

# MANAGEMENT AGREEMENT (Holiday Resort)

## TABLE OF CONTENTS

	PAGE
RECITALS .....	8
<b>0.00 INTERPRETATION .....</b>	<b>8</b>
0.01 Definitions.....	8
0.01.01 Agreement.....	9
0.01.02 Best Effort.....	9
0.01.03 Breach .....	9
0.01.04 Change in Control .....	9
0.01.05 Client .....	10
0.01.06 Confidential Information.....	10
0.01.07 Co-ownership.....	10
0.01.08 Encumber or Encumbrance.....	11
0.01.09 Event of Default.....	11
0.01.10 Financial Year.....	11
0.01.11 Force Majeure.....	12
0.01.12 Fundamental Provisions.....	12
0.01.13 Legal Representatives .....	12
0.01.14 Other Proprietors .....	12
0.01.15 PARTY.....	12
0.01.16 Person.....	12
0.01.17 Prime Rate.....	12
0.01.18 Proportion .....	13
0.01.19 Related Person .....	13
0.01.20 Rental Expenses.....	13
0.01.21 Subsidiary .....	13
0.01.22 Rental Income .....	13
0.01.23 Unit.....	13
0.02 Precedence .....	13
0.03 Jurisdiction.....	14
0.03.01 Governing Law .....	14
0.03.02 Non-compliance.....	14
(a) Severability .....	14
(b) Substitute Provision.....	14
0.04 Miscellaneous .....	14
0.04.01 Cumulative Rights.....	14
0.04.02 Time and Dates .....	14
(a) Time of the Essence.....	15
(b) Computation of Time .....	15

	(c) Delays.....	15
0.04.03	Financial References .....	15
0.04.04	References within Agreement.....	16
0.04.05	Gender and Number .....	16
0.04.06	Headings.....	16
0.04.07	Presumptions.....	16
0.04.08	Knowledge .....	16
0.04.09	Approval.....	16
0.04.10	GAAP.....	16
<b>1.00</b>	<b>PURPOSE.....</b>	<b>17</b>
1.01	Legal Transaction .....	17
1.02	Conditions .....	17
1.02.01	Required by PROPRIETOR .....	17
1.02.02	Required by MANAGER.....	17
1.02.03	Choice .....	17
<b>2.00</b>	<b>CONSIDERATION.....</b>	<b>18</b>
<b>3.00</b>	<b>TERMS OF PAYMENT.....</b>	<b>18</b>
3.01	Deduction.....	18
3.02	Interest.....	18
3.03	Loss of Term.....	18
<b>4.00</b>	<b>SECURITY.....</b>	<b>19</b>
4.01	In favour of PROPRIETOR .....	19
4.02	In favour of MANAGER .....	19
<b>5.00</b>	<b>MUTUAL REPRESENTATIONS AND WARRANTIES.....</b>	<b>19</b>
5.01	Status .....	20
5.02	Authority .....	20
5.03	Binding Agreement .....	20
5.04	Canadian Resident .....	20
5.05	Commission .....	20
5.06	Insurance .....	20
5.07	Nominee .....	20
5.08	Fundamental Provisions .....	21
5.09	Disclosure.....	21
<b>6.00</b>	<b>REPRESENTATIONS AND WARRANTIES OF THE PROPRIETOR.....</b>	<b>21</b>
6.01	No Warranties.....	21
<b>7.00</b>	<b>REPRESENTATIONS AND WARRANTIES OF THE MANAGER.....</b>	<b>21</b>
7.01	Competence.....	21
7.02	Solvability .....	21

7.03	Other Businesses.....	22
<b>8.00</b>	<b>MUTUAL DUTIES AND OBLIGATIONS.....</b>	<b>22</b>
8.01	Confidential Information.....	22
8.01.01	Undertaking .....	22
8.01.02	End of Agreement .....	22
8.02	Insurance .....	23
8.02.01	Insured Risks .....	23
8.02.02	Amount of Coverage .....	23
8.02.03	Issuer .....	23
8.02.04	Co-insured.....	23
8.02.05	No Limitation.....	23
8.03	Indemnification .....	23
8.03.01	“Loss”.....	23
8.03.02	Scope .....	24
8.03.03	Procedure .....	24
8.03.04	Deductible.....	25
8.03.05	Limitation on Claims.....	25
8.04	Disclosure of Agreement.....	25
<b>9.00</b>	<b>DUTIES AND OBLIGATIONS OF THE PROPRIETOR.....</b>	<b>25</b>
9.01	Working Capital.....	25
9.01.01	Initial Installment.....	25
9.01.02	Default.....	26
9.01.03	Income and Expense Guarantee .....	26
9.02	Reimbursement by PROPRIETOR .....	26
9.02.01	Advance .....	26
9.02.02	Interests .....	27
<b>10.00</b>	<b>DUTIES AND OBLIGATIONS OF THE MANAGER .....</b>	<b>27</b>
10.01	Best Effort .....	27
10.02	Duties .....	27
10.02.01	Powers .....	27
10.02.02	Major Work .....	29
10.02.03	Urgent Work .....	29
10.03	Financial Statements.....	29
10.04	Registers and Accounting Books.....	29
10.05	Access to Books and Information.....	29
10.06	Respect of Legislation.....	29
10.07	Legal Proceedings .....	29
10.08	Attribution of Rental Income and Expenses .....	30
10.09	Allocation of the Working Capital and the Rental Expenses attributed to the Unit .....	30
10.10	Rental Income and Rental Expense Guarantee.....	30
10.10.01	Awarding.....	30

10.10.02	Income.....	31
10.10.03	Expenses .....	31
10.10.04	Default.....	31
10.10.05	Discharge .....	31
10.10.06	Maximal Profit.....	32
10.10.07	Surplus .....	32
10.11	Annual Budget.....	32
10.11.01	Submittal .....	32
10.11.02	Operating Expenses.....	32
10.11.03	Initial Financial Years .....	33
10.12	Insurance Policy .....	33
10.12.01	Subscription.....	33
10.12.02	Beneficiary.....	33
<b>11.00</b>	<b>SPECIAL PROVISIONS .....</b>	<b>33</b>
11.01	Assignment .....	33
11.01.01	Prohibition .....	33
11.01.02	Effect of Breach.....	33
11.01.03	Exception .....	34
11.02	Force Majeure .....	34
11.02.01	No Default.....	34
11.02.02	Duty.....	34
11.02.03	Rights of Other PARTY.....	34
11.03	Relationship .....	34
11.03.01	Independent Contractors .....	34
11.03.02	No Control over Performance.....	34
11.03.03	No Authority to Bind .....	35
11.04	Further Assurances .....	35
11.05	Other Remedies .....	35
11.05.01	Choices.....	35
11.05.02	No Limitations.....	35
11.06	Prescription .....	35
11.07	Exclusivity .....	35
11.08	Right to Vote.....	36
11.09	Management of the Bank Account.....	36
11.10	Common Management .....	36
11.11	Non-Liability .....	36
11.12	Formalities .....	36
11.13	Occupancy of the Unit by PROPRIETOR and Clients Referral .....	36
11.13.01	Waiving.....	37
11.13.02	Rental Modalities .....	37
11.13.03	Credit.....	37
<b>12.00</b>	<b>GENERAL PROVISIONS .....</b>	<b>37</b>

12.01	Notice .....	37
12.02	Dispute Resolution .....	37
	12.02.01 Good Faith Negotiations .....	37
	12.02.02 Mediation .....	37
	12.02.03 Arbitration.....	38
12.03	Election .....	38
12.04	Counterparts.....	38
12.05	Amendment.....	38
12.06	Waiver of Rights.....	38
12.07	Electronic Transmission.....	38
12.08	Language.....	39
<b>13.00</b>	<b>TERMINATION.....</b>	<b>39</b>
13.01	Mutual Consent.....	39
13.02	Unilateral Termination .....	39
13.03	Cancellation .....	39
	13.03.01 By PROPRIETOR.....	39
	(a) With FIVE (5) Days Notice .....	39
	(b) With FIFTEEN (15) Days Notice.....	40
	(c) With SIXTY (60) Days Notice .....	40
	13.03.02 By MANAGER.....	40
	13.03.03 Other recourses.....	41
13.04	Transition .....	41
13.05	Survival of the Obligations.....	41
<b>14.00</b>	<b>EFFECTIVE DATE.....</b>	<b>42</b>
14.01	Retroactivity.....	42
14.02	Execution .....	42
14.03	Deferral .....	42
<b>15.00</b>	<b>DURATION.....</b>	<b>42</b>
15.01	Probationary or Trial Period .....	42
15.02	Initial Term .....	43
15.03	Renewal Option.....	43
15.04	Survival .....	43
<b>16.00</b>	<b>SCOPE .....</b>	<b>44</b>

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MANAGEMENT AGREEMENT entered into in the City of \_\_\_\_\_, Province of \_\_\_\_\_ (insert name of province), Canada.

BETWEEN: V1 \_\_\_\_\_ (name of individual), \_\_\_\_\_ (occupation), domiciled and residing at \_\_\_\_\_ (insert civic number and street name), in the City of \_\_\_\_\_ (insert name of city), Province of \_\_\_\_\_ (insert name of province), \_\_\_\_\_ (postal code);

OR

V2 \_\_\_\_\_ (corporate or business name), a legal person duly incorporated pursuant to the \_\_\_\_\_ Act (name of statute under which the corporation was incorporated), having its principal place of business at \_\_\_\_\_ (insert civic number and street name), in the City of \_\_\_\_\_ (insert name of city), Province of \_\_\_\_\_ (insert name of province), \_\_\_\_\_ (postal code);

OR

V3 \_\_\_\_\_ (corporate or business name), a legal person duly incorporated pursuant to the \_\_\_\_\_ Act (name of statute under which the corporation was incorporated), having its head or registered office at \_\_\_\_\_ (insert civic number and street name), in the City of \_\_\_\_\_ (insert name of city), Province of \_\_\_\_\_ (insert name of province), \_\_\_\_\_ (postal code), represented by \_\_\_\_\_ (name of representative), its \_\_\_\_\_ (title of representative), duly authorized for the purposes hereof;

OR

V4 \_\_\_\_\_ (corporate or business name), a legal person, duly incorporated pursuant to the \_\_\_\_\_ Act (name of statute under which the corporation was incorporated), having its head or registered office at \_\_\_\_\_ (insert civic number and street name), in the City of \_\_\_\_\_ (insert name of city), Province of \_\_\_\_\_ (insert name of province), \_\_\_\_\_ (postal code), and duly registered under number \_\_\_\_\_ ( ) in accordance with \_\_\_\_\_ (insert name of statute pursuant to which the entity is registered), represented by \_\_\_\_\_ (name of representative), its \_\_\_\_\_ (title of representative), duly authorized for the purposes hereof as he/she so declares [or as indicated in the resolution of the [sole director or board of directors]];

HEREINAFTER REFERRED TO AS "PROPRIETOR";

AND: \_\_\_\_\_ (identification of the manager);

PROPRIETOR	MANAGER	DEVELOPER

HEREINAFTER REFERRED TO AS "MANAGER";

AND: ..... (identification of the developer);

HEREINAFTER REFERRED TO AS "DEVELOPER";

HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES".

RECITALS

THE PARTIES MAKE THE FOLLOWING REPRESENTATIONS:

- (A) PROPRIETOR is the owner of a unit bearing the number ..... in divided co-ownership (hereinafter referred to the "Unit"), part of a complex situated at ..... and known under the name of ".....";
- (B) PROPRIETOR does not presently wish to occupy its Unit and consequently, would like to entrust its management to MANAGER, for the purposes hereinafter stipulated;
- (C) MANAGER manages other units for hotel leasing purposes, which are a part of the co-ownership, thus permitting a pooling of rental income and all operating costs of the units managed, including income and expenses attributable to the renting and management of the Unit;
- (D) The PARTIES wish to set out in writing the terms of their agreement regarding such purpose;
- (E) It is the intent of the PARTIES that their agreement be construed as a contract by mutual agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

0.00 INTERPRETATION

0.01 Definitions

PROPRIETOR	MANAGER	DEVELOPER

Unless indicated otherwise, the following capitalized terms or expressions shall have the meaning indicated below throughout the Agreement:

**0.01.01 Agreement**

means this agreement including its recitals and schedules, any related or ancillary agreement or document identified therein, as well as any amendment made thereto from time to time by the PARTIES in compliance with Section 12.05; the terms “herein”, “hereof”, “hereto”, “herewith”, “hereunder”, “hereby” and other similar terms, when used in the Agreement, shall generally refer to the agreement as a whole rather than to a specific part thereof, unless otherwise indicated in the text;

**0.01.02 Best Effort**

means the efforts which a prudent Person desirous of achieving a result would use in similar circumstances to maximize, to the extent reasonably practicable, the probability that a result will occur and includes state of the art as it relates to any trade or profession in addition to generally acknowledged best practices in a field of activity;

**0.01.03 Breach**

means any misrepresentation, inaccuracy, error, omission, non-compliance, infringement, failure, claim or other circumstance relating to a representation, warranty, covenant, obligation or other provision of the Agreement leading to:

- (a) any infringement of the Agreement; or
- (b) any claim by any Person or other occurrence or circumstance which (i) is inconsistent with a covenant, obligation or other provision of the Agreement and (ii) causes damage to such Person;

**0.01.04 Change in Control**

means, in relation to any PARTY to the Agreement whose legal status is that of a business corporation, any one of the following events:

- (a) the direct or indirect acquisition by any Person or entity of securities of such a corporation representing more than FIFTY PERCENT (50%) of the corporation’s voting rights;
- (b) an agreement for the sale or disposition of all or substantially all of such a corporation’s assets;

PROPRIETOR	MANAGER	DEVELOPER

- (c) a reorganization of such corporation leading to an assignment of a PARTY's rights in the Agreement to a Related Person;
- (d) a merger of such a corporation; or
- (e) the approval by the shareholders of such a corporation of a plan for its complete liquidation;

**0.01.05 Client**

means the Persons who lease through MANAGER a unit and the units in co-ownership of the Other Proprietors;

**0.01.06 Confidential Information**

means any commercial, technical, scientific, financial, legal, personal or other information disclosed by a PARTY relating to the disclosing PARTY's business activities, strategies or opportunities, Intellectual Property, suppliers, customers, financial condition or employees which, at the time of disclosure, is designated as confidential, is disclosed in confidence, or would be understood by the receiving PARTY, exercising reasonable business judgment, to be confidential, but excludes:

- (a) information known to the receiving PARTY before the date on which it is received;
- (f) information known by the public or available to the public before the date on which it is received;
- (g) information which becomes known by or available to the public after the date on which it is received and which does not result from a breach of confidentiality on the part of the receiving PARTY;
- (h) information received at any time by a Person not bound to one of the PARTIES by an undertaking of confidentiality with regard to such information;
- (i) information independently produced by the receiving PARTY;
- (j) personal information provided by an individual when such information is being used for the purpose for which it has been previously disclosed or any other purpose permitted by Law;

**0.01.07 Co-ownership**

means the whole immoveable situated at ....., ..... comprised of the Unit or units of the Other Proprietors operated for hotel leasing purposes;

PROPRIETOR	MANAGER	DEVELOPER

**0.01.08 Encumber or Encumbrance**

encumber means to create or grant an encumbrance and encumbrance means a legal cause of preference, a dismemberment of ownership rights, an ownership modality, a restriction on the right to sell or a security interest;

**0.01.09 Event of Default**

refers to any of the following events:

- (a) if a PARTY fails to make any of the payments (of principal or interest) according to the timetable set and if it fails to cure such default within ..... ( ..... ) days following receipt of notice to such effect;
- (k) if any of the security mentioned in the Agreement is reduced in value, forfeited or expires before the obligation it guarantees is performed;
- (l) if a PARTY, in its interim or annual financial statements, does not show a working capital having a ratio of at least 1:1;
- (m) if the operations of a PARTY are interrupted for any reason whatsoever during ..... ( ..... ) consecutive days or more;
- (n) if a PARTY assigns its property for the benefit of its creditors or involuntarily liquidates its property;
- (o) if a PARTY becomes insolvent or if a petition in bankruptcy is instituted against it and a final judgment is handed down confirming its bankruptcy;
- (p) if a PARTY sells, assigns or transfers its rights in the Agreement, in whole or in part, without having obtained the prior written consent of .....
- (q) if a PARTY does not comply with one or more of its undertakings pursuant to the Agreement or to any ancillary agreement and such default is not cured within ..... ( ..... ) ..... following receipt of a notice of default from .....
- (r) if a PARTY (or any of its Subsidiaries) is subject to a Change in Control;

**0.01.10 Financial Year**

means, with respect to the first Financial Year, the period starting on the ..... and finishing on the ..... and for each subsequent year, the period starting the

PROPRIETOR	MANAGER	DEVELOPER

1<sup>st</sup> of January of a given year and finishing the last day of December of that year, subject to the termination of the Agreement before the expiry of the initial term or the renewal term;

**0.01.11 Force Majeure**

means any event beyond the control of a PARTY which could not have been reasonably foreseen and against which it could not have protected itself such as, without limiting the generality of the foregoing, natural disasters, epidemics, fires, accidents, acts of war (whether declared or not), insurrections, riots, acts of terrorism, wildcat strikes, partial or total work stoppages or slowdowns, lock-outs, changes in market conditions, power or communications breakdowns, interventions by civil or military authorities, compliance with any orders of governmental authorities, courts or tribunals or public authorities;

**0.01.12 Fundamental Provisions**

means, in the opinion of the PARTIES, Parts ..... of the Agreement;

**0.01.13 Legal Representatives**

means, in respect of each PARTY and, as the case may be, its authorized assignee, when a natural person, the executors or administrators of his estate, his legal heirs, legatees, successors or mandataries and, when a legal person, its directors, officers, shareholders, members, employees and representatives;

**0.01.14 Other Proprietors**

means the proprietors of Co-ownership units who have entered into a real-estate management agreement with MANAGER to the same effect as this Agreement;

**0.01.15 PARTY**

refers to a signing party to the Agreement and includes its Legal Representatives;

**0.01.16 Person**

means, as the case may be, a natural person, partnership, joint-stock company, business corporation, cooperative, association, labour union, trust or any other organization whether incorporated or unincorporated, or any public authority of foreign, federal, provincial, territorial or municipal jurisdiction which is not a party to the Agreement, and includes their Legal Representatives;

**0.01.17 Prime Rate**

PROPRIETOR	MANAGER	DEVELOPER