be subject to any mortgage, assignment of rents or other security registered or to be registered by any Owner against title to its Strata Lot, including any renewals, modifications, replacements or extensions thereof (collectively called the “Security”), then:

- (1) prior to granting any Security, the Owner of such Strata Lot will notify the proposed holder of such Security (the “Security Holder”) of the existence and substance of this Agreement and the fact that the ownership and use of the Strata Lot are subject to the rights of the Manager and the Hotel Guests pursuant to this Agreement and the Owner will provide the Security Holder with a true copy of this Agreement: and
- (2) if the Security Holder in respect of such Security does not agree to the priority of the Rental Pool Covenant and this Agreement over the Security, the Rental Pool Covenant and this Agreement will be subordinate to such Security and the Manager will, upon request of the Owner, execute an instrument of postponement or in confirmation of the subordination of the Rental Pool Covenant and this Agreement pursuant to this subsection 16.4(2) and in such case the Owner will use its best efforts to obtain a non-disturbance agreement in the form of Schedule B attached hereto from such Security Holder.

16.5 Estoppel Certificates. The Manager will, from time to time, upon not less than 10 days’ prior notice by any Owner or any Security Holder, execute and deliver to such Owner or Security Holder, a certificate in writing certifying that this Agreement is unmodified and in force (or, if there have been modifications, that the same is in force as modified and stating the modifications), stating such facts as to this agreement as such Owner or Security Holder reasonably requires, and stating whether or not to the best knowledge of the signer of such

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

certificate, there exists any default in the performance of any duty or obligation contained in this Agreement, and, if so, specifying each such default of which the signer may have knowledge. Any certificate so delivered may be relied upon by such Owner and by any such Security Holder or prospective Security Holder. The Manager, upon similar notice, will be entitled to a similar certificate from each Owner.

16.6 Attornment by the Manager. The Manager agrees to attorn to and become the manager, in accordance with this Agreement, of any purchaser, mortgagee or trustee who becomes entitled to possession of any Strata Lot in accordance with any requirements set out in this Article 16.

16.7 Manager to Provide Information to Purchaser. Forthwith upon request by any person who has entered into a purchase and sale agreement with the Owner in respect of the Strata Lot, the Manager will provide such purchaser with access to reasonably detailed information as to revenue and expenses for the Rental Pool for the two year period prior to the proposed completion date of the sale, to the extent the Rental Pool has been operating during such two year period.

**ARTICLE 17
ASSIGNMENT BY THE MANAGER**

17.1 Assignment by Manager.

- (1) The Manager shall not be entitled to assign, directly or indirectly, all or any of its rights under this Agreement except that it may do so only in the following circumstances:
 - (a) at any time, as security to its bankers;
 - (b) at any time, to Powder Resort Properties, or any other Affiliate of the Manager;
 - (c) at any time prior to the Commencement Date, to the Owner-Developer and then from the Owner-Developer to Westin Hotel Company but only if required to maintain the Franchise Agreement in good standing;
 - (d) prior to the date which is three years after the Commencement Date, except as contemplated in paragraphs 17.1(1) (a) and (b), to any person with the prior approval by Special Resolution (which approval may be unreasonably withheld);
 - (e) after the date which is three years after the Commencement Date, except as contemplated in paragraphs 17.1(1) (a) and (b), to a professional hotel operator of equal or greater financial and managerial capacity and ability to that of the Manager;

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

and for the purpose of paragraphs 17.1(1) (c) and (d) a change in the voting control of the Manager will be deemed to be an assignment of the Manager's rights under this Agreement.

- (2) Any assignment by the Manager of any of its rights under this Agreement pursuant to paragraphs 17.1(1)(a) through (d) will not release the Manager from any of its obligations hereunder. Any assignment permitted hereunder will not be effective unless and until:
 - (a) the assignee executes an agreement pursuant to which the assignee agrees to assume the Manager's obligation in this Agreement and be bound by all of the provisions hereof,
 - (b) the assignee also assumes the obligations of the Manager under all other rental pool management agreements for the Strata Lots (other than the Lobby Strata Lot); and
 - (c) the Franchisor approves the assignment in writing.
- (3) For the purposes of this Agreement, "financial and managerial capacity and ability" means the overall ability and capacity of a hotel management company based on:
 - (a) recognition of its trade name to be used in connection with the marketing and operation of a First-Class Hotel;
 - (b) its financial status;
 - (c) the perceived operating standards of hotels managed by it under the same trade name which it would use in relation to the Hotel;
 - (d) a reasonable estimate of its ability to maintain or increase the Net Hotel Revenue over that which would have been produced by the Manager for the balance of the period under this Agreement under the same conditions; and
 - (e) its ability to provide competent personnel experienced in the hospitality industry in Whistler to manage and operate the Hotel.

Satisfaction of the foregoing test will be determined by agreement between the Manager and the Hotel Owners Council. If the Manager and the Hotel Owners Council cannot agree as to whether a proposed hotel manager has equal or greater financial and managerial capacity and ability within 30 days of the notice by the Manager of its proposed assignment hereunder, such matter shall be submitted to arbitration pursuant to Article 18 hereof.

Notwithstanding any other term in this Article 17, as long as the Hotel is subject to the Franchise Agreement with Westin as the initial Franchisor, any assignment, either directly or indirectly, by the Manager of all or any of its rights under this Agreement will be void unless each of the following conditions have been satisfied:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- (1) Manager has obtained Franchisor's consent to the identity of the assignee;
- (2) The assignee has executed the then current standard form of confidentiality agreement used by the Franchisor;
- (3) Manager has, in accordance, with the terms and requirements of the Franchise Agreement then in affect, assigned to the assignee all its right, title and interest in and to the Franchise Agreement.

**ARTICLE 18
ARBITRATION**

18.1 Arbitration. Where pursuant to the terms and conditions of this Agreement, a matter is submitted to arbitration, such matter will be settled by arbitration in accordance with this section 18.1. If any such matter is so submitted to arbitration, the arbitration will be final and binding upon the parties and will be conducted as follows:

- (1) The rules of procedure (the "Rules") for domestic arbitrations of the British Columbia International Commercial Arbitration Centre (the "Centre") will apply to the arbitration, except as otherwise provided in this section 18.1.
- (2) Such matter will be determined by a single arbitrator agreed upon by the parties, or, failing agreement on the arbitrator by the date which is 10 days after the party submitting the matter to arbitration has notified the other party that it wishes the matter to be determined by arbitration, the arbitrator will be appointed by the Centre, upon request by either party at any time after such date.
- (3) The arbitrator will be an experienced hotel consultant or such other person as is approved by the Manager and the Strata Corporation.
- (4) The arbitrator will make his determination on the basis of written submissions and affidavits (including expert evidence) submitted by the parties, without any hearing, unless the arbitrator determines that a hearing is necessary, and the arbitrator may require the parties to make further and other written submissions or provide further and other affidavits. Each party will receive a copy of each such submission and affidavit.
- (5) The arbitrator's decision will be final and binding on the parties,
- (6) The parties will share all costs of the arbitrator equally, unless otherwise determined by the arbitrator.
- (7) The parties acknowledge and agree that they have provided for arbitration to determine the matters set out in this section 18.1 so as to promote the efficient, expeditious and inexpensive resolution of the issue. The parties agree to act at all times so as to facilitate, and not frustrate nor delay, such efficient, expeditious and inexpensive resolution of the issue. The arbitrator is authorized and directed to

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

make orders, on his initiative or upon application of either party, to ensure that the arbitration proceeds in an efficient, expeditious and inexpensive manner, and, in particular, to enforce strictly the time limits provided for in the Rules or as set by order of the arbitrator, unless the arbitrator considers it inappropriate to do so. The parties acknowledge and agree that it is their wish that the issue be determined within 30 days after appointment of the arbitrator, subject to an order of the arbitrator extending the date.

**ARTICLE 19
MISCELLANEOUS**

19.1 Corporation. Subject to the terms and conditions set out in this Agreement, the parties will at all times during the Term act in good faith, cooperate and act reasonably in respect of all matters within the scope of this Agreement.

19.2 Canadian Funds. All amounts payable by either party to the other hereunder will be paid in Canadian funds.

19.3 No Waiver of Breach. No failure by the Manager or the Owners to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach, will constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach will affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

19.4 Severability of Provisions. If any provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, will not be affected thereby, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

19.5 Notices. All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement will be in writing and addressed to the parties as follows;

(1) if to the Manager:

OHR WHISTLER MANAGEMENT LTD.
1690 - 401 West Georgia Street
Vancouver, B.C. V6B 5A1

and:

(2) if to the Owner:

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

c/o WRM Strata Management & Real Estate Services Ltd.
#202 - 1410 Alpha Lake Road
Whistler, British Columbia, V0N 1B1

and:

- (3) if to the Strata Corporation:

The Owners, Strata Plan LMS4089:
c/o WRM Strata Management & Real Estate Services Ltd.
#202 - 1410 Alpha Lake Road
Whistler, British Columbia, V0N 1B1

- (3.1) if to The Owners of Strata Lots 3 – 421, forming part of The Owners, Strata Plan LMS4089:

c/o WRM Strata Management & Real Estate Services Ltd.
#202 - 1410 Alpha Lake Road
Whistler, British Columbia, V0N 1B1

- (3.2) if to the Hotel Owners Council:

c/o WRM Strata Management & Real Estate Services Ltd.
#202 - 1410 Alpha Lake Road
Whistler, British Columbia, V0N 1B1

or, in any case, at such other address as the party to whom the notice is sent will have designated in accordance with the provision of this section 19.5. All notices will be delivered personally, transmitted by fax or mailed by postage prepaid mail (provided that in the event of a disruption in mail services, notices will be delivered personally or transmitted by fax). Notices will be deemed to be received:

- (4) on the date of delivery or transmittal thereof if delivered personally or sent by fax;
or
(5) on the fifth Business Day after the mailing thereof, if sent by mail.

19.6 Successors and Assigns. Subject to section 16.2, this Agreement will inure to the benefit of and will be binding upon the heirs, executors, successors, legal representatives and permitted assigns of the parties.

19.7 Counterparts. This Agreement may be executed in several counterparts, each of which will be an original, but all of which will constitute but one and the same instrument.

19.8 Waiver. No provision of this Agreement may be changed orally, but only by an instrument in writing signed by the party against which the enforcement of the change is sought.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

19.9 No Partnership or Joint Venture. Nothing contained in this Agreement will constitute or be deemed to create a partnership or joint venture between the Owners and the Manager.

19.10 Third Party Beneficiary. Westin and Westin Hotel Company are third party beneficiaries of all terms of this Agreement that imply an obligation or right benefiting Westin or Westin Hotel Company, including, but not limited to, the terms of paragraphs 11.4, 12.3, 15.7, and 17.1. Either Westin or Westin Hotel Company, or both, may enforce directly the obligations of the Owner, the Owners, or Manager under such terms.

19.11 No Modification of Franchise Agreement. Nothing in this Agreement amends or modifies the obligations of Manager or the duties of Westin under the terms of the Franchise Agreement.

19.12 Approvals. Except as expressly set out herein, whenever any party hereto is requested to give its approval to any matter, such approval will not be withheld or delayed unreasonably. If a party will desire the approval of the other party hereto to any matter, such party will give notice to such other party that it requests such approval, specifying in such notice the matter (in reasonable detail) as to which such approval is requested.

19.13 Force Majeure. If a party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of Act of God, strike, labour dispute, lockout, threat of imminent strike, fire, flood, interruption or delay in transportation war, insurrection or mob violence, requirement or regulation of government, or statute, unavoidable casualties, shortage of labour, equipment or materials, economic or market conditions plant breakdown or failure of operation equipment or any disabling cause (other than lack of funds), without regard to the foregoing enumeration, beyond the control of either party or which cannot be overcome by the means normally employed in performance, then and in every such event, any such prevention or delay will not be deemed to be a breach of this Agreement but performance of any of the said obligations or requirements will be suspended during such period or disability and the period of all such delays resulting from any such thing required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is to be done, or made pursuant hereto will be extended by the total period of all such delays.

19.14 Entire Agreement. This Agreement constitutes the entire amended and restated agreement between the Owners and the Manager relating to the subject matter of this Agreement and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the Owners and the Manager.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED in the presence of:	OHR WHISTLER MANAGEMENT LTD.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

Witness Signature Print Name: _____ _____	Per: _____ Authorized Signatory Per: _____ Authorized Signatory
Address	

SIGNED, SEALED AND DELIVERED in the presence of: _____	FOR AND ON BEHALF OF EACH OF THE OWNERS LISTED ON SCHEDULE F BY: THE OWNERS, STRATA PLAN LMS 4089
Witness Signature Print Name: _____ _____	Per: _____ Authorized Signatory Per: _____ Authorized Signatory
Address	

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SCHEDULE A

The Westin Resort, Whistler
4090 Whistler Way

ASSIGNMENT AND ASSUMPTION OF HOTEL MANAGEMENT AND RENTAL POOL
AGREEMENT

"Manager"	_____	
"Vendor"	_____	
"Purchaser"	_____	
	Name	Address
	Tel: (H) _____ (W) _____	Tel: (H) _____ (W) _____
	Fax: _____	Fax: _____
	This Purchaser's Social Insurance Number is:	This Purchaser's Social Insurance Number is:
	_____	_____
	This Purchaser (is/is not) resident in Canada for the purpose of the <u>Income Tax Act</u>	This Purchaser (is/is not) resident in Canada for the purpose of the <u>Income Tax Act</u>
"Strata Lot"	THE RESORT MUNICIPALITY OF WHISTLER Strata Lot _____ Block _____ District Lot _____ Strata Plan LMS _____	
"Sale Date:"	_____	

WHEREAS:

- A. The Vendor is the owner of the Strata Lot;
- B. The Vendor and the Purchaser have entered into a contract for the sale of the Strata Lot from the Vendor to the Purchaser on the Sale Date;
- C. The Vendor and the Manager are parties to an amended and restated hotel management and rental pool agreement dated for reference _____, 2013 between O’Neill Hotels & Resorts Ltd. and the Vendor, as amended by the amendments, if any, described in section 5 below and as previously assigned (collectively called the “Rental Management Agreement”) in respect of the Strata Lot and the operation of The Westin Resort (the “Development”); and

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

- D. The parties are required to enter into this Agreement in accordance with the Rental Management Agreement

THEREFORE in consideration of the transfer of the Strata Lot from the Vendor to the Purchaser on the Sale Date and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all of the parties, the parties agree as follows:

1. Assignment to Purchaser. Effective as of the Sale Date, the Vendor hereby absolutely assigns, transfers and conveys, effective from and including the Sale Date, all of the Vendor's right, title and interest in and to the Rental Management Agreement insofar as they arise from ownership of and relate to the Strata Lot, and all rights and benefits to be derived thereunder (including any amounts payable to the Vendor thereunder) insofar as such rights and benefits arise from ownership of and relate to the Strata Lot
2. Direction to Pay. The Vendor and the Purchaser hereby direct the Manager to pay any amounts payable under the Rental Management Agreement in respect of the Strata Lot that relate to the period before the Sale Date to the Vendor at its address above and any such amounts that relate to the period from and including the Sale Date to the Purchaser at the address set out above.
3. Assumption and Indemnify by Purchaser. The Purchaser hereby assumes, from and including the Sale Date, all of the duties and obligations of the Vendor under the Rental Management Agreement and the Rental Pool Covenant (as defined in the Rental Management Agreement) insofar as such duties and obligations arise from ownership of and relate to the Strata Lot, and covenants and agrees with the Vendor and the Manager to perform and observe all of such duties and obligations from and including the Sale Date.
4. Other Strata Lots Excluded. This Agreement relates only to the Strata Lot and not to any other strata lots in the Development.
5. Amendments to Rental Management Agreement. The Vendor represents to the Purchaser that the Rental Management Agreement has not been amended except as follows (NIL if not completed):
6. Miscellaneous. If either the Vendor or the Purchaser is comprised of more than one person, the covenant, and agreements of the Vendor or the Purchaser, as the case may be, are joint and several covenants and agreements. This Agreement will be binding upon and enure to the benefit of the heirs, executors, successors legal and personal representatives and assigns of the parties, as applicable.

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

7. Purchaser Acknowledgement. The Purchaser acknowledges that the Purchaser has received a copy of and has been given as opportunity to read the Rental Management Agreement (including any amendments set out in section s above)

DATE _____

BY THE VENDOR:

(if a corporation)

THE COMMON SEAL of <*> was)
hereunto affixed in the presence of:)

C/S

_____)
Authorized Signatory)

_____)
Authorized Signatory)

(if an individual)

SIGNED, SEALED AND DELIVERED by)
<*> in the presence of:)

_____)
Name)

_____)
<*>

_____)
Address)

_____)
Occupation)

BY THE PURCHASER

(if a corporation)

THE COMMON SEAL of <*> was)
hereunto affixed in the presence of:)

C/S

_____)
Authorized Signatory)

_____)
Authorized Signatory)

CONSOLIDATED VERSION – THIS IS NOT THE ACTUAL AGREEMENT

(if an individual)

SIGNED, SEALED AND DELIVERED by)

<*> in the presence of:)

)

)

_____) Name)

_____) <*>

_____) Address)

_____))

_____))

_____))

_____) Occupation)

_____)

(NAME OF MANAGER) hereby agrees that the Vendor is hereby released from all of the Vendors duties and obligations under the Rental Management Agreement and the Rental Pool Covenant arising from and including the Sale Date, insofar as such duties, and obligations arise from ownership of or relate to the Strata Lot.

DATED _____

BY THE MANAGER

Per: _____

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THE HMA CONSISTS OF THE 2013 AGREEMENT, 2017 AMENDMENT AND
THE 2022 AMENDMENT**

SCHEDULE B

SECURITY HOLDER'S NON-DISTURBANCE AGREEMENT

THIS AGREEMENT MADE _____ -

BETWEEN:

[Name, address and fax number of the Lender]

(the "Lender")

AND

(the "Manager")

WHEREAS:

A. _____ [Insert name of Owner(s)] (the "Owner") is the owner of the lands and premises situated in the resort Municipality of Whistler, British Columbia and legally described as follows:

Parcel Identifier _____

Strata Lot _____

Lot A

District Lots 3020, 3685, 4893, 5946, 7885 and 7888

Strata Plan LMS _____

(the "Strata Lot");

B. The Owner is party to an amended and restated hotel management and rental pool agreement dated for reference _____, 2013 with the Manager (the "Rental Management Agreement")

C. In connection with the Rental Management Agreement, the Strata Lot is encumbered by a restrictive covenant (the "Rental Pool Covenant") in favour of the Lobby Strata Lot (as defined in the Rental Management Agreement) which Rental Pool Covenant is registered in the Land Title Office against title to, inter alia, the Strata Lot under instrument number _____;

D. The Owner has granted to the Lender a _____ [describe security] (the "Security") in favour of the Lender, which security is registered in the Land Title Office against title to the Strata Lot under instrument no(s); and

E. The owner of the Lobby Strata Lot has agreed to postpone the Rental Pool Covenant to the Security on the condition that the Lender enter into this Agreement with the Manager.

NOW THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement, the Lender and the Manager hereby promise and agree as follows:

1. The Lender covenants with the Manager that if either;
 - (1) any proceedings are brought by the Lender for foreclosure or sale or other suit, sale or proceeding under the Security in respect of the Strata Lot; or
 - (2) the Lender becomes the owner of the Strata Lot pursuant to the proceedings referred to in subsection 9 (1) above or of any transfer or quit claim in respect of the Strata Lot is made by the Owner to Lender;

then;

- (a) the Lender will not interfere with any of the rights and privileges of the Manager under the Rental Pool Covenant or the Rental Management Agreement, nor disaffirm the Rental Pool Covenant or the Rental Management Agreement, subject to paragraph 1 (2) (c);
 - (b) the Lender shall not, except as may be necessary or required in accordance with any application law, make the Manager a party to any foreclosure or other suit, sale or proceeding under the Security and the same shall not affect the rights or estate of the Manager under the Rental Pool Covenant or the Rental Management Agreement; and
 - (c) the Lender shall, upon the issue of a writ of possession, transfer or quit claim of the Strata Lot in favour of the Lender, or upon the Lender becoming the owner of the Strata Lot, assume and observe and perform all of the obligations of the Owner under the Restrictive Covenant and the Rental Management Agreement accruing on and after such date and shall be entitled to all of the rights and benefits of the Owner on and after such date, including any rights of termination.
2. If the Lender succeeds to the interest of the Owner in the Strata Lot:
 - (1) the Manager will be bound to the Lender as under all of the Manager's promises and agreements contained in the Rental Pool Covenant and the Rental Management Agreement, insofar as such promises and agreements relate to the Strata Lot, for the balance of the term of the Rental Management Agreement, as if the Lender were the owner of the Strata Lot under the Rental Management Agreement; and
 - (2) the Lender will be bound to the Manager under all of the Owner's promises and agreements contained in the Rental Pool Covenant and the Rental Management Agreement, insofar as such promise and agreements relate to the Strata Lot, for the balance of the term of the Rental Management Agreement, as if the Lender were the owner of the Strata Lot under the Rental Management Agreement,

3. The Manager will, from and after the Lender's succession to the interest of the Owner in the Strata Lot, have the same remedies against the Lender for any breach of the Rental Pool Covenant or the Rental Management Agreement as the Manager would have had under the Rental Pool Agreement Covenant or the Rental Management Agreement, as the case may be, against the Owner if the Lender had not succeeded to the interest of the Owner, provided that the Lender will not be:

- (1) liable for any act or omission of any prior owner of the Strata Lot, including the Owner; and
- (2) subject to any set-off or defence that the Manager may have against any prior owner of the Strata Lot, including the Owner.

4. If the Lender realizes upon the Security, the Lender will not transfer or cause to be transferred title to the Strata Lot to any person unless prior thereto the Lender has caused the transferee to execute and deliver to the Manager the assignment and assumption agreement in the form and content of Schedule A to the Rental Management Agreement.

5. The Lender will not assign or transfer the Security unless the Lender requires the assignee or transferee to execute and deliver to the Manager an agreement with the Manager on the same terms and conditions as this Agreement.

6. This Agreement may only be modified by an agreement in writing signed by the parties hereto.

7. This Agreement will be governed and construed in accordance with the laws of British Columbia.

8. This Agreement will enure to the benefit of and be binding upon the successors and assigns of the parties.

9. The Lender acknowledges that the Lender has received a copy of and has been given an opportunity to read the Rental Management Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

BY THE LENDER:

[Name of Lender]

Per: _____

BY THE MANAGER

[Name of Manager]

SCHEDULE C

NON-EXCLUSIVE SUMMARY OF PERSONAL USE BENEFITS

1. The Owner shall be entitled to use his strata lot up to 56 nights per calendar year subject to availability and in accordance with the Phase II Rental Pool Covenant registered on title as BM72382. The terms of the Phase II Rental Pool Covenant are described in the “Seasonal Residential Use” section of the covenant.
2. On any night, total Owners’ usage may not exceed 50% of the Strata Lots.
3. The Owner will have free year round usage of the Hotel’s public facilities.
4. The Owner shall have account charging privileges at the Hotel, while residing as a guest of the Hotel.
5. The Owner will have privileges with other hotels managed by or affiliated with the Manager to book rooms at a 30% discount off rack rate, subject to availability.

SCHEDULE D
Sales and Marketing Services

The Manager agrees to:

- review and provide advice regarding the Hotel's annual marketing plan;
- integrate the Hotel on an at-cost basis, subject to the Approved Operating Plan and Budget, in various trade shows and exhibitions attended by the Manager or recommended for the Hotel;
- make available to the Hotel on an at-cost basis, subject to the Approved Operating Plan and Budget, participation in group advertising and brochures, promotions and other optional services that may be offered by the Manager from time to time;
- keep all proprietary information confidential;
- reasonably distribute the Hotel brochures, rates and other pertinent information as supplied by the Hotel;
- use its reasonable efforts to ensure that the Hotel is integrated into the marketing system of any Franchisor with which the Hotel is affiliated.

SCHEDULE E

Total Rooms Available
Total Rooms Occupied
Perct. Occ. - Total
Total Paid Occupied
Perct. Occ. - Paid
Average Paid Rate
RevPar (Revenue Per Available Rooms)
Revenues
Rooms
Food and Beverage
Telecommunications
Sub-Rentals
Total Revenues
Departmental Expenses
Rooms
Food and Beverage
Telecommunications
Sub-Rentals
Total Departmental Expenses
Gross Operating Income
Departmental Income
Rooms
Percentage Profit
Food and Beverage
Percentage Profit
Telecommunications
Percentage Profit
Sub-Rentals
Percentage Profit
Total Departmental Income
Percentage Profit
Undistributed Expenses
Administrative and General
Credit Cards Commissions
Sales and Marketing
Starwood Preferred Guest Cost
Property Maintenance
Utilities
Total Undistributed Expenses

House Profit/Gross Operating Profit

Fixed Expenses/"Below-Line Costs"

OHR Management Fees:

Revenue Incentive Fee

House Profit Percentage Incentive Fee

House Profit Dollar Incentive Fee

Westin License Agreement

Owner's Strata Lot Expenses:

Property Tax

Tourism Whistler Fee

Cressey/Common Area Leases:

Lobby Strata Lot Lease

Restaurant Strata Lot Lease

Convention Strata Lot Lease

Employee Housing Lot Lease

Staff Cafeteria and Office Lease

Strata Administration Expense

Equipment and Other Operating Leases

Tourism Whistler Fees (if not included in "Owner's Strata Lot Expenses")

Property Tax (if not included in "Owner's Strata Lot Expenses")

Insurance (excluding D&O insurance for Strata/Owners' Council)

Interest Expense - Capital Lease

Principal Repayment - Capital Lease

Total Fixed Expenses/"Below-Line Costs"

Net Income

Percentage Of Net Income

FF&E Reserve

FF&E Reserve

Total FF&E

Gross Cash Available for Distribution

OHR Management Fee

Incentive Fee on Cash Distribution

Net Cash Available for Distribution

SCHEDULE F
LIST OF OWNERS

SCHEDULE G
SAMPLE CALCULATION OF INCENTIVE FEE ON DISTRIBUTION
(Section 7.3.2)

Part A – Sample Calculation for Operating Years Prior to 2017

Net Income		10,820,043	
FF&E Reserve - 4%		1,610,979	
"Gross Cash Available for Distribution"		<u>9,209,064</u>	
OHR Incentive Fee on Cash Available:			
less: Base		<u>5,250,000</u>	
		3,959,064	
\$5.25 mill. -to- \$7.50 mill. Portion per subsection 7.3(2)1	15%	<u>2,250,000</u>	337,500
2nd Portion of Incentive Fee per subsection 7.3.2(2)	25%	1,709,064	<u>427,266</u>
Incentive Fee on Distribution			<u><u>\$764,766</u></u>

Part B – Sample Calculation for Operating Years 2017 and Following

Net Income		10,820,043	
FF&E Reserve - 4% - 2017, 5% - 2018		1,610,979	
"Gross Cash Available for Distribution"		<u>9,209,064</u>	
OHR Incentive Fee on Cash Available:			
less: Base		<u>5,250,000</u>	
		3,959,064	
\$5.25 mill. -to- \$7.50 mill. Portion per subsection 7.3.2(1)	15%	<u>2,250,000</u>	337,500
		1,709,064	
less: 1st Portion of Incentive Fee		<u>337,500</u>	
2nd Portion of Incentive Fee per subsection 7.3.2(2)*	25%	1,371,564	<u>274,313</u>
Incentive Fee on Distribution			<u><u>\$611,813</u></u>

* for Operating Years 2017 and following, the 2nd portion of the incentive fee under subsection 7.3.2(2) is computed using the factor 25 / 125 to account for the fee being calculated on a net Cash Available for Distribution basis (after deducting the Incentive Fee on Distribution).

For certainty, the circularity inherent in the Part B calculation will be resolved by an iterative calculation method such that the residual error is less than \$0.001.

TABLE OF CONTENTS

ARTICLE 1	INTERPRETATION	2
1.1	Definitions	2
1.2	Interpretation.....	15
1.3	Applicable Law.....	15
1.4	Statutes.....	15
1.5	Owner’s Liability.....	15
1.6	Accounting Terms	15
ARTICLE 2	COMMENCEMENT DATE, TERM OF AGREEMENT	16
2.1	Commencement Date.....	16
2.2	Initial Term	16
2.3	Intentionally Deleted	16
2.4	Performance by Manager – RevPAR Test.....	16
2.5	Topping up by Manager.....	17
2.6	Renewal By Agreement.....	18
ARTICLE 3	HOTEL RENTAL MANAGEMENT	19
3.1	Management of Hotel Rental Pool	19
3.2	Hotel Rental Pool.....	20
3.3	Use	20
3.4	Restrictions Re: Strata Corporation Bylaws	20
3.5	Assignment of Leases	20
ARTICLE 4	MAJOR DECISIONS - SPECIAL RESOLUTIONS	20
4.1	Major Decisions - Special Resolutions.....	20
4.2	Owners to be Bound	21
ARTICLE 5	OPERATING PLAN AND BUDGET.....	21
5.1	Operating Plan and Budget.....	21
5.2	Inclusions in Operating Plan and Budget	22
5.3	Budget Summary	22
ARTICLE 6	OWNERS’ REVENUES AND DISTRIBUTIONS TO OWNERS	22
6.1	Calculations and Reports by the Manager	22
6.2	Calculations of Unit Revenue Share.....	23
6.3	In the Rental Pool’/Exclusion of Convention, Lobby and Restaurant Strata Lots	24
6.4	Payments to Owner.....	24
6.5	Maintenance and Repair of Strata Lots	25
6.6	FF&E Reserve/Repair of FF&E	25
6.7	Shortfalls.....	25
6.8	Payment of Owner’s Strata Lot Expenses by Owners.....	25
6.9	GST and Withholding Tax.....	26
6.10	No Separate Revenue for Manager.....	26
6.11	Reporting	27

TABLE OF CONTENTS
Continued

ARTICLE 7	MANAGEMENT AND OTHER FEES AND REIMBURSABLE EXPENSES.....	27
7.1	Revenue Incentive Fee.....	27
7.2	House Profit Percentage Fee.....	27
7.3	House Profit Dollar Fee.....	28
7.4	Reimbursement of Manager Recoveries.....	29
ARTICLE 8	HOTEL BANK ACCOUNTS AND BOOKS AND RECORDS	29
8.1	Hotel Bank Accounts.....	29
8.2	Books, Records, Financial Statements.....	30
ARTICLE 9	SERVICES TO BE RENDERED BY THE MANAGER.....	31
9.1	Management Services.....	31
9.2	General Management.....	32
9.3	Use of Lobby, Convention and Restaurant Strata Lots	34
9.4	Maintenance.....	34
9.5	Changes and Alterations	34
9.6	Capital Expenditures.....	36
9.7	Personnel and Employees	36
9.8	Franchise Group Advertising.....	37
9.9	Manager's Sales and Marketing Systems	37
9.10	Third Party Reservations Systems Providers.....	38
9.11	Other Systems.....	39
9.12	Performance of the Manager's Services	39
9.13	Meetings	39
9.14	Shared Services.....	39
9.15	Employee Housing Management.....	40
ARTICLE 10	USE OF STRATA LOT BY OWNER	40
10.1	Use of Strata Lot by Owner	40
10.2	Standard Charges	40
10.3	No Charge for Common Property or Common Assets.....	41
10.4	Request to use Different Strata Lot	41
10.5	Owner Election Not to Use.....	41
10.6	Use by or on behalf of Owner.....	41
ARTICLE 11	COVENANTS, REPRESENTATIONS AND WARRANTIES.....	41
11.1	Covenants	41
11.2	Representations and Warranties of Manager.....	41
11.3	Representations and Warranties of Owners.....	42
11.4	Franchisor Indemnity.....	42
11.5	Indemnity of Manager	42
11.6	Participation in Action.....	43
11.7	Release for Matters Arising Prior to the Effective Date.....	43

TABLE OF CONTENTS
Continued

ARTICLE 12	TRADEMARKS	43
12.1	During the Term	43
12.2	After the Term	44
12.3	Westin Hotels Trademark	44
12.4	Removal of "Westin" Brand	45
ARTICLE 13	INSURANCE.....	45
13.1	Insurance	45
13.2	Insurance For Owners Contents.....	46
13.3	Parties Insured	46
13.4	Insurance by the Manager.....	46
13.5	Schedules of Insurance	46
ARTICLE 14	TITLE	46
14.1	Title.....	46
ARTICLE 15	DEFAULT, OBLIGATIONS ON TERMINATION	47
15.1	Events of Default	47
15.2	Remedies for Owners	47
15.3	Termination by the Manager	48
15.4	Remedies for the Manager.....	48
15.5	Liquidated Damages	48
15.6	Obligations on Termination.....	48
15.7	Obligation to Franchisor	49
15.8	Termination of Franchise Agreement.....	49
ARTICLE 16	STRATA LOT DISPOSITIONS	50
16.1	Limitation of Owners' Liability.....	50
16.2	Disposition of Strata Lot by Owner.....	50
16.3	Assumption and Release.....	52
16.4	Financing of the Strata Lot	52
16.5	Estoppel Certificates	52
16.6	Attornment by the Manager.....	53
16.7	Manager to Provide Information to Purchaser.....	53
ARTICLE 17	ASSIGNMENT BY THE MANAGER	53
17.1	Assignment by Manager	53
ARTICLE 18	ARBITRATION.....	55
18.1	Arbitration.....	55
ARTICLE 19	MISCELLANEOUS	56
19.1	Corporation	56
19.2	Canadian Funds	56
19.3	No Waiver of Breach	56
19.4	Severability of Provisions.....	56

TABLE OF CONTENTS
Continued

19.5	Notices	56
19.6	Successors and Assigns	57
19.7	Counterparts.....	57
19.8	Waiver.....	57
19.9	No Partnership or Joint Venture	58
19.10	Third Party Beneficiary	58
19.11	No Modification of Franchise Agreement.....	58
19.12	Approvals.....	58
19.13	Force Majeure	58