

ARTICLE 7

USE BY OWNER

7.1 Use by Owner. The parties agree that:

(1) for the purposes of this Agreement:

- (a) "Day" means any period of 24 consecutive hours, commencing at 2:00 p.m. on any day and ending at 2:00 p.m. on the immediately following day;
- (b) "Period" means the Summer Period or the Winter Period, as the case may be;
- (c) "Public" means all persons other than the Unit Owner;
- (d) "Registered Owner" means the Owner or any subsequent person registered in the register of the New Westminster/Vancouver Land Title Office as owner in fee simple of the Strata Lot or, where there is a registered agreement for sale of the Strata Lot, the registered holder of the last registered agreement for sale and, in the case of a tenancy, any tenant whether under a residential tenancy agreement, lease or otherwise, in each case of which the Manager has been notified in writing;
- (e) "Statutory Holiday" means:
 - (i) any day which is a statutory holiday in British Columbia; or
 - (ii) any day for which the Manager, acting reasonably, notifies the Owner in writing at least 10 months prior to the commencement of any Period that such day is a statutory holiday in the United States;
- (f) "Summer Period" means the period from 2:00 p.m. on April 16 to 2:00 p.m. on November 15 of each calendar year;
- (g) "tenant" includes any person entitled to possession or occupancy of a Strata Lot for a period longer than 56 days in each calendar year;
- (h) "Unit Owner" means the Registered Owner and the spouse, children and parents of such Registered Owner and the parents of the Registered Owner's spouse; and where there is more than one Registered Owner, all the Registered Owners and their spouses, children, parents and the parents of their spouses will together constitute the "Unit Owner" for the Strata Lot and, where the Registered Owner is a corporation or corporations, all directors, officers, shareholders and employees and the spouses, children and parents of each of them will together with the corporation or corporations constitute the "Unit Owner" for the Strata Lot; and "Unit Owner" shall include any person permitted by any of the foregoing to use the Strata Lot free of charge;
- (i) "use" includes the purpose to which the Strata Lot is put, and includes reside, sleep, inhabit, or otherwise occupy;
- (j) "Weekly Period" means any period of seven consecutive Days; and
- (k) "Winter Period" means the period from 2:00 p.m. on November 15 in a calendar year to 2:00 p.m. on April 16 in the next calendar year;

(2) subject to subsection 7.1(8), the Unit Owner may use the Strata Lot for up to a maximum of 56 Days in a calendar year (the "Permitted Annual Allotment") as follows:

- (a) up to but not more than 28 Days in the Winter Period (the "Permitted Winter Allotment"); and
- (b) up to but not more than 28 Days in the Summer Period (the "Permitted Summer Allotment"),

and for no other Days; any use by the Unit Owner must be reserved by the Registered Owner pursuant to subsection 7.1(4) or (8);

(3) each of the Permitted Winter Allotment and the Permitted Summer Allotment will consist of not less than three Weekly Periods, consecutive or otherwise, and the remaining seven days for which a Unit Owner is entitled to use the Strata Lot may consist of seven days used consecutively or otherwise, provided that in the event the Registered Owner reserves the use of the Strata Lot for a Day which commences at 2:00 p.m. on a Friday, the Registered Owner will also reserve the use of the Strata Lot for the Day commencing at 2:00 p.m. on the Saturday immediately following and in the event that the Owner reserves the use of the Strata Lot for a Day which commences at 2:00 p.m. on a Saturday, the Owner will also reserve the use of the Strata Lot for the Day which commences at 2:00 p.m. on the immediately preceding Friday;

(4) if any Unit Owner wishes to use the Strata Lot, the Registered Owner must first reserve the use of the Strata Lot by a notice in writing to the Manager at least six months prior to the commencement of the Period in which the Unit Owner wishes to use the Strata Lot;

(5) if the Registered Owner (or any other person permitted by the Manager, in its sole discretion, to reserve the use of the Strata Lot on behalf of the Registered Owner) reserves the use of the Strata Lot pursuant to subsection 7.1(4), the Unit Owner will be deemed to have used the Strata Lot during the period or periods so reserved, whether or not the Unit Owner actually uses or occupies the Strata Lot during such period or periods, unless the Strata Lot is available for rental to the Public and at least 30 Days prior to the Unit Owner's scheduled use of the Strata Lot the Registered Owner cancels such reservation, with the approval of the Manager, acting reasonably;

(6) if the Unit Owner does not use the full amount of Days permitted to be used by the Unit Owner pursuant to subsection 7.1(2) in any fiscal year, Winter Period or Summer Period, as the case may be, the Unit Owner will not be entitled to accumulate or otherwise use the unused Days in any future fiscal year, Winter Period or Summer Period;

(7) subject to the use by the Unit Owner pursuant to this section 7.1, the Strata Lot will be available at all times for rental to the Public; the Manager may accept reservations (whether more or less than six months prior to the Summer Period or the Winter Period) from the Public for the use of the Strata Lot for any future Day or Days, other than Statutory Holidays, unless the Registered Owner has, prior to the request for a reservation from the Public, already reserved that Day or those Days pursuant to subsection 7.1(4), provided that if the Registered Owner has not reserved a particular Statutory Holiday as part of his Permitted Annual Allotment by the last date for reservations permitted by subsection 7.1(4), the Manager may thereafter accept reservations from the Public for the use of the Strata Lot on that Statutory Holiday; and

(8) in addition to the Days permitted to the Unit Owner pursuant to subsection 7.1(2) and notwithstanding subsection 7.1(2), the Registered Owner may:

- (a) reserve and use the Strata Lot:
 - (i) for a period of up to five consecutive Days reserved not more than 30 days in advance, provided that such Days shall be drawn from, shall not exceed, and

shall form part of either the Permitted Summer Allotment or the Permitted Winter Allotment as the case may be; and

- (ii) for a period of up to 15 Days reserved no more than 15 Days in advance;

provided that in each case:

- (iii) the Strata Lot is not reserved for use by any member of the Public during such Days or Days;
- (iv) if, at the time the Registered Owner proposes to make a reservation of the Strata Lot, 80% or more of all Strata Lots in the Hotel Suite Section are reserved by members of the Public for any Day or Days the Registered Owner seeks to reserve the Strata Lot, the Manager may refuse to accept the Registered Owner's reservation; and
- (v) in the event the Registered Owner reserves a Day which commences at 2:00 p.m. on a Friday he or she shall also reserve the Day commencing at 2:00 p.m. on the Saturday immediately following, and in the event the Registered Owner reserves a Day which commences at 2:00 p.m. on a Saturday, he or she shall also reserve the day which commences at 2:00 p.m. on the immediately preceding Friday; and

- (b) reserve and any Unit Owner may use the Strata Lot on such other terms and conditions as may from time to time be approved in writing by the Manager in its discretion and by or on behalf of the Resort Municipality of Whistler pursuant to the Rental Pool Covenant; and

- (9) a Unit Owner using the Strata Lot pursuant to this Article 7 will be subject to, and shall comply with, the Manager's rules and policies regarding smoking, pets, noise and similar operating matters and shall be responsible for all costs arising from any breach thereof including cleaning costs.

The Registered Owner will otherwise be bound by the rental bookings of the Strata Lot made by the Manager pursuant to this Agreement and the Rental Pool. Neither the Registered Owner nor any Unit Owner will be required to pay rent for the use of the Strata Lot on such Days, but the Unit Owner will pay to the Manager the amounts set out in this Article 7.

7.2 Change in Use. The Registered Owner will forthwith notify the Manager in writing if the Registered Owner determines or discovers at any time that any Unit Owner will not use the Strata Lot on any of the Days for which the Registered Owner gave notice therefor pursuant to subsection 7.1(4) and (8) and the Manager may then rent out the Strata Lot on such Days.

7.3 Maid Service - Daily. The Unit Owner will be required to utilize the Basic Maid Services offered by the Manager on the Days the Unit Owner uses the Strata Lot and pay the Manager its daily user fees in respect thereof. Upgraded Maid Services offered by the Manager will be available at the request of the Unit Owner provided the Unit Owner pays the Manager its daily user fees in respect thereof. The Manager's daily user fees as of the Commencement Date are as follows:

<u>Strata Lot Size</u>	<u>Basic Maid Services</u>	<u>Upgraded Maid Services</u>
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Standard King	\$42.50	\$70.00
Exec. with or without Powder Room	\$62.50	\$97.50
Two Bedroom/Townhouse	\$85.00	\$130.00
Presidential Suite	\$127.50	\$185.00

The Manager may change its daily user fee at any time upon notice to the Registered Owner. If the Unit Owner does not pay the Manager's daily user fees, the Manager may deduct such amount from the Owner's Net Rental Revenue and withdraw it from the Operating Account.

7.4 **Maid Service - Change Over.** The Unit Owner will leave the Strata Lot in a reasonably neat and tidy condition following his or her use thereof. The Unit Owner will vacate the Strata Lot by 12:00 noon on the Day following the last evening of the Unit Owner's use thereof. The Unit Owner will pay to the Manager its change over clean up fee in respect of each day after the Unit Owner completes his or her use of the Strata Lot in accordance with the terms hereof. The Manager's change over clean up fees as of the Commencement Date are as follows:

<u>Strata Lot Size</u>	<u>Change Over Clean Up Fee</u>
Standard King	\$70.00
Exec. with or without Powder Room	\$97.50
Two Bedroom/Townhouse	\$130.00
Presidential Suite	\$185.00

The Manager may change its change over clean up fee at any time upon notice to the Registered Owner. If the Unit Owner does not pay the Manager's change over clean up fee the Manager may deduct such amount from the Owner's Net Rental Revenue and withdraw it from the Operating Account.

7.5 **Use by or on behalf of Registered Owner.** The Registered Owner will be responsible for any use of the Strata Lot by any Unit Owner and any amount payable from any Unit Owner to the Manager hereunder and will cause any Unit Owner to comply with its obligations under this Article 7. Under no circumstances will the Registered Owner or any Unit Owner during the Term directly or indirectly charge rent or accept any form of consideration for the use of the Strata Lot except in accordance with the Rental Pool and this Agreement.

7.6 **No Other Use by Registered Owner.** Neither the Registered Owner nor any Unit Owner will use or permit any person to use the Strata Lot, the Equipment or the Common Property or Common Facilities (including any parking areas within the Common Property) except in accordance with this Article 7 or with the prior written consent of the Manager in its sole discretion.

7.7 **Parking, Pool and Exercise Room.** The Owner agrees that the Manager shall have the right to administer and manage the portion of the parking facility, the Common Property pool and the exercise room for the Development, including establishing and collecting fees for the use thereof (subject always to the provisions of this Agreement). Such revenues will be included in Gross Rental Pool Revenue. The Unit Owner will be entitled to park one vehicle in the hotel/lodge portion of the parking facility free of charge whenever the Unit Owner is using the Strata Lot in accordance with this Article 7. In addition, the Owner will be entitled to park one vehicle in the hotel/lodge portion of the parking facility free of charge at all other times during the Term by obtaining a parking pass from the front desk to cover the anticipated period of use so long as the Manager has not determined, acting

reasonably, that such portion of the parking facility is required to be made available to the renters of the Strata Lots and public use. The Owner covenants and agrees that notwithstanding any limited common property designation associated with any portion of the parking facility for the Development, the Owner will not use any parking stall within the parking facility other than in accordance with this section 7.7.

7.8 **Access to Recreational Facilities.** Subject to availability after providing priority to the renters of the Strata Lots in a manner determined by the Manager, the Unit Owner shall be entitled to access free of charge to any recreational facilities within the Development intended for use by occupiers of the Hotel Suite Section, including the lockers, the change rooms and the cardio fitness area but excluding the Spa Strata Lot, at any time that such facilities are open whether or not the Unit Owner is occupying the Strata Lot at the time. The use of recreational facilities by itself when a Unit Owner is not in occupancy of the Strata Lot will not constitute use of the Strata Lot for the purposes of this Article 7.

ARTICLE 8

MISCELLANEOUS

8.1 **Cooperation.** The parties will at all times during the Term act in good faith, cooperate and act reasonably in respect of all matters within the scope of this Agreement.

8.2 **Proxies.** Subject to any previous appointment of any mortgagee of the Strata Lot, the Owner will, upon request by the Manager, nominate, constitute and appoint the Manager to be the proxy for the Owner, to attend in the place and stead and for and on behalf of the Owner at such meetings of the Strata Corporation as the Manager may from time to time and at any time wish to attend, and to act and vote or refrain from acting or voting in the place and stead and for and on behalf of the Owner on any and all matters where the Owner has the power or right to act or vote conferred on it by or under the *Strata Property Act* (British Columbia), the bylaws or rules and regulations of the Strata Corporation as owner of the Strata Lot or otherwise, except insofar as such action or voting relates to any contract between the Manager and the Strata Corporation. The Owner will promptly execute such proxy or proxies, whether general or specific, as the Manager may hereafter request for the foregoing purpose. Nothing contained in this section 8.2 will require the Manager to attend any meeting of the Strata Corporation or act or vote in any particular way and the Owner acknowledges and agrees that the Manager and its Affiliates and their respective directors, officers, employees, consultants, agents and representatives will not be directly or indirectly liable to the Owner or any person claiming through or under the Owner in connection with the Manager's exercise or failure to exercise any of such rights provided that the Manager acts in good faith.

8.3 **Approval by the Owner.** Whenever any matter pursuant to or arising out of this Agreement is left to the discretion or approval or disapproval of the Owner, the Owner will notify the Manager of his decision promptly and any approval requested by the Manager shall not be unreasonably withheld or delayed by the Owner; provided that, in determining the reasonableness of any such withholding or delay, full consideration shall be given to, and it shall be unreasonable to deny or refuse consent or approval to any matter if the effect of such denial or refusal would prevent or hinder the operation or maintenance of the Hotel Suite Section or the Strata Lot in a manner consistent with a World Class Luxury Hotel. In the absence of a notification from the Owner within 7 days after any matter arises the Manager will be entitled (but not obligated) to make such decision on behalf of the Owner. The Manager will not be responsible for any decisions so made or for the failure of the Manager to make any such decision provided that the Manager has acted in good faith.

8.4 **Relationship.** This Agreement is not a lease, partnership or joint venture agreement and nothing contained herein will constitute the parties landlord and tenant, partners or joint venturers.

8.5 **Notices.** Any payment, demand or notice in connection with this Agreement will be delivered, telecopied or sent by postage prepaid mail and addressed to the parties at their addresses first above written, or at such other address as either party may specify in writing to the other in the manner set forth in this section 8.6. No notice from the Owner to the Manager will be effective unless the Owner has provided a copy thereof to the registered owner of the strata lot containing the front desk and other management facilities used or occupied by the Manager in connection with managing the Strata Lots, to the address set out on the title to such strata lot or such