

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR LEON COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 02-CA -1296

STATE OF FLORIDA  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

WYNDHAM INTERNATIONAL, INC. and  
PATRIOT AMERICAN HOSPITALITY, INC.  
WILLIAM McCLEAVE and  
JEFFREY WAGONER,

Defendants.

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**SETTLEMENT AGREEMENT**

This Settlement Agreement is made as of this 28<sup>th</sup> day of July, 2006, by and among the undersigned, and is intended to settle and resolve with finality all present and future civil claims against all Released Parties relating to the subject matter of this litigation.

WHEREAS, the State of Florida, Office of the Attorney General, Department of Legal Affairs ("Attorney General"), commenced this action on May 30, 2002, asserting various claims for monetary and injunctive relief against Wyndham International, Inc. ("Wyndham") and other defendants arising from advertising and disclosure practices with respect to the charging of Automatic Hotel Charges, as set forth in Plaintiff's Third Amended Complaint;

WHEREAS, during all or part of the time period relevant to this action, certain hotel properties located in Florida owned, leased or managed by Wyndham (the "Wyndham Florida Properties," as listed in Paragraph I.D.14.) charged Automatic Hotel Charges to

guests of their hotels;

WHEREAS, over the course of more than four years of litigation, the defendants have denied each and every one of the Attorney General's allegations of unlawful conduct and wrongdoing and have asserted a number of defenses to the Attorney General's claims, which defenses have been contested by the Attorney General;

WHEREAS, on August 16, 2005, Wyndham was merged into an affiliate of Blackstone Real Estate Advisors ("BREA") and, in connection therewith, several Wyndham properties (including four of the Wyndham Florida Properties) became part of "LXR Luxury Resorts", a collection of resort properties owned by affiliates of BREA and managed by WHM LLC.

WHEREAS, the Wyndham hotel brand and Wyndham franchise agreements and management contracts for several hotels, including several Wyndham Florida Properties, have been sold and transferred to other companies;

WHEREAS, the parties, including the Attorney General and Wyndham's new affiliates, have agreed to settle this lawsuit on the terms set forth in this Settlement Agreement;

WHEREAS, this Settlement Agreement contemplates an advertising and disclosure protocol that seeks to ensure that LXR and the Participating Hotels, as well as the independent third parties that promote and sell hotel rooms on their behalf including independent third party internet booking sites, e.g., Orbitz, Travelocity, etc., provide Clear and Conspicuous Disclosure of LXR and the Participating Hotels' Automatic Hotel Charges to consumers at the time of reservation;

WHEREAS, LXR has agreed to implement this advertising and disclosure protocol

with respect to Automatic Hotel Charges for their hotels not only located in Florida, but for their hotels nationwide;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the undertakings to be made by LXR and the Participating Hotels, the dismissal and release of claims by the Attorney General and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the parties hereto, acting by and through their authorized agents, memorialize and agree as follows:

## **I. GENERAL PROVISIONS**

### **A. JURISDICTION**

The parties acknowledge that this Court has jurisdiction over the subject matter of this Action and over each of the parties to this Settlement Agreement. Jurisdiction is retained by the Court for the purpose of enabling any party to this Settlement Agreement to apply to the Court at any time for further orders and directions as may be necessary and appropriate to implement or enforce this Settlement Agreement, and the parties hereto agree to present any disputes under this Settlement Agreement to this Court.

### **B. APPLICABILITY**

This Settlement Agreement shall be binding upon all Released Parties (as defined in Section VI hereof) and their successors and assigns in the manner expressly provided for herein and shall inure to their benefit and to that of their respective officers, employees, attorneys, representatives, insurers, agents and of any of their former, present or future parents, subsidiaries, affiliates, divisions or other organizational units of any kind. The Settlement Agreement shall be binding on and inure to the benefit of the Attorney General, its administrators, representatives, employees, officers, agents, and legal representatives.

### **C. VOLUNTARY AGREEMENT**

The parties hereto acknowledge and agree that this Settlement Agreement is voluntarily entered into by all parties hereto as the result of arms length negotiations during which all parties were represented by counsel.

### **D. DEFINITIONS**

As used in this Settlement Agreement and for purposes of this Settlement Agreement only, the following terms shall have the following meanings:

1. "Advertising" (including "advertisement" and "advertise") means any message created and published by or at the direction of LXR or a Participating Hotel, as defined herein, directly to the general public or any segment thereof that promotes or is likely to promote directly or indirectly any good, merchandise, property, product, commodity, or service offered by LXR or a Participating Hotel directly to the general public or any segment thereof. The term "advertising" includes messages conveyed by the name under which LXR or a Participating Hotel owns or manages its hotels, and includes, but is not limited to, messages conveyed visually, orally, or in writing:

a. In a newspaper, magazine, periodical, leaflet, flyer, catalog, brochure, circular, on or in packaging; in facsimile material; in any direct mail literature, including but not limited to notices, invoices and forms; in a telephone book or any other written, graphic, pictorial, illustrated or printed material;

b. In any recording, radio, television, video, computer, internet, email, or text-message, public address system, by a telephonic transmission, telex, facsimile or telecopier transmission or during any other transmission;

c. On an inside or outside sign or display;

d. In any point-of-sale literature, price tag, or sign;

e. During any in-person appearance or otherwise during any personal contact with the general public or any segment thereof.

2. "Attorney General" means the Office of the Attorney General, Department of Legal Affairs, State of Florida.

3. "Automatic Hotel Charge" means and includes any automatic or hotel mandated charge that is imposed on hotel guests (including, but not limited to, a resort fee, resort service charge, energy fee or surcharge, safe fee, safe warranty charge, transportation fee, or any other automatic or hotel mandated nightly or per person fee or charge however denominated), other than the nightly room rate and any governmentally imposed fees or taxes. This Agreement shall not affect any optional charges affirmatively agreed to by the guests of the hotels including gratuities imposed with food service.

4. "Clear and Conspicuous Disclosure" or "Clearly and Conspicuously Disclose[d]" means that a statement, representation, claim or term being conveyed is readily noticeable and reasonably understandable by the persons to whom it is directed. The following, without limitation, shall be considered in determining whether a statement, representation, claim or term, is Clearly and Conspicuously disclosed:

a. whether it is of sufficient prominence in terms of size, placement, color, contrast, duration of appearance, sound, and speed, as to be readily noticeable and reasonably understandable by a person to whom it is directed acting reasonably under the circumstances;

b. whether it is presented to the person(s) to whom it is directed in a coherent and meaningful sequence with respect to other representations, statements,

claims, or terms conveyed;

c. whether it is contradictory to any representations, statements, claims, or terms it purports to clarify, modify, or explain, or otherwise contradictory or confusing in relation to any other representations, statement, claim, or term being conveyed;

d. whether abbreviations are being used and if so whether they are commonly understood by the public or approved by federal or state law; and

e. whether, in print or electronic media or orally represented, it is in close proximity to the representations, statements, claims, or terms it clarifies, modifies, explains, or to which it otherwise relates;

f. whether it is delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

5. "Execution Date" shall mean and refer to the date on which this Settlement Agreement is fully executed by the parties.

6. "Final Approval" means the date on which all of the following shall have occurred:

a. The Settlement Agreement is approved by the Court; and

b. Entry is made of an order of dismissal of claims or a final judgment as provided herein.

7. "Group Contract" shall mean and include an agreement negotiated and entered into by a Participating Hotel and any group, association, corporation, organization, or any other entity (hereinafter collectively referred to as a "Group") that sets forth the negotiated room rates, hotel charges (which may include but are not necessarily limited to, Automatic Hotel Charges), governmentally imposed fees or taxes, and other terms and conditions

governing the stays of guests staying at a Participating Hotel pursuant to such Group Contract.

8. "LXR" shall mean LXR Properties, LXR Luxury Resorts, WHM LLC and BREA, and all of their subsidiaries, affiliated or related entities, or divisions, and their present and former directors, officers, partners, members, owners, joint venturers, employees, agents, insurers, investors, attorneys, administrators, executors, conservators, successors-in-interest and assigns.

9. "LXR Properties" shall mean and include the hotel properties nationwide that are owned or managed by WHM LLC or other affiliates of BREA, or that are acquired or managed by such entities in the future. The LXR Properties located in Florida include: The Reach Resort in Key West, Florida; Buena Vista Palace in Orlando, Florida; Casa Marina Resort & Beach Club in Key West, Florida; Edgewater Beach Hotel & Club in Naples, Florida; Boca Raton Resort & Club in Boca Raton, Florida; Naples Grande Resort & Club in Naples, Florida; Bahia Mar Beach Resort in Fort Lauderdale, Florida; Hyatt Regency Pier Sixty Six in Fort Lauderdale, Florida; Fort Lauderdale Grande Hotel & Yacht Club in Fort Lauderdale, Florida; Miami Beach Resort & Spa in Miami Beach, Florida; South Seas Island Resort on Captiva Island, Florida; Hilton Clearwater Beach Resort in Clearwater Beach, Florida; Hilton Cocoa Beach in Cocoa Beach, Florida; Sheraton Beach Resort Key Largo in Key Largo, Florida; Holiday Inn Fort Lauderdale Beach in Fort Lauderdale, Florida; The Sanibel Collection in Sanibel, Florida; Sanibel Inn in Sanibel, Florida; Seaside Inn in Sanibel, Florida; Song of the Sea in Sanibel, Florida; Sunset Beach in Sanibel, Florida; and Sundial Resort in Sanibel, Florida.

10. "Participating Hotels" shall mean the LXR Properties and the Wyndham Brand Hotels.

11. "Representing" or "represent" shall mean stating, orally or in writing, directly or indirectly, in substance or effect, and whether by affirmative statements, implications, or omissions.

12. "Transient Guest" shall mean a guest whose stay at a Participating Hotel is not governed by or reserved pursuant to the terms of a Group Contract.

13. "Wyndham Brand Hotels" refers collectively to those Wyndham franchised or Wyndham brand hotels listed in Appendix A hereto that impose or imposed Automatic Hotel Charges and elect to participate in this Settlement Agreement.

14. "Wyndham Florida Hotels" refers collectively to those Wyndham franchised or Wyndham brand hotels located in Florida that, during the time period relevant to this litigation, charged Automatic Hotel Charges to their guests. The Wyndham Florida Hotels include the hotel properties known as (or formerly known as): the Wyndham Ft. Lauderdale Resort & Spa, Wyndham Miami Beach Resort, Wyndham Palace Resort & Spa, Wyndham Orlando Resort, Wyndham Casa Marina Resort, Wyndham Reach Resort, Santa Maria Motel, Wyndham Grand Bay - Coconut Grove, Wyndham Harbour Island, Wyndham Westshore - Tampa, Wyndham Miami Airport, Wyndham Fort Lauderdale Airport, Summerfield Suites by Wyndham -- Miami Airport, Summerfield Suites by Wyndham -- Orlando Lake Buena Vista, Summerfield Suites by Wyndham -- Orlando International Drive, and Wyndham Biscayne Bay.

## **II. AGREEMENT OF COMPLIANCE**

LXR and the Participating Hotels shall adopt and implement, within 90 days of the Execution Date, policies and procedures governing the advertising and disclosure of Automatic Hotel Charges, as set forth in part A of this Section (and as to be enforced as to LXR and the Participating Hotels located in Florida, pursuant to part B of this Section), which shall ensure



that LXR and the Participating Hotels Clearly and Conspicuously Disclose the existence, nature and amount of any Automatic Hotel Charge whenever actual room rates are quoted by LXR and the Participating Hotels through channels controlled by LXR or the Participating Hotels, and to ensure that independent third parties, including vending sites, travel consolidators, wholesalers, brokers or booking services ("Independent Third Parties") provide Clear and Conspicuous Disclosure of Automatic Hotel Charges.

**A. ADVERTISING AND DISCLOSURE PROTOCOL**

1. Advertising and Disclosures. LXR and the Participating Hotels shall make certain that the existence, nature and amount of any Automatic Hotel Charges are Clearly and Conspicuously disclosed whenever the actual amount of the room rate to be charged is quoted by LXR or the Participating Hotels, through channels controlled by LXR or the Participating Hotels, including through proprietary Advertisements and internet websites, and central, property specific, and proprietary reservationists (except as provided for in paragraph 4 of this Section). To illustrate:

a. With respect to proprietary advertising conveyed visually or in writing, in all such advertising that includes a quote for a the actual amount of the room rate to be charged:

(1) the name of the Automatic Hotel Charge, the amount of the charge and the frequency of the charge if the charge is to be made more than once during the guest's stay, shall be disclosed directly beneath or next to the quoted room rate, and above or before the governmentally imposed taxes or fees, in a manner that is Clear and Conspicuous.

(2) the disclosures required to be disclosed in the manner set forth in subsection (1) shall be set forth in a list of specific charges that will be made by the hotel for the guests' stay. This list may include only the identification of the room rate, Automatic Hotel Charges,

governmentally imposed taxes and fees, the amount of these charges, and a total of all charges.

(3) The disclosures required to be made under subsection (1) and (2) shall not:

(a) be included with other text other than that specified in subsection (1) and (2);

(b) be made in the context of a paragraph or other narrative form;

(c) include abbreviations;

(d) be placed or referenced under titles or headings that are misleading or deceptive.

(4) the goods or services provided by the Participating Hotel in exchange for payment of the Automatic Hotel Charge shall be Clearly and Conspicuously disclosed directly beneath and on the same page of as the Automatic Hotel Charge or the total of charges. Provided however, that if the advertising is conveyed on a proprietary web-site, e-mail, or other proprietary or electronic medium, said disclosure of goods and services may be made either directly on the page or by a hypertext link that is underlined, which link describes the nature of the charge.

b. With respect to advertising conveyed orally through central and property specific reservationists:

(1) all such advertising shall include a script that requires that: the reservationist Clearly and Conspicuously disclose the name and the amount of all Automatic Hotel Charges, directly after the reservationist initially states the room rate, prior to the confirmation of any reservation, and during the confirmation of the reservation; and that the Reservationist shall at least generally disclose the goods and services provided by the Participating Hotel in exchange for payment of the Automatic Hotel Charge prior to the confirmation of any reservation.

(2) the reservationist shall be required to follow the script described to subsection (1).

(3) the reservationist shall, prior to confirmation of the reservation, affirmatively confirm

that the Automatic Hotel Charge and the amount of the charge was disclosed prior to the reservation being made.

c. With respect to Group Contracts and guests whose stays are governed by or under the terms of a Group Contract, "Group Guest(s)," a Participating Hotel may not charge any Group Guest an Automatic Hotel Charge unless:

(1) Such Group Contract provides for and permits the Participating Hotel to charge Group Guests the specific Automatic Hotel Charge charged during the Period; and

(2) The amount of the Automatic Hotel Charge is disclosed in the Group Contract; and

(3) The existence and amount of the Automatic Hotel Charge is Clearly and Conspicuously disclosed to Group Guests reserving rooms through LXR or a Participating Hotel pursuant to or under the terms of the Group Contract, in the manner described in Section II. A. herein.

(4) The goods and services provided by the Participating Hotel in exchange for payment of the Automatic Hotel Charge is disclosed to the Group Guest in the manner described in Section II. A. 1. a. (4) herein.

2. In addition to providing Clear and Conspicuous Disclosure of Automatic Hotel Charges as set forth in paragraph 1 hereof (for those Transient Guests who book through channels controlled by the Participating Hotels), Participating Hotels shall also provide confirmation, by mail, email or otherwise, to Transient Guests of their reservation, which provides Clear and Conspicuous Disclosure of the hotel room rate and Automatic Hotel Charges, if any. The Parties agree that such Confirmation shall not be deemed to cure a failure to provide disclosures as required in this Agreement in any advertising or in the process of making or

receiving reservations.

3. The Participating Hotels agree not to represent or advertise any Automatic Hotel Charge as a "tax," "surcharge," or any other term that may reasonably be construed as a required tax or other governmentally imposed fee, unless the charge is for a governmentally imposed tax or fee that the Participating Hotel is required by law to collect.

4. With respect to Advertisements for multiple hotels and web pages for single hotels that reference only "starting room rates" (e.g., "rooms from \$\_\_\_\_") the existence of Automatic Hotel Charges, if any, shall be Clearly and Conspicuously Disclosed (e.g., "exclusive of resort fee" or "plus resort fee"). With respect to print advertisements that quote a starting room rate for a specific hotel, the existence and amount of the applicable automatic hotel charges, if any, shall be Clearly and Conspicuously Disclosed.

5. Independent Third Parties' Disclosures. The Participating Hotels shall ensure that Independent Third Parties, which Advertise hotel rooms on behalf of Participating Hotels, shall Clearly and Conspicuously Disclose in the manner set forth herein in Paragraph II. A.1. a. (1) and (3) herein, any Automatic Hotel Charge and the amount of such charge to be imposed by a Participating Hotel whenever room rates are quoted for a Participating Hotel after a potential hotel guest elects to obtain information about the specific Participating Hotel from the Independent Third Party. In this connection, the Participating Hotels shall include an obligation to make Clear and Conspicuous Disclosures of Automatic Hotel Charges in their contracts with Independent Third Parties. In the event that an Independent Third Party fails to comply with this paragraph 5 of this Section, within 30-days after notice, such Participating Hotel shall, unless prohibited by order of a court, take all necessary steps to terminate its relationship with such Independent Third Party. LXR or the Participating Hotels shall not seek nor cooperate

with another to obtain a court order prohibiting the termination of its relationship with such Independent Third Party.

6. LXR and each Participating Hotel shall implement the provisions of this Section within 90 days of the Execution Date (or, in the case of a Wyndham Brand Hotel, within 90 days of the date it becomes a Participating Hotel).

## **B. ENFORCEMENT**

1. Within five (5) days of the Execution Date, LXR shall appoint a liaison who will, among other things, communicate directly with the Attorney General and be responsible for investigating and working in good faith to resolve any issues of compliance with section II.A. of this Settlement Agreement raised by the Attorney General (the "Liaison"). The Attorney General agrees that it shall contact the Liaison and work with the Liaison in good faith to resolve any issues of compliance arising from this Settlement Agreement and shall do so prior to bringing any action pursuant to section II. B. 4 herein.

2. Within 180 days of the Execution Date, LXR shall, at its own cost, institute an effective third-party verification program in order to monitor the Participating Hotels' compliance with section II.A. of this Settlement Agreement (the "Verification Program"). The Verification Program shall be undertaken by an independent company, approved by the Attorney General, and shall, among other things, review compliance (including review and resolution of consumer complaints, procedures, and processes instituted for this agreement). This review shall include the monitoring of hotel websites, advertisements, third party internet sites, and making reservations through the central reservation office and through the individual hotels to assure that the disclosures made are Clear and Conspicuous. The Verification Program will include reports and recommendations to improve compliance with this Agreement. These reports and

recommendations shall be sent to the Attorney General and to LXR on a quarterly basis for two years. LXR shall comply with these recommendations, if possible. If LXR cannot comply with these recommendations, it shall inform the Attorney General of the reasons why it cannot comply. This provision shall not be construed to limit the Attorney General right to enforce the terms of this Settlement Agreement.

3. The Participating Hotels shall retain documents and other information reasonably sufficient to assess the Participating Hotels' compliance with Section II.A. of this Settlement Agreement, and shall provide reasonable access to such documents and information to the Attorney General upon request, or provide copies of such materials to the Attorney General at the Attorney General's request. The Participating Hotels' failure to retain any particular document shall not constitute a per se violation of this Settlement Agreement.

4. In accordance with Section 501.207(6), Florida Statutes, violation of this Settlement Agreement by the Participating Hotels may subject them to civil penalties and sanctions provided by law and payment of attorneys' fees and costs incurred in enforcing the provisions of this Settlement Agreement.

### **III. OPTION TO JOIN SETTLEMENT**

Each of the Wyndham Brand Hotels has the right, but not the obligation, to become party to this Settlement Agreement on the terms set forth herein. The Wyndham Brand Hotels shall be given 60 days from execution of this Settlement Agreement by the State and LXR in which to inform the State and LXR in writing of their desire to join the Settlement Agreement. LXR will present the executed Settlement Agreement to the Wyndham Brand Hotels and will inform the Wyndham Brand Hotels of their right to become party to this Settlement Agreement.

#### **IV. ATTORNEYS' FEES AND COSTS**

Within fifteen (15) business days of the Execution Date, the Released Parties shall pay to the ATTORNEY GENERAL the sum of \$1,800,000.00 as reimbursement for its attorneys' fees and costs of investigation. This sum shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes. Payment shall be made by check payable to the Department of Legal Affairs' Revolving Trust Fund, and shall be delivered to Tina Furlow, Senior Assistant Attorney General, Department of Legal Affairs, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050.

#### **V. CONSUMER FUND/CHARITABLE CONTRIBUTION**

Within fifteen (15) business days of Final Approval, the Released Parties shall pay into an escrow account the sum of \$560,000.00 for the benefit of consumers who paid Automatic Hotel Charges during the time period relevant to this action. This fund shall be administered and distributed by an independent third party approved by the Office of Attorney General, at the cost of the Released Parties. The fund shall be distributed to applicable consumers identified by the independent third party within six months of funding of the escrow account. To the extent that any monies remain after this distribution, such funds shall be wired directly to the Florida Hurricane Relief Fund.

#### **VI. DISMISSAL AND RELEASE**

1. Upon Final Approval and payment of funds due hereunder (or, in the case of a Wyndham Brand Hotel, the later of Final Approval and the date it becomes a Participating Hotel), the Office of the Attorney General, shall release and forever discharge the Wyndham International Inc., Wyndham Florida Hotels, Wyndham Brand Hotels, the Wyndham Participating Hotels, Patriot American Hospitality Inc., LXR, William McCleave, Jeffrey

Wagoner, Theodore Teng, Laurie Holmes, the owners and operators of Participating Hotels, and all of their present and former parents, subsidiaries, divisions, affiliates, joint venturers, officers, directors, employees, members, representatives, insurers, agents, attorneys and distributors (and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (the "Released Parties"), from any and all manner of civil claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees ("Claims"), known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable or statutory as to any claims that were or could have been brought in this Action relating to any Automatic Hotel Charges imposed by the Released Parties (hereinafter, collectively, the "Released Claims").

2. The Attorney General hereby covenants and agrees that it shall not, hereafter, sue or seek to establish civil liability against any Released Party based, in whole or in part, upon any of the Released Claims.

3. Within 30 days after the Execution Date, the Attorney General shall dismiss, with prejudice as to the Released Parties, all claims in the Action.

## **VI. MISCELLANEOUS**

### **A. HEADINGS**

The headings of the paragraphs and sections of this Settlement Agreement are not binding and are reference only and do not limit, expand, or otherwise affect the contents of this Settlement Agreement.

### **B. NO ADMISSION OF LIABILITY OR WAIVER OF DEFENSES**

This Settlement Agreement and any proceedings taken hereunder are not intended and shall not in any event be construed as, or deemed to be, an admission or concession or



evidence of any liability or any wrongdoing whatsoever on the part of any party or any Released Party. The parties hereto and Released Parties specifically disclaim and deny and liability or wrongdoing whatsoever with respect to the allegations and claims asserted against them in this action and enter into this Settlement Agreement solely to avoid the further expense, inconvenience, burden and uncertainty of litigation.

#### **C. NON-ADMISSIBILITY**

These settlement negotiations have been undertaken by the parties in good faith and for settlement purposes only, and neither this Settlement Agreement nor any evidence of negotiations hereunder, shall be offered or received in evidence in this Action, or any other action or proceeding, for any purpose other than in an action or proceeding arising under this Settlement Agreement.

#### **D. TERM**

This Agreement shall remain in effect until modified by an order of the Court based on a subsequent amendment to the Florida Statutes or agreement of the Parties. To the extent that the provisions of this Agreement conflict with any Florida or federal law that is later enacted or amended, such law and not this Agreement shall apply where such conflict exists. For the purposes of this Agreement, a conflict exists if conduct prohibited by this Agreement is required or expressly permitted by such Florida or federal law, or if conduct required by this Agreement is prohibited by such Florida or federal law.

#### **E. AMENDMENT**

This Settlement Agreement contains an entire, complete and integrated statement of each and every term and provision agreed to by and among the parties; it is not subject to any condition not provided for herein. This Settlement Agreement may be amended only by a

writing executed by all signatories hereto and any provision hereof may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

#### **F. COOPERATION**

The parties to this Settlement Agreement and their attorneys agree to use their best efforts and to cooperate with each other to cause this Settlement Agreement to become effective, to obtain all necessary approvals, consents, and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection therewith. The parties hereto may agree, without further order of the Court, to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

#### **G. GOVERNING LAW AND VENUE**

This Settlement Agreement shall be governed by, construed, and enforced exclusively in accordance with and subject to the laws of the State of Florida, including, but not limited to, its choice of law principles. Venue for all disputes arising from this Agreement shall be in Leon County, Florida.

#### **H. CONSTRUCTION**

None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

#### **I. SEVERABILITY**

In the event that any non-material provision of this Settlement Agreement is found to be

invalid, the remainder of this Settlement Agreement shall be fully enforceable.

**J. INTENDED BENEFICIARIES**

This Action was brought by the Office of the Attorney General to recover certain monies and to curtail certain business practices, on behalf of the people of Florida. No portion of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not party hereto or a Released Party.

**K. COUNTERPARTS**

This Settlement Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same Settlement Agreement. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of this 28<sup>th</sup> day of July, 2006.

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William J. Stein  
Managing Director  
Wind International, Inc. (f/k/a Wyndham International, Inc.)  
501 East Camino Real  
Boca Raton, FL 33432

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Piero Bussani  
Secretary/General Counsel  
WHM LLC  
595 S. Federal Highway  
Suite 600  
Boca Raton, FL 33432

OFFICE OF THE ATTORNEY GENERAL

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Eric B. Tilton  
Senior Assistant Attorney General  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050

Date: \_\_\_\_\_

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Tina Furlow  
Senior Assistant Attorney General  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050

Date: \_\_\_\_\_

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Paul Huck  
Deputy Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 487-1963

Accepted this 28<sup>th</sup> day of July 2006.