



SOUTHERN HOSPITALITY
RESORTS AND RESIDENCES, LLC

LEASING AND MANAGEMENT AGREEMENT

This Leasing and Management Agreement (the "Agreement") dated as of the last date of execution on the signature page below, is by and between Southern Hospitality Resorts & Residences, LLC, a Florida Limited Liability Company ("Management Company") having an address at 600 N. Atlantic Avenue, Daytona Beach, Florida 32118 and [REDACTED] ("Owner", whether one or more as listed on the deed).

RECITALS

WHEREAS Owner has acquired or is acquiring the condominium unit identified on the signature page of this Agreement ("Unit") in Plaza Resort & Spa, a Condominium, located in Daytona Beach, Florida ("Condominium"). The Condominium is created pursuant to the Declaration of Plaza Resort & Spa, a Condominium, which was recorded in the Public Records of Volusia County on October 3, 2005 in Official Records Book 5665, at Pages 1910 through 2007

WHEREAS A portion of the Condominium will be operated as a hotel ("Hotel") by Management Company.

WHEREAS Owner is entering into this Agreement to engage Management Company to lease and operate the Unit as part of the Hotel on the terms described below.

NOW THEREFORE, in consideration of the obligations of Owner and Management Company contained in this Agreement and other good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

AGREEMENT

1 **Definitions.** The following terms used in this Agreement shall have the meanings indicated:

"Adjusted Gross Rentals" has the meaning set forth in Section 4(b).



“Affiliate” means, with respect to any entity, any natural person or firm, corporation, partnership, association, trust or other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the subject entity; a natural person or entity which has another entity as an Affiliate under the foregoing shall also be deemed to be an Affiliate of such entity. For purposes hereof, the terms “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity, or the power to veto major policy decisions of any such entity, whether through the ownership of voting securities, by contract, or otherwise.

“Amenity Charges” has the meaning set forth in Section 6(h).

“Anniversary Date” means, for any given year, the month and day on which this Agreement was executed

“Commencement Date” has the meaning set forth in Section 2.

“Condominium” has the meaning set forth in the Recitals to this Agreement.

“Condominium Charges” has the meaning set forth in Section 7(a).

“Declaration of Condominium” has the meaning set forth in the Recitals to this Agreement.

“Declaration of Covenants” means the Declaration of Covenants, Restoration & Easements for Plaza Resort & Spa, which was recorded in the Public Records of Volusia County on September 29, 2005 in Official Records Book 5663, at Pages 2330 through 2400.

“Effective Date” means the date which is the later of (i) the date Owner acquired the Unit or (ii) the date Owner executed the Prior Agreement. If, however, no Prior Agreement was executed by Owner, “Effective Date” means the date on which this Agreement is fully executed.

“FFE&M Fund” has the meaning set forth in Section 7(c)(i).

“Friend of Owner” has the meaning set forth in Section 5(e).

“Gross Rentals” has the meaning set forth in Section 4(a).

“Guest” means any person who rents the Unit or a Replacement Unit.

“Housekeeping Charge” has the meaning set forth in Section 4(c).

“Hotel” has the meaning set forth in the Recitals to this Agreement.



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“Indemnified Parties” has the meaning set forth in Section 12.

“Licensor” and “Licensor Fee” have the meaning set forth in Section 6(i).

“Management Fee” has the meaning set forth in Section 4(e).

“Monthly Report” has the meaning set forth in Section 4(g).

“Non Condominium Lot” means all facilities located within the hotel located at 600 North Atlantic Avenue, Daytona Beach, Florida, excluding the rooms which have been converted to condominium pursuant to the Declaration of Condominium for the Plaza Resort & Spa, a Condominium and the future development land as defined in the Declaration of Covenants, Restoration & Easements for Plaza Resort & Spa.

“Non Condominium Lot Owner” means the owner of the Non Condominium Lot.

“Owner’s Designate” has the meaning set forth in Section 13(h).

“Owner-Occupier” has the meaning set forth in Section 5(m).

“Owner’s Share” has the meaning set forth in Section 4(f).

“Prior Agreement” has the meaning set forth in Section 13(o).

“Replacement Unit” has the meaning set forth in Section 5(m).

“Shared Rental Amount” has the meaning set forth in Section 4(d)

“Substitute Unit” has the meaning set forth in Section 5(c).

“Substitute Unit Arrangement” has the meaning set forth in Section 5(h).

“Term” has the meaning set forth in Section 2.

“Unit” has the meaning set forth in the Recitals to this Agreement.

“Unpaid Owner Expenses” means (i) any amounts that Management Company chooses, in accordance with Sections 7(c), 7(d) and 7(e) of this Agreement, to deduct from the Owner’s Share (ii) any Use Period Charges, or late fees imposed in connection therewith, whether incurred by Owner or Friend of Owner, that remain unpaid at the time of the Monthly Report; and (iii) any delinquent Condominium Charges that Management Company pays pursuant to Section 7(a) of this Agreement.



“Use Period” means the period during which Owner may occupy the Unit, or a Substitute Unit, in accordance with the provisions of Section 5.

“Use Period Charges” has the meaning set forth in Section 5(j).

2 **Term.** This Agreement shall commence on the Effective Date of this Agreement (the “Commencement Date”). The term of this Agreement shall be for three (3) years from the Commencement Date (the “Term”) unless automatically extended as provided for herein. For each year of the Term, the Term shall be automatically extended for a period of one year unless Owner provides Management Company written notice at least ninety (90) days prior to that year’s Anniversary Date that Owner does not want the Agreement to be extended. Upon such notice by Owner, the Agreement shall expire two years from the date of the next Anniversary Date with no additional notice obligations under this Section.

3 **Management Company’s Role and Responsibilities.** Subject to the terms and conditions set forth herein, Owner hereby engages Management Company, and Management Company hereby accepts such engagement, to market the Unit for transient rental purposes as part of the Hotel and otherwise manage the Unit on the terms contained in this Agreement. In this connection with this engagement:

a) Management Company will promote and market the Unit as part of the Hotel. All such marketing and promotion shall be left to the sole discretion of the Management Company, and the Unit may be included in brochures, flyers, commercials or other marketing materials or media. Management Company is hereby authorized to photograph and film the interior and/or exterior of the Unit for marketing purposes. Such photographs and film shall be the sole property of Management Company.

b) Management Company is authorized to rent the Unit under such conditions, and for such periods and for the number of persons as are deemed desirable in Management Company’s business judgment, subject to any limitations contained herein.

c) Management Company is authorized to collect all amounts attributable to the rental of the Unit and to allocate Gross Rentals, Adjusted Gross Rentals and the Shared Rental Amount in accordance with the terms of Section 4. Management Company is further authorized, as it deems appropriate, to (i) collect rental amounts and deposits due or to become due, and give receipts therefor; (ii) institute any proceedings it deems necessary to collect rental amounts; and (iii) settle, compromise and release claims for unpaid rental amounts, as it deems appropriate. Notwithstanding anything to the contrary herein, Management Company shall have no obligation to sue for rental amounts or damages attributable to a Friend of Owner or Guest’s occupancy of the Unit.

d) Management Company is authorized to provide any services it deems necessary to arrange for and carry out the transient rental of the Unit, which services may include but are



not limited to, check-in and check-out of all occupants of the Unit, distribution of keys, switchboard operations, on-site reservations, housekeeping services, accounting services, and marketing and advertising.

e) Management Company, its employees, agents, contractors and subcontractors are authorized to enter the Unit as Management Company deems necessary to the performance of any services contemplated by, related to, or in furtherance of this Agreement.

f) Management Company is authorized to perform, arrange for and coordinate maintenance, repairs and replacements in the Unit that Management Company determines, in its sole discretion, are necessary to keep the Unit suitable for rental occupancy and in compliance with the standards set forth in Section 7(j), at Owner's sole expense.

g) Nothing in this Agreement shall be construed so as to create a property management arrangement pursuant to which Management Company manages the Unit for the benefit of Owner for leasing or any purpose other than for on a transient rental occupancy basis.

4 **Computation and Allocation of Rentals.**

a) **Gross Rentals.** "Gross Rentals" means room rental charges actually collected by Management Company that are solely attributable to a guest's occupancy of a Unit or any Replacement Unit; provided, however, that Gross Rentals shall not include (i) Amenity Charges, (ii) any taxes associated with the rental of the Unit or a Replacement Unit, (iii) uncollected or uncollectible room rental or other charges, (iv) deposits forfeited as a result of a cancellation of a reservation on the Unit; (v) room rental charges or other charges collected in connection with the rental of the Unit during the period a Substitute Unit Arrangement is in effect.

b) **Adjusted Gross Rentals.** "Adjusted Gross Rentals" means Gross Rentals less any (i) credit card processing fees, credit card commissions, commission or fees owed to travel agents or booking agents, tour brokers, or other companies in accordance with the normal business practices in the industry, and (ii) Licensor Fees.

c) **Housekeeping Charge.** Management Company shall be entitled to charge Owner a housekeeping charge in the amount of 10% of Adjusted Gross Rentals (the "Housekeeping Charge").

d) **Shared Rental Amount.** The "Shared Rental Amount" shall be computed by subtracting the Housekeeping Charge from Adjusted Gross Rentals.

e) **Management Fee.** To compensate Management Company for services to be provided pursuant to this Agreement, Management Company shall retain a management fee in an amount equal to 50% of Shared Rental Amount (the "Management Fee").



f) Owner's Share. Owner shall be entitled to 50% of Shared Rental Amount (the "Owner's Share").

g) Monthly Reports. Management Company shall furnish or cause to be furnished to Owner's Designate Monthly reports (each a "Monthly Report"). Each Monthly Report shall indicate for the applicable reporting period (i) the number of days during the period that the Unit was rented, (ii) the number of days in the period that a Replacement Unit was utilized, (iii) Adjusted Gross Rentals, the Housekeeping Charge and the Shared Rental Amount (iv) Unpaid Owner Expenses and (iv) any other amounts payable to or owed by Owner.

h) Management Company's Payments to Owner. If, for any given Monthly Report, Owner's Share exceeds Unpaid Owner's Expenses, Management Company shall remit to Owner's Designate a check for the amount by which Owner's Share exceeds Unpaid Owner's Expenses. Any such amounts owed by Management Company will be reflected on the Monthly Report and shall be paid by Management Company no later than thirty (30) days following the date of the applicable Monthly Report.

i) Owner's Payments to Management Company. If, for any given Monthly Report, Unpaid Owner's Expenses exceed Owner's Share, Owner shall remit payment to Management Company in the amount by which the Unpaid Owner Expenses exceeds the Owner's Share. Such amount will be clearly reflected on the Monthly Statement as an amount owed by Owner, and shall be paid by Owner no later than thirty (30) days following the date of the applicable Monthly Report. If Owner fails to pay such amounts to Management Company within thirty (30) days following the date of a Monthly Report reflecting such amounts owed, Management Company has the right to impose late fees and to deduct all such amounts from any subsequent amounts that Management Company would otherwise be required to pay to Owner.

j) Fees for Late Payments; Management Company's Right to Offset. If either party fail to timely pay any assessment due under this Agreement, the balance due shall be subject to an interest charge in the amount of one percent (1%) per month, or the highest permissible rate under applicable law, whichever is less. Additionally, if Owner fails to pay any assessments, fees or expenses required under this Agreement, Management Company may pay such amounts on Owner's behalf and offset such payments against any payments due to Owner under Section 4(h).

5 Owner Use of Unit or Substitute Unit; Replacement Units

a) An Owner's Use Period may not be for more than thirty (30) consecutive days, nor may the Use Period exceed sixty (60) days in any calendar year. To the extent the term of this Agreement involves partial calendar years, Owner's Use Period will be pro-rated accordingly by Management Company to include five (5) days for each full month in the partial calendar year.



b) Owner must notify Management Company in advance of Owner's intended Use Period. Management Company shall have the right to specify the form that any such notice shall take, but at a minimum each notice shall specify the beginning and ending date of the intended Use Period.

c) Owner's right to occupy the Unit for the intended Use Period shall be subject to availability. The Unit shall not be deemed available if, at the time Owner provides notice of the intended Use Period, the Unit is reserved for occupancy for any portion of the proposed Use Period. If, at the time Owner provides notice of the intended Use Period, the Unit is not available for the proposed Use Period, then Management Company will determine if any other comparable unit in the Condominium in the leasing program ("**Substitute Unit**") is available for the proposed Use Period.

d) Management Company will notify Owner, within three (3) days from receipt of Owner's notice of proposed Use Period, whether the Unit or a Substitute Unit is available during the proposed Use Period. Within two (2) days following receipt of notice of availability from Management Company, Owner shall confirm its use of the Unit, or the Substitute Unit. Upon receipt of such confirmation of use from the Owner, the period of proposed use shall be included in Owner's Use Period whether or not Owner occupies the Unit or Substitute Unit for all or some portion of the proposed Use Period.

e) Owner may allow use of the Unit or a Substitute Unit during a Use Period by Owner's family and friends, provided Owner does not charge for such use, and further provided that Owner shall notify Management Company in advance of any such use and provide to Management Company any authorizations that Management Company may require. Any family or friends of Owner who occupy the Unit or a Substitute Unit during a Use Period are hereinafter referred to as a "**Friend of Owner.**"

f) Owner and any Friend of Owner who intends to occupy the Unit or a Substitute Unit during the Use Period, must comply with normal check-in and check-out procedures for the Hotel as determined by Management Company from time to time.

g) The occupant of the Unit during a Use Period, whether the Owner or a Friend of Owner, shall have the option to request daily housekeeping service during their occupancy of the Unit. If daily housekeeping service is elected, a daily service fee (housekeeping charge) shall be charged for such time as Owner or Friend of Owner occupies any portion of the Unit.

h) During any Use Period in which Owner or a Friend of Owner occupies a Substitute Unit ("**Substitute Unit Arrangement**"), the occupant shall be charged a daily fee for daily housekeeping services.

i) Following an Owner's or Friend of Owner's occupancy of a Unit or a Substitute Unit, the occupant will be assessed a departure cleaning service fee.



j) During a Use Period, Owner shall be responsible for payment of all charges incurred for use of the Unit or Substitute Unit and services at the Hotel (“Use Period Charges”), including, without limitation, daily housekeeping services (if applicable), departure cleaning service, fax service, room service or any other charge imposed against hotel guests other than room rental charges regardless of whether Owner was actually the occupier of the Unit or Substitute Unit.

k) Owner shall be obligated for any costs of repair and/or replacement to the Substitute Unit and the property located in the Substitute Unit by reason of Owner’s or Friend of Owner’s occupancy of such Substitute Unit. Owner agrees to indemnify and hold harmless the owner of the Substitute Unit and Management Company for all costs, expenses, damage or liability incurred by reason of use of the Substitute Unit during the Use Period.

l) During the period of any Owner or Friend of Owner occupancy of a Substitute Unit, any rentals received from the Unit for the period of the Substitute Unit Arrangement shall not be included in the calculation of Gross Rentals or Adjusted Gross Rentals pursuant to this Agreement and shall therefore not be considered for purposes of determining amounts payable to Owner. Instead, any Adjusted Gross Rentals collected from the Unit for the period of the Substitute Unit Arrangement shall be included in the adjusted gross rentals rentals of the owner of the Substitute Unit.

m) If the Unit is made available to another owner in the leasing program (“Owner-Occupier”) under an arrangement in which the Unit would constitute a Substitute Unit for such Owner-Occupier, then such Owner-Occupier’s unit in the Condominium shall be deemed a “Replacement Unit” for the period of the Owner-Occupier’s occupancy of the Unit. All Adjusted Gross Rentals received on the Replacement Unit during the Owner-Occupier’s occupancy of the Unit shall be deemed Adjusted Gross Rentals received from the Unit and shall be included in the calculation of that portion of Adjusted Gross Rentals payable to Owner pursuant to this Agreement.

6 **Rental Policy.**

a) Owner acknowledges that the Unit will not be part of a “rental pool” or “rental sharing” arrangement. Owner will therefore not participate in the rental revenue of any other units in the Condominium (other than a Replacement Unit) nor will such other units participate in the rental revenue of the Unit (other than by reason of a Substitute Unit Arrangement).

b) Management Company, in Management Company’s business judgment, will have the right to set the rental rates for the Unit. This shall include the right to set discounts or offer the Unit on a complementary basis in accordance with Management Company’s operating practices. Management Company will use its best efforts to ensure that Owner’s unit is not offered on a complementary basis more than six (6) nights in any year of this Agreement.



c) Owner agrees that Management Company may, in its sole discretion, offer a Guest a rebate in the event the Guest experiences difficulties with the Unit or, in the event a rebate is unacceptable to the Guest, transfer the Guest to another unit. If Management Company has to transfer a Guest to another unit, only the rental amounts attributable to those nights that such Guest actually occupied the Unit will be included for purposes of computing Adjusted Gross Rentals.

d) No rental amount will be imputed for the discounts, rebates or complementary stays contemplated by Section 6(b) and Section 6(c) hereof in determining Gross Rentals or any other amounts due to Owner under this Agreement.

e) When Owner checks in to the Hotel to occupy the Unit or a Substitute Unit during the Use Period, Owner may request to be upgraded to a better unit in the Hotel, which request Management Company may, in its sole discretion, grant for a fee to be determined by Management Company at the time of check-in. If any owner of a unit in the Hotel is upgraded to the Owner's Unit, any revenues collected by Management Company in connection with such upgrade shall be considered in computing Adjusted Gross Rentals.

f) Management Company shall be entitled to retain, for its sole benefit, all reservation deposits and any other related cancellation charges that are associated with the cancellation of a rental reservation on the Unit.

g) Management Company will exercise reasonable efforts to rent units on a rotational basis, if the units available for rental fulfill the particular requests of a Hotel guest. Management Company need not, however, adhere to a strict rotation system and may vary the rental of the Unit for reasonable reasons, including, but not limited to, the following: (i) preferences for a particular size, feature, location or type of unit expressed by potential rental guests; (ii) prior reservations or other occurrences making a Unit unavailable for the any portion of the occupancy period desired by the potential rental guests; (iii) needed or ongoing repair or replacement operations or unsuitability of the Unit for rental; and (iv) usage by the Owner or a Friend of Owner.

h) Owner acknowledges and agrees that any amounts payable to Owner hereunder are related solely to the number of nights the Unit or any Replacement Unit is rented and the rentals charged for such room nights and that Management Company has not furnished any guaranty, assurance or representation of the income to Owner or the revenues which may be generated by the Unit. Owner further acknowledges and agrees that the only revenues in which Owner will participate relate solely to the room rental for the Unit or a Replacement Unit. Owner shall not be entitled to any payment by reason of mini bar revenues, telephone or fax charges, room service charges, food and beverage revenue, spa charges, parking charges or any other charges other than rental charges imposed upon any guest occupying the Unit or any Replacement Unit ("**Amenity Charges**").



i) Owner acknowledges and understands that Management Company may enter into a licensing or similar agreement with a third party to obtain a license to operate the Hotel as a branded hotel (a "Licensor"). Owner acknowledges and understands that any such agreement with Licensor may involve the payment of additional, regularly recurring fees ("Licensor Fees"), which would be deducted from Gross Rentals.

7 **Owner's Responsibilities.**

a) Owner shall be responsible for payment of all mortgage payments and real estate taxes on the Unit. Owner shall also be responsible for payment of Condominium charges and any other charges due under the Declaration of Covenants or the Declaration of Condominium ("Condominium Charges"). Owner authorizes Management Company to pay delinquent Condominium Charges on the Unit and Owner agrees that Management Company shall have the right to deduct any amounts so paid from Owner's Share.

b) Throughout the term of this Agreement, Owner shall provide Management Company with pertinent information relating to a valid, major credit card in Owner's name that Management Company may keep on file and to which Management Company shall be allowed to charge (i) any Use Period Charges or other charges that remain unpaid after Owner or a Friend of Owner has occupied the Unit or a Substitute Unit or (ii) any amounts owed by Owner in connection with a Monthly Report or invoice that remain unpaid as of 30 (thirty) days after such Monthly Report or invoice.

c) **Cost of Repairs, Replacement, Renewals and Modernization of FF&E.**

i. **FFE&M Fund.** On a monthly basis, for the term of this Agreement, Management Company shall deduct from the Owner's Share an amount equal to the following percentage of the Gross Rentals for the prior month:

<u>Year</u>	<u>Percentage</u>
2006	0%
2007	1%
2008	2%
2009	3%
2010 – Onward	Annual percentage for each year after 2009, shall be set by Management Company, in its business judgment, taking into account factors that include, but are not limited to, the existing wear and tear of units and anticipated or scheduled maintenance, repairs, replacements, renewals or modernizations.

The amounts collected shall be placed by Management Company in a reserve (the "FFE&M Fund") for the cost of repair or replacement of the furniture, fixtures and equipment in the Unit



as and when such furniture, fixtures and furnishings are in need of repair, replacement, renewals or modernization in accordance with the operating standards of the Hotel, as set forth in Section 7(j). The amounts in the FFE&M shall be carried over from year-to-year during the term of this Agreement, and at no time shall the dollar value of the current funds in the FFE&M Fund exceed Ten Thousand Dollars (\$10,000). If Owner sells the Unit while this Agreement is still in effect, FFE&M Fund will be transferred to the account of the subsequent Purchaser for continued use in connection with the Unit. However, in the event of a proper termination by Owner of this Agreement or in the event this Agreement expires and is not renewed, the monies remaining in the FFE&M Fund at that time will be returned to Owner within thirty (30) days of such termination or expiration.

ii. Any Owner placing a Unit into the unit rental management program after the year 2006, may be required to make an initial lump sum payment into the FFE&M Fund, in an amount to be determined by Management Company, to insure Owner has sufficient funds to comply with his obligations under this Agreement.

iii. FFE&M Shortfall. In the event any expenditures chargeable to the FFE&M fund for repairs, replacements or modernization contemplated herein exceed the amount in the FFE&M Fund at that time, Owner shall remit to Management Company the shortfall amount within ten (10) days of Management Company's demand therefore. Management Company also has the option of paying, on Owner's behalf, any such expenditure and invoicing the Owner for such amounts, in which case Owner must remit payment to Management Company within twenty (20) days of the date of the invoice. Management Company shall further have the option at all times to deduct any such shortfall amounts (including any late fees incurred in connection therewith) from Owner's Share.

iv. Damage or Theft. If a Guest damages the Unit or steals any item that properly belongs in the Unit as part of the standard fixture, furnishings and equipment, Management Company will repair or replace the damage or theft as appropriate, and will use commercially reasonable efforts to cause the Guest to pay all costs associated therewith. If Management Company cannot collect such amounts from a Guest, Owner shall be solely responsible for the costs associated therewith, either through a deduction from the FFE&M Fund or through the shortfall procedures set forth in Section 7(c)(iii). Notwithstanding anything to the contrary contained herein, in the event the damage or loss is insured and a claim is filed, whether by Owner or Management Company, Management Company agrees to be responsible for the first \$500.00 of any deductible, with the Owner responsible for the portion of the deductible in excess (as well as for the entirety of an uninsured losses).



d) Insurance.

i. Management Company shall be entitled to deduct a prorated monthly charge from Owner's Share, in an amount determined by Management Company, for the cost of supplying: (A) fire and extended coverage casualty insurance for the furniture, fixtures, furnishings and other personal property within the Unit and (B) liability insurance for occurrences within the Unit.

ii. Owner shall maintain any additional insurance coverage required to be maintained by Owner under the Declaration of Covenants, Declaration of Condominium or any other Condominium documents, as well as any other insurance Owner reasonably deems it necessary to carry to protect its interests.

e) Warranties. Management Company shall have the right to purchase extended warranty items on warrantable items in the Unit and assess Owner a prorated monthly charge, to be deducted from Owner's Share, in an amount determined by Management Company for the cost associated with any such warranties.

f) Any charges under Sections 7(c), 7(d) and 7(e) shall be payable regardless of whether there are any Adjusted Gross Rentals for the Unit.

g) Owner may not rent the Unit at any time during the term of this Agreement. Owner may not under any circumstances allow use of the Unit during a Use Period under an arrangement in which Owner receives compensation or any other benefit, except if such arrangement is made through Management Company and the Unit is rented as part of the Hotel inventory. Owner may not under any circumstances rent, lease, or allow occupancy of the Unit except pursuant to this Agreement, even if Management Company has been relieved of its obligations to rent the Unit pursuant to Section 9. To the extent Owner receives any requests or inquiries for rental of the Unit, Owner shall transmit such requests to Management Company.

h) Owner shall not alter or decorate the Unit or replace any furniture or furnishings in the Unit. Owner shall not, except in connection with Owner's occupancy of the Unit during a Use Period, store any private property or personal items in the Unit.

i) Owner shall not enter the Unit or permit any person, whether family member, friend, repairman, or guest to enter the Unit, other than during a Use Period, without prior notification to and consent by Management Company.

j) It is understood and agreed that each Unit must be in usable, first-class condition on a level of quality as established by Management Company in its sole discretion. Management Company, or a third party contractor retained by Management Company, may inspect the Unit from time to time to verify that it meets the level of quality defined, and Management Company is authorized to undertake repairs, replacements or maintenance that may be required to maintain



the Unit in compliance with the level of quality required.

k) Under no circumstances while this Agreement is in force shall the Owner engage any other rental management agent, broker or other person or entity to perform services in any way supplementary or competitive to the services provided by Management Company hereunder. Owner also may not operate, or allow anyone else to operate, any business establishment, casino or gambling device in the Unit.

8 Termination of Agreement.

a) Owner may terminate this Agreement if Management Company breaches any of its obligations under this Agreement provided that Owner has given Management Company at notice of such breach in accordance with the notice provisions of Section 13(j) and Management Company has failed to cure or to take reasonable steps to cure such breach within thirty (30) days.

b) Management Company may terminate this Agreement at any time and for any reason by delivering a thirty (30) day prior written notice to Owner. Upon termination pursuant to this Section 8(b), Management Company shall have the right, but not the obligation, to reallocate any confirmed reservations on the Unit to other units or other properties and Owner will be liable for any costs associated with such reallocation. For a period of one year from the date of termination, Owner will be required to honor any confirmed reservations on the Unit that Management Company does not reallocate to another unit in the Hotel or to another hotel. Within thirty (30) days following termination, Management Company will supply Owner with a list of those confirmed reservations that Management Company has not reallocated and that Owner must honor and assume.

c) Damage or Destruction.

i. If the Unit is damaged by fire or casualty, which does not require the closing of the Hotel, or if the Hotel is closed and the election is made to repair the Hotel, Management Company shall expeditiously repair the damage to the interior of the Unit and replace and repair or replace the fixtures, furnishing and equipment in the Unit in accordance with the standards set forth in Section 7(j). This shall be done by Management Company, on Owner's behalf and at Owner's sole cost and expense out of the FFE&M Fund or in accordance with the FFE&M shortfall provisions of this Agreement.

ii. If the Hotel and/or Non Condominium Lot shall be substantially damaged by fire or other casualty, then Management Company, by written notice to Owner given within sixty (60) days after the occurrence of such event, shall have the right to terminate this Agreement on the basis that the Non Condominium Lot Owner does not elect to rebuild or restore the Hotel and/or Non Condominium Lot, and neither party shall have any further obligation to the other party hereunder, except with respect to liability accruing, or based upon



events occurring, prior to the effective date of such termination. For the purposes hereof, the Hotel and/or Non Condominium Lot shall be deemed to have been substantially damaged if the estimated length of time required to restore Hotel and/or Non Condominium Lot substantially to their condition and character just prior to the occurrence of such casualty shall be in excess of two and one-half (2½) years, as indicated by an architect's certificate or other evidence reasonably satisfactory to the Non Condominium Lot Owner. If this Agreement shall not terminate in the event of damage to the Hotel and/or Non Condominium Lot, either because (i) the damage does not amount to substantial damage as described above, or (ii) notwithstanding substantial damage to the Hotel and/or Non Condominium Lot, the Non Condominium Lot Owner shall elect to restore the Hotel and/or Non Condominium Lot, then if the complete restoration of the Hotel and/or Non Condominium Lot to its condition and character just prior to the occurrence of such casualty, is not completed within two and one-half (2 1/2) years following the occurrence of the casualty, then Owner shall have the right to terminate this Agreement by providing notice to Management Company in accordance with Section 13(j).

d) Eminent Domain.

i. If the Unit, or any portion thereof, is taken through the exercise, or by agreement in lieu of the exercise, of the power of eminent domain, this Agreement shall terminate upon written notice from either party.

ii. If all of the Hotel or Non Condominium Lot, or such substantial portion thereof as to make it infeasible, in the reasonable opinion of the Non-Condorminium Lot Owner, to restore and continue to operate the remaining portion for the purposes contemplated hereby, shall be taken through the exercise, or by agreement in lieu of the exercise, of the power of eminent domain, then upon the date that Non Condominium Lot Owner shall be required to surrender possession of the Hotel or Non Condominium Lot, or a portion thereof for the purpose herein contemplated, then this Agreement shall not terminate, and Owner shall proceed with all due diligence to repair any damage to the Hotel, or to alter or modify the Hotel and/or Non Condominium Lot so as to render it a complete architectural unit which can be operated as a hotel of substantially the same type and class as before; and if such restoration is not completed within two (2) years following the taking, then Owner shall have the right to terminate this Agreement by providing notice to Management Company in accordance Section 13(j). In any event, all proceeds from any taking of the Hotel or the Non Condominium Lot shall belong solely to Non Condominium Lot Owner, and Owner shall not be entitled to any portion thereof.

e) Neither the right of termination nor the right to sue for damages nor any other remedy available to either party hereunder shall be exclusive of any other remedy given hereunder or now or hereafter existing in law or in equity.

9 Termination or Suspension of Owner's Rights Under Agreement. Management Company may suspend or terminate Owner's right to participate in the rental program and may be relieved of any obligation to rent the Unit if Owner fails to maintain the Unit to the standards



required by Management Company after Owner's use of the Unit or fails to make any payment due from Owner under this Agreement. Any suspension or termination under this Section shall not terminate this Agreement nor relieve Owner from any obligations of Owner under this Agreement.

10 **Sale of the Unit.** In the event Owner intends to sell the Unit, Owner shall advise Management Company in writing of Owner's intention to sell not less than fifteen (15) days prior to the Unit being listed for sale. Salespersons wishing to inspect or show the Unit must apply and sign for a key to the Unit at the Hotel reception desk and return such key prior to departing the premises. To insure proper preparation of the Unit and Guest privacy, keys will not be issued beginning twenty-four (24) hours prior to anticipated occupancy of the Unit by a Guest or other owner and through the term of such occupancy. Owner shall provide Management Company with written notice (i) immediately upon the signing of a purchase and sales agreement relating to the Unit and (ii) five (5) days prior to the closing of the sale of the Unit. Owner further agrees that, during the term of this Agreement, it will obtain from any subsequent purchaser of the Unit an executed assumption of all of Owner's duties under the Agreement.

11 **Assignment; Successors and Assigns.** The rights and obligations of Management Company under this Agreement may be assigned by Management Company, in whole or in part, to (i) to any other party acquiring any of the rights or obligations of Management Company, (ii) any affiliate of Management Company, or (iii) any other party. The rights and obligations of Owner under this Agreement may be assigned only to a purchaser of the Unit. Any transfer of the Unit by Owner shall not relieve Owner from any liability under this Agreement arising prior to the time of such transfer and any subsequent owner of the Unit shall be bound by this Agreement and obligated for any charges payable under this Agreement accruing prior to or subsequent to the transfer. This Agreement shall inure to the benefit of and be binding on the signatories of this Agreement and their successors and assigns including, without limitation, any subsequent owner of the Unit. The Management Company may record a memorandum of this Agreement in the Public Records of Volusia County, Florida, for the purposes of giving notice of the existence of this Agreement.

12 **Indemnification.** Owner shall indemnify and hold harmless Management Company and its affiliates, agents, employees, officers and directors ("**Indemnified Parties**") from and against, and in respect of, all claims, demands, damages, losses, liabilities, judgments, fines, penalties, costs and expenses (including reasonably attorneys' and paralegal fees and costs incurred at all tribunal levels, before proceedings are commenced, and in establishing this right of indemnification) asserted against or incurred or suffered by any of such Indemnified Parties which arise from, or are related to or connected with, the performance by Indemnified Parties of any acts contemplated by this Agreement or related to the operation of the Units as part of the inventory of Hotel units, including, but not limited to, any act or omission of Indemnified Parties other than such acts constituting gross negligence or intentional misconduct of each of the Indemnified Parties seeking indemnification.



13 Miscellaneous.

a) No Oral Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both Owner and a properly authorized representative of Management Company.

b) Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided in this Agreement, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

c) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

d) Headings. The headings and section numbers in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

e) Severability. Any provision of this Agreement, which is unenforceable in any jurisdiction, shall be ineffective in such jurisdiction to the extent of such unenforceability without invalidating the remaining provisions of this Agreement. Any unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g) Applicable Law. The rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without giving effect to any conflicts or choice of laws principles that otherwise might be applicable.

h) Owner's Designate. Where there are multiple owners of the Unit, one of the owners must be designated on the signature page as the person to whom billing and payments should be addressed (the "**Owner's Designate**"). Owner's Designate shall have the authority to issue any and all instructions to the Management Company, and the Management Company shall have the authority to act in reliance thereon. In the event notice is required under this Agreement, such notice shall be made to the Owner's Designate in accordance with Section 12(i).

i) Notices. Except as otherwise provided for herein, whenever any notice, consent approval or other communication is required to or may be given or delivered pursuant to this Agreement, such notice or other communication shall not be effective unless in writing, signed



by or on behalf of the person giving the notice or other communication or its agent. It shall be deemed to have been given on the earlier to occur of the date of the actual delivery, the next day after mailing by next-day delivery with a nationally recognized overnight mail service, if sent via facsimile, upon receipt of confirmation that the facsimile has been transmitted in its entirety, or, if mailed by U.S. mail, five (5) days after the date mailed by certified or registered mail, return receipt requested, with postage prepaid. If same is to be given to Owner it shall be to the address appearing below the Owner's Designate signature and if same is to be given to Management Company to the attention of the "Owner Relations Manager" at the address indicated on the first page, or to such other address as either party may designate by notice to the other party in accordance with this Section.

j) Owner Notices of Breach or Termination. Notwithstanding Section 13(i) of this Agreement, any notice by Owner (i) alleging a breach of this Agreement by Management Company, (ii) seeking to terminate this Agreement pursuant to Section 8(a), or (iii) electing under Section 2 of this Agreement not to renew this Agreement for an additional three (3) year term, shall be sent via certified or registered mail, postage prepaid, return receipt requested, to:

Southern Hospitality Resorts & Residences, LLC
Attn: Mr. John Felletter
600 N. Atlantic Avenue
Daytona Beach, FL 32118

Southern Hospitality Resorts & Residence, LLC
Attn: Owner Relations Manager
600 N. Atlantic Avenue
Daytona Beach, FL 32118

Any such notice or other communication shall not be effective unless in writing, signed by or on behalf of the person giving the notice or other communication or its agent. It shall be deemed to have been given on the date of the actual delivery. Management Company may change the address required for notice under this Section 13(j) at any time by mailing a notice to Owner in accordance with the notice requirements of Section 13(i).

k) Required Information. Owner hereby agrees to provide Management Company, upon request, with all information and to execute all documents Management Company deems necessary to enable it to fulfill its obligations under this Agreement.

l) Force Majeure. If either the Hotel, Condominium or the Unit is so damaged by fire, catastrophe, acts of God, civil commotion, war or other casualty as to render it unfit for rental purposes, as determined by the Management Company, then Management Company shall have the right to cancel any Unit reservations that cannot be fulfilled due to the condition of the Condominium or the Unit and the obligations of Management Company hereunder shall be temporarily abated until the building or the Unit is restored, as determined by Management



Company, to the standards set forth in Section 7(j) and deemed suitable for renting.

m) Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

N) WAIVER OF JURY TRIAL. OWNER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER OR IN ANY COUNTERCLAIM OWNER MAY BE PERMITTED TO ASSERT HEREUNDER OR WHICH MAY BE ASSERTED BY MANAGER OR ITS AGENTS OR AFFILIATES AGAINST OWNER OR IN ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE UNIT.

O) PRIOR AGREEMENTS AND ORAL REPRESENTATIONS. THIS AGREEMENT SUPERSEDES ANY PRIOR AGREEMENT BETWEEN MANAGER AND OWNER INCLUDING BUT NOT LIMITED TO THAT CERTAIN LEASING AND MANAGEMENT AGREEMENT BETWEEN THE MANAGER AND OWNER (THE "PRIOR AGREEMENT") WHICH PRIOR AGREEMENT SHALL BE DEEMED NULL AND VOID AND OF NO FURTHER FORCE AND EFFECT AND OWNER HEREBY WAIVES ANY CLAIMS OR CAUSES OF ACTION IT MAY HAVE OR MAY HAVE HAD AGAINST THE INDEMNIFIED PARTIES WITH RESPECT TO THE PRIOR AGREEMENT. OWNER SPECIFICALLY UNDERSTANDS AND ACKNOWLEDGES THAT ORAL REPRESENTATIONS MADE BY ANY PARTY TO OWNER CANNOT BE RELIED UPON AND ARE NOT REPRESENTATIONS OF THE INDEMNIFIED PARTIES AND THAT THE ONLY REPRESENTATIONS MADE IN CONNECTION WITH THIS AGREEMENT ARE THOSE CONTAINED IN THIS AGREEMENT, IF ANY.

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SOUTHERN HOSPITALITY
RESORTS AND RESIDENCES, LLC

This Agreement has been executed as of the latest of the dates indicated below.

OWNER'S DESIGNATE/ADDRESS FOR NOTICE

Signature

Date

Printed Name

Address Line 1

Address Line 2

Phone No.

Fax No.

Unit No.

ADDITIONAL OWNER(S):

Signature

Date

Printed Name

Signature

Date

Printed Name

Signature

Date

Printed Name

**SOUTHERN HOSPITALITY RESORTS &
RESIDENCES, LLC:**

By: _____
John Felletter

Date