

SCHEDULE H
RENTAL POOL MANAGEMENT AGREEMENT

SCHEDULE H

FOUR SEASONS RESORT WHISTLER

RENTAL POOL MANAGEMENT AGREEMENT

This Agreement dated as of _____, 200__.

BETWEEN the Owner and the Manager

“Owner”:

_____	_____
Name	Name
_____	_____
Address	Address
Telephone: _____	Telephone: _____
Fax: _____	Fax: _____

“Manager”:

- [Name]
- [Address]
- Telephone: •
- Fax: •

“Strata Lot”:

Strata Lot _____, District Lots 3866 and 3903, Group 1, NWD, Strata Plan LMS• (the “Strata Plan”)

“Commencement Date”: _____, 200__

The Owner hereby certifies that the owner _____ [is/is not] a resident of Canada for the purposes of the *Income Tax Act (Canada)* and agrees to inform the Manager of any change of residency.

The Purchaser’s GST Registration Number is: _____

WHEREAS:

- A. The Owner is the registered owner of the Strata Lot and a member of the Strata Corporation;
- B. The Owner has the full right, title, power and authority to collect rents and operate the Strata Lot and desires to appoint the Manager to manage the rental of the Strata Lot upon the terms and conditions hereinafter set forth; and
- C. The Manager has agreed to manage the rental of the Strata Lot on the terms and conditions contained in this Agreement.

THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 **Definitions.** In this Agreement the following terms have the following meanings:

- (1) "Adjusted Gross Revenue" has the meaning ascribed to such term in subsection 3.2(2);
- (2) "Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such first Person;
- (3) "Annual Budget" means a Proposed Budget which is approved in accordance with section 5.2;
- (4) "Basic Maid Services" means maid and linen services provided in the morning only of any Day;
- (5) "Commencement Date" has the meaning set out on page 1 of this Agreement;
- (6) "Common Facilities" means the common facilities (as defined in the *Strata Property Act*) of the Development;
- (7) "Common Property" means all of the area shown as common property of the Development on the Strata Plan;
- (8) "control" means direct or indirect (i) ownership of a majority of voting shares or other interests in a Person, and (ii) in the absence of such majority ownership, other effective control over the decision-making process of the Person;
- (9) "Corporate Charges" means the charges set out in paragraphs 3.2(2)(ii), (iii) and (iv) under the definition of Adjusted Gross Revenue calculated on the same basis as for other hotels and resorts operated by Manager and its Affiliates under the name "Four Seasons";
- (10) "Development" means the development in which the Strata Lot is located;
- (11) "Equipment" means all appliances, equipment, fixtures and furnishings, linens, towels and housewares, draperies and carpeting in the Strata Lot or, if the context so requires, in one or more of the Strata Lots;
- (12) "F & B Strata Lot" means the food and beverage space within the Development owned by the Manager or any Affiliate thereof;
- (13) "FF&E Reserve" means the reserve established by the Manager pursuant to section 3.4;
- (14) "fiscal year" means the calendar year for all purposes; provided that the initial fiscal year shall be the period commencing on the Commencement Date and ending on December 31 of the same year;
- (15) "Gross Rental Pool Revenue" has the meaning ascribed to such term in subsection 3.2(1);
- (16) "Gross Unit Revenue" has the meaning ascribed to such term in subsection 3.2(5);
- [(17) "HM" means [NAME OF HOTEL MANAGER] or a subsidiary of [NAME OF HOTEL MANAGER] of which more than 50% of each and every class of issued and outstanding shares of such subsidiary are owned directly or indirectly by [NAME OF HOTEL MANAGER];] [NOTE: IF THE MANAGER IS FOUR SEASONS HOTELS LIMITED,**

THEN THE HM CONCEPT WILL BE DELETED. IF NOT, HM WILL BE FOUR SEASONS HOTELS LIMITED]

- (18) **“HM Management Agreement” means the management agreement between the Manager and HM pursuant to which HM is appointed the agent of the Manager to perform substantially all of the obligations of the Manager hereunder and includes any subsequent agreement between the Manager and a permitted assignee that replaces HM pursuant to section 2.9;**
- (19) **“Hotel Management Easement” means the easement granted or to be granted over the Common Property;**
- (20) **“Hotel Suite Section” means the portion of the Development used or intended to be used for hotel/lodging rooms;**
- (21) **“Interest Rate” means the annual rate of interest equal to the highest rate then currently charged to Manager by its principal lending source plus 2% per annum;**
- (22) **“Intrawest” means Intrawest Corporation;**
- (23) **“Management Fee” means the management fee payable to the Manager, as described in section 4.1;**
- (24) **“Operating Account” means the trust account or accounts maintained by the Manager in accordance with section 3.1;**
- (25) **“Owners” means all of the owners of Strata Lots;**
- (26) **“Owner’s Net Rental Revenue” has the meaning ascribed to such term in subsection 3.2(4);**
- (27) **“Period” means the Summer Period or the Winter Period (each as defined in subsection 7.1(1)), as the case may be;**
- (28) **“Person” means any individual, partnership, corporation, governmental authority, trust, trustee, unincorporated organization and the heirs, executors, administrators or other legal personnel representatives of any individual;**
- (29) **“Property Management Agreement” means the property management agreement entered into or to be entered into between the Strata Corporation and the Manager pursuant to which the Manager has agreed to maintain and manage, on behalf of the Strata Corporation, the Common Property;**
- (30) **“Proposed Budget” has the meaning ascribed thereto in section 5.2;**
- (31) **“Qualified Operator” means [HM or another/a] professional hotel operator of equal or greater managerial capacity and ability to that of [HM/the Manager]. For the purposes of this Agreement, “managerial capacity and ability” means the overall ability and capacity of a hotel operator based on:**
- (a) **international recognition of its trademark, trade name, service mark and copyright to be used in connection with the marketing and operation of the Hotel Suite Section as a luxury resort hotel of its size and location;**
 - (b) **its financial status;**
 - (c) **the size and geographic distribution of its reservation system among potential guests of the Hotel Suite Section;**

- (d) the perceived operating standards of hotels managed by it under the same trademark and trade name which it would use for the Hotel Suite Section;
 - (e) its ability to at least maintain the Owner's Net Rental Revenue over that which would have been produced by the Manager for the balance of the period under the Agreement under the same conditions; and
 - (f) its ability to provide competent personnel experienced in the hospitality industry in Whistler to manage and operate the Hotel Suite Section;
- (32) "Rental Pool" means the rental management arrangement undertaken by the Manager in respect of the Development in accordance with this Agreement and the agreements with other owners of Strata Lots within the Hotel Suite Section on terms and conditions consistent with this Agreement;
 - (33) "Rental Pool Covenant" means the restrictive covenant registered against title to the Development in favour of the Resort Municipality of Whistler in respect of the rental of the Strata Lots;
 - (34) "Retail Strata Lot" means strata lot(s) • within the Development;
 - (35) "Spa Strata Lot" means strata lot(s) • within the Development;
 - (36) "Strata Corporation" means the strata corporation known as "The Owners, Strata Plan LMS•" formed in respect of the Development;
 - (37) "Strata Lot" means the strata lot legally described on page 1 of this Agreement;
 - (38) "Strata Lot Expense" has the meaning ascribed to such term in subsection 6.1(6);
 - (39) "Strata Lots" means at any time all of the strata lots within the Hotel Suite Section for which the owners thereof have agreed with the Manager to participate in the Rental Pool and, for greater certainty, does not include the strata lot containing the front desk and other management facilities used or occupied by the Manager in connection with managing the Strata Lots;
 - (40) "Strata Property Act" means the *Strata Property Act* (British Columbia), as amended from time to time;
 - (41) "Term" means the initial term and any subsequent extension provided for in section 2.5;
 - (42) "Unit Factor" in respect of any Strata Lot means the factor set out opposite the number of such Strata Lot in Schedule A hereto;
 - (43) "Unit Revenue Share" has the meaning ascribed to that term in subsection 3.2(3);
 - (44) "Upgraded Maid Services" means maid and linen services provided during any entire Day; and
 - (45) "World Class Luxury Hotel" means a world class luxury hotel or resort as understood in the hotel industry having the operating, service, furnishing, equipping and maintenance standards equivalent to those of other similar facilities which may at any time be managed by Four Seasons or any of its Affiliates such as Four Seasons Resort, Aviara.

Additional capitalized terms used in this Agreement are defined in section 7.1.

ARTICLE 2

MANAGEMENT, USE, TERM AND TERMINATION

2.1 **Management of Rental Pool.** The Manager shall serve as the exclusive manager to manage the rental of the Strata Lot and the Equipment in accordance with, and subject to, the terms and conditions set out in this Agreement. [The Manager shall appoint HM as its agent pursuant to the HM Management Agreement and for a term coextensive with this Agreement to perform substantially all of the obligations of the Manager hereunder. The Owner acknowledges that the HM has no liability to the Owner hereunder and that any action or claim the Owner may have for non-performance of the obligations of the Manager hereunder may be commenced or made solely against the Manager.] [It is the intention of the parties that substantially all of the obligations of the Manager shall at all times be performed by [HM/the Manager] or a permitted assignee that replaces [HM/the Manager] pursuant to section 2.9.]

2.2 **Rental Pool.** The Manager will manage the rental of the Strata Lot and the Equipment and the other Strata Lots in accordance with this Agreement, the Rental Pool and the Rental Pool Covenant. The Owner hereby irrevocably covenants and agrees to be bound by the rental bookings of the Strata Lot made by the Manager in accordance with this Agreement and the Rental Pool. The Owner will indemnify and save the Manager and its Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives harmless from all claims, damages and costs in connection with any failure of the Owner, or anyone claiming under or on behalf of the Owner to comply with such rental bookings.

2.3 **Use.** The Strata Lot and the Equipment will be used only as a condominium hotel unit and only in accordance with this Agreement, the Rental Pool and the Rental Pool Covenant and will not be used for any other purpose without the prior written consent of the Owner. Any use of the Strata Lot and the Equipment will comply with all applicable laws and the bylaws and rules and regulations of the Strata Corporation from time to time.

2.4 **Complimentary Employee Use.** The Manager will have the right to provide complimentary rooms to employees of the Manager or any of its Affiliates and personnel of hotels and resorts under management of the Manager or any of its Affiliates in accordance with the employee benefits policy of the Manager and its Affiliates and normal practice in other World Class Luxury Hotels under management of the Manager or any of its Affiliates.

2.5 **Term.** The initial term of this Agreement shall be for a period commencing on the Commencement Date and terminating at midnight on the last day of the 25th full fiscal year (disregarding the initial fiscal year of less than 12 calendar months) after the Commencement Date. The Manager shall have the right to extend the Term for 11 extension terms of five fiscal years each provided (except for the first extension option) the immediately preceding extension shall have been exercised. Notwithstanding the foregoing, the Term shall terminate upon the earlier termination of this Agreement in accordance with the provisions hereof. Each option to extend granted to the Manager by this section 2.5 shall be deemed to have been exercised unless the Manager shall have given written notice to the Owner of the Manager's intention not to exercise the option to extend, which notice shall be given by the Manager not later than 30 days prior to the end of the initial term or any subsequent extension term provided for in this section 2.5. During each extension term provided for in this section 2.5, this Agreement shall continue in full force and effect in all respects, and all of the terms, covenants, conditions and provisions of this Agreement shall apply, except that there shall be no option to extend beyond those provided for in this section 2.5.

2.6 **Events upon Termination.** The Manager will not make any rental bookings of the Strata Lot and the Equipment for any day after the expiry of the Term. If this Agreement is terminated prior to the expiry of the Term pursuant to section 2.7 or section 2.8:

- (1) the Manager will not make any further rental bookings of the Strata Lot and the Equipment after such termination;
- (2) the Manager may, at its discretion, transfer the rental bookings of the Strata Lot and the Equipment to any other strata lot or rental unit, whether in the Hotel Suite Section or any other

development, and the Owner hereby acknowledges that such rental bookings will have been made due to the efforts made and expenses incurred by the Manager and will remain the property of the Manager following such termination; and

- (3) if the Manager does not transfer the rental bookings of the Strata Lot and the Equipment pursuant to subsection 2.6(2), the Owner will continue to be bound by the rental bookings made by the Manager in accordance with this Agreement including those which extend beyond the date of the termination of this Agreement and will indemnify and hold harmless the Manager and its Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives in respect thereof, and the Manager will be entitled to receive the Management Fee and any other amount owing hereunder in respect of such rental bookings.

Following the expiry or termination of this Agreement, the money collected on behalf of the Owner in the Operating Account and held by the Manager will continue to be held for a period of 60 days after termination and during this period the Manager may make withdrawals and payments from the Operating Account with respect to amounts the Manager is authorized or required to pay pursuant to this Agreement, including the Management Fee and any other amount payable to the Manager hereunder, and the Owner will reimburse the Manager for such amounts to the extent that funds held in the Operating Account on behalf of the Owner are insufficient for this purpose. If at any time after the expiry or termination of this Agreement the Manager receives any funds on behalf of the Owner, such funds will be received by the Manager in trust for the Owner and disbursed by the Manager in accordance with this Agreement.

2.7 Termination by the Manager. The Manager may at its option, upon 30 days prior written notice to the Owner, terminate this Agreement in the event that, at any time, less than 75% of the strata lots in the Hotel Suite Section are in the Rental Pool.

2.8 Termination by the Owner. The Owner may terminate this Agreement, without compensation to the Manager (other than amounts due and payable to the Manager under this Agreement up to the date of termination), if:

- (1) the Manager fails to keep, observe, or perform any material covenant, agreement, term or provision to be kept, observed, or performed by the Manager hereunder, and such default continues for a period of 60 days after the Manager's receipt of written notice from the Owner requesting the cure of such default;
- (2) the Manager files a petition in bankruptcy, any proposal for reorganization, or for an arrangement under any bankruptcy or insolvency laws, or if any petition under any such law is filed by any third party against the Manager and not dismissed within 90 days; or
- (3) the Manager makes any assignment of all or substantially all of its property for the benefit of the Manager's creditors.

2.9 Assignment and Subcontracting by the Manager.

- (1) The Manager will have the right at any time without the prior consent of the Owner to assign its interest in this Agreement to (a) a Qualified Operator, (b) an Affiliate, (c) a Person that results from any merger, amalgamation, consolidation or other reorganization of Manager, or (d) a Person that acquires all or substantially all of the assets or shares of the Manager and operates a hotel management business either on its own or in conjunction with its Affiliates, provided such assignee assumes the obligations of the Manager under this Agreement, including this section 2.9, and all of the other rental pool management agreements for the Strata Lots. In addition, the prior consent of the Owner shall not be required to a change in control of Four Seasons Hotels Inc. resulting from the change in ownership of, or direction or control over, shares in the capital of Four Seasons Hotels Inc. that are listed on any internationally recognized securities exchange.

- (2) Whether or not an assignee, replacement, agent, delegatee or subcontractor is a Qualified Operator will be determined by agreement between the Manager and the Hotel Suite Section of the Strata Corporation. If the Manager and the Strata Corporation cannot agree as to whether a proposed hotel manager is a Qualified Operator within 30 days after the notice by the Manager of its proposed assignment hereunder, such matter shall be submitted to arbitration under the *Commercial Arbitration Act* (British Columbia) by a sole arbitrator nominated with directions that he or she render a finding within 30 days after his or her appointment. The decision of the arbitrator will be final and binding on the parties.
- (3) In the event of an assignment pursuant to subsections (1), all references herein to "Four Seasons" will from and after the effective date of the assignment be deemed to refer to the operating name of the assignee.
- (4) The Manager shall also have the right at any time without the prior consent of the Owner to assign, grant a security interest in or otherwise encumber all or any part of its rights under this Agreement to a financial institution as security for its obligations to such financial institution.
- (5) Except as provided in section 5.1, the Manager will have the right at any time without the prior consent of the Owner **[to appoint a replacement agent for HM to carry out the Manager's obligations hereunder or]** to subcontract with a Person to carry out substantially all of the Manager's obligations hereunder provided such person would be a permitted assignee pursuant to section 2.9. No such subcontract will relieve the Manager of any of the obligations hereunder.
- (6) Except as provided in **[section 2.1,]** this section 2.9 and section 5.1, the Manager shall not be entitled to assign any interest under this Agreement or subcontract any of its obligations hereunder without the prior written consent of the owners of a majority of the Strata Lots.

ARTICLE 3

OPERATING ACCOUNT AND OWNER'S REVENUE

3.1 **Operating Account.** The Manager will maintain a trust account or accounts in respect of the Rental Pool in a financial institution in British Columbia qualified to engage in the banking or trust business in British Columbia which shall be under the exclusive control of the Manager and for which the Manager or any one or more directors, officers or employees of the Manager as designated by it will have sole signing authority. The Owner acknowledges and agrees that the Operating Account may contain funds in respect of the rental of other Strata Lots and that the Owner's funds may be commingled with the funds of the other Owners, provided that the Operating Account will be separate from the Manager's personal accounts. The Manager will deposit all Gross Rental Pool Revenue in the Operating Account from time to time. All funds held in the Operating Account will be held for the benefit of the Owners and the Manager as set out herein and will be expended by the Manager in the following order of priority:

- (1) firstly, to the payment of the amounts referred to in subsection 3.2(2) as deductions from Gross Rental Pool Revenue, concurrently with the payment of the Management Fee;
- (2) secondly, to the Manager in respect of any other amount owing to the Manager pursuant to this Agreement and the Rental Pool;
- (3) thirdly, to the FF&E Reserve in accordance with section 3.4;
- (4) fourthly, if so determined by the Manager, in accordance with section 3.5; and
- (5) fifthly, to the Owner as set out in this Agreement and to the other Owners in accordance with the Rental Pool.

The Manager will hold and disburse all amounts in the Operating Account in accordance with this Agreement and the Rental Pool, provided that the obligation of the Manager to disburse funds and carry out its obligations imposed by this Agreement is conditional upon sufficient funds being available in the Operating Account from the Gross Rental Pool Revenue or from the Owner's resources.

3.2 **Rental Pool Definitions.** In this Agreement, the following terms have the following meanings:

- (1) "Gross Rental Pool Revenue" means for any time period all amounts collected by the Manager as rent or room charges for the rental of all of the Strata Lots pursuant to the Rental Pool, and revenue from parking and the pool and the exercise room, if any, but excluding (a) income derived from the F & B Strata Lot, the Spa Strata Lot or the Retail Strata Lot, and (b) any incidental or other revenue, such as room service revenue, valet charges above the standard daily parking charge, reasonable charges for provision of cribs and rollaway cots, telephone revenue, coin laundry revenue and vending machine revenue;
- (2) "Adjusted Gross Revenue" means for any time period the Gross Rental Pool Revenue less the aggregate of:
 - (a) all travel agent and credit card commissions, Whistler Resort Association commissions (but not Whistler Resort Association dues) and hotel tax and other applicable taxes, rates and charges with respect to the rental of all of the Strata Lots pursuant to the Rental Pool and all other departmental adjustments typical under the Uniform System of Accounts for Lodging Industry in respect of packaged revenue, including food and beverage, public room rental (such as meeting rooms, ballrooms and the like) and ski concierge charges;
 - (b) a central reservation charge payable to the Manager of \$40.00 per month per keyed accommodation unit, as adjusted from time to time by the Manager but subject always to subsection 5.1(19);
 - (c) a corporate sales and marketing charge payable to the Manager of 0.87% of budgeted Gross Rental Pool Revenue for each fiscal year of the Term (or any portion thereof), as adjusted from time to time by the Manager but subject always to subsection 5.1(19);
 - (d) a corporate advertising charge payable to the Manager of 0.6% of budgeted Gross Rental Pool Revenue for each fiscal year of the Term (or any portion thereof), as adjusted from time to time by the Manager but subject always to subsection 5.1(19);
 - (e) a franchise fee payable to the Manager (or such other Person as the Manager may direct), such fee not to exceed 6% of Gross Rental Pool Revenue; and
 - (f) any bona fide out of pocket third party costs (such as legal costs, credit bureau fees and the like) incurred in collecting any amounts included in Gross Revenue or carrying out the duties referred to in subsection 5.1(13);
- (3) "Unit Revenue Share" means the amount, calculated on a daily basis, of the Adjusted Gross Revenue received by the Manager on the days the Strata Lot is in the Rental Pool multiplied by the following fraction:

Unit Factor for the Strata Lot divided by the total of the Unit Factors for all of the Strata Lots in the Rental Pool on such days;
- (4) "Owner's Net Rental Revenue" means for any time period the Unit Revenue Share less the Management Fee and any other amount payable to the Manager pursuant to this Agreement, including pursuant to section 3.5 and the portion of the cost of preparing the audited financial statements referred to in subsection 3.6(2) to be paid by the Owner; and

- (5) "Gross Unit Revenue" means for any time period the amount equal to the Gross Rental Pool Revenue multiplied by the following fraction:

Unit Factor for the Strata Lot divided by the total of the Unit Factors for all of the Strata Lots in the Rental Pool.

For the purposes of this section 3.2, a Strata Lot will be considered to be "in the Rental Pool" on a particular Day only if, in the reasonable opinion of the Manager, it is fit for occupancy by the Public as defined in subsection 7.1(c). and unconditionally available for rental by the Manager to the Public pursuant to the Rental Pool. Without limiting the generality of the foregoing, for the purpose of this section 3.2 a Strata Lot will not be "in the Rental Pool" on a particular Day if it is booked for use by the Owner in accordance with Article 7 (unless the Owner complies with the requirements of section 7.2) or if, in the reasonable opinion of the Manager, its condition renders it unfit for use by the Public pursuant to the Rental Pool.

3.3 Payment to Owner. Within 30 days after the end of every calendar month during the Term, the Manager will, if the Owner's Net Rental Revenue (after deduction of any amount which is to be or may be deducted from Owner's Net Rental Revenue pursuant to this Agreement including the FF&E Reserve and to the extent that the FF&E Reserve is not sufficient to maintain the Equipment at a standard consistent with a World Class Luxury Hotel in accordance with an Annual Budget or to make expenditures which exceed the FF&E Reserve as contemplated in section 3.4, additional funds may be withheld at the sole discretion of the Manager) exceeds \$100 for such period, pay to the Owner the Owner's Net Rental Revenue then in the Operating Account. Such payment will be made by the Manager mailing the Manager's cheque for such amount to the Owner or by deposit to the Owner's bank account in Vancouver or Whistler, British Columbia if the Owner notifies the Manager of all the relevant details of such account.

3.4 FF&E Reserve. The Manager will be entitled to withhold from the Owner's Net Rental Revenue the following:

- (1) 1% of the Gross Unit Revenue during the first fiscal year of the Term;
- (2) 2% of the Gross Unit Revenue during the second fiscal year of the Term;
- (3) 3% of the Gross Unit Revenue during the third fiscal year of the Term;
- (4) 3.5% of the Gross Unit Revenue during the fourth fiscal year of the Term; and
- (5) for each fiscal year thereafter of the Term, 4% of Gross Unit Revenue during such fiscal year,

such amount to be held by the Manager as part of a reserve comprising similar funds collected from all of the Owners for the replacement or repair of any Equipment in the Strata Lots, in order to maintain the Equipment at all times during the Term at a level consistent with a World Class Luxury Hotel. Provided the same are included in an Annual Budget or are otherwise approved by a majority of the Owners (which approval shall not be withheld if the expenditures are necessary to maintain the Equipment at a level consistent with a World Class Luxury Hotel), the Owner hereby authorizes the Manager to utilize such funds, including interest accrued thereon and any unused amounts in the FF&E Reserve from any preceding fiscal year, and to expend amounts in excess of the unexpended amounts remaining in the FF&E Reserve, for such purpose. The Owner hereby authorizes the Manager to keep the FF&E Reserve in a pooled bank account (in a financial institution in British Columbia qualified to engage in the banking or trust business in British Columbia) with similar funds collected from all of the Owners, separate from the Operating Account, which bank account shall be under the exclusive control of the Manager and for which the Manager or any one or more of its directors, officers or employees designated by it shall have sole signing authority. The FF & E Reserve is not the property of any individual Strata Lot owner and the Owner will not be entitled to any refund of any portion thereof at any time, including on the sale of the Strata Lot.

3.5 Common Property. The Owner acknowledges and agrees that, consistent with the obligation of the Owner set out in subsection 6.1(5), in the event of any failure of the Strata Corporation to maintain the Common Property at a level consistent with a World Class Luxury Hotel as agreed to in the Property Management Agreement

and contemplated in the Hotel Management Easement, to the extent that the Manager is entitled to be reimbursed under the Hotel Management Easement or to receive funds pursuant to the Property Management Agreement for expenditures made to maintain the Common Property at a level consistent with a World Class Luxury Hotel, the Manager will be entitled to deduct such amounts from Owner's Net Rental Revenue to the same extent that the Owner would have been responsible for the expenditures if the same had been paid by the Strata Corporation.

3.6 Owner's Failure to Pay Strata Lot Expenses. If the Owner does not pay any Strata Lot Expense when due, the Manager may, but will not be obligated to:

- (1) pay any such amount out of the Owner's Net Rental Revenue payable in respect of the Strata Lot and the Owner hereby authorizes the Manager to utilize such funds for such purpose; or
- (2) pay any such amount out of its own funds and the Owner will repay such amount to the Manager forthwith upon demand and will pay interest on any amount outstanding at the rate equal to the Interest Rate, calculated daily and compounded monthly from the date of advance by the Manager until the date of repayment by the Owner and the Manager may deduct the amount of any such payment by the Manager from any future Owner's Net Rental Revenue payable in respect of the Strata Lot.

3.7 Statements to Owner. Concurrently with the payment of the Owner's Net Rental Revenue in accordance with section 3.3, the Manager will mail to the Owner a written statement of account in respect of the Gross Rental Pool Revenue, the Adjusted Gross Revenue, the Unit Revenue Share, the Gross Unit Revenue, the Management Fee, the Owner's Net Rental Revenue (including details of the calculation thereof) and any applicable withholding tax, goods and services tax or other applicable tax, charge or levy for the relevant period. In addition to the foregoing:

- (1) the Manager will provide to the Owner, at the cost of the Manager, "interim financial statements" for the Rental Pool as required by BOR#97/1 issued by the British Columbia Securities Commission, such statements to be prepared at the cost of the Manager; and
- (2) the Manager will provide to the Owner, at the cost of the Owner and the other owners of the Strata Lots (and the Owner will pay a portion thereof based upon the fraction contained in the definition of Gross Unit Revenue), "audited annual financial statements" for the Rental Pool as required by BOR#97/1 issued by the British Columbia Securities Commission, and the Manager may pay the cost thereof from Gross Rental Pool Revenue.

3.8 GST and Withholding Tax. The Owner will be responsible for the payment of all goods and services tax and other applicable taxes, charges, rates and levies in connection with the Strata Lot or this Agreement, including that payable in connection with the Management Fee (other than income tax or withholding tax on the Management Fee itself which shall be for the account of the Manager) and the Corporate Charges. The Manager may withhold from the Owner's Net Rental Revenue and remit to Revenue Canada or any other relevant authority any amount required to be withheld or remitted in respect of goods and services tax, withholding tax or any other applicable tax, charge, rate or levy which the Manager is required to withhold or remit and the Manager will provide the Owner with annual statements of such information within a reasonable time after the end of each fiscal year of the Term. The Manager will comply with any requirement to remit withholding tax on payment of the Management Fee.

ARTICLE 4

MANAGEMENT FEE

4.1 Management Fee. As compensation for the services rendered by the Manager pursuant to this Agreement, the Manager shall have earned and shall be entitled to payment of a management fee (the "Management Fee") in an amount equal to:

- (1) 50% of the Adjusted Gross Revenue for the period of 12 consecutive full calendar months after the Commencement Date;
- (2) 47% of Adjusted Gross Revenue for the second period of 12 consecutive full calendar months after the Commencement Date; and
- (3) for each fiscal year (or any portion of a fiscal year) thereafter of the Term, 45% of Adjusted Gross Revenue for such fiscal year (or any portion of a fiscal year).

The Management Fee will be paid monthly, on the 15th day of each month, in respect of the Gross Rental Pool Revenue for the immediately prior month.

4.2 **Manager's Separate Revenue.** The Owner acknowledges and agrees that the Manager will be entitled to keep 100% of any revenue collected by the Manager which is not included in Gross Rental Pool Revenue, including revenues derived from the F&B Strata Lot, the Spa Strata Lot, the Retail Strata Lot and any incidental or other revenue, such as room service revenue, valet charges above the standard daily parking charge, reasonable charges for provision of cribs and rollaway cots, telephone revenue, coin laundry revenue and vending machine revenue.

4.3 **No Charges for Common Property.** The Manager will not charge any Unit Owner (as defined in paragraph 7.1(1)(h)) for the use or enjoyment of any portion of the Common Property or Common Facilities provided that such use by the Unit Owner is in accordance with Article 7.

ARTICLE 5

MANAGER'S RESPONSIBILITIES

5.1 **Manager's Responsibilities.** The Manager will during the Term, subject to the performance and compliance by the Owner of and with all of its obligations under this Agreement and to the extent the Owner funds all amounts required to be funded by the Owner pursuant to this Agreement:

- (1) ensure that the Manager [or HM] retains the right to the use of the name "Four Seasons" and its related logos;
- (2) ensure that [HM] retains the right to the use of the centralized reservation system of Manager and its Affiliates for use by hotels and resorts operated and managed by Manager and its Affiliates under the name "Four Seasons";
- (3) ensure that the Manager [or HM] owns, leases or otherwise has the exclusive right to occupy all administrative, management, food and beverage and other space required in order for the Manager [or HM] to carry out its obligations under this Agreement;
- [(4) not terminate the HM Management Agreement unless the Manager has complied with the terms of section 2.9 in respect of a proposed assignment of its interest under this Agreement;]**
- [(5) while this Agreement remains in force, unless the Manager assigns this Agreement or replaces HM in accordance with section 2.9, comply with the Manager's obligations under the HM Management Agreement, maintain the HM Management Agreement in good standing and renew the HM Management Agreement;]**
- (6) use reasonable efforts to rent the Strata Lots during the Term in accordance with, and subject to, this Agreement, the Rental Pool and the Rental Pool Covenant;

- (7) determine the rate of rental for the Strata Lots, having regard to the seasonal uses of the Strata Lots and the market for the rental of hotel/condominium units which are consistent with a World Class Luxury Hotel;
- (8) use reasonable efforts to collect all rents, fees and other amounts payable in connection with the rental of the Strata Lots, give receipts and acknowledgements therefor, and to the extent that such actions are commercially reasonable to maximize the Owner's Net Rental Revenue over the Term in the opinion of the Manager, make abatements and allowances in respect thereof (including providing complementary accommodation), and deposit such amounts into the Operating Account;
- (9) charge the renters of the Strata Lots for all long distance telephone calls made by such renters from the Strata Lots and, subject to section 5.7, remit all amounts collected on behalf of the Owner to Telus or any other utility company in replacement thereof;
- (10) give to the renters of the Strata Lots such notices and statements as may be required from time to time;
- (11) operate, supervise, manage, maintain, control and rent the Strata Lot and the Equipment in a manner consistent with a World Class Luxury Hotel, it being the intention of the parties that the Manager will have the right to determine all operating policies with respect to reasonable standards of operations, quality of services and any other matters affecting the rental of the Strata Lot and the Equipment;
- (12) keep or cause to be kept full and adequate books of account and such other reasonable records reflecting the Operating Account, the Gross Rental Pool Revenue, the Adjusted Gross Revenue, the Unit Revenue Share, the Gross Unit Revenue, the Management Fee and the Owner's Net Rental Revenue and the Manager will permit the Owner and its agents the right during normal business hours and on reasonable prior notice to examine or make extracts of such books and records at the Manager's offices in the Development, but such examination will be done at the cost of the Owner and with as little disruption as possible to the day to day operations of the Manager and the Hotel Suite Section;
- (13) to the extent not already authorized hereunder, warn off and prohibit and proceed against any person who trespasses upon the Strata Lot or any part of the Strata Lot with the knowledge of the Manager by due process of law as the Manager may deem appropriate either before or after such warning off or prohibition;
- (14) use reasonable efforts to ensure that the Strata Lot and the Equipment and the use and occupancy thereof comply with all fire and safety codes, rules and requirements of all governmental or regulatory authorities, including the bylaws and applicable rules and regulations of the Strata Corporation, the non-compliance with which would materially and adversely affect the Strata Lot, subject at all times to the duties of the Owner as the owner of the Strata Lot and provided that the Manager will not be obligated to advance or utilize any of its own funds in respect of the foregoing;
- (15) take out and maintain at all times during the Term, at its cost, the following insurance, at a minimum, pertaining to the Manager's premises within the Development and the Manager's activities hereunder:
 - (a) comprehensive public liability insurance in an amount of at least \$2,000,000 for claims for personal injury, death, or property damage arising out of any one occurrence;
 - (b) any innkeeper's liability, worker's compensation or other similar insurance as may be required by law;
 - (c) employer's liability insurance with a minimum liability limit of \$1,000,000; and

- (d) fidelity and honesty insurance in such reasonable amount as the Manager shall deem advisable;
- (16) take out and maintain at all times during the Term, on behalf of the Owner, the following insurance in respect of the Strata Lot and the Equipment:
- (a) property damage insurance for the standard Equipment within the Strata Lot to their full replacement value (but not any other personal property of the Owner which is the Owner's sole responsibility);
 - (b) comprehensive public liability insurance in the amount of at least \$2,000,000 per occurrence for claims for personal injury, death or property damage; and
 - (c) such other insurance as may be deemed appropriate by the Manager, acting reasonably,
- and if the same is combined with insurance coverage taken out by the Manager on behalf of the Strata Corporation, then the cost of the foregoing insurance will be a common expense of the Strata Corporation, but otherwise the Manager is authorized to deduct the cost from the Owner's Net Rental Revenue and the Owner will reimburse the Manager for such cost that is not so deducted forthwith upon receipt by the Owner of the Manager's invoice therefor;
- (17) procure and maintain all such licenses and permits as are necessary in connection with the performance by the Manager of its obligations under this Agreement;
- (18) provide such general administrative, supervisory and management staff, as employees or contractors of the Manager and not of the Owner, and keep in stock such cleaning and other supplies as may from time to time be required to carry out the obligations of the Manager under this Agreement;
- (19) not change the amount of the Corporate Charges unless the Manager or any of its Affiliates has notified all of the owners of hotels and resorts managed by the Manager or any of its Affiliates under the name "Four Seasons" of the change and at least two-thirds of such owners entitled to approve such change do so; and
- (20) provide the Owners with an annual audited statement detailing the calculation of the Corporate Charges for the prior Fiscal Year. The Manager hereby acknowledges that the intent of the Corporate Charges is to permit the recovery by the Manager and its Affiliates of their cost of providing corporate sales and marketing services, corporate advertising services and centralized reservation services. It is not intended that the Manager or any of its Affiliates realize a profit or loss on such services. Accordingly, at the time of delivery of the annual audited statement detailing the calculation of the Corporate Charges, if the amount of the Corporate Charges paid by the Owners exceeds their *pro rata* share of expenses incurred by the Manager and its Affiliates in respect of its corporate sales and marketing, corporate advertising and centralized reservations divisions for the prior Fiscal Year in question, the Manager will promptly refund the excess to the Owners.

The Manager may engage one or more Persons to perform the services contemplated in this Agreement in connection with the management of the Strata Lot and the Equipment and each Person engaged by the Manager to perform such services, including any agent or employee of the Manager shall be acting solely as agent of Owner. Notwithstanding the foregoing, however, the Manager shall not be entitled to delegate to any Person (other than any Affiliate of Manager) any services in connection with the management of the Strata Lot and the Equipment which are to be performed by Manager in accordance with this Agreement and which are, as at the date of this Agreement, generally performed by Manager or any of its Affiliates in respect of the hotels and resorts operated and managed by Manager or any Affiliate thereof under the name "Four Seasons". Notwithstanding that the Manager may engage one or more Persons to perform the services contemplated by this Agreement, the Manager shall not be

released from its responsibilities under this Agreement or any liabilities which may result therefrom nor shall such responsibilities or liabilities be diminished.

5.2 **Annual Budget Process.** Concurrently with the preparation and submission to the council of the Strata Corporation and the executives of the separate sections of the Strata Corporation of a proposed budget for the Strata Corporation and the separate sections on or before November 15 of each calendar year, the Manager will also prepare and submit to the executive of the Hotel Suite Section of the Strata Corporation a proposed budget (the "Proposed Budget") for maintenance, repair, replacement, and refurbishment of the Strata Lots and Equipment required during the next fiscal year to ensure the operation and maintenance of the Strata Lots and the Equipment at a standard consistent with a World Class Luxury Hotel, including proposed expenditures from the FF & E Reserve. The executive will have 15 days after receipt thereof to approve the Proposed Budget or propose changes thereto, failing which the Proposed Budget will be circulated promptly for consideration by the Owners at the annual general meeting. The executive shall not withhold its approval of the Proposed Budget if the expenditures contemplated therein are necessary to ensure the operation and maintenance of the Strata Lots and the Equipment at a standard consistent with a World Class Luxury Hotel. If the executive proposes changes to the Proposed Budget, the parties will co-operate, act reasonably and negotiate in good faith with the objective of reaching agreement on the Proposed Budget on the basis contemplated in this section 7.7 but regardless of whether they are able to do so, the Proposed Budget (which shall include any changes proposed by the executive and approved by the Manager) will be circulated promptly for consideration by the Owners at the annual general meeting (and the Owner will not withhold its approval of such Proposed Budget if the expenditures contemplated therein are necessary to ensure the operation and maintenance of the Strata Lots and Equipment at a standard consistent with a World Class Luxury Hotel). If the Owners do not approve such Proposed Budget at the annual general meeting, then either party may, by written notice to the other, submit to arbitration in accordance with section 8.17 the question of whether the expenditures contemplated in such Proposed Budget, or any of the expenditures, are necessary to maintain and operate the Strata Lots and the Equipment at a standard consistent with a World Class Luxury Hotel. A determination by the arbitrator that they are will constitute approval by the Owners of such Proposed Budget, and a determination by the arbitrator that they are not will be deemed to be a rejection by the Owners of such Proposed Budget or the particular expenditures in dispute (and approval by the Owners of any expenditures therein which were not in dispute).

5.3 **Damage to Strata Lot by Renters.** The Manager will be responsible at its sole cost and expense for the repairs of any damage (other than that due to normal wear and tear) to the Strata Lot or the Equipment caused by any renter of the Strata Lot pursuant to the Rental Pool. The Manager shall, either in its own name or in the name of the Owner, commence and pursue legal action against such renter of the Strata Lot to recover all costs and expenses for any repairs of any such damage, and the Owner hereby agrees to cooperate with the Manager in connection with any such legal action as the Manager may reasonable require.

5.4 **Other Damage to Strata Lot.** The Manager will notify the Owner promptly after it becomes aware of any material damage to the Strata Lot or the Equipment. If the Manager deems the Strata Lot or the Equipment to be unfit for rental for any reason whatsoever at any time during the Term, the Manager will notify the Owner of such condition and the Owner hereby authorizes the Manager to take such steps as are necessary, in the opinion of the Manager, acting reasonably, to remedy such condition, provided that, subject to section 5.3, such steps will be taken at the sole cost and expense of the Owner, and the Manager will not be obligated to advance or utilize any of its own funds, including the Management Fee or any other amount owing to the Manager pursuant to this Agreement, in respect thereof.

5.5 **Repairs.** Except for repairs contemplated in section 5.3 which the Manager shall make or cause to make at its expense, the Owner hereby authorizes the Manager to make or cause to be made, at the sole cost and expense of the Owner, any minor repairs and minor capital improvements to the Strata Lot, repairs, replacements, renewals and additions to the Equipment and such other minor alterations, additions or improvements to the Strata Lot and the Equipment from time to time as are necessary to maintain the Strata Lot and the Equipment at all times during the Term at a level consistent with a World Class Luxury Hotel (separate and apart from repairs to or replacement of Equipment as contemplated in section 3.4) and are either contemplated in an Annual Budget or approved by the Owner (which approval shall not be withheld if the expenditures are necessary to maintain the Strata Lot and the Equipment at a level consistent with a World Class Luxury), and any emergency repairs to the Strata Lot and emergency repairs, replacements, renewals and additions to the Equipment as the Manager may from time to time determine are necessary, and to deduct, in each case, the cost of such repairs, alterations, improvements

and additions from the Owner's Net Rental Revenue. Subject to this section 5.5, to the extent that any such expenditures involve repairs or replacements of any Equipment, the Owner hereby authorizes the Manager, in its sole discretion, to apply any unexpended amounts in the FF&E Reserve to fund the same. In the event that any such expenditures are required to be made in emergency situations where it is not possible for the Manager to first seek the approval of the Owner and, in the reasonable opinion of the Manager, such expenditures are necessary, the Manager shall not be required to seek the prior approval of the Owner prior to making any such expenditures but will advise the Owner thereof as soon as reasonably possible thereafter. The Owner will reimburse the Manager in respect of any amount incurred in connection with such repairs or replacements that is not deducted from the Owner's Net Rental Revenue forthwith upon receipt by the Owner of the Manager's invoice therefor. Subject to section 5.3, however, under no circumstances will the Manager be obligated to make or cause to be made any such repairs or replacements to the Strata Lot.

5.6 Capital Refurbishment. In the event the Manager determines that the Strata Lots or any group of Strata Lots (such as, for instance, the Strata Lots on one or more floors or Strata Lots of a particular type or configuration) require major refurbishment (separate and apart from repairs, improvements, alterations or additions contemplated in section 5.4) involving expenditures of a capital nature or construction of a structural or otherwise significant nature (such as, for instance, bathroom replacement, reconfiguration or upgrading) necessary to maintain the Strata Lots in a good and safe operating condition and at the standard of a World Class Luxury Hotel, the Manager must not carry out the work unless the expenditures are necessary to maintain the Strata Lot in a good and safe operating condition and at a standard consistent with a World Class Luxury Hotel and the expenditures are set out in the Annual Budget. The Owner hereby authorizes the Manager to cause such work to be carried out diligently, expeditiously and in a manner consistent with the standards of a World Class Luxury Hotel. Subject to this section 5.6, to the extent that any such expenditures involve repairs or replacements of any Equipment, the Owner hereby authorizes the Manager, in its sole discretion, to apply any unexpended amounts in the FF & E Reserve to fund the same. To the extent that such unexpended amounts in the FF & E Reserve are insufficient or unavailable to fund repairs or replacements of any Equipment, the Manager, in its sole discretion, elects not to apply them for such purpose or the expenditures do not involve repairs or replacements of Equipment, the Owner hereby authorizes the Manager to deduct the Owner's share of such costs (which shall be allocated between the Strata Lots affected based on the Manager's reasonable estimate of the costs to carry out the work within each of the Strata Lots) from the Owner's Net Rental Revenue, provided that the Owner shall always remain responsible to pay such amount if the Owner's Net Rental Revenue is insufficient.

5.7 Telephone System. The Manager will arrange for the provision of telephone service to the Hotel Suite Section. The Owner hereby authorizes the Manager to operate and maintain the telephone and switchboard system, including in-suite telephone sets, in the Hotel Suite Section for the Owner and the other Owners. The Owner agrees and acknowledges that the Manager will charge the Owner and the other Owners a reasonable monthly charge for the provision, operation and maintenance of the telephone system and, as a consequence, the Owner will not receive a bill from Telus or other telephone service supplier for the telephone service to the Strata Lot. The Manager may, in its discretion, provide more reasonable pricing to the Owner for local and long distance calling than it provides to guests.

5.8 Standard of Performance. The Manager shall not in the performance of its duties and obligations under this Agreement be liable to the Owner or any other person for any act or omission of the Manager or any of its Affiliates or any of their respective directors, officers, employees, consultants, agents or representatives, except only to the extent such liabilities, obligations, claims, costs and expenses arise out of or caused by the wilful misconduct or gross negligence of the Manager.

ARTICLE 6

OWNER'S RESPONSIBILITIES AND AUTHORIZATIONS

6.1 Owner's Responsibilities. The Owner will:

- (1) strictly comply with the terms and conditions of the Rental Pool Covenant and this Agreement;

- (2) to the extent not already authorized hereunder, authorize the Manager to control the keys for the Strata Lot, any parking facility or storage area applicable to the Strata Lot, the entrance to the building in which the Strata Lot is located and any other locked facility in the Strata Lot to which the renters of the Strata Lot pursuant to the Rental Pool will be permitted access, all in a manner consistent with a World Class Luxury Hotel, and the Owner hereby authorizes the Manager to duplicate any such keys as required by the Manager;
- (3) to the extent not already required hereunder, ensure that the Manager, the Manager's agents and representatives and the renters of the Strata Lot and the Equipment have full, free and uninterrupted access to the Strata Lot and the Equipment and all parking spaces, storage areas and limited common property applicable to the Strata Lot and the Equipment as contemplated by this Agreement;
- (4) maintain and furnish the Strata Lot and the Equipment and keep it maintained and furnished, and keep the Strata Lot and the Equipment in a good state of maintenance and repair, all in a manner consistent with a World Class Luxury Hotel;
- (5) ensure that the Common Areas are maintained at a standard consistent with a World Class Luxury Hotel;
- (6) promptly pay when due all amounts owing under any financing of the Strata Lot arranged by the Owner and all real property taxes, telephone charges (other than long distance charges incurred by renters of the Strata Lot), and utility charges, cablevision charges, strata fees, assessments, levies, fines and other amounts payable to the Strata Corporation, Whistler Resort Association dues, and all other taxes, rates, levies and assessments in respect of or relating to the Strata Lot (collectively, the "Strata Lot Expenses");
- (7) not permit any lien, charge or encumbrance to be filed against title to the Strata Lot or the Equipment except in connection with the Owner's financing thereof;
- (8) ensure that the Strata Lot is serviced with water, sewer, gas, electricity, telephone (including connections to the Manager's hotel switchboard) and cablevision at all times during the Term;
- (9) not exercise any voting rights or other powers as a member of the Strata Corporation in a manner which is inconsistent with, or would interfere with the Manager's ability to carry out, the Manager's duties and obligations hereunder including its ability to maintain and operate the Development as a World Class Luxury Hotel;
- (10) take out and maintain insurance with respect to any Equipment or other personal effects for which the Manager is not responsible to insure pursuant to subsection 5.1(16), and provide the Manager with evidence thereof upon request by the Manager;
- (11) not make any alteration to the Strata Lot, Common Property (including limited common property) or the Equipment without the prior approval of the Manager;
- (12) not withhold its approval of any budget prepared by the Manager hereunder or under the bylaws or rules and regulations of the Strata Corporation, or any other expenditures proposed by the Manager, if and to the extent the expenditures are necessary to ensure the operation and maintenance of the Strata Lot, the Development, the Hotel Suite Section or the Common Property at a standard consistent with a World Class Luxury Hotel;
- (13) not to use the name "Four Seasons" or any of the trademarks associated therewith in any manner whatsoever except only for purposes of identifying the location of the Strata Lot; and
- (14) indemnify and save the Manager and its Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives (each, an "Indemnified Party") harmless from

any claim, damage and cost incurred by an Indemnified Party in connection with the management of the Strata Lot and the Equipment and the performance of its duties and obligations hereunder, (except to the extent caused by the wilful misconduct or gross negligence of the Manager) or arising out of any breach of this Agreement by the Owner and to carry, at the expense of the Owner, adequate insurance to protect the Indemnified Parties against any such claim, damage and cost in the same manner and to the same extent as the Owner naming the Manager as one of the insured.

6.2 Owner's Authorizations. The Owner hereby:

- (a) authorizes, to the extent not already authorized hereunder, the Manager to take any and all such steps as are reasonably necessary or desirable to enable the Manager to perform efficiently its functions and duties under this Agreement, including depositing and withdrawing funds from the Operating Account as set out herein and performing the Manager's obligations set out in sections 5.1, 5.4, 5.5 and 5.6;
- (b) irrevocably appoints the Manager to be the attorney of the Owner, which appointment is coupled with an interest, to execute all necessary instruments and documents of whatsoever kind or nature and to take or cause to be taken all such steps, actions or proceedings, in the name of and on behalf of the Owner, as fully and effectually in every respect as the Owner itself could do in respect of the matters herein contained, including the right to institute or defend legal proceedings in respect of the same in relation to which the Owner hereby covenants and agrees to provide the Manager with all documents and instruments of whatsoever nature reasonably required by the Manager and to cooperate with the Manager in instituting or defending legal proceedings as aforesaid, provided that the Manager will not be obligated to institute or defend any such legal proceedings and that such legal proceedings will be undertaken at the sole cost and expense of the Owner; and
- (c) agrees that if the Strata Lot is a "lock off" suite, the Manager may rent it out together with the adjacent, adjoining suite regardless of whether or not they are both owned by the Owner.

6.3 Sale of the Strata Lot. The Owner agrees that if at any time the Owner wishes to sell, lease or otherwise directly or indirectly dispose of the Strata Lot and the Equipment or any interest therein to any person (in this section 6.3 called a "Transferee") (other than by way of financing):

- (1) prior to entering into any contract or agreement with any Transferee, the Owner will (i) notify the proposed Transferee of the existence and substance of this Agreement and the fact that the ownership and use of the Strata Lot and the Equipment are subject to the rights of the Manager and the Public pursuant to this Agreement, the Rental Pool and the Rental Pool Covenant, (ii) notify the proposed Transferee of its right to obtain from the Manager the items described in subsections 6.3(3) and (4), (iii) notify the proposed Transferee of any bookings of the Strata Lot by the Owner pursuant to Article 7, (iv) provide the proposed Transferee with a true copy of this Agreement, and (v) notify the Manager of the intended sale to the Transferee;
- (2) the Owner will not, and will not permit any agent acting on behalf of the Owner to, advertise the expected economic benefits of the Rental Pool or this Agreement to any Transferee or prospective Transferee;
- (3) the Manager will, upon reasonable written notice of an intended sale by the Owner, deliver to the prospective Transferee before an agreement of purchase and sale with the Transferee is entered into:
 - (a) the audited annual financial statements for the most recent fiscal year, which include financial statements for the prior comparative year, if any; and

- (b) interim financial statements for any interim periods after the most recent fiscal year end, each as prepared in accordance with section 3.6;
- (4) the Manager agrees that, upon reasonable written notice of an intended sale by the Owner to extent required by law:
 - (a) if the intended sale is to complete within 12 months from the date of the issuance of permission to occupy the Strata Lot, the Manager will cause the owner developer of the Development to deliver to the prospective Transferee, before an agreement of purchase and sale with the transferee is entered into, the disclosure statement for the Development; and
 - (b) if the intended sale is to be complete after 12 months from the date of the issuance of permission to occupy the Strata Lot, the Manager will deliver to the prospective Transferee, before an agreement of purchase and sale with the Transferee is entered into, a "summary disclosure statement" as required by BOR#97/1 issued by the British Columbia Securities Commission;
- (5) the Owner will not directly or indirectly sell, lease or otherwise directly or indirectly dispose of the Strata Lot and the Equipment or any interest therein unless prior to the completion of such transaction the proposed Transferee covenants pursuant to a written assignment and assumption agreement, in the form and content reasonably required by the Manager, to fully assume and be bound by this Agreement;
- (6) upon written request from the Owner, the Manager will provide any prospective Transferee therein with details of any bookings of the Strata Lot by the Owner pursuant to Article 7;
- (7) the Owner or the Transferee will notify the Manager of the completion of the sale, lease or other disposition of the Strata Lot and the Equipment and provide the Manager with reasonable evidence thereof, together with the assignment and assumption agreement described above, duly executed by the Owner and the Transferee;
- (8) the Manager will not be required to make any adjustments as between the Owner and any Transferee and the Manager will be deemed to have fully discharged its obligations hereunder if the Manager pays the Owner's Net Rental Revenue payable to such Owner in accordance with section 3.6 to or to the order of the Person who was, according to the records of the Manager, the registered owner of the Strata Lot on the days such Owner's Net Rental Revenue was earned;
- (9) subject to the Manager's approval and any required consent from the Resort Municipality of Whistler pursuant to the Rental Pool Covenant, acting reasonably, the Transferee may upon not less than 30 days' notice to the Manager, reschedule the use by the Transferee of the Strata Lot pursuant to Article 7 as the new owner of the Strata Lot; and
- (10) upon the execution and delivery of the assignment and assumption agreement described above by the Owner and the Transferee and the transfer of title of the Strata Lot and the Equipment to the Transferee:
 - (a) the Owner will be released from its duties and obligations under this Agreement for the period from and including the date of such transfer of title; and
 - (b) the Transferee will be responsible for all duties and obligations under this Agreement for the period from and including the date of such transfer of title.

6.4 **Name of Development.** During the Term, the Development will be known as the "Four Seasons Resort Whistler" or such other name designated by the Manager from time to time.

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

other address as the Manager specifies to the Owner in writing. The time of giving and receiving any such notice will be deemed to be on the day of delivery or transmittal if delivered or sent by telecopy, or on the sixth business day after the day of mailing thereof if sent by mail. In the event of any disruption of mail services, all notices will be delivered or sent by telecopy rather (if available) than mailed.

8.6 **No Waiver.** No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

8.7 **Applicable Laws.** This Agreement will be construed according to the laws in force in the Province of British Columbia.

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

8.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and will not be modified or amended except by an instrument in writing signed by each of the parties.

8.10 **Non-Limiting.** The word "including", when following any general statement, will be construed to refer to all other things that could reasonably fall within the scope of such general statement, whether or not non-limiting language (such as "without limitation") is used with reference thereto.

8.11 **Gender and Number.** Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.

8.12 **Joint and Several.** If the Owner is more than one person, all of the covenants and liabilities of the Owner are joint and several.

8.13 **Enurement.** This Agreement will enure to the benefit of and be binding upon the heirs, executors, legal representatives, successors and permitted assigns of the parties.

8.14 **Execution by Telecopy.** This Agreement may be executed by the parties and transmitted by telecopy and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

8.15 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which counterparts shall be deemed an original. In proving this Agreement, it shall not be necessary to produce or account for more than one of the counterparts.

8.16 **Dispute Resolution.** Unless otherwise specifically provided for in this Agreement, all disputes, controversies, claims or disagreements arising out of or relating to this Agreement (singularly, a "Dispute", and collectively, "Disputes") shall be resolved in the following manner:

- (1) first, within 10 days from the receipt of notice of a Dispute by one party to the other, the parties shall in good faith attempt to negotiate for a period of 30 days in an effort to resolve the Dispute;
- (2) second, if the parties are unable to resolve the Dispute within such 30 day period, the parties shall resort to the arbitration procedures set forth in section 8.18; and
- (3) third, any party to the Dispute shall be entitled to join any Dispute proceeding arising out of this Agreement with any other Dispute proceeding arising out of this Agreement.

Notwithstanding the provisions of this section 8.17, each of the Owner and the Manager may waive the provisions of section 8.17(1) in respect of any Dispute by written notice to the other, in which case the parties shall resort directly to the arbitration procedures set forth in section 8.18 in respect of such Dispute.

8.17 **Arbitration.** Except as otherwise provided in this section 8.18, any Dispute shall be settled by arbitration as follows:

- (1) such Dispute may be submitted to arbitration by either party giving written notice to the other party that the party giving the notice has elected to have the Dispute submitted to arbitration. Such arbitration will be carried out by a single arbitrator mutually agreed upon by the parties. If the parties fail to agree upon an arbitrator within 15 days after a party has notified the other party of the name of the person it nominates to carry out the arbitration, then either party may apply to a judge of the Supreme Court of British Columbia for the appointment of an arbitrator and such appointment will be binding on the parties. Any arbitrator nominated or selected will be independent of each of the parties to the Dispute;
- (2) it is the intention of the parties that the arbitration will be conducted, and that the determination or award of the arbitrator be made and communicated in writing to the parties, as expeditiously as possible and this will be reflected in choice of and directions given to and by the arbitrator. The arbitrator will conduct the arbitration of the dispute as expeditiously as reasonably possible and will provide written reasons for his decision. The decision of the arbitrator duly appointed pursuant to this section 8.18 will be final and binding upon the parties hereto;
- (3) the arbitration will be held in Vancouver, British Columbia; and
- (4) no limitation imposed by or pursuant to the *Commercial Arbitration Act* (British Columbia) on the remuneration of the arbitrator will apply. The arbitrator is authorized to include in his determination or award an award in favour of either party in respect of any costs incurred in connection with or in respect of the arbitration, including the cost of the arbitrator and the arbitration and all legal and other professional costs and disbursements and although such an award must be made on a judicial basis, it need not be based on any court-approved tariff basis and may be on a complete indemnity basis. In all other respects the arbitration will be governed by the *Commercial Arbitration Act* (British Columbia), as the same may be amended or replaced from time to time.

Notwithstanding anything contained in this section 8.18, each of the Owner and the Manager shall be entitled to (i) commence legal proceedings seeking such mandatory, declaratory or injunctive relief as may be necessary to define or protect the rights and enforce the obligations contained herein pending the settlement of a Dispute, (ii) commence legal proceedings involving the enforcement of an arbitration decision or award arising out of this Agreement, or (iii) join any arbitration proceeding arising out of this Agreement with any other arbitration proceeding arising out of this Agreement.

8.18 **Severability.** If any provision of this Agreement or any part hereof is found or determined to be invalid it will be severable and severed from this Agreement and the remainder of this Agreement will be construed as if such invalid provision or part had been deleted from this Agreement, except when such construction (i) would operate as an undue hardship on either party, or (ii) would constitute a substantial deviation from the general intent and purposes of the parties as reflected in this Agreement. In the event of either clause (i) or (ii) above, the parties shall, subject to section 8.19 use their best efforts to negotiate a mutually satisfactory amendment to this Agreement to circumvent such adverse construction. If no such amendment has been agreed upon within 60 days, the dispute shall be submitted to arbitration in accordance with the provisions of section 8.17.

8.19 **Amendments.** This Agreement must not be amended unless the same amendments are simultaneously being made to all rental pool management agreements between the Manager [or HM] and each of the Owners in respect of all of the Strata Lots, and any such amendment will be effective, and the Owner will be bound thereby, if approved by a 3/4 vote of the Hotel Lot Section of the Strata Corporation, whether or not the Owner voted in favour of such amendment.

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

BY THE MANAGER:

•

By: _____

BY THE OWNER:

if a corporation:

By: _____

if an individual:

Witness

Print Name: _____

Witness

Print Name: _____

SCHEDULE A
UNIT FACTORS

Strata Lot

Unit Factor

Strata Lot

Unit Factor