

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,  
WILLIAM STENGER,  
JAY PEAK, INC.,  
Q RESORTS, INC.,  
JAY PEAK HOTEL SUITES L.P.,  
JAY PEAK HOTEL SUITES PHASE II. L.P.,  
JAY PEAK MANAGEMENT, INC.,  
JAY PEAK PENTHOUSE SUITES, L.P.,  
JAY PEAK GP SERVICES, INC.,  
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,  
JAY PEAK GP SERVICES GOLF, INC.,  
JAY PEAK LODGE AND TOWNHOUSES L.P.,  
JAY PEAK GP SERVICES LODGE, INC.,  
JAY PEAK HOTEL SUITES STATESIDE L.P.,  
JAY PEAK GP SERVICES STATESIDE, INC.,  
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,  
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,  
GSI OF DADE COUNTY, INC.,  
NORTH EAST CONTRACT SERVICES, INC.,  
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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**RECEIVER'S MOTION FOR AUTHORIZATION  
TO ENTER AND FOR APPROVAL OF MANAGEMENT AGREEMENT  
NUNC PRO TUNC TO DATE OF APPOINTMENT OF RECEIVER**

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<sup>1</sup> See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].  
{38405454;1}

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Michael I. Goldberg (the "Receiver"), in his capacity as the court-appointed Receiver for Defendants, Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II, L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouses L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside, L.P., Jay Peak GP Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC (collectively, "Receivership Defendants") and Relief Defendants Jay Construction Management, Inc., GS1 of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, "Relief Defendants" and together with Receivership Defendants, the "Receivership Entities") files this Motion for Authorization to Enter and for Approval of the Management Agreement *Nunc Pro Tunc* to Date of Appointment of Receiver (this "Motion").

A management company is critical to operation and preservation of the Receivership Entities' assets, which includes a ski resort and related operations. The hiring and retention of a management company is specifically authorized in the Receivership Order (defined below). The Receiver has negotiated a detailed management agreement, which was drafted and negotiated to provide protection of the Receivership Entities' assets. Accordingly, the Court should authorize and approve the Management Agreement (defined below).

## BACKGROUND

### The Complaint and Appointment of Receiver

1. On April 12, 2016, the Securities and Exchange Commission ("SEC") filed a complaint [ECF No. 1] ("Complaint") in the United States District Court for the Southern District of Florida (the "Court") against the Receivership Defendants, the Relief Defendants, William Stenger ("Stenger") and Ariel Quiros ("Quiros" and with the Receivership Defendants,

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Relief Defendants and Stenger, the “Defendants”), the principal of the Receivership Defendants, alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors.

2. The SEC alleged that Quiros and Stenger obtained and improperly utilized funds from foreign investors who made investments through the U.S. government’s EB-5 investor program.

3. According to the Complaint, the scheme orchestrated by Quiros and managed by Stenger involved securities offerings made on behalf of seven limited partnerships connected to Defendant Jay Peak, Inc. The first six offerings were associated with construction and renovation at the Jay Peak ski resort and its accompanying facilities.

4. On April 12, 2016, the SEC filed an Emergency *Ex Parte Motion* for Temporary Restraining Order, Asset Freeze and Other Relief [ECF No. 4] (the “Asset Freeze Motion”). On April 13, 2016, the Court granted the Asset Freeze Motion [ECF No. 11].

5. On April 12, 2016, the SEC filed a Motion for Appointment of Receiver [ECF No. 7]. On April 13, 2016, the Court entered the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver [ECF No. 13] (the "Receivership Order"). Among other things, the Receivership Order appointed Michael Goldberg as the Receiver and identified the Receiver's authority. That authority includes the Receiver's ability to appoint one or more agents, accountants, etc, as well as the specific authority to appoint a management company to operate the Receivership Entities.

**Jay Peak Resort and The Management Agreement**

6. Jay Peak, Inc. is a Vermont Corporation with its principal place of business in Jay Vermont. Jay Peak operates the Jay Peak Resort, which contains, among other things, dozens of ski trails, two base lodges, a small lodge at the summit where the aerial tram terminate, as well as

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hotel facilities and a large number of ski-in/ski-out condominium units on the lower part of the mountain. The majority of revenue for the Jay Peak Resort is generated from skiing.

7. Immediately upon his appointment, the Receiver contacted Leisure Hotels & Resorts, one of the preeminent resort management companies in the country. Leisure Hotels & Resorts has decades of experience addressing some of the most common hurdles resort owners face like forecasting and budget planning, accounting, banking relationships, customized marketing plans, food and beverage operation management, strategic sales plans, and HR and recruitment (just to name a few).

8. An experienced report management company such as Leisure Hotels & Resorts is critical to Jay Peak Resort operations. The Receiver immediately began negotiating a detailed management agreement (the "Management Agreement"), which was drafted and negotiated to provide protection of the Receivership Entities' assets. A copy of the Management Agreement is attached as **Exhibit A**.

9. While discussed in more detail in the Management Agreement, pursuant to the Management Agreement, Leisure Hotels & Resorts will be responsible for, among other things, maintaining and repairing the subject properties; obtaining and maintaining in full force and effect required licenses and permits; procuring and arranging for goods and services; making or installing REPAIRS, decorations, renewals, alterations, etc.; making recommendations with respect to all major policy matters affecting the subject property; arranging for and complying with all terms of all insurance policies; collecting and accounting for and remitting to governmental authorities applicable taxes; and participating in and cooperating with the Receiver in connection with any investigation related to the subject properties.

10. While discussed in more detail in the Management Agreement, pursuant to the Management Agreement, the management fees is two and one-half percent (2.5%) of all gross

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receipts (as that term is defined in the Management Agreement). There is a minimum fee of forty-five thousand dollars (\$45,000) for each month (or prorated for partial months). There is also a nine thousand dollar (\$9,000) accounting fee to be paid for each month (or prorated for partial months). The Receiver has confirmed that the fees identified in the Management Agreement are consistent with those regularly charged in the industry.

**Memorandum of Law**

The Court should authorize the Receiver to enter the Management Agreement *nunc pro tunc* to the date of the appointment of the Receiver (*i.e.*, April 13, 2016) and should approve the Management Agreement. A management company is critical to operation and preservation of the Receivership Entities' assets. Pursuant to this Court's prior order, *i.e.*, the Receivership Order, the Receiver has authority to appoint a management company to provide protection of the Receivership Entities' assets. Accordingly, the Court should authorize and approve the Management Agreement.

Pursuant to the terms of the Receivership Order, the Receiver is directed to operate the Receivership Entities for the benefit of investors subject to order of this Court. To satisfy that direction, the Receiver has the power and obligation to manage and administer the business affairs of the Receivership Entities and to take actions necessary for the protection of the investors. *See* Receivership Order, p. 2. The Receivership Order specifically includes the authority for the Receiver to appoint a management company. Specifically, the Receivership Order provides in pertinent part:

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Michael Goldberg is hereby appointed the Receiver over Corporate Defendants and Relief Defendants, their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the

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Receiver deems necessary . . . *This includes a management company or companies necessary to the continued operation of the Jay Peak and Burke Mountain ski resorts, the Phase I-V projects, and the portion of Phase VI (the Stateside Hotel) that has been fully built, which the Receiver shall continue to operate for the benefit of investors subject to further order of this Court.*

The Receivership Order, ¶ 4 (emphasis added).

The Receivership Order also specifically requires the Receiver to provide periodic reports to the Court regarding the existence and value of the assets of the Receivership Entities; the information for which reports would need to be provided by a management company. Specifically, the Receivership Order provides in pertinent part:

3. Present to this Court periodic reports (no less than quarterly) reflecting the existence and value of the assets of the Corporate Defendants and Relief Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Corporate Defendants and Relief Defendants;

The Receivership Order, ¶ 3.

The Court should exercise its power and authorize the Receiver to enter and should approve the Management Agreement. A district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). Additionally, the Receivership Order provides specific authority for the appointment of such a management company. The Receivership Order, ¶ 4. The appointment and retention of a management company to continue operations at the Receivership Entities is critical to preserving the value of the Receivership Entities for the benefit of the investors. The management company identified in the Management Agreement, i.e., Leisure Hotels & Resorts, has the experience to provide the required management operations of the Jay Peak Resort, as well as handle the unique situations arising from this Action and the existence of the receivership. The fees charged by Leisure Hotels & Resorts are reasonable and consistent with those regularly charged in the

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industry. Accordingly, the Court should authorize the Receiver to enter and should approve the Management Agreement.

**WHEREFORE**, the Receiver requests the Court enter an order

- i. authorizing the Receiver to enter the Management Agreement *nunc pro tunc* to date of appointment of the Receiver (*i.e.*, April 13, 2016) and approving the Management Agreement; and
- ii. granting such further relief as is just and equitable.

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with to the Securities and Exchange Commission and to counsel for Defendants Ariel Quiros and William Stenger. Counsel for the Securities and Exchange Commission and Mr. Stenger have indicated that their clients do not object to the relief requested in this Motion. Counsel for Mr. Quiros has indicated that additional time is needed to inform us of his client's position with respect to the relief requested in this Motion.

Dated: June 28, 2016

Respectfully submitted,

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*Counsel for Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 28th day June, 2016 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Samuel A. Miller  
Samual A. Miller, Esq.



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**SERVICE LIST**

**1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:**

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**EXHIBIT A**

**EXECUTION VERSION**

**MANAGEMENT AGREEMENT**

**PROPERTIES:**

**Jay Peak Resort and Q Burke Resort**

This Agreement ("Agreement"), dated as of the 20th day of April, 2016 ("Effective Date"), by and between Michael I. Goldberg, Court Appointed Receiver under the United States District Court, Southern District of Florida ("Receiver"), for Jay Peak, Inc., Jay Peak Hotel Suites, L.P., Jay Peak Hotel Suites Phase II, L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites, L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites, L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouses, L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside, L.P., Jay Peak GP Services Stateside, Inc., Q Resorts, Inc., Q Burke Mountain Resort, LLC, Burke Mountain Operating Company, Burke Mountain Water Company, Mountain Road Management Company, Burke 2000, LLC, and applicable affiliates of each of the foregoing (all Vermont legal entities and collectively referred to as "Owner") with its primary offices located at 830 Jay Peak Road, Jay, VT 05859; and LEISURE HOTELS, L.L.C., a Kansas limited liability company organized and existing under the laws of the State of Kansas, with its principal office at 5000 W. 95<sup>th</sup> St, Ste 100, Prairie Village, KS 66207 (hereinafter referred to as "Manager"). Owner, Receiver and Manager are sometimes referred to collectively in this Agreement as the "Parties" and individually as a "Party."

**WHEREAS**, Receiver has been granted full authority by the United States District Court, Southern District of Florida ("District Court") to enter into this Agreement on behalf of Owner and retain Manager as agent for the purpose of performing the services contemplated pursuant hereto, and

**WHEREAS**, Manager has performed certain initial "takeover" services with respect to the Properties, including, without limitation, securing the Properties owned by Owner, interviewing various levels of staff of Owner and providing leadership and direction with respect to the takeover of the Properties with Manager's compensation for such services being equal to \$175 per hour per individual plus out of pocket expenses with one-half of the compensation (excluding out of pocket expenses) being abated as partial consideration for the Receiver entering into this Agreement; and

**WHEREAS**, Receiver hereby agrees to engage Manager to manage the Properties on the terms set forth herein and Manager agrees to accept the engagement as delineated within this Agreement.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the mutual agreements between the parties hereto and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

**SECTION 1. DEFINITIONS**

1.1 Definitions. When used herein, the following terms shall have the respective meanings set forth opposite each such term:

(a) Accounting Fee: Has the meaning given to such term in Section 10.2 of this Agreement.

(b) Affiliate: (i) With respect to any Person who is an entity, another Person, directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under common Control with the Person in question, including, without limitation, any partner, member, shareholder, officer or director of such Person, as the case may be, and (ii) with respect to any Person who is an individual, such individual's parents, spouse, direct lineal or adoptive descendants, siblings, nieces, nephews and/or first cousins and/or one or more trusts created solely for the benefit of such individual or any such family members.

(c) Aggregate Deficit Balance: Has the meaning given to such term in Section 10.1(c)(i) of this Agreement.

(d) Agreement: Has the meaning given to such term in the preamble to this Agreement.

(e) Applicable Law(s): (a) statutes, laws, rules, regulations, ordinances, codes or other legal requirements of any federal, state or local Governmental Authority, board of fire underwriters and similar quasi-Governmental Authority, including any legal requirements under any Government Approvals, and (b) judgments, injunctions, orders or other similar requirements of any court, administrative agency or other legal adjudicatory authority, in effect at the time in question and in each case to the extent the Properties or Person in question is subject to the same. Without limiting the generality of the foregoing, references to Applicable Law shall include any of the matters described in clause (a) or (b) above relating to employees, zoning, building, health, safety and environmental matters and accessibility of public facilities.

(f) Approved Annual Plan: a Proposed Annual Plan that has been approved in writing by the Receiver.

(g) Approved Capital Expenditures Budget: a Proposed Capital Expenditures Budget that has been approved in writing by the Receiver.

(h) Approved Operating Budget: a Proposed Operating Budget that has been approved in writing by the Receiver.

(i) Basic Management Fee: Has the meaning given to such term in Section 10.1(a) of this Agreement.

(j) Business Day: A day, other than a Saturday, Sunday or statutory holiday, on which banks are open for the transaction of business in the State of Vermont and the State of Florida.

(k) Capital Expenditures: All hard and soft costs associated with any repairs, alterations, improvements, renewals and replacements to the Properties which are normally capitalized under GAAP.

(l) Certified Financial Statements: Has the meaning given to such term in Section 7.4 of this Agreement.

(m) Commencement Date: Has the meaning given to such term in Section 4.1 of this Agreement.

(n) Condominiums: Each of those certain condominiumized buildings containing residential lodging units, some of which may be utilized for transient lodging purposes through a rental program operated by Owner, an Affiliate or a third party.

(o) Controlling, Controlled and Control: The possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through ownership of voting securities or a partnership or membership interest, by contract or otherwise.

(p) CPI: CPI shall mean the Consumer Price Index-All Urban Consumers (CPI-U)/All Items, Not Seasonally Adjusted, 1982-84=100, for the market area that includes the Properties, as published by the United States Department of Labor Statistics, for the applicable comparison period. If the CPI shall cease to use 1982-84 as the base year, the CPI shall be converted in accordance with the conversion factor, if any, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the Operating Term, such other governmental index or computation, if any, with which it is replaced shall be used. If no conversion factor is supplied by the United States Department of Labor, Bureau of Statistics, either for a new base year or a new index, the Parties shall reasonably agree upon a replacement for the CPI.

(q) Deficit Payment: Has the meaning given to such term in Section 10.1(c)(i) of this Agreement.

(r) Distribution Amount: Has the meaning given to such term in Section 7.6 of this Agreement.

(s) District Court: Has the meaning given to such term in the preamble to this Agreement.

(t) Effective Date: Has the meaning given to such term in the preamble to this Agreement.

(u) Employee Benefit Plans: Has the meaning given to such term in Section 5.2 of this Agreement.

(v) Excess Allocable Funds: Has the meaning given to such term in Section 10.1(c)(ii) of this Agreement.

(w) Expert: A Qualified Person selected in accordance with the procedures set forth in Section 18.1.

(x) FF&E: All furniture, furnishings, fixtures and equipment of Owner required for the proper and efficient operation of portions of the Properties, including, without limitation, the Hotels, Condominiums, clubhouses, lodges and other spaces available to guests of the Properties and office and other support spaces for portions of the Properties (but excluding the Resort Fixtures and Equipment) comprised of, without limitation, such furniture, fixtures and equipment as lobby furniture, carpeting and floor coverings, draperies, wall coverings, artwork, bedspreads, television sets, radios, office furniture and equipment such as safes, cash registers and accounting, computer, duplicating and communication equipment, telephone equipment, guest room furniture, other specialized equipment such as equipment

required for the operation of kitchens, laundries, the front desk, dry cleaning facilities, bars and cocktail lounges and decorative lighting, material handling equipment and cleaning and engineering equipment.

(y) Financial Statements: Has the meaning given to such term in Section 7.3 of this Agreement.

(z) Fiscal Period: A period of a calendar month period or 52/53 week period as established by Receiver consistent with the adoption of the Fiscal Year, and any partial (short) year.

(aa) Fiscal Year: The accounting year established by the Receiver for the Properties which may be different for Jay Peak and Q Burke, and any partial (short) year.

(bb) Force Majeure Causes: Has the meaning given to such term in Section 5.1(c) of this Agreement.

(cc) GAAP: Generally accepted accounting principles, as consistently applied for the Properties and as interpreted by the Uniform System. Except as expressly provided otherwise, any financial or accounting terms not otherwise defined herein shall be construed and applied according to GAAP, as interpreted by the Uniform System.

(dd) Governmental Authority: Any governmental authority or any subdivision thereof, whether national, federal, provincial, regional, state, county, municipal, local or other, and any ministry, department, agency, entity or other body exercising executive, legislative, regulatory or administrative functions of government, including, without limitation, any board of fire underwriters or any other body which may exercise similar functions, and under rulings or directives of the court having jurisdiction over the receivership pursuant to which the Receiver has been appointed.

(ee) Government Approvals: All licenses, permits, approvals, certificates and other authorizations granted or issued by any Governmental Authority for the matter or item in question.

(ff) Gross Receipts: The total of all rents and revenues, income and receipts of every kind accrued during the applicable period and derived, directly or indirectly, from the operation of the Properties and all departments and parts thereof, attributable to such period, calculated on an accrual basis and determined in accordance with the Uniform System and GAAP, including, but not limited to, income (from both cash and credit transactions and before commissions) from, and to the extent such exist, the rental of rooms, floor space, personal property, meeting rooms and other facilities of every kind, ski receipts; waterpark receipts; golf receipts; license, lease and concession fees and rentals; vending and game machine receipts; sales of food, beverage, and merchandise; service charges; laundry charges; telephone and telex charges; and the portions of the net proceeds (after deduction of the expenses of adjustment and collection ) of business interruption and other similar insurance in respect to the Properties, which is attributable to Management Fee and other fees and expenses actually incurred by Manager pursuant to this Agreement (provided that insurance proceeds shall be included in Gross Receipts only to the extent actually received during such period). "Gross Receipts" shall not include (a) the gross receipts of any business or operation under a lease, concession or similar arrangement operated by or on behalf of a third party, (b) gratuities to employees or service charges levied in lieu of such gratuities which, in either case, are payable to employees, (c) federal, state or local excise, room, sales, use, hotel occupancy, gross receipts, entertainment, admission or tourist taxes or similar impositions collected from customers of the Properties or included as part of the sales price of any goods or services and required to be remitted to the appropriate taxing authorities, (d) proceeds from the sale, financing or refinancing of the Properties (or any portion thereof) or of capital assets, FF&E or Resort Fixtures and

Equipment made in the ordinary course of replacement of such items, (e) condemnation awards, proceeds from sales in lieu of condemnation, casualty insurance proceeds and similar extraordinary receipts (other than business interruption proceeds and any other portion of such awards or receipts representing compensation for loss of items of Gross Receipts), (f) any funds contributed by Owner or Receiver, or (g) any refunds, rebates, discounts and credits of a similar nature, given, paid or returned in the course of obtaining Gross Receipts or components thereof.

(gg) Hotels: Each of those certain transient lodging facilities located within the Properties, which shall include rental program operations utilizing condominium or other residential dwelling units within the Properties.

(hh) Impositions: All real estate and personal property taxes and similar levies, assessments, special assessments and charges on or relating to the Properties.

(ii) Improvements: The improvements constructed on the Site, including the improvements and betterments comprising, without limitation, multiple buildings, structures, above and below ground infrastructure, Resort Fixtures and Equipment and FF&E with respect to Properties operations, including, without limitation, those located at Jay Peak Resort and Q Burke Resort, including but not limited to, ski areas, on-mountain and other ski resort facilities, golf courses and related facilities, Hotels, including conference center facilities, Condominiums, spa, fitness centers, waterpark, golf course, housing, restaurants, bars, entertainment venues, swimming pools and various other amenities located upon the Site, and landscaping, parking, recreational and other facilities.

(jj) Intangible Personal Property: All intangible personal property owned or possessed by Owner and used in connection with the ownership, operation, leasing, occupancy or maintenance of the Properties, insurance policies, general intangibles, business records and plans and specifications, any unpaid award for taking by condemnation or any damage to the Properties by reason of a change of grade or location of or access to any street or highway.

(kk) Inventory: All "inventories" as defined in the latest edition of the Uniform System, located within the Properties, including, but not limited to, provisions in storerooms, refrigerators, pantries and kitchens, beverages in wine cellars and bars, other merchandise intended for sale or resale, fuel, mechanical supplies, cleaning supplies, light bulbs, stationary and other expensed supplies and similar items.

(ll) Leased Properties: Those certain portions of the Properties that are made available for use and/or operation by third parties pursuant to a lease or concession agreement.

(mm) Leased Properties Agreements: Those certain contracts entered into by or on behalf of Owner in connection with, and governing the use and occupancy of, the Leased Properties.

(nn) Major Capital Expenditures: Has the meaning given to such term in Section 6.1(a)(ii) of this Agreement.

(oo) Manager: Has the meaning given to such term in the preamble to this Agreement.

(pp) Management Fee: Has the meaning given to such term in Section 10.1 of this Agreement.



(qq) Marketing Program: a Proposed Marketing Program or other marketing program or plan that has been approved by Receiver.

(rr) Minimum Fee: Has the meaning given to such term in Section 10.1(b) of this Agreement.

(ss) Motor Vehicles: Any vehicle that is required to be registered or licensed under Applicable Laws.

(tt) Operating Account: Has the meaning given to such term in Section 7.5 of this Agreement.

(uu) Operating Standard: The operation of the Properties in a manner consistent with (i) standards and level of service directed by Receiver from time to time, with input and recommendations of Manager, and reflected in the Approved Annual Plan; and (ii) except as limited by clause (i), (1) protecting and preserving the assets that comprise the Properties, normal wear and tear excepted; and (2) recognizing the interest of Owner in maximizing profits and receiving an appropriate return on its investment. Wherever "Operating Standard" is used in this Agreement, Manager is obligated to maintain the Operating Standard and operate the Properties in accordance with the Operating Standard only to the extent that funds necessary to achieve and maintain the Operating Standard are available to Manager, either in the Operating Accounts or otherwise made available by Owner.

(vv) Operating Term: Has the meaning given to such term in Section 4.1.

(ww) Operating Supplies: All blankets, linens, uniforms, glassware, silverware, china, crockery and other items of a similar nature necessary for the operation of the Properties, all such items being of a class or grade corresponding with the Operating Standard.

(xx) Owner: Has the meaning given to such term in the preamble to this Agreement.

(yy) Person: shall mean any individual, firm, corporation, partnership, joint stock company, business trust, voluntary association or government or any department or agency thereof.

(zz) Personal Property: Collectively, the Tangible Personal Property and Intangible Personal Property.

(aaa) Properties: Collectively, the Site (inclusive of Jay Peak Resort and Q Burke Resort), the Improvements, the Personal Property, the Inventory, the Resort Fixtures and Equipment, and the FF&E of the Properties, along with other property (real or personal) belonging to entities that are brought within the receivership from time to time.

(bbb) Properties Personnel: Has the meaning given to such term in Section 5.2 of this Agreement.

(ccc) Properties Standard: As it relates to the physical condition of the Properties as of the date of this Agreement, the now existing physical condition. On a prospective basis, the physical standard established for the Properties by the Receiver from time to time.

(ddd) Proposed Annual Plan: Has the meaning given to such term in Section 6.1 of this Agreement.

(eee) Proposed Capital Expenditures Budget: Has the meaning given to such term Section 6.1(ii) of this Agreement.

(fff) Proposed Marketing Program: Has the meaning given to such term in Section 6.1(iv) of this Agreement.

(ggg) Proposed Operating Budget: Has the meaning given to such term Section 6.1(i) of this Agreement.

(hhh) Qualified Person: An independent, neutral and impartial individual having not less than 10 years hospitality industry experience in the area of expertise on which the dispute is based. An individual shall be excluded as a Qualified Person if, currently or within the 5 years prior to the date of selection of such individual as an Expert, the individual: (i) is, or has been, an employee of either Party, or any of their respective Affiliates; (ii) is, or has served as, a consultant to either Party, or any of their respective Affiliates; and/or (iii) is, or has been, the owner of any debt or equity position in the Properties or either Party, or any of their respective Affiliates.

(iii) Receiver: Has the meaning given to such term in the preamble to this Agreement.

(jjj) Resort Fixtures and Equipment: Consists of all equipment used in the operation of any golf course, ski facility, waterpark facility, ice rink, roads, green spaces, landscaping, water and sewer systems, retention ponds and the like, which are located on the Properties, to the extent not associated exclusively with any Hotel, Condominium, restaurant, bar, conference center facility, spa, swimming pool, fitness center or retail facility, including, without limitation, any golf carts, golf rentals, tractors and mowers, irrigation systems, pump stations and related equipment, ski lifts, snowmaking equipment, ski rentals, snow cats, snowmobiles, or any other like equipment and Motor Vehicles.

(kkk) Routine Capital Expenditures: Has the meaning given to such term in Section 6.1(a)(ii) to this Agreement.

(lll) Specially Designated National or Blocked Person: (a) a Person designated by the U.S. Department of Treasury's Office of Foreign Assets Control from time to time as a "specially designated national or blocked person" or similar status; (b) a Person described in Section 1 of U.S. Executive Order 13224, issued on September 23, 2001; or (c) a Person otherwise identified by government or legal authority as a person with whom Owner or Receiver is prohibited from transacting business.

(mmm) Site: Those certain parcels of real property comprising two ski resorts (Jay Peak Resort and Q Burke Resort) including certain non-ski, contiguous and non-contiguous real property owned or operated by entities comprising Owner or their Affiliates and located in Orleans and Caledonia Counties of Vermont. The Parties agree to enter into amendments from time to time for the purpose of clarifying the precise extent of the Site.

(nnn) Tangible Personal Property: The items of tangible personal property consisting of all furniture, fixtures, equipment, machinery and other personal property of every kind and nature located on or used or useful in the operation of the Properties and owned by Owner (inclusive of FF&E and Resort Fixtures and Equipment), including, Owner's interest as lessee with respect to any such Tangible Personal Property

(ooo) Uniform System: The 11<sup>th</sup> Revised Edition of the Uniform System of Accounts for the Lodging Industry, published by the Hotel Association of New York City, Inc., as amended or replaced from time to time.

## **SECTION 2. ENGAGEMENT OF AND GRANT OF AUTHORITY TO MANAGER**

2.1 Engagement of Manager. Subject to the terms of this Agreement, Receiver hereby grants to Manager (and Manager hereby accepts) the exclusive right, authority, discretion and duty during the Operating Term, and instructs Manager during the Operating Term, to take all such actions for and on behalf of Receiver that Receiver reasonably deems necessary or advisable to operate the Properties (a) in accordance with the Properties Standard and Operating Standard, (b) in accordance with the policies and programs proposed by Manager and approved by Receiver, as the same may change from time to time, (c) in accordance with the requirements and limitations set forth in this Agreement, including those relating to the Approved Annual Plan, and (d) to the extent consistent with the standards described in clauses (a) through (c) above, in a manner reasonably expected to (i) protect and preserve the assets that comprise the Properties; and (ii) optimize the financial performance of the Properties operations, which responsibilities shall include, without limitation:

(a) maintaining and repairing the Properties consistent with the Approved Annual Plan, the Operating Standard and Properties Standard and cause the Properties to be maintained in good and clean condition and repair.

(b) Obtaining and maintaining in full force and effect, in the name of the Receiver, unless the Receiver agrees to the contrary or such license or permit is legally required to be in the name of Manager, all licenses and permits required or appropriate in connection with all components of the Properties except to the extent that the same are obtained and maintained by a third party tenant or concessionaire of portions of the Properties. Manager undertakes to comply with any conditions set out in any such licenses and permits and at all times to operate and manage the Properties in accordance with such conditions and any other requirements of the Applicable Laws.

(c) Procuring or arranging for the procurement of goods and services, including all related contractual arrangements, necessary or appropriate to the operation of the Properties without benefit or profit to Manager other than procurement fees specified within this Agreement or otherwise agreed to in writing by Receiver and without any other benefits to Manager, including, without limitation, discounts, purchasing incentives commissions, rebates or allowances.

(d) Making or installing, or causing to be made or installed, in the name of Owner, all capital repairs, decorations, renewals, revisions, alterations, rebuilds, replacements, additions and improvements in and to the Properties through the use of funds made available by the Receiver to the extent consistent with the Approved Annual Plan and subject to those further approvals and restrictions as may be required from time to time by the Receiver under this Agreement.

(e) Coordinating any capital repairs, decorations, renewals, revisions, alterations, rebuilds, replacements, additions and improvements in and to the Properties.

(f) making recommendations to the Receiver as to all major policy matters affecting the Properties.

(g) Complying with the terms of all insurance policies maintained with respect to the Properties.

(h) Collecting on behalf of the Receiver and accounting for and remitting to Governmental Authorities all Impositions collectible by the Properties directly from patrons or guests, or as part of the sales price of any goods, services or displays, including Gross Receipts, admissions or similar or equivalent taxes, duties, levies or charges.

(i) Participating in and cooperating with the Receiver in connection with any investigation of Owner or its Affiliates by any Governmental Authority related to the Properties and reasonably assisting the Receiver in the collection and/or provision of information to any such Governmental Authority related to such investigation and otherwise cooperating with such Governmental Authority during the course of any such investigation.

(j) Reasonably cooperating with Receiver and any prospective purchaser, lessee, mortgagee or other lender, in any attempts by Receiver to sell or otherwise transfer any or all of Owner's interest in the Properties, either directly or through transfers of sale of direct or indirect ownership interests in Owner, or to obtain a mortgage or enter into any ground lease including, without limitation, the reasonable answering of prospective purchasers' and lenders' questions, preparing schedules of leases, concessions, fixed assets, Inventories, Operating Supplies, other consumables supplies, FF&E, Resort Fixtures and Equipment, numbers and job classifications of Properties Personnel (but not names or other personal information) and matters regarding the Properties and the operation thereof as Receiver may reasonably request, provided that such obligations shall extend only to providing information existing in or generated by Manager in the ordinary course of performing its obligations hereunder and shall not result in any additional cost or expense to Manager.

(k) Providing such other operational services as may be reasonably required from time to time pursuant to the terms of this Agreement, including, without additional cost, Manager's support services to the Properties in the area of operations, marketing, revenue management, accounting, information technology, purchasing, human resources initiatives (such as recruitment or training programs, quality assurance inspections, etc.), personnel recruitment, training, relocation, compensation and benefits programs, personnel costs; review, bidding and procuring insurance and processing claims; assisting with any tax (including cost segregation studies) and external audit issues;

(l) Promptly notifying Receiver of any anticipated material deviation from the Approved Annual Plan, setting forth in reasonable detail the nature, extent and cause of any such deviation.

The general grant of authority to Manager within this Section 2.1 shall be expressly limited by the limitations on Manager's authority provided for in Section 5.4 hereof and as otherwise provided for in this Agreement.

2.2 Delegation by Manager. Manager may not delegate any management services to be provided in connection with the Properties or its components, without prior written notice to and approval of Receiver and in connection therewith (i) the cost to the Properties for the provision of such services shall not be more than had Manager performed such services itself, and (ii) Manager shall not be released from its responsibilities under this Agreement.

2.3 Properties Funding. All funds required, or costs to be borne, under or pursuant to the terms of this Agreement shall be, unless otherwise specifically stated, Owner's responsibility. For example, any expense noted in this Agreement as an operating expense or an expense of the Properties shall be Owner's expense and responsibility. Manager shall have no responsibility to fund operating expenses or losses relating to the operation of the Properties; Manager shall bear costs under this

Agreement only when specifically required by the terms or provisions of this Agreement. The designation of an expense as an expense of the Properties shall not, however, govern whether such an item must be capitalized or amortized or treated as an ordinary business expense. Except as may be otherwise specifically provided in this Agreement, Manager shall bear all of its own overhead cost and expense. Manager shall not make payments or incur costs or obligations in excess of those provided for within the Approved Annual Plan, including the budgetary components thereof. All payments by Manager shall be made from the Operating Account or as otherwise expressly permitted in writing by Receiver. Any incidental cost or expense that is paid by Manager in connection with obligations contemplated pursuant to this Agreement from Manager's own funds, in good faith, shall be reimbursed to Manager upon submission to Owner or Receiver of written documentation of payment of such expense by Manager. Where in this Agreement it is indicated that Owner is responsible for, or agrees to pay, any expense or take any action, Owner hereby authorizes and directs Manager to pay such expense from the Operating Account or take such action on its behalf, to the extent that the same is consistent with the Approved Annual Plan and the budgets comprising portions thereof, as part of the services provided in implementing this Agreement; provided that such authorization and direction shall not in any way alleviate the obligation of Manager to advise Receiver of cost overruns as provided in Section 6.1 of this Agreement.

2.4 Manager's Liabilities for Contracts and Funding: Manager acknowledges that the services provided by it pursuant to this Agreement shall be subject to the requirements of Receiver and the District Court. Receiver acknowledges and agrees that, in the performance of its services under this Agreement, Manager is and will be acting in a representative capacity and Manager in no event shall be liable in any manner whatsoever to any party either for any breach by Owner or Receiver in funding the operation of the Properties, for any breach by Owner or Receiver in payment for services or materials under agreements entered into by Manager for and on behalf of Owner pursuant to the terms of this Agreement or for the performance, failure of performance, delay, loss or damage from any act or omission by a client, trade contractor, subcontractor, vendor or supplier in connection with the operation of the Properties, or for acts of God, sabotage, vandalism, casualty losses, earthquake, flood, wind, riots, strikes, labor or employment difficulties, delays in transportation, subsurface or soil conditions, environmental conditions, inability to obtain necessary services, materials or equipment, inability to obtain permits or approvals or any similar circumstances beyond Manager's control.

### **SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1 Representations and Warranties of Manager. Manager represents and warrants to Owner as follows:

(a) Manager is a Kansas limited liability company duly organized, validly existing and in good standing under the laws of the State of Kansas and in the state of Vermont where the Properties are located.

(b) Manager has full power, authority and legal right to perform and observe the provisions of this Agreement.

(c) This Agreement constitutes a valid and binding obligation of Manager, fully enforceable in accordance with its terms, and does not constitute a breach of or default under any other agreement to which Manager is a party or any of its assets are bound or affected.

(d) During the term of this Agreement, Manager will, at its own expense, obtain and keep in full force and effect its limited liability company existence, and rights required in order for it to observe all of the terms and conditions of this Agreement.

(e) Manager currently, and at all times throughout the duration of this Agreement shall maintain appropriate errors and omissions insurance (at Manager's cost) and fidelity bonds (at Owner's cost).

(f) Manager represents and warrants to Owner and Receiver that neither Manager (including, without limitation, any and all of its directors and officers), nor any of its Affiliates is a Specially Designated National or Blocked Person. Neither Manager nor any Affiliate of Manager is directly or indirectly owned or controlled by, or acting on behalf of, the government of any country that is subject to an embargo by the United States government. Manager further represents and warrants that it is in compliance with any applicable anti-money laundering law, including, without limitation, the USA Patriot Act. Receiver shall be entitled to conduct an investigation relating to any representations or warranties made by Manager within this Section 3.1(f), and Manager shall provide complete cooperation and assistance in connection with said investigation, including by providing any information, documents or authorizations requested by Receiver or its designee. Manager agrees that it will notify Receiver in writing immediately upon the occurrence of any event which would render the foregoing representations and warranties of this Section 3.1(f) incorrect.

3.2 Covenant of Manager. Manager covenants to exercise reasonable but diligent efforts to obtain, and provide to Receiver, descriptions of and to the extent reasonably available, copies of, operating licenses, Leased Properties Agreements and contracts related to the Properties and the Site.

3.3 Representations and Warranties of Receiver. Receiver represents and warrants that pursuant to Case NO. 16-CV-21301-GAYLES of the United States District Court for the Southern District of Florida, it has been appointed as receiver for the Properties and has the authority to enter into this Agreement with respect to the Properties.

#### **SECTION 4. TERM AND COMMENCEMENT DATE**

4.1 Operating Term. This Agreement shall be deemed to have commenced as of April 20, 2016 (the 'Commencement Date'). As of such Commencement Date, Manager shall commence operation of the Properties and shall continue with the management thereof unless terminated with thirty (30) days advance notice by Receiver or the District Court or as otherwise provided pursuant to this Agreement (the "Operating Term").

#### **SECTION 5. OPERATION OF PROPERTIES AND LIMITATIONS ON MANAGER'S AUTHORITY**

##### 5.1 Compliance with Operational Standards.

(a) As provided for in Section 2.1 hereof, Manager shall operate the Properties at the expense of the Owner, in accordance with the Operating Standard and the other provisions of this Agreement. Manager may allocate travel expenses and salary of personnel employed by Manager specifically assisting the Properties from time to time, but not deemed a Properties' employee, equitably not to exceed the reasonable and customary cost, fee and expense of an independent contractor providing said service. Such allocation will only occur when Manager sends personnel to perform services for vacant and/or supplemental positions at the Properties.

(b) Notwithstanding anything to the contrary contained in this Section 5.1 or elsewhere in this Agreement, Manager shall be excused from its obligation to operate the Properties in conformity with Properties Standard and Operating Standard (i) to the extent and whenever Manager shall be prevented from compliance with such standard by Force Majeure Causes (as hereinafter defined), (ii) to the extent of and whenever there shall occur any breach by Owner of any provision of this Agreement, and (iii) to the extent and whenever there is herein provided a limitation upon Manager's ability to expend funds or perform the necessary services in respect of the Properties, provided that the failure to expend funds by reason of the operation of such limitation shall reasonably prevent Manager from meeting such standard. For purposes hereof, "Force Majeure Causes" shall mean causes beyond the reasonable control of Manager, including casualties, war, insurrection, strikes, lockouts, material or supply shortages, acts of God and governmental actions. It is expressly understood and agreed that each and every provision contained in this Agreement pursuant to which Manager is excused from its obligation to operate the Properties in conformity with the Properties Standard and Operating Standard shall operate without prejudice to any other remedy (including the right to terminate this Agreement) which Manager shall have under the terms of this Agreement.

5.2 Personnel. All personnel employed at the Properties are employees of the Owner (collectively "Properties Personnel"). Subject to the Approved Operating Budget, Manager will supervise the hiring and direct the work of, discharge, and determine the compensation and other benefits of all personnel necessary for the operation of the Properties. Notwithstanding the previous sentence, the individuals hired by Manager as member of the executive team, as well as the terms of employment, and any relocation benefits, if applicable, and any employment contract must be approved in writing by Receiver and shall include any general managers, chief executive officer (if applicable), chief financial officer, director of revenue management, director of engineering, director of sales and marketing and other positions of similar rank. The executive team shall be comprised of personnel to be agreed upon by Manager and Receiver. Manager shall not relocate any member of the executive team to other of its managed properties. In no event shall Manager participate in discussions or other activities related to union organizing activities, collective bargaining agreements, neutrality agreements, or the like without the express written approval of Receiver, and at the election of Receiver, participation by Receiver. The cost of Properties Personnel, which includes but is not limited to wages, benefits, assessments, personnel, administration cost, employment tax, employment tax compliance, and other employment-related costs including Paychex processing fees and expenses (or other such third party administration fees and expenses) shall be an operating expense and shall be charged to Owner each Fiscal Period. Manager shall evaluate and administer all employee benefit plans previously adopted with respect to employees of the Properties (the "Employee Benefit Plans"). Employer contributions to such Manager's Employee Benefit Plans for Properties Personnel for the period of such employee's performance of services at the Properties shall be deemed payroll costs hereunder and shall be the responsibility of, and at the sole cost and expense of Owner. As applicable, the administrative expenses of any joint plans will be equitably apportioned by Manager among properties covered by such plans. Except as may be required under any applicable law, Manager shall not make any material changes to any of the Employee Benefit Plans without Receiver's written approval. It is expressly understood and agreed that all Properties Personnel shall be employed at Owner's cost.

5.3 Complimentary Rooms and On-site Meals. Manager's off-site personnel shall be furnished and provided with rooms and on-site meals (excluding alcohol), without expense to Manager whenever such personnel are on the Site or in the vicinity in the performance of this Agreement. The complimentary rooms and meals referenced in the preceding sentence shall be permitted to the extent provided within the Approved Annual Plan or as otherwise reasonably approved by Receiver, with the imputed cost associated with such rooms and meals being allocated to a line item specified therefore within the applicable budget.

5.4 Restrictions on Manager's Authority to Make Replacements, Alterations, Repairs and Improvement. Manager shall obtain the consent of Receiver before entering into any contract, agreement or purchase involving alterations, repairs or rehabilitation of the Improvements or the repair or replacement of any FF&E or Resort Fixtures and Equipment, if the amount payable under such contract has not been previously approved by Receiver as part of the Approved Capital Expenditures Budget or Approved Operating Budget, which budgets shall form a part of the Approved Annual Plan; except in the event of an emergency situation requiring immediate action to protect persons or the property of guests, Manager shall be authorized, upon notice to Receiver, but without such Receiver's prior consent to the extent not practical to obtain same in advance, to enter into contracts occasioned by such emergency in excess of such sum. In the event that, at any time during the term of this Agreement, structural repairs to Improvements shall be required by reason of any Applicable Laws, ordinances, rules or regulations now or hereafter in force, or by order of any Governmental Authority, Manager shall notify Receiver of such repairs or changes and the repairs or changes shall be made and paid for by Owner.

5.5 Limitations on Manager's Authority. Notwithstanding the general grant of authority given to Manager in Section 2.1 and elsewhere in this Agreement, and without limiting any of the other circumstances under which Receiver's approval is specifically required under this Agreement (including, without limiting, Receiver's approval rights with respect to the Proposed Annual Plan), Receiver's written approval shall be required in each instance for:

(a) the institution, prosecution, defense or settlement of any claim or legal or equitable suits, actions or proceedings arising out of the operation of components of the Properties, including the selection of counsel, other than (i) routine collection and litigation matters involving ordinary day-to-day operations of the Properties involving amounts in controversy of less than \$5,000, and (ii) insured claims involving an amount in controversy of less than \$50,000;

(b) (i) the execution of any lease or other contract having a term in excess of one year that cannot be terminated by Owner, Receiver or Manager on behalf of Owner without penalty upon notice of thirty (30) days or less, or (ii) the execution of any lease, license or concession agreement for space within the Properties having an area in excess of 1,000 square feet or annual rent in excess of \$75,000; provided, however, that this limitation shall not apply to the ordinary course leasing of banquet and meeting space; or (iii) the execution, modification, renewal or termination of any Leased Property Agreements, license or concession agreement for any restaurant or spa operation at the Properties, it being further acknowledged that Receiver may elect to participate with Manager in the negotiation of any such lease, license or concession agreement and that the terms and conditions of any arrangement for third party operation of the facilities within the Properties (as well as the identity of the lessee of such facilities) shall be subject to the approval of Receiver;

(c) the execution of any equipment lease or other contract for goods or services (or series of related equipment leases or contracts) that requires aggregate annual payments in excess of \$25,000.00 for equipment leases and \$50,000.00 for other contracts for goods or services, other than contracts for (a) approved centralized services, (c) utilities, and (d) employee salaries and benefits;

(d) (i) the borrowing of any money or execution of any credit obligation in the name and on behalf of Owner or Receiver, except in connection with trade payables for goods and services incurred in the ordinary course of business in the operation and management of the Properties in accordance with the terms of this Agreement and as set forth in the Approved Annual Plan, or (ii) the grant of a security interest, pledge or mortgage on all or any part of the Properties, the FF&E or the Resort Fixtures and Equipment, other than purchase money financing for equipment wherein the amount of indebtedness is not greater than \$50,000.00;



(e) the incurrence of any liability or obligation on behalf of Owner or Receiver to third parties which is unrelated to the operation, maintenance or security of the Properties or to the performance of Manager's responsibilities under this Agreement;

(f) (i) the employment of any professional firm (other than legal counsel and accountants) for more than \$25,000.00 annually in the aggregate except as set forth in the Approved Annual Plan or (ii) the entry into any arrangements for engagement of any attorney or accountant other than legal counsel retained to collect accounts receivable and pursue other routine matters involving amounts in controversy of less than \$100,000.00;

(g) the prosecution or settlement of any tax claims or appeals;

(h) the acquisition on behalf of Owner of any land or interest therein;

(i) the consent to any condemnation or participation in any condemnation proceeding relating to the Properties;

(j) the sale, transfer or other disposal of all or any portion of the Properties except for dispositions of FF&E or Resort Fixtures and Equipment to the extent expressly permitted herein or provided for in the Approved Annual Plan;

(k) the taking of any other action which, under the terms of this Agreement, is prohibited or requires the approval of Receiver without having obtained such approval.

5.6 Reimbursement of Taxes: Owner shall pay to Manager an amount equal to any sales, use, Gross Receipts, value added, excise or similar tax assessed against Manager by any Governmental Authority that are calculated on reimbursements or fees payable to Manager under this Agreement for expenses incurred for Owner's account (but not, for avoidance of doubt, the Management Fee), other than income taxes assessed against Manager.

5.7 Internet Marketing Services. Manager will include the Properties in its internet marketing program to actively market the presence of the Properties via the internet to potential customers. Such services may include, but may not be limited to, contracting with various third party providers which may or may not be affiliated with Manager, of internet sales channels or search engines, managing "pay per click", key word searches or tag lines regarding the Properties and managing the cost of promoting participation in web sites that facilitate the placement of the Properties or information about the Properties toward the top of various search engines. Any affiliated vendor of Manager who is to provide goods or services to Owner must be approved in advance by Receiver. Any contracts that Manager enters into with an Affiliate shall be on terms at least as favorable to Owner as generally available from third parties in arms-length transactions in the relevant market. The costs paid to internet vendors for any of such searches (or, as appropriate, the Properties proportionate or Properties-specific share) shall be considered an operating expense of the Properties and the responsibility of Owner (or reimbursed to Manager by Owner for out-of-pocket amounts advanced by Manager). The requirements of this Section 5.6 shall be in addition to the Marketing Program provided for in Sections 9 hereof.

5.8 Regulatory, Structural and Environmental Compliance or Deficiencies. Receiver hereby acknowledges that Manager is not an expert in, nor does Manager specialize or have professional expertise in, such areas such as compliance with the Americans with Disabilities Act, environmental laws, regulations or compliance (including mold and other toxins, hazardous materials and environmental contamination or mitigation), structural or other engineering matter or the like as pertains to the

Properties. Accordingly, Receiver expressly acknowledges and agrees that it will consult with appropriate experts, specialists and professionals with respect to any such compliance or deficiency issues or claims, including matters involving emerging or developing areas of Applicable Laws (with Manager's assistance if desired). Additionally, Receiver shall keep Manager appropriately informed with respect to such matters or circumstances, and agrees to work with Manager, to prevent or minimize harm, injuries or damage to persons or property. Manager shall promptly inform Receiver of any such issues, matters or circumstances that come to Manager's attention.

## **SECTION 6. ANNUAL PLAN**

### **6.1 Proposed Annual Plan.**

(a) Within 90 days of the Commencement Date, Manager shall prepare and deliver to Receiver a Proposed Operating Budget and Proposed Capital Expenditures Budget for the first Fiscal Year, which shall include projections of Gross Receipts, operating expenses, cash flow and such other matters as may be reasonably requested by Receiver for such period. The Proposed Operating Budget is intended as and will represent only an estimate of the projected revenues and expenditures for the Fiscal Year based upon assumptions believed by Manager to be reasonable at the time of preparation. On or before 60 days prior to each Fiscal Year thereafter, Manager shall prepare and deliver to Receiver, for its review and approval, a Proposed Annual Plan for the next Fiscal Year, which shall include monthly and annualized projections of the following items (collectively referred to as the "Proposed Annual Plan"):

(i) an estimate of Gross Receipts, operating expenses, Management Fees, expenses associated with Marketing Programs and other marketing or advertising expenses and any reimbursable expenses to Manager, all setting forth in reasonable line-item detail the projected income and expenses of all aspects of operations of the Properties (the "Proposed Operating Budget");

(ii) a budget prepared by Manager setting forth the estimated cost and expenses of Owner for any Capital Expenditures to be made during such Fiscal Year, in such detail as Receiver shall reasonably require (the "Proposed Capital Expenditures Budget"), consisting of, without limitation (a) those Capital Expenditures that are necessary or advisable to keep the Properties in good working order and condition and in compliance with the Operating Standard and Properties Standard, (b) those Capital Expenditures as Manager reasonably determines are necessary or advisable to comply with, and cure or prevent the violation of, any Applicable Laws (those Capital Expenditures described in (a) and (b) above are hereinafter referred to as the "Routine Capital Expenditures"), and (c) Capital Expenditures, other than Routine Capital Expenditures, with those Capital Expenditures that entail a cost in excess of \$200,000 (the "Major Capital Expenditures") being specifically identified.

(iii) a cash flow projection (by month), including a schedule (by month) of an estimate of any amounts Owner will be required to provide during the Fiscal Year as working capital in accordance with this Agreement;

(iv) a marketing plan for the activities to be undertaken by Manager pursuant to Sections 5.6 and 9.1 of this Agreement, which plan shall include a description of the Properties' target markets, the Properties' relative position in those markets, the proposed room or other rate structures for each market segment, the advertising and public relations plan for the Properties, and the proposed staffing for the sales and marketing activities of the Properties (the "Proposed Marketing Program");

(v) to the extent reasonably requested by Receiver, a summary of Properties Personnel in such detail as may reasonably be requested, and within the Proposed Annual Plan, a summary of the significant proposed policy changes with regard to Properties Personnel matters;

(vi) a description of the status of any pending or reasonably anticipated collective bargaining negotiations affecting Properties Personnel;

(vii) a description of the current status of material pending suits, actions, proceedings, inquiries or investigations concerning the Properties;

(viii) FF&E purchases, replacements and repairs;

(ix) Resort Fixtures and Equipment purchases, replacements and repairs;

(x) a separate estimate to be contained within the Annual Plan (by month) of all fees and charges and other amounts payable by Owner or Receiver to Manager and its Affiliates under this Agreement and any other agreement relating to the Properties; and

(xi) any other information reasonably deemed appropriate by Manager or reasonably requested by Receiver.

(b) Approval of Annual Plan. Receiver shall review the Proposed Annual Plan and shall provide Manager with any objections to such Proposed Annual Plan in writing, in reasonable detail, within thirty (30) Business Days after receipt of the Proposed Annual Plan from Manager. If Receiver has not delivered written notice within such thirty (30) Business Day period, such failure to respond shall be deemed to be Receiver's disapproval of the Proposed Annual Plan. If Receiver objects to all or any portion of the Proposed Annual Plan through written notice or through silence in accordance with this Section 6.1(b), the Parties shall meet within fourteen (14) days after Manager's receipt of Receiver's objections or the expiration of the thirty (30) Business Day response period without having obtained Receiver's written approval, to discuss such objections. Following such meeting, the Manager shall submit written revisions to the Proposed Annual Plan. The Parties shall use good faith efforts to reach an agreement on the Proposed Annual Plan prior to the beginning of any Fiscal Year. The Proposed Annual Plan, as modified to reflect the revisions agreed to by the Parties, shall become the "Approved Annual Plan" for the next Fiscal Year. Receiver shall act reasonably and exercise prudent business judgment in approving of, or objecting to, all or any portion of the Proposed Annual Plan.

(c) Resolution of Disputes for Annual Plan. The Parties acknowledge that it is the right and intention of Receiver to participate actively in the budget process of the Properties in accordance with the process and procedures and subject to the limitations set forth in Section 6.1(a) and (b), and such review and approval process by Receiver will be a major method by which Receiver can provide input to Manager with respect to the operation of the Properties. If the Parties, despite their good faith efforts, are unable to reach a final agreement on the Proposed Annual Plan for a Fiscal Year by the start of the Fiscal Year, those portions of such Proposed Annual Plan that are not in dispute shall become effective on the first day of the applicable Fiscal Year and the prior Fiscal Year's Approved Annual Plan shall govern the items not approved by Receiver, except that the budgeted expenses provided for such item(s) in the prior year's Approved Annual Plan (or, if earlier, the last Approved Annual Plan in which the budgeted expenses for such disputed item(s) were approved) shall be increased by the percentage increase in CPI.

(d) Compliance with Approved Annual Plan. The Approved Annual Plan is intended as and will represent only an estimate of the projected revenues and expenditures for the Fiscal

Year based upon assumptions believed by Manager to be reasonable at the time of preparation. Although Manager shall use reasonable efforts to achieve the budgetary goals reflected in the Approved Annual Plan, the Approved Annual Plan cannot be relied upon as an assurance of actual results for such Fiscal Year. Manager shall promptly notify Receiver of the need to depart in any material way from the Approved Annual Plan if, in Manager's judgment, adherence to the Approved Annual Plan is impractical or such departure is necessary or desirable for the efficient or profitable operation of the Properties in accordance with the Operating Standard, provided that (a) Manager shall not intentionally incur any controllable costs or expenses or make any controllable expenditures that would cause the (i) expenditures for any departmental level costs to exceed the budgeted amount of such departmental level costs by more than ten percent (10%)(the variances provided for in this Section 6.1(d)(a)(i) shall be at a departmental level until Receiver provides Manager with written notice that the variances within this Section 6.1(d)(a)(i) shall be applicable to line item costs, at which time Manager agrees that such variances shall be applicable at a line item level for all variances thereafter), or (ii) total expenditures for the operation of the Properties to exceed the aggregate amount of expenditures provided in the Approved Annual Plan by more than five percent (5%), in each case without obtaining Receiver's prior written approval, and (b) Manager shall not exceed the Approved Capital Expenditures Budget by any amount without Receiver's prior written approval. The Approved Annual Plan shall be deemed to include increases or decreases for the following circumstances or expenses, and Manager may, during the course of each applicable Fiscal Year, deviate from the Approved Annual Plan as follows: (i) increased or reduced variable expenses directly attributable to occupancy or revenues above or below budgeted levels; (ii) payment of uncontrollable expenses such as taxes, utilities rates and insurance costs; and (iii) making emergency expenditures, provided that Manager shall use commercially reasonable efforts to notify Receiver prior to the time that the emergency expenditures in question are made and shall in any event notify Receiver as soon as reasonably possible after such expenditures are made. No other deviations from the Approved Annual Plan, other than those set forth in this Section 6.1(d), shall be permitted without Receiver's prior written consent. Notwithstanding any provision contained in this Section 6.1(d) to the contrary, Manager shall not be liable for changes or deviations to the Approved Annual Plan; provided, however, that this sentence shall not modify the notice obligations regarding deviations from the Approved Annual Plan as set forth above in this Section. Manager shall at all times use its best efforts to ensure any new operations or changed operations relating to the Properties are operated as efficiently as possible to maximize revenues and minimize expenses.

(e) Modification to Approved Annual Plan. Manager shall have the right from time to time during each Fiscal Year to propose modifications to the Approved Annual Plan then in effect based on actual operations during the elapsed portion of the applicable Fiscal Year and Manager's judgment as to what will transpire during the remainder of such Fiscal Year. Any such modifications shall be subject to Receiver's written approval pursuant to this Section 6.1.

## **SECTION 7. FINANCIAL STATEMENTS, ACCOUNTING AND ACCOUNTS**

7.1 Books and Records; Operating Statements. Manager shall ensure an accurate accounting in connection with its management of the Properties. All books, records, bills, receipts, bank books, check books, correspondence, lists, files and books of accounts and all other books and records related to the management of the Properties, shall at all times be safely kept and preserved by Manager. The books and records relating to or reflecting the results of operation of the Properties in accordance with GAAP and, to the extent applicable, the Uniform System, shall be maintained at all times at the offices of Owner or Receiver. Manager may maintain copies of the same at its corporate office. To the extent that book and records are not already within Receiver's possession, Receiver, and its respective agents, representatives and designees shall have the right and privilege of examining, inspecting and copying said books and

records at any reasonable time. All tax returns and filings including income tax returns applicable to Properties operations shall be the responsibility of Owner.

7.2 Manager's Accounting Services. In addition to the Financial Statements and Certified Financial Statements provided to Receiver in accordance with Section 7.3 below, Manager's accounting staff, which consists of Certified Public Accountants, shall specifically perform the following accounting services:

- (a) Provide monthly rolling cash forecasts;
- (b) Perform balance sheet review and review all material account reconciliations;
- (c) Perform a review of inventory counts and adjustments;
- (d) Assist in providing appropriate reporting to Receiver for quarterly reporting to the District Court;
- (e) Review the Properties' flash management reporting system information daily and periodically;
- (f) Review any applicable audits performed on the Properties and 401(k) plan of Owner and put in place regulatory compliance standards for fiduciaries of the Properties;
- (g) Review welfare benefit plans and annual form 5500 filings for reasonableness;
- (h) Perform pay period reviews;
- (i) Perform Accounts Payable weekly reviews and direct payments to be made pursuant with guidance to be provided by Receiver;
- (j) Review the administration of the Home Owner Association ("HOA") and Condominium association ("COA") accounting, allocations and Federal Form 1120-H reporting;
- (k) Review the calculation of profits amongst the partners of the various limited partnerships, if any;
- (l) Perform periodic compliance and efficiency reviews inclusive of human resource, payroll administration, and accounting controls;
- (m) Manage bank accounts and control personnel with access to funds (other than Receiver or a designee of Receiver), to the extent authorized under this Agreement;
- (n) Provide management level oversight to human resource and accounting staff of the Properties and establish policies and procedures commensurate with the terms of this Agreement; and
- (o) Assist Receiver in accumulating financial information and financial understanding for the United States District Court and as otherwise reasonably requested by Receiver.

Owner shall pay to Manager, the Accounting Fee (as defined in Section 10.2 hereof), for services contained within this Section 7.

7.3 Financial Reports. Manager shall oversee and be responsible for the provision of, in a paper format and an electronic file format (PDF & Excel), its standard monthly financial reporting package to Receiver at the earliest practicable time, with Manager using commercially reasonable efforts to provide the following within twenty (20) days after the end of each Fiscal Period, including the last Fiscal Period of the Fiscal Year (which reporting obligation shall commence not later than forty-five (45) days after the first full Fiscal Period after the Commencement Date)(collectively referred to as the "Financial Report"):

- (a) a balance sheet with reasonable detail;
- (b) an income and expense statement for such month and for the elapsed portion of the current Fiscal Year through the end of such month, including a breakdown of all fees and reimbursements claimed by and paid to Manager;
- (c) a comparison of the actual monthly results with the Approved Operating Budget and prior Fiscal Years;
- (d) a statement of net cash flow from operations in reasonable detail for such month and such elapsed portion of the current Fiscal Year through the end of such month;
- (e) a schedule of Capital Expenditures showing in reasonable detail, items budgeted, actual expenditures to date and the amount of expenditures projected for completion;
- (f) an account receivable aging report;
- (g) Manager's narrative report;
- (h) Monthly bank statements for all bank accounts, including without limitation, the Operating Account but only if requested by Receiver; and
- (i) Such other reports as may be reasonably requested by Receiver.

All reports required pursuant to this Section 7.3 shall be in a form and be in such detail as shall be acceptable to Receiver. The Parties acknowledge that unless they otherwise agree, the reporting requirements described in this Section 7.3 shall not apply to property owner or condominium owner associations operating within the Properties or the limited partnerships as to which an entity subsumed in the definition of Owner acts as a general partner unless requested in writing by Receiver.

7.4 Certified Financial Statements. Manager shall cause to be prepared and delivered to Receiver no later than sixty (60) days following each Fiscal Year, financial statements for the preceding Fiscal Year (consisting of a balance sheet, a statement of earnings and retained earnings and a statement of cash flows), which shall include a certificate of the CFO or CEO of Manager, to the effect that, subject to any qualifications therein, the financial statements fairly present, in conformity with GAAP and the Uniform System, the financial position, results of operations and cash flows of the Properties for the Fiscal Year then ended (the "Certified Financial Statements"). Subject to the audit requirements set forth in this paragraph, the Certified Financial Statements delivered pursuant to this Section 7.4, and all information therein, shall be binding and conclusive on the Parties unless, within one hundred-twenty (120) days after the delivery of such statements to the Parties, either Party shall deliver written notice to the other Party of its objection thereto, setting forth in reasonable detail the nature of such objection. If

the Parties are unable thereafter to resolve any disputes with respect to the matters set forth in the Certified Financial Statements within sixty (60) days after delivery by either Party of such notice, either Party shall have the right to cause such dispute to be resolved in accordance with the Expert resolution procedure of Section 18.1 hereof. In addition to the foregoing, Owner may at its election and as an operating expense, cause further audits of the accounting systems, books and records and financial records of the Properties, including all expenditures made by the Properties, provided that such further audits shall occur not more than twice each Fiscal Year. The cost of any independent review or audit shall be an operating expense, unless such audit reveals a misstatement in favor of Manager in the aggregate amount of more than five percent (5%), which is not attributable to the quality or lack of financial information reasonably available to Manager for the period prior to the Effective Date, in which case the cost of such audit shall be borne by Manager without reimbursement from Owner.

7.5 Operating Account. Receiver shall establish and Manager shall maintain one or more separate segregated special operating bank accounts (collectively, the "Operating Account") at a bank or banks selected by Receiver and reasonably approved by Manager. The Operating Account shall be used for the collection and disbursement of monies in connection with the management and operation of the Properties. All Gross Receipts and other funds received by Manager in the operation of the Properties provided by Owner or retained by Manager from Gross Receipts, shall be deposited in the Operating Account. From the Operating Account, Manager shall pay all operating expenses, and other costs and expenses relating to the operation of the Properties as permitted or required to be paid by Manager in accordance with this Agreement before any penalty or interest accrues thereon. The Operating Account shall at all times be in Owner's name, unless otherwise directed by Receiver in writing. The signatories of the Operating Account shall be limited to home office employees designated by Manager and approved by Receiver from time to time, and checks or other documents of withdrawals from the Operating Account shall be signed or authorized only by those representatives, each of whom shall be bonded pursuant to a fidelity bond acceptable to Receiver at Owner's cost. Receiver may also designate itself or an agent, designee, employee or representative to act as a signatory of the Operating Account. All interest earned or accrued on amounts invested from the Operating Account shall be added to the Operating Account and shall belong to Owner. Manager shall be solely responsible for the actions of the authorized signatories that Manager appoints.

7.6 Distributions. At the direction of Receiver, Manager shall remit to Receiver out of the Operating Account an amount (the "Distribution Amount") of excess funds which shall not be needed for the operation of the Properties or for any reserves agreed to, in writing, by Receiver.

7.7 Ownership of Accounts. All bank accounts (including the Operating Account), bank balances, bank statements, advice, paid checks, blank checks and other related records established in connection with operation of the Properties or the ownership of the Properties shall be the sole property of Owner or of the Receiver on behalf of Owner.

## **SECTION 8. MAINTENANCE AND REPAIR; CAPITAL EXPENDITURES AND REPLACEMENT OF FF&E AND RESORT FIXTURES AND EQUIPMENT**

8.1 Required Maintenance and Repair and Capital Expenditures. Manager, at Owner's expense, shall perform or cause to be performed all ordinary maintenance and repair, Routine Capital Expenditures, other Capital Expenditures requested by Receiver that are not Major Capital Expenditures and routine acquisition of FF&E and Resort Fixtures and Equipment in accordance with Section 8.2 hereof and as otherwise provided for in this Agreement. Notwithstanding the foregoing, Receiver may, by written notice to Manager, elect to perform Major Capital Expenditures; provided, however, such Major Capital Expenditures shall be governed by the terms of Section 8.3 hereof.

8.2 Routine Capital Expenditures and Acquisitions of FF&E and Resort Fixtures and Equipment. Owner shall provide funds from time to time as requested by Manager for (i) new or replacement FF&E and Resort Fixtures and Equipment when Manager reasonably believes such purchase to be necessary or desirable and as set forth in the Approved Annual Plan or otherwise approved by Receiver, (ii) Routine Capital Expenditures as are set forth in the Approved Annual Plan, and (iii) such purposes as are otherwise approved by Receiver. Manager shall recommend that Owner purchase major items of new or replacement FF&E and Resort Fixtures and Equipment when Manager reasonably believes such purchase to be necessary or desirable in order to maintain the Operating Standard. All items of FF&E and Resort Fixtures and Equipment replaced or added at the Properties shall be and become the property of Owner. For avoidance of any doubt, Manager shall not incur any Capital Expenditures except in accordance with the Approved Capital Expenditures Budget.

8.3 Major Capital Expenditures. The supervisions and facilitation of major renovations or major Capital Expenditures of the Properties are not the responsibility of Manager; however, Receiver may request or contract separately with Leisure Construction & Renovation, L.L.C. (an affiliate of Manager) for such services.

## **SECTION 9. MARKETING PROGRAM**

9.1 Properties Marketing Program. In addition to the Properties' participation in any Marketing Program included as part of any centralized services provided by Manager, Manager shall develop and implement a specific marketing program for the Properties, which shall provide for the planning, publicity, internal communications, organizing and budgeting activities to be undertaken, and which may include the following (a) production, distribution and placement of promotional materials relating to the Properties, including materials for the promotion of employee relations; (b) development and implementation of promotional offers or programs that benefit the Properties; (c) attendance of Properties Personnel at conferences, conventions, meetings, seminars and travel congresses; (d) selection of and guidance to advertising agency and public relations personnel; and (e) preparation and dissemination of news releases for national and international trade and consumer publications, all as approved in writing by Receiver.

## **SECTION 10. MANAGEMENT FEES**

10.1 Management Fees. In consideration for the management of the Properties by Manager, Receiver agrees to pay to Manager the higher of the Basic Management Fee or the Minimum Fee for services provided pursuant to this Agreement for each Fiscal Period, subject to adjustment and in accordance with the calculation method provided for in Section 10.1(c) below (the "Management Fee"):

(a) Basic Management Fee. The "Basic Management Fee" shall be Two and One-Half Percent (2.5%) of all Gross Receipts.

(b) Minimum Fee. In the event the Basic Management Fee calculated pursuant to Section 10.1(a) above for a given Fiscal Period is less than Forty-Five Thousand Dollars (\$45,000), Owner shall pay to Manager a fee of Forty-Five Thousand Dollars (\$45,000) (the "Minimum Fee") in lieu of the Basic Management Fee. The Minimum Fee for any short Fiscal Period shall be prorated for the number of days the Manager has managed the Properties.

(c) Payment and Calculation of Management Fee.



(i) To the extent that the Basic Management Fee for a Fiscal Period is less than the Minimum Fee, Receiver shall pay the Minimum Fee to Manager. The difference between the Minimum Fee paid and the Basic Management Fee shall be referred to as the "Deficit Payment." The unreimbursed aggregate of the Deficit Payments outstanding at any time during the Operating Term shall be referred to as the "Aggregate Deficit Balance."

(ii) To the extent that the Basic Management Fee for a Fiscal Period exceeds the Minimum Fee, the difference between the Basic Management Fee and the Minimum Fee shall be referred to as the "Excess Allocable Funds." In any given Fiscal Period that there are Excess Allocable Funds, such funds shall be applied first to reduce the Aggregate Deficit Balance. If any Excess Allocable Funds remain after repayment of the Aggregate Deficit Balance, such remainder of the Basic Management Fee in such Fiscal Period shall be paid to Manager.

(iii) By way of example only, if in the first Fiscal Period, Two and One-Half Percent (2.5%) of Gross Receipts equals Thirty Thousand Dollars (\$30,000), the Management Fee for such Fiscal Period will consist of the Minimum Fee (\$45,000), and the Deficit Payment will be Fifteen Thousand Dollars (\$15,000). If in the second Fiscal Period, Two and One-Half Percent (2.5%) of Gross Receipts equals Sixty Thousand Dollars (\$60,000), the Management Fee will consist of the Basic Management Fee (\$60,000); provided, however, that prior to payment of the Basic Management Fee for such Fiscal Period to Manager, the Excess Allocable Funds of Fifteen Thousand Dollars (\$15,000) would first be applied to the Aggregate Deficit Balance. Therefore, the Management Fee for the second Fiscal Period would be the Minimum Fee (\$45,000), as the Excess Allocable Funds for such Fiscal Period (\$15,000) are to be applied towards bringing the Aggregate Deficit Balance (\$15,000.00) to Zero (0). The Management Fee for all further Fiscal Periods will continue to be the greater of the Basic Management Fee and the Minimum Fee subject to the calculations as provided for in this Section 10.1(c).

(d) Timing for Payment of Management Fees. The Management Fee shall be automatically paid each Fiscal Period to Manager out of the Operating Account and shall be paid contemporaneously with the delivery of the Financial Report and such Management Fee shall be reflected in the Financial Report.

10.2 Accounting Fee: As provided for in Section 7.2, Owner shall pay to Manager an accounting fee of Nine Thousand and no/100 (\$9,000.00) per Fiscal Period for services contained within this Section 7 (the "Accounting Fee"). Accounting Fees for any short Fiscal Period shall be prorated for the number of days the Manager has managed the Properties.

## **SECTION 11. ABATEMENT OF FEES OWED TO MANAGER**

11.1 Abatement. As stated in the Recitals to this Agreement, Manager has performed certain initial "takeover" services with respect to the Properties, including, without limitation, securing the Properties owned by Owner, interviewing various levels of staff of Owner and providing leadership and direction with respect to the takeover of the Properties with Manager's compensation for such services being equal to \$175 per hour per individual plus out of pocket expenses. As a material inducement to Owner and Receiver to enter into this Agreement, Manager expressly agrees that one-half (1/2) of the compensation (excluding out of pocket expenses) that has accrued from their initial services performed from April 13, 2016 to the Effective Date and is owing to Manager will be abated as of the Effective Date of this Agreement as partial consideration for Receiver entering into this Agreement.

## **SECTION 12. INSURANCE**

12.1 Property Insurance Coverage and Placement Fees. Manager agrees that it will supervise the placing of insurance at the expense of Owner on the full insurable value of the Properties, furniture, furnishings and equipment therein against the risks required to be covered pursuant to the provisions of any mortgage outstanding affecting the Properties or Site or covered on similar Properties manager manages, including loss or damage by, but without limitation, fire, boiler, elevator, plate glass, workers compensation, liability and fidelity insurance, and all other typical insurance (which shall also cover) any liability of managing Agent, all of which shall be a Properties expense. Manager shall furnish to Owner satisfactory evidence of all insurance maintained by Owner for Owner's ultimate approval

12.2 Liability and Other Insurance Coverage. Manager agrees that it will supervise the placing of liability and any other required insurance at the expense of Owner (naming Manager as an additional insured thereunder) at the expense of Owner unless otherwise indicated, at all times during the term hereof (and in the case of a claims made policy, for a period following the termination of this Agreement to the extent necessary to protect Manager from claims made or asserted and arising from acts or actions during the term of this Agreement), the following insurance, all of which shall be a Properties expense, if such insurance is available on usual terms and at customary rates:

(a) Comprehensive public liability insurance for injury to or death of persons and damage to or loss of property, in such amounts as Manager shall deem necessary but not less than \$10,000,000 in respect of bodily injury (including death), and \$1,000,000 for property damage (inclusive of any excess liability policies); and

(b) Such workmen's compensation, employers' liability, employment practices, crime or similar insurance as may be required by Applicable Laws, or which Manager shall deem advisable; and

(c) Use and occupancy insurance against loss or damage by fire and the hazards included in an extended coverage endorsement in an amount not less than eighty percent (80%) of the estimated insurable value of the Properties, including any applicable endorsements, for one year as computed from time to time by Manager; and

(d) Insurance against such other operating risks against which it is now or hereafter may be customary to insure in the operation of similar properties and operations.

Any insurance of the character described in this Section including, but not limited to, business interruption insurance may be effected on policies of blanket insurance which may cover other properties of locations of Manager and its affiliated companies, the premiums and administrative costs on which may be allocated by Manager in its discretion, on a reasonable basis, among the various properties, including the Properties, covered by said policies. Except as Owner may be required so to do as provided above, Manager agrees to comply with, fulfill and perform all rules, orders, ordinances, regulations and requirements, imposed by, or in connection with, or affecting the premiums for, policies of insurance upon the Properties, and relating to the use of the Properties by Manager, sub-tenants, or any other person.

## **SECTION 13. INDEMNIFICATION**

13.1 Indemnification by Owner. Subject to Section 13.3 hereof, the Owner hereby agrees to indemnify and hold harmless and defend Manager and its Affiliates and any of their respective directors,

officers, employees, consultants, agents and representatives from and against any and all claims, liabilities, costs or damages related to (i) injuries to persons or property resulting from any cause whatsoever in, on, or about the Properties, (ii) any action taken by Manager on behalf of or at the direction of Owner, (iii) any agreement(s) entered into by Owner, Receiver or by Manager on Owner's behalf, (iv) Owner's failure to make any payment to any trade contractor, subcontractor, vendor or supplier or otherwise under this Agreement or related to the operation of the Properties, (v) any act or omission by Owner or Owner's employees, representatives or agents, (vi) a breach of this Agreement by Owner or Receiver, or (vii) the enforcement of the foregoing indemnities, and, at its own cost and expense, to defend any action or proceeding against Manager arising therefrom, provided that the Manager shall have fully and faithfully performed all of its duties hereunder. Notwithstanding the foregoing, the Owner shall not be required to indemnify Manager against damages suffered as a result of Manager's breach of this agreement or gross negligence or willful misconduct on the part of Manager, its agents, or employees. It is expressly understood and agreed that the foregoing provisions of this Section shall survive the termination or expiration of this Agreement.

13.2 Indemnification by Manager. Subject to Section 13.3 hereof, Manager shall indemnify, defend and hold harmless Owner and Receiver and its and their Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives from and against any and all claims, liabilities, costs or demands, including, without limitation, interest, penalties and reasonable attorneys' fees, which arise, result from or relate to (i) gross negligence or willful misconduct on the part of the Manager, its agents, or employees, (ii) proceedings resulting from Manager's willful violations of law, (iii) any action taken by Manager that is materially beyond the scope of Manager's authority under this Agreement, (iv) any material breach of this Agreement by Manager, and (v) the enforcement of the foregoing indemnities.

13.3 Insurance Coverage. Notwithstanding anything to the contrary in this Section 13, the Parties shall look first to the appropriate insurance coverages in effect pursuant to this Agreement prior to seeking indemnification under this Section 13 in the event any claim or liability occurs as a result of injury to persons or damage to property, regardless of the cause of such claim or liability; provided, however, if the insurance company denies coverage or reserves rights as to coverage, then the Parties shall have the right to seek indemnification, without first looking to such insurance coverage.

#### **SECTION 14. RELATIONSHIP AND AUTHORITY.**

The Parties intend by this Agreement to create a relationship of principal and agent between them. Owner is interested only in the results to be achieved, and the conduct and control of how and when the services under this Agreement are performed lie solely with Manager, subject to the Approved Annual Plan and the terms of this Agreement. Manager and Owner shall not be construed as joint venturers or partners of each other and neither shall have the power to bind or obligate the other except as set forth in the Agreement. This Agreement shall not be deemed at any time to be an interest in real estate or a lien of any nature against the Properties or Site upon which it exists. The rights of the Manager shall be at all times subject and subordinate to all mortgages which may now or hereafter be outstanding, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required in connection with the subordination referred to herein, provided, however, Manager agrees to reasonably cooperate with any mortgagee in further documenting the subordination contemplated hereby, and agrees to provide notices and opportunities to cure hereunder and to reasonable modifications of this Agreement that may be required by any such mortgagee provided that the same does not have material adverse impact on the economic terms of this Agreement. Receiver acknowledges and agrees that Manager is free to contract to provide similar or other services for others, while Manager is under contract with

Receiver, though Manager agrees that it will not engage in any activity prohibited in Section 16 hereof, or any other activity that conflicts with Owner's interests or Manager's duties or obligations under this Agreement.

## **SECTION 15. TERMINATION**

15.1 Termination By Owner. This Agreement and the employment of Manager may be terminated by Receiver, at Receiver's option, upon the happening of the following events:

(a) Breach, default, or non-compliance with any material term or covenant contained in this Agreement by Manager, followed by written notice given to Manager by Owner or Receiver, and failure of Manager to correct or remedy such breach, default, or non-compliance within thirty (30) days after receipt of such notice shall give the Owner or Receiver the right to terminate this Agreement without abrogating any legal or equitable remedy which it may have.

(b) Manager shall file in the courts a petition in bankruptcy or insolvency or for a reorganization or for the appointment of a receiver or trustee of all or a substantial part of Manager's property; if a petition in bankruptcy is filed against the Manager which is not discharged within thirty (30) days thereafter; or the insolvency of Manager by reason of being unable to pay debts as they mature. Termination under this Section 15.1(b) shall have immediate effect and Manager shall have no additional right to cure.

(c) A material misstatement or inaccuracy in any financial report provided to Owner or Receiver hereunder which is confirmed by an independent accountant.

(d) If Owner or Receiver wishes to terminate this Agreement for any reason other than those provisions mentioned in the preceding subparagraphs of Section 15.1, Owner may do so only after delivery of thirty (30) days prior written notice to Manager and thereupon, Manager will hereby assign all right and interest in agreements and accounts outstanding to Owner or its designees.

15.2 Termination By Manager. This Agreement and the employment of Manager may be terminated upon Manager providing Receiver Ninety (90) days advance written notice; provided, however, that Manager shall only be required to provide Receiver with thirty (30) days advance notice if such notice of termination is a result of a default by Receiver under this Agreement.

15.3 Owner's Obligations Upon Termination. Termination of the Management Agreement will not relieve Owner from paying prior fees and expenses due Manager up to and including the date of termination plus any on-going expenses incurred by Manager on behalf of Owner in accordance with the terms of this Agreement, if any.

15.4 Manager's Obligations Upon Termination. Upon the effective date of the termination of this Agreement for any reason, Manager shall:

(a) As expeditiously as reasonably possible and to the extent permitted by law, surrender and assign to Receiver, or its designee any and all licenses, permits, and/or other Governmental Approvals or authorizations in its possession and required for the operation of the Properties;

(b) Deliver to Receiver, any and all of Owner's Properties and assets within the possession of Manager, including keys, locks and safe combinations, files, correspondence, information

regarding group bookings, reservation lists, ledgers, bank statements for the Operating Account, accounting books and records, all electronic data maintained by Manager relating to the Properties (which data shall be delivered on computer disc in a format that is accessible and readable by Owner and Receiver's then current computer systems), insurance policies, bonds and other documents, agreements, leases, licenses, records and plans (including, without limitation, the as-built or record set plans) relating to the operation of the Properties, provided that Manager may retain possession of copies of any of the foregoing, other than keys, locks and safe combinations. For avoidance of any doubt, prior to and following termination, all books and records relating to the Properties shall be the property of Owner. Manager will take all reasonable steps to ensure that client account lists and other proprietary information of Owner or the Properties is kept as a trade secret. Manager will not use or permit to be used any such client account lists or other proprietary information of Owner in connection with any other hotel, property or business;

(c) Not thereafter use any information concerning the Properties obtained by Manager or in Manager's possession in any manner to compete with the Properties or disclose any such information to any person who is likely to use it to compete with the Properties;

(d) Remit to Owner or Receiver, as applicable, the balance (if any) of the Operating Account, after computation and disbursement to Manager of all accrued, unpaid Management Fees, costs that are reimbursable to Manager under this Agreement and other amounts due Manager under the terms of this Agreement that have not been objected to by Receiver;

(e) As expeditiously as reasonably possible, prepare or have prepared by Owner's accounting staff and deliver to Owner or Receiver, as applicable, the financial reports required under this Agreement with respect to the final Fiscal Year, which shall include a certificate of the CFO or CEO of Manager, to the effect that, subject to any qualifications therein, the financial statements fairly present, in conformity with GAAP and the Uniform System, the financial position, results of operations and cash flows of the Properties for the final Fiscal Year and remit to Owner the amount (if any) shown as owing to Owner or Receiver, as applicable, in the final financial statements on account of previously overpaid Management Fee, reimbursements to Manager, and other costs and payments due under this Agreement; and

(f) Cooperate and assist with, and do all things reasonably necessary or advisable to effectuate, the proper and smooth transition of operations of the Properties from Manager to Owner or its designee.

#### **SECTION 16. NONCOMPETITION CLAUSE.**

16.1 Manager covenants that it will not operate any ski resort or other resort that is competitive with the Properties and that is located within a One Hundred (100) mile radius of the Properties during the period of management under this Agreement.

#### **SECTION 17. MANAGER'S RELATIONSHIP WITH FRANCHISOR**

THIS SECTION HAS BEEN INTENTIONALLY LEFT BLANK AS THE PROPERTIES ARE NOT FRANCHISED

#### **SECTION 18. DISPUTE RESOLUTION**

18.1 Expert Resolution.

(a) Expert Resolution. Notwithstanding anything contained in this Agreement to the contrary, whenever a provision of this Agreement expressly provides for submission of a dispute for resolution by an Expert, such dispute shall be resolved by an Expert selected in accordance with this Section 18.1. All decisions of an Expert, absent fraud, shall be final and binding on the Parties hereto (without appeal or review) and shall be enforceable in any court of competent jurisdiction.

(b) Selection of Expert. In the event of a dispute under this Agreement which requires resolution by an Expert (as specified in this Agreement), the complaining Party shall give written notice to the other Party that a dispute exists. Such notice shall also indicate that the dispute requires resolution by an Expert under the terms of this Agreement. Within twenty (20) days following delivery of such notice, the Parties shall use commercially reasonable efforts to agree upon a Qualified Person to act as the Expert for the dispute in question. If the Parties are unable to agree upon a Qualified Person to act as the Expert during such twenty (20) day period, each Party shall have ten (10) days to select a Qualified Person. The two Qualified Persons so selected by each Party shall then have twenty (20) days to select a third Qualified Person to be the sole Expert. If either Party fails to make its respective selection of a Qualified Person within the ten (10) day period described above, then the other Party's selection shall be appointed to act as the Expert. If the two Qualified Persons so selected shall fail to select a third Qualified Person to act as the Expert within the twenty (20) day period described above, then the Florida office of the American Arbitration Association shall appoint a Qualified Person to act as the sole Expert. Notwithstanding anything contained herein, either Party, in its sole discretion, may waive any of the Qualified Person requirements and permit an individual proposed by the other Party who does not meet some or all of the Qualified Person requirements to serve as an Expert under this Section 18.1.

(c) Expert Resolution Process. To the extent not inconsistent with this Section 18.1, the Commercial Arbitration Rules of the American Arbitration Association ("Rules") shall apply to any Expert resolution proceedings.

(d) Decision of Expert. The Expert shall notify the Parties in writing of his/her decision within forty-five (45) days from the date on which the Expert has been selected, or such other period as the Parties and the Expert may agree.

(e) Authority. The authority of the Expert shall be limited to deciding the matter submitted to it. **THE EXPERT SHALL NOT HAVE ANY AUTHORITY TO AWARD ANY PUNITIVE, EXEMPLARY, STATUTORY OR TREBLE DAMAGES OR TO VARY, ALTER OR IGNORE THE TERMS OF THIS AGREEMENT, OR TO VARY, ALTER OR IGNORE THE OPERATING STANDARD. ALL PROCEEDINGS, AWARDS AND DECISIONS UNDER ANY DISPUTE RESOLUTION PROCEEDING DESCRIBED IN THIS SECTION 18 SHALL BE STRICTLY PRIVATE AND CONFIDENTIAL.**

(f) Disputes Subject to Resolution by Expert. Any dispute with respect to any matter as to which this Agreement expressly provides for dispute resolution by an Expert, shall be exclusively resolved in accordance with this Section 18.1.

(g) Location. The location of any Expert resolution proceedings shall be held in Broward County, Florida, unless otherwise agreed by the Parties.

18.2 Legal Proceedings and Venue. Except for those disputes subject to resolution by an Expert, all other disputes shall be heard by the District Court or other court having jurisdiction over the

receivership, and if such court shall be deemed not to have jurisdiction over the dispute, venue shall be in Broward County, Florida and governed by the laws of the State of Florida.

18.3 Fees and Expenses. The fees and expenses of the Expert shall be paid by the Party against whom the Expert rules. Each Party shall bear the costs and expenses of their own counsel, expert witnesses, research and case presentation in connection with any dispute resolution process described in this Section 18. Notwithstanding the foregoing, if any Party secures a court judgment in any proceeding brought to enforce or interpret this Agreement, then any costs or expenses (including reasonable attorneys' fees) incurred in enforcing, or in appealing from, such court judgment shall be payable by the Party against whom such court judgment or determination on appeal has been rendered and shall be recoverable separately from and in addition to any other amount included in such court judgment.

18.4 TRIAL BY JURY. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY OF ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18.5 PUNITIVE DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR UNDER APPLICABLE LAW, IN ANY EXPERT RESOLUTION, LAW SUIT, LEGAL ACTION OR PROCEEDING BETWEEN THE PARTIES ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PROPERTIES, THE PARTIES UNCONDITIONALLY AND IRREVOCABLY WAIVE AND DISCLAIM TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW ALL RIGHTS TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, STATUTORY OR TREBLE DAMAGES, AND ACKNOWLEDGE AND AGREE THAT THE RIGHTS AND REMEDIES IN THIS AGREEMENT, AND ALL OTHER RIGHTS AND REMEDIES AT LAW AND IN EQUITY, WILL BE ADEQUATE IN ALL CIRCUMSTANCES FOR ANY CLAIMS THE PARTIES MIGHT HAVE WITH RESPECT THERETO.

18.6 LIMITATION OF RECEIVER'S LIABILITY: NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, FOR THE PURPOSE OF DETERMINING OWNER'S OR RECEIVER'S LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT, MANAGER'S SOLE RECOURSE AGAINST OWNER OR RECEIVER, SHALL BE THE INTEREST OF OWNER OR RECEIVER AND ITS AND THEIR AFFILIATES IN THE PROPERTIES, AND WITHOUT LIMITING THE FOREGOING, MANAGER WILL NOT HAVE ANY RIGHT TO SATISFY ANY JUDGMENT THAT IT MAY HAVE AGAINST OWNER OR RECEIVER (A) FROM ANY OTHER ASSETS OF OWNER OR RECEIVER, OR (B) FROM ANY PARTNER, SHAREHOLDER, MEMBER, OFFICER, DIRECTOR, OR OTHER OWNER OF OWNER OR RECEIVER.

## **SECTION 19. TRANSFER**

19.1 Transfer by Manager. Manager shall not assign, transfer or pledge this Agreement without the prior written consent of Receiver, which may be withheld in Receiver's sole discretion.

## **SECTION 20. NOTICES**

All notices provided for in this Agreement shall be in writing and all notices or payments of money shall be deemed given when personally delivered, emailed (with confirmation receipt), faxed (with confirmation receipt), on the next day following deposit when mailed by a reputable overnight mail service with return receipt requested, or three (3) Business Days following deposit when mailed by registered or certified mail at the following address for each party for the duration of this Agreement or

any renewal thereof or until such time as written notice, as provided herein, of a change of address to be used thereafter is given the other party:

RECEIVER: Akerman, LLP  
Attn: Michael I. Goldberg  
350 East Las Olas Boulevard  
Fort Lauderdale, FL 33301

With a copy to: Andrew Robins  
Three Brickell City Centre  
98 Southeast Seventh Street, Suite 1100  
Miami, Florida 33131

OWNER: c/o Akerman, LLP  
Attn: Michael I. Goldberg  
350 East Las Olas Boulevard  
Fort Lauderdale, FL 33301

With a copy to: Andrew Robins  
Three Brickell City Centre  
98 Southeast Seventh Street, Suite 1100  
Miami, Florida 33131

MANAGER: Leisure Hotels, L.L.C.  
c/o Leisure Hotel Corporation, its Manager  
Attn: Gary S. Endicott, EVP/CFO  
5000 W. 95<sup>th</sup> St, Ste 100  
Prairie Village, KS 66207

## **SECTION 21. GOVERNING LAW**

The interpretation, validity and performance of this Agreement shall be governed by the laws of the State of Florida. In the event any court or appropriate judicial authority shall hold or declare that the law of another jurisdiction is applicable, this Agreement shall remain enforceable under the laws of the appropriate jurisdiction.

## **SECTION 22. AMENDMENTS**

Any change or modification of this Agreement must be in writing signed by both parties hereto. This Agreement shall be executed in one or more counterparts, each of which shall be deemed an original.

## **SECTION 23. APPROVALS**

If a party shall desire the approval of the other party hereto to any matter, such party may give notice to such other party that it requests such approval, specifying in such notice the matter as to which such approval is requested and reasonable detail respecting such matter. Unless otherwise provided in this Agreement, if such other party shall not respond negatively in writing to such notice within twenty (20) days after receipt thereof, such other party shall be deemed to have denied the matter referred to in such notice.



**SECTION 24. FURTHER INSTRUMENTS**

Each Party hereto shall further execute and deliver all such other appropriate supplemental agreements and other instruments and take such other action as may be necessary to carry out the intentions of this Agreement and make this Agreement fully and legally effective, binding and enforceable as between the parties hereto and as against third parties.

**SECTION 25. NO RECORDATION**

25.1 No Recordation. Neither this Agreement nor any memorandum hereof shall be recorded against the Properties and any recordation or attempted recordation of this Agreement or any memorandum of this Agreement by Manager shall constitute a default under this Agreement, and in addition to any other remedies therefor, Receiver is hereby granted a power of attorney (which power is coupled with an interest and shall be irrevocable) to execute and record on behalf of Manager a notice or memorandum removing this Agreement or such memorandum of this Agreement from the public records or evidencing the termination hereof (as the case may be). ALL RECORDING OFFICERS ARE HEREBY DIRECTED NOT TO RECORD THIS CONTRACT.

**SECTION 26. WAIVER**

No failure or delay by a Party to insist upon the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any default shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

**SECTION 27. SURVIVAL AND CONTINUATION**

If, pursuant to the terms hereof, this Agreement is terminated or the term shall expire, (a) Owner's obligations to pay to Manager any amounts due to Manager hereunder shall survive such termination or expiration and shall continue until all such amounts are paid in full, and (b) all terms, provisions and obligations of either Party contained herein which, in order to give them effect and accomplish their intent and purpose, need to survive such termination shall, by agreement between Owner and/or Receiver and Manager, survive and continue until they have been fully satisfied or performed.

**SECTION 28. SALE OF SECURITIES**

In the event Owner, or any person controlling Owner, shall at any time sell or offer to sell any securities involving the Properties issued through the medium of any prospectus or otherwise, it shall do so only in compliance with all applicable federal and state securities laws and shall clearly disclose to all purchasers and offerees that (i) neither Manager nor any of its officers, directors, partners, agents or employees shall in any way be deemed an issuer or underwriter of said securities, and (ii) Manager and said officers, directors, partners, agents and employees have not assumed and shall not have any liability arising out of or related to the sale or offer of said securities, including any liability or responsibility for any financial statements, projections or other financial information contained in any prospectus or similar written or oral communication. Owner agrees to indemnify, defend and hold Manager and its officers,

directors, partners, agents and employees free and harmless of and from any and all liabilities, costs, damages, claims or expenses arising out of or related to the sale or offer of any securities by Owner.

#### **SECTION 29. CONFIDENTIALITY**

29.1 Confidentiality. Manager agrees that the matters set forth in this Agreement and all statements, reports, projections and other information relating to the operation of the Properties are strictly confidential. Except as may be required by Applicable Laws or by the order of any Governmental Authority, or as may be reasonably necessary to obtain licenses, permits and other public approvals, Manager shall make every effort to ensure that such information is not disclosed to the press or to any other third person or entity without the prior consent of Receiver, which consent may or may not be given at Receiver's sole and absolute discretion. The obligations set forth in this Section 29.1 shall survive any expiration or sooner termination of this Agreement. Manager shall coordinate with Receiver on all public statements, if any, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement, or the performance by either of them of their respective obligations under this Agreement.

#### **SECTION 30. INTERPRETATION**

(a) The headings and captions herein are inserted for convenient reference only, and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

(b) The terms "hereby", "hereto", "herein", "hereunder", and any similar terms shall refer to this Agreement.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) The terms "include", "including" and similar terms shall be construed as if followed by phrases "without being limited to".

(e) The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and consistent with carrying out the expressed purposes of this Agreement, and it shall not be strictly construed either for or against either Owner or Manager.

(f) Financial terms that are used in this Agreement, which are not otherwise defined, shall, as applicable, have the meaning provided to such terms in the Uniform System; provided, however, that the Parties acknowledge that certain terms may be used in prior editions of the Uniform System of Accounts for the Lodging Industry, published by the Hotel Association of New York City, Inc. in which such financial term is defined.

(g) Whenever Owner or Receiver's approval is required under this Agreement, such approval shall not have been obtained until the approval is received in writing.

#### **SECTION 31. PARTIAL INVALIDITY**

In the event that any one or more of the phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any

court, this Agreement shall be construed as if such phrases, sentences, clauses or paragraphs had not been inserted in this Agreement.

**SECTION 32. COUNTERPARTS**

This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**SECTION 33. ENTIRE AGREEMENT**

This Agreement contains the entire agreement and understanding of the parties in respect to the subject matter hereof, and the same may not be amended, modified or discharged, nor may any of its terms be waived, except by an instrument in writing signed by the parties to be bound thereby. No person not a party to this Agreement shall have any rights or interests hereunder and no provision of this Agreement is in any way intended nor should it be construed to benefit by right, remedy, claim or reason, any person not a party hereto. All terms and conditions in this Agreement shall be for the sole and exclusive benefit of the parties hereto.

THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY

**IN WITNESS WHEREOF**, the parties hereto have duly executed and delivered this Agreement as of the day and year first above written.

**RECEIVER:**

By: \_\_\_\_\_  
Michael I. Goldberg

**OWNER:**

By: \_\_\_\_\_  
Michael I. Goldberg, as Receiver

**MANAGER:**

**LEISURE HOTELS, L.L.C.**

By: Leisure Hotel Corporation, a  
Kansas corporation, Manager

By: \_\_\_\_\_  
Gary S. Endicott, Exec. Vice-President