



VILLA RENTAL BUSINESS AGREEMENT

BETWEEN

LERMITAGE CHATEAU (Pty) Ltd
Registration Number: 2018/466222/07

AND

Villa No: _____

RENTAL BUSINESS AGREEMENT

1. **PARTIES**

1.1 L'Ermitage Chateau (Pty) Ltd - Registration Number 2018/466222/07; (*“the Operating Company”*), and

1.2 VILLA NUMBER: _____

INDIVIDUAL FULL NAMES: _____

ID No: _____

Passport no if no SA ID: _____

OWNER TRUST/COMPANY NAME: _____

REGISTRATION NUMBER: _____

REPRESENTED BY: _____

CAPACITY/TRUSTEE/DIRECTOR: _____

ADDRESS: _____

2. **INTERPRETATION AND DEFINITIONS**

In this Agreement:

2.1 the clause headings are for convenience and shall be disregarded in construing this Agreement;

- 2.2 unless the context clearly indicates a contrary intention, the singular shall include the plural and vice versa; and a reference to any one gender shall include the other genders; and a reference to natural persons includes legal persons and vice versa;
- 2.3 where any term is defined within any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 2.4 if any provision of this Agreement is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions hereof;
- 2.5 if any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any of the parties hereto then, notwithstanding that it is only in the definition clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 2.6 in this Agreement words or expressions shall have the meanings therein defined and words or expressions defined in the Sectional Titles Act No. 95 of 1986 ("**the Act**") shall have the meanings therein defined;
- 2.7 the following words and phrases shall have the meanings set out hereunder: -
- 2.7.1 "**the Villas**" means all of the Accommodation Villas in the Sectional Scheme;
- 2.7.2 "**Auditors**" means the auditors qualified to act as such under the Public Accountants and Auditors Act No.51 of 1951, duly appointed to act as auditors from time to time by the Operating Company in respect of the Hotel operation;
- 2.7.3 "**this Agreement**" means this Rental Agreement;
- 2.7.4 "**the Body Corporate**" means the Body Corporate/Homeowners Association for the Sectional Scheme, as constituted in terms of the Act;
- 2.7.5 "**Calendar Month**" means each of the 12 months of the Gregorian Calendar;

- 2.7.6 “**Calendar Year**” means each period commencing on 1 January and ending on 31 December of the same year;
- 2.7.7 “**Commencement Date**” means 1 November 2019;
- 2.7.8 “**Commission**” means actual commission charged on reservations and bookings by platforms including Booking.com;
- 2.7.9 “**Common Property**” means the portions of the Sectional Scheme not forming part of any section and/or Villa in the Sectional Scheme in terms of the Sectional Titles Act and excludes any exclusive use areas which are managed and controlled by the Body Corporate / Homeowners Association;
- 2.7.10 “**Guest/s**” means any person or persons who occupies or uses any of the Villas in the course of the conduct of the Hotel Business, but excludes the Owner and /or any person occupying through or under the Owner as his non-paying guest or invitee;
- 2.7.11 “**the Hotel**” means the hotel known as “L’Ermitage Hotel or Chateau”, located as per Sectional Plan No SS121/2009 in the building or buildings know as L’ERMITAGE FRANSCHHOEK;
- 2.7.12 “**the Hotel Business**” means the hotel business conducted by the Operating Company at and under the name and style of the Hotel;
- 2.7.13 “**Operating Company**” means the party in clause 1.1, being the party that conducts the Rental Business;
- 2.7.14 “**Operating Expenses**” means all expenses incurred in the conduct and operation of the Rental Business and in the conduct and operation of the Hotel Business;
- 2.7.15 “**the Owner**” means the party in clause 1.2;
- 2.7.16 “**the Owner’s Parking Bay/s**” means the parking bay/s described in clause 1.2, to be used in the Hotel Business on the terms of this Agreement and which is available to produce income for the Rental Business;

- 2.7.17 **“the Owner’s Villa”** means the Villa described in clause 1.2, including all furniture, furnishings, appliances, equipment, utensils and the like therein, and which the Owner makes available to L’Ermitage Chateau (Pty) Ltd on a fully furnished and equipped basis, to be used in the Hotel Business on the terms of this Agreement and which is available to produce income for the Owner;
- “the Owner’s Share”** means the net income after deductions as per clause 7.4, as the amount due to the Owner in respect of each calendar month by reason of the Owner’s Villa being included in the Rental of Villas, such amount being determined and paid as provided for in clause 7;
- 2.7.18 **“Participating Parking Bays”** means the parking bays that participate in the Hotel Operations from time to time, and includes the Owner’s Parking Bay/s;
- 2.7.19 **“Participating Villa/s”** means the Villas that participate in the Rental Business from time to time, and includes the Owner’s Villa;
- 2.7.20 **“Participating Owners”** means the owners from time to time of Participating Villas;
- 2.7.21 **“Parties”** means the parties to this agreement, namely the Operating Company and the Owner;
- 2.7.22 **“the Property”** means the immovable property described on Sectional Plan No SS121/2009.
- 2.7.23 **“Rental”** means the villa rentals created and arising by reason of the Owner and other owners of the Participating Villas making their Villas available to the Hotel for use by Guests, as part of the operation of the Hotel Business;
- 2.7.24 **“Rental Income”** means the total income received during a calendar month by the Hotel in the conduct of the Hotel Business, specifically in respect of the use of the Participating Villas;
- 2.7.25 **“Rental Pool”** means the participating owners in a specific month for rental and a share of rental income from the rental business;

- 2.7.26 “**VAT**” means the Value Added Tax in terms of applicable legislation and the rate at the specific time;
- 2.7.27 “**the Sectional Scheme**” means the sectional title scheme known as Sectional Plan No SS121/2009 in the building or buildings known as L’ERMITAGE FRANSCHHOEK.

3. **VILLA RENTAL**

- 3.1 For the duration of this Agreement and any renewal thereof, the Owner shall make the following available to the Operating Company for the purpose of being placed in, and comprising part of the Villa Rentals for the purpose of conducting the Hotel Business, on the terms of this Agreement: -
- 3.1.1 the Owner’s Villa;
- 3.1.2 the Owner’s Parking Bay/s;
- 3.1.3 all equipment, implements, utensils and articles in the Owner’s Villa; and
- 3.1.4 the Owner’s share of all equipment, implements, utensils and articles on or in the Common Property.
- 3.2 Notwithstanding clause 3.1, the Owner shall have the right of use of the Owner’s Villa and the Owner’s Parking Bay (or if not available, another Participating Villa and Participating Parking Bay) in accordance with the provisions of clause 6.4.

4. **DURATION**

This Agreement shall commence on the Commencement Date and shall continue for a period of 24 calendar months from the Commencement Date (the “Initial Period”). This Agreement shall automatically renew on the same terms and conditions *mutatis mutandis* for a further period of two (2) calendar years should this Agreement not be terminated by the Owner or the operating company, prior to the expiration of the Initial Period.

5. **THE OBLIGATIONS OF THE OPERATING COMPANY**

- 5.1 Subject to the Owner's right to use the Owner's Villa and the Owner's Parking Bay/s in terms of this Agreement, the Owner hereby authorizes the Operating Company to place the Owner's Villa and the Owner's Parking Bay in the Villa Rental Business. The Operating Company undertakes to place the Owner's Villa and the Owner's Parking Bay in the Rental Business and to endeavor to use the Owner's Villa as often as possible in the conduct of the Hotel Business during the term of this Agreement accordingly.
- 5.2 The Operating Company shall throughout the duration of this Agreement have the right, in its sole discretion, to set the rates payable by Guests for using and occupying the Participating Villas and the Parking Bay's (including the Owner's Villa and the Owner's Parking Bay/s), provided such rates are reasonably comparable to those of similar South African hotels.
- 5.3 For the duration of this Agreement the Operating Company is entrusted with the control and management of the Hotel Business, the Participating Villas, the Parking Bay's and the Owner's Villa and the Owner's Parking Bay and will be responsible, inter alia, for: -
- 5.3.1 the creation of a Villa Rental Business by way of the use of the Participating Villas for the purposes of carrying on of the Hotel Business and the control, management and administration of the Rental Business so created;
- 5.3.2 the maintenance of the interior of the Participating Villas as in the normal course of business, expenses to be approved by the Villa owner and will be for the cost of the Villa owner;
- 5.3.3 ensuring the continued good working order of facilities in the Villas such as, by way of illustration, television sets, fridges and microwave ovens, where applicable, expenses to be approved by the Villa owner and will be for the cost of the Villa owner;
- 5.3.4 the maintenance through damage, loss or fair wear and tear, of all furniture, fixtures, fittings, equipment and movables in the Participating Villas, expenses to be approved by the Villa owner and will be for the cost of the Villa owner;

- 5.3.5 the reasonable control of all Guests;
- 5.3.6 the employment and control of all staff members engaged in the conduct and operation of the Hotel Business, including the cleaning of the Owner's Villa at an agreed upon daily cost and the Owner's Parking Bay;
- 5.3.7 ensuring that the Participating Villas are supplied with appropriate Guest supplies (including without limitation cleaning supplies) at an agreed upon daily cost, and that a daily cleaning service is provided for the Participating Villas when occupied;
- 5.3.8 undertaking an adequate and on-going marketing campaign with the aim of ensuring reasonable levels of occupancy of the Participating Villas and to report to Owners on a (no less than) quarterly basis in respect of marketing;
- 5.4 increasing the annual occupancy rate, and improving the out of season occupancy rate, of the Hotel and all villas within the rental scheme for maximum benefit of all participating owners with a target of 10% growth in annual occupancies and revenue; and
- 5.5 allow a representative of the Owner to have access at all reasonable times to the reservation system.
- 5.6 The Operating Company shall ensure that the hotel retains a minimum of a four star rating with the Tourism Grading Council.
- 5.7 The Operating Company shall provide a monthly report to owners reflecting occupancy rates, monthly revenues and marketing initiatives when they render the statements of income to each owner as per paragraph 7 below.
- 5.8 The Operating Company warrants that it shall at all times maintain the appropriate business licences and shall comply with relevant legislation for the running of a hotel.

6. **OWNER'S OBLIGATIONS**

- 6.1 The Owner acknowledges that the Operating Company, has an absolute and unrestricted discretion in implementing the provisions of clause 5, subject to clause 5.3.4 above.
- 6.2 The Owner undertakes: -
- 6.2.1 not to use, occupy, lease, nor allow anyone else to use, occupy or lease the Owner's Villa other than through the Operating Company in terms of this Agreement;
- 6.2.2 the Owner shall not interfere in any way whatsoever with the control and management of the Hotel Business and shall refer any issues or queries to the Operating Company;
- 6.2.3 not to remove from the Owner's Villa or any other Villa any of the furniture, fixtures, fittings, equipment and movables supplied or interfere with or change or vary the layout, décor, mix of design and any aspect of the Owner's Villa;
- 6.2.4 not to alter any lock or install any new lock on any doors to the Owner's Villa save in the event of non-payment by the Operating Company after giving the Operator 7-day notice of non-compliance;
- 6.2.5 to at all times to comply with the Rules of the Body Corporate/Homeowners Association and the Management Rules of the Sectional Scheme;
- 6.2.6 to observe such Rules as may be imposed by the Body Corporate/Homeowners Association or the Operating Company relating, inter alia, to the use by the Owner and his invitees of the Participating Villas and the facilities in the Sectional Scheme or Hotel and regulating matters such as check-in and out time, identification of Owners and their invitees and the like;
- 6.2.7 the Owner is responsible for monthly levies, rates and taxes, internal contents insurance and actual bulk negotiated DSTV subscription cost and undertakes to pay these costs monthly and timeously.

- 6.3 The Owner acknowledges that any breach of the provisions of this clause 6, and in particular any advertising of the Owner's Villa as available for hire shall be a breach of this Agreement and shall entitle the Operating Company to terminate this Agreement on seven (7) days' notice should this breach not be rectified within such notice period, and to claim full damages for the balance of the duration of this agreement.
- 6.4 The Owner shall be entitled to use and occupy the Owner's Villa for a maximum period of 30 days per annum, provided that: -
- 6.4.1 the Owner shall be obliged to give the Operating Company reasonable, prior written notice of any period for which he may require the use of the Owner's Villa.
- 6.4.2 If an Owner use his unit, it will not form part of the rental pool for that period and the owner will not receive income for that period.
- 6.5 For all periods during which the Owner or his invitee occupies the Owner's Villa or other Participating Villa, the Owner can elect to have his Villa serviced by the Hotel Housekeeping Department at the agreed cost per day as per clause 7.3.3.
- 6.6 The Operating Company shall construct a swimming pool and tanning area in front of the main hotel and reception within two (2) years of the commencement date. This is subject to all owners agreeing in writing to the expansion of the main hotel area to accommodate two extra rooms on the first floor and an extended undercover breakfast area.

7. DETERMINATION AND PAYMENT OF OWNER'S RENTALS

- 7.1 Calculation of the Owner's Share, (being the amount owing to the Owner by reason of the Owner's Villa being included in the Rental Business) shall be sent by the Operating Company to the Owner by no later than the 20th day following the last day of each month. Payment of the Owner's Share shall likewise be by no later than the 20th of the month following in which the revenue was earned.
- 7.2 In the event of late payment as per clause 7.1, the net amount due to the owner will accrue interest a rate of prime, from the day the amount became due till the date of payment.

7.3 The Owner's Share shall be determined in accordance with the following formula: -

Net Monthly Income: Rental Income **less** VAT, **less** cleaning, **less** breakfast, **less** DSTV subscriptions, **less** commissions (charged by booking agents, travel agents, portals), **less** the contribution to the upgrading trust fund and less actual data & VOIP cost.

The net monthly income will then be shared following terms of the agreed applicable daily room rate tariff in proportion to total room rates from available participating villas, subject to the invoicing and VAT requirements in respect of VAT registered owners.

For the avoidance of doubt, the following amounts are deducted as a first charge from the Rental Income:

- 7.3.1 Breakfast meals will be costed (currently at R185per person) and shall be deducted from the Rental Income (all other meals to be paid for by the guest);
- 7.3.2 Commissions payable to any third party who procured the reservation for the Villa Rental business shall be deducted off the Rental Income;
- 7.3.3 The actual daily cleaning charge and room amenities will be costed and the cost shall be deducted off the Rental Income;
- 7.3.4 The actual linen laundry services and linen replacement cost.
- 7.3.5 The net monthly return payable to the Owner as stated in this clause 7 (the Owner's Share) shall be paid after all deductions are made in clauses 7.3 and as illustrated in clause 7.4.
- 7.3.6 The current data infrastructure will be upgraded to provide for higher speed internet and VOIP services. The actual monthly cost will be deducted off the rental income. Usage will be billed separately to guests.
- 7.3.7 Fees will be reviewed annually in consultation with villa owners, failing agreement as to the annual increase , such increase shall be limited to CPI.

7.4 This is an example of the calculation methodology:

Average Daily Rate	3 659
Monthly Income on 60% Occupancy	65 862
Minus Commission 18% On 60%	- 7 113
Minus Breakfast per person	- 6 660
Minus Cleaning per Villa	- 5 598
Minus DSTV	- 404
Minus Linen replacement & Laundry	- 1 800
Minus Upgrading Fund	- 400
Minus Data & VOIP basic cost	- 250
Gross Income before split	43 637
Monthly Owners Share (67%)	29 237

7.5 The Operating Company shall pay to the Owner the Owner's Share of rental as per clause 7.1 by the 20th day of the month following that in which it is earned, commencing from the first month after the month in which the Commencement Date occurs. The Owner's share is 67% of the income before the split between Owners and the Operating Company.

7.6 The Operating Company shall cause the Rental Business Income to be reviewed by the Auditors at the end of each financial year of the Hotel Business throughout the currency of this Agreement. The Owner shall, upon request, be entitled to receive a certificate from the auditors confirming the Owner's Share of the Rental Business Income for each such period.

8. **ADMINISTRATION AND MANAGEMENT FEE**

For its services in terms of this Agreement, the Operating Company shall be entitled to the management fee calculates as 33% of the net income each month to be paid simultaneously with the payment of the 67% share of income to Villa Owners.

9. **CONSENT TO LEASE OR RENT**

For the duration of this Agreement and/or any renewal thereof the Owner cannot lease, rent or otherwise deal with his Villa as a hotel room without the prior written consent of the Operating Company as per clause 6.2.1.

10. **VALUE ADDED TAX**

The Owner acknowledges that if the Owner is VAT registered, the Owner will provide a monthly VAT invoice for payment of the Owners share of income.

11. **DOMICILIUM / NOTICES**

11.1 For the purpose of this Agreement, the parties hereto choose *domicilium citandi et executandi* at their respective addresses recorded below.

The Owner:

Address: _____

Contact Number: _____

Contact e-mail Owner/Owner's representative: _____

The Operating Company:

L'Ermitage Hotel, Lambrechts Road, Franschhoek, Western Cape, 7690

Contact e-mail Operating Company: gerhardt@igrow.co.za

11.2 Either party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be an address other than a box number, and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.

11.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.

A notice sent by one party to another party shall be deemed to be received on the same day, if delivered by hand or if sent by e-mail with receipt received confirming completion of transmission.

11.4 Notwithstanding anything to the contrary herein contained a written notice or communication received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

12. **CESSION**

The Owner shall not cede, delegate or assign any of his rights or obligations in terms of this agreement without the prior written consent of the other Parties. The Operating Company will be entitled to cede, delegate or assign any of its rights or obligations in terms of this Agreement without the prior written consent of the Owner.

13. **TERMINATION**

13.1 This Agreement is terminated in the case of a sale in execution process.

13.2 In the event that the owner has obtained a loan for the purchase of the Property (whether from a Bank or any other Lender) ('The Lender') and the owner defaults on the repayment terms of such loan entitling the Lender to attach the Property, this Agreement, at the instance of the Lender, may be terminated on 14 (fourteen) days written notice by the Lender to the Operating Company. The provisions of this clause shall be a stipulatio alteri, in favour of the Lender, capable of acceptance at any time.

13.3 Should the Operating Company, in its sole discretion, determine that the Hotel business is no longer viable, it shall be entitled to terminate the Rental Pool on 90 (ninety) days written notice to all Owners.

13.4 Should the Owner wish to sell the Property, and the Purchaser of the Property does not wish the Property to continue to be in the Rental Pool, the owner shall be entitled to terminate this Agreement on 30 (thirty) days written notice to the Operating Company, such notice to be given within 30 (thirty) days of such sale.

14. **MISCELLANEOUS MATTERS**

14.1 The Parties hereto acknowledge that this Agreement contains the entire agreement between them and that no other conditions, stipulations, warranties and/or representation whatsoever have been made by either Parties or their agents other than as set forth in this Agreement.

14.2 No variation of this Agreement shall affect the terms hereof unless such variation shall be reduced to writing under the hands of the Parties hereto.

14.3 No extension of time or indulgence granted by either Party to the other Party shall be deemed in any way to affect, prejudice or derogate from the rights of either Party in any respect under their Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder or a novation of this Agreement.

15. FURNISHINGS

Notwithstanding the provisions of paragraphs 6 and 5 above, the Operator shall upgrade any soft furnishings, furniture, utensils and loose items, should the Operator in its sole and unfettered discretion be of the view that the villa does not comply with a standard sufficiently high enough to retain a minimum of a four-star rating.

For this purpose, an upgrading trust fund will be setup from which these expenses will be paid. A monthly contribution of R 400 per villa will be retained in this upgrading fund, which funds will be kept in a separate investment bearing account with the L'Ermitage Body Corporate Managing Agent. Upgrading expenses will first be communicated and agreed with owners, before any funds will be released.

Date: _____

Place: _____

Witness

Name

Date

THE OWNER
(or duly authorised representative who warrants his/her authority hereto)

Date: _____

Place: _____

Witness

Name

Date

LERMITAGE CHATEAU (PTY) LTD
(or duly authorised representative who warrants his/her authority hereto)