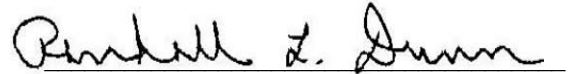


Below is an Order of the Court.



RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

Bay Club Partners-472, LLC,

Debtor.

Case No. 14-30394-rld11

**AMENDED ORDER GRANTING  
DEBTOR'S PRECAUTIONARY  
MOTION FOR AUTHORITY TO  
CONTINUE OPERATING UNDER  
MANAGEMENT AGREEMENT**

THIS MATTER having come before the Court for a hearing on January 31, 2014, on Debtor's Precautionary Motion for Authority to Continue Operating Under Management Agreement (the "Motion") [Dkt. #10], the Court having entered an initial order granting the Motion [Dkt. #27], Debtor and the Office of the United States Trustee (the "UST") having resolved all issues raised by the UST in connection with the initial order by entering into an amended management agreement, and the Court being duly advised in the premises and finding good cause; now, therefore,

IT IS HEREBY ORDERED that Debtor has authority to continue performing under the Management Agreement with Morrison, Ekre, & Bart Management Services, Inc., as set forth in **Exhibit 1** attached hereto (the "Agreement").

###

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

TONKON TORP LLP

By /s/ Ava L. Schoen

Albert N. Kennedy, OSB No. 821429  
Ava L. Schoen, OSB No. 044072  
888 S.W. Fifth Avenue, Suite 1600  
Portland, OR 97204-2099  
Telephone: 503-221-1440  
Facsimile: 503-274-8779  
E-mail: al.kennedy@tonkon.com  
ava.schoen@tonkon.com  
Attorneys for Debtor

cc: List of Interested Parties

# **EXHIBIT 1**

## **Management Agreement**

## MANAGEMENT AGREEMENT

This Agreement made and entered into this day March 18, 2014, by and between **Morrison, Ekre, & Bart Management Services, Inc. (Company)**, and **Bay Club Partners – 472, LLC ("Owner")**. The parties agree as follows:

1. Owner hereby engages Management Company exclusively to rent, lease, operate, and manage the apartment property located at **2121 West Main Street, Mesa, Arizona 85024**, known as **Midtown on Main** upon the terms herein after set forth.
2. The term of this Agreement shall be for a period of two years beginning on March 18, 2014, and ending on March 17, 2016, and shall continue for annual periods thereafter upon Company notifying Owner in writing prior to renewal. Either party may terminate this Agreement at any time with a thirty (30) day written notice. Owner understands that if Owner terminates this Agreement without a thirty (30) day written notice to the Company, Company is due a one month management fee, which will be no less than the average monthly management fee the Company received during the term of management with Owner. Company may terminate this Agreement at any time with a thirty (30) day notice to Owner, in which event Company shall waive all rights of a management fee for the remainder of the term.
3. Company accepts the engagement and agrees:
  - a. To use due diligence and reasonable efforts in the management of the Property for a period and upon the terms herein provided, and shall furnish the services of its organization for the renting, leasing, operating, and managing of the Property;
  - b. To render monthly statements of receipts, disbursements and budget variance, which budget will be submitted to Owner for review and approved no later than November 15<sup>th</sup> of each year. Monthly reports to include income statement, balance sheet, general ledger, check register, and budget variance. In the event the disbursements are in excess of the receipts, Owner shall pay such excess promptly upon demand by Company;
  - c. To deposit all receipts including refundable security deposits and non-refundable fees collected for Owner in to Company's Operating Account which will be a segregated debtor-in-possession Trust Account controlled and overseen by Company.
  - d. All security deposits and non-refundable fees shall be deposited in Company's Operating Account in the regular course of business. Owner agrees to always hold sufficient funds equal to security deposit liability of Property. Company may issue security deposit refunds from Company's

Operating Account and account for such in the monthly financial statements to the Owner. Company agrees to inform residents that security deposits are held by the Owner, as required by Arizona statute.

- e. Within thirty (30) days of termination, return all available cash to Owner, less outstanding checks, accounts payable obligations and amount due to Company under the terms of this Agreement. In the event and to the extent that there are not sufficient operating funds in Owner's account, Owner will immediately fund any deficit.
4. Owner gives to Company the following authority and powers to act for Owner either in the name of Owner or Company and Owner shall be liable for the costs and expenses incurred in connection therewith:
- a. To sign, renew, cancel, or reinstate rental agreements or leases for the Property;
  - b. To collect rents due or to become due;
  - c. To institute legal actions to enforce the collection of rent and to dispossess former tenants or other persons unlawfully holding the Property, and when expedient, to settle, compromise, and release such actions.
  - d. To enforce compliance by tenants with all material terms of rental agreements.
  - e. To purchase all necessary supplies; make provision for the supply of electricity, water, gas, and telephone; and make contracts for refuse disposal, pest extermination, janitorial services, landscaping services, laundry, and cable television facilities, and for any other utilities or services which Company shall reasonably consider advisable for the Property, except that the term of any such contract shall not extend beyond twelve (12) months unless Owner consents to a longer term. Owner shall assume the obligations of any such contract upon the termination or expiration of the Agreement.
  - f. To make or cause to be made ordinary repairs and alterations, provided that, except for recurring operating expenses or emergency repairs necessary to protect the Property from damage or to maintain services to tenants as called for in their leases, expenditures for any one item of repair or alteration shall not exceed the sum of \$2,000.00 without the approval of the Owner.
  - g. To hire, discharge, and supervise all labor and employees required for the operation and maintenance of the Property and to pay said labor and employees through the Company's payroll, it being understood that all costs and expenses incurred in connection with the employment of said persons, including without limitation, salary, wages, medical, workmen's compensation,

disability, or life insurance, placement fees, retirement, pension or profit sharing plan contributions, Federal, State or Local taxes, Social Security and other benefits, shall be the responsibility of Owner. Company shall not be responsible for the acts, defaults or negligence of said employees if reasonable care has been exercised in their employment and retention. Company shall be paid an administration fee of 2% of gross payroll to cover cost of Employers Liability Insurance and other payroll related administrative costs.

- h. To advertise the availability of the property for rent.
  - i. Company shall remit real property taxes and personal property taxes from tax reserve funds on behalf of the Owner. If tax reserve funds are insufficient to cover payment, Company will advise Owner at least (5) working days prior to due date so that Owner may provide funds in a timely manner.
5. Owner shall reimburse Company for all direct and indirect costs and expenses actually incurred by Company in connection with this Agreement and shall pay to Company a management fee a sum equal to **Three percent (2.75%) of the monthly gross receipts of the Property, or a minimum of \$3,500**. Management fee shall be calculated and paid on a monthly basis.
  6. Should Owner have an independent audit take place that requires additional accounting staff time, Company shall be reimbursed for additional hours at \$60 per hour.
  7. Owner shall at all times maintain sufficient funds in the Property Operating Account to pay for all Operating and Non-operating Expenses, but in no case shall the Account balance be less than \$5,000. If the Account balance drops below this amount or if Company projects that it will drop below this amount, Owner agrees to provide the necessary funds to bring the account up to the required level in a timely manner, but in no case more than 10 calendar days from the date the notice is received by the Owner.
  8. Any amount due from the Owner to Company for more than thirty (30) days shall bear interest at the rate of eighteen (18%) percent per annum from the original date due. The interest rate provided for in the prior sentence shall not apply during the pendency of Owner's chapter 11 bankruptcy case. No costs of Company's home office, nor any divisional offices will be charged to the Property, except for actual cost of postage, phone, facsimile, and copier costs applicable to the Property subject to the limitations in Rule 2016-1 of the Local Rules of the United States Bankruptcy Court for the District of Oregon.
  9. Subject to notice and order of the Bankruptcy Court for the District of Oregon, Company shall be entitled to a construction supervision fee of **four (4%) percent** of the costs of major capital projects over \$5,000.00. In addition, Owner agrees to pay

for all costs related to the construction supervisor's time that is spent directly related to major capital projects at the Property. Both Company and Owner agree to set a maximum time limit on the number of hours that such construction supervisors will be entitled to bill to Owner on a weekly/monthly basis and such maximum time limit shall only be modified with Owner's prior consent. Normal day to day repairs, such as painting, carpet, and appliance replacement are not subject to this fee.

10. Owner shall hold Company harmless from any claims or causes of action from Company's reasonable, professional management of the Property and shall indemnify Company from any losses incurred by Company in connection therewith, except for the willful misconduct or gross negligence of Company and/or its personnel; it being understood that Company shall not be responsible for any reasonable errors of judgment.

11. Manager hereby agrees to indemnify and hold Owner, its partner(s) and the shareholders, directors, officers, employees, and agents free of and harmless from all claims, demands, liabilities, suits, costs and expenses (including reasonable attorney fees) arising out of any gross negligence or willful misconduct of Manager, or any person on behalf of Manager, relating to performance by Manager under this Agreement.

Except for Manager's gross negligence or willful misconduct, Owner hereby agrees to indemnify and hold Manager and its shareholders, directors, officers, employees, and agents free of and harmless from all claims, demands, liabilities, suits, costs, and expenses (including reasonable attorneys' fees) arising: (i) out of management and operation of the Property (ii) from injury suffered by any employee of Manager or other person whomsoever at the Property; and (iii) from Manager's performance under this Agreement generally. It is agreed that the costs and attorney fees incurred in defending any claims alleging violations of Landlord Tenant, Fair Housing, employment, Fair Credit Reporting, Fair Debt Collections, environmental protection or other similar laws will be paid by Owner as incurred, but will be reimbursed by Manager if, and only if, it is determined by a final judgment that the violation of such law(s) occurred and was the result of Manager's gross negligence or willful misconduct.

12. Owner shall obtain and maintain in full force and effect liability insurance of at least two million dollars (\$2,000,000) insuring Owner and Company as co-insureds. Owner shall provide Company with a certificate of insurance and the policy or policies for said insurance, and unless there is objection from Company within 5 days, such insurance shall be deemed to satisfy this provision. The policy or policies shall provide for notice of lapse or cancellation to Company.

13. Time is of the essence of this Agreement and this Agreement shall be for the benefit of and shall be binding upon the parties hereto and their heirs, administrators, executors, representatives, successors and assigns. It shall not be modified in any respect except by instrument signed by all parties hereto, and shall be construed in

accordance with the laws of the State of Arizona. The prevailing party shall be entitled to reasonable attorney fees and costs in any dispute between Owner and Company.

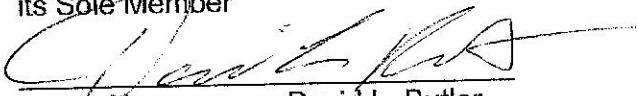
In witness whereof, the parties hereto have affixed their respective signatures effective as of the 18<sup>th</sup> of March 2014.

**Owner**

Bay Club Partners – 472, LLC.  
An Oregon limited liability company

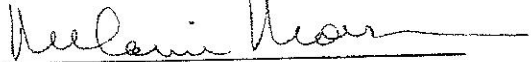
By: Bay Club Management, LLC  
An Arizona limited liability company,  
its Manager

By: Residential Equity Partners, LLC  
An Oregon limited liability company,  
its Sole Member

By:   
Name: David L. Butler  
Title: Manager

**Company**

Morrison, Ekre & Bart  
Management Services, Inc.

By:   
Designated Broker

Date 3/25/14

Date 3/25/14

Owner Address:  
3827 SW Hall Blvd.  
Beaverton, OR 97005  
Attn: David Butler  
e-mail: dbutler@residencequitypartners.com

Company Address:

Morrison, Ekre & Bart  
Management Services, Inc.  
1039 N. 6<sup>th</sup> Ave.  
Tucson, AZ 85705

With copy to:  
Alterman Law Offices 1000 SW Broadway, Suite 910 Portland, OR 97205 Attn: Dean N.  
Alterman, Esq.  
Facsimile No.: (503) 778-2200

Tax ID #20-3641917

037108/00001/5368958v1



**LIST OF INTERESTED PARTIES**

***In re Bay Club Partners-472, LLC***  
**U.S. Bankruptcy Court Case No. 14-30394-rld11**

**ECF PARTICIPANTS**

- CAROLYN J JOHNSEN cjohnsen@jsslw.com, lbourland@jsslw.com
- ALBERT N KENNEDY al.kennedy@tonkon.com, leslie.hurd@tonkon.com;andy.haro@tonkon.com
- AVA L SCHOEN ava.schoen@tonkon.com, larissa.stec@tonkon.com
- US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov
- LAURA J WALKER lwalker@cablehouston.com, mingram@cablehouston.com

**NON-ECF PARTICIPANTS**

**NON-ECF PARTICIPANTS**

**SECURED CREDITOR**

LEGG Mason Real Estate CDO I,  
Ltd.

10880 Wilshire Blvd. #1750  
Los Angeles CA 90024

LEGG Mason Real Estate CDO I,  
Ltd.

c/o Latitude Management Real  
Estate Investors, Inc.  
Attn: Michael Schlesinger  
350 S. Beverly Dr. #300  
Beverly Hills CA 90212

**TOP 20 UNSECURED CREDITORS**

SMD Remodeling LLC  
3102 57th Ave.  
Phoenix, AZ 85031

HD Supply Facilities  
Maintenance, L.T.D.  
POB 509058  
San Diego, CA 92150-9058

IDT Landscaping LLC  
1876 3rd St  
Tempe, AZ 85281

J.R. McDade Co. Inc.  
1102 N. 21st Ave.  
Phoenix, AZ 85009

AZ Partsmaster  
POB 23169  
Phoenix, AZ 85063

AZ Brite Carpet Care  
1602 N Gilbert Rd  
Mesa, AZ 85203

Wildcat Fire Protection  
2929 Clarendon Ave.  
Phoenix, AZ 85017

Apartments Resurfacing  
3039 W. Peoria Ave. C102 #115  
Phoenix, AZ 85029

P & J's Painting Inc  
273 S. Link Creek Rd.  
Prescott, AZ 86303

Level One LLC  
POB 671476  
Dallas, TX 75267-1476

Rainforest Plumbing & Air  
127 S. Weber Dr.  
Chandler, AZ 85226

Valley Protective Services Inc  
POB 11568  
Chandler, AZ 85248

Sherwin Williams Co.  
2760 E. Main St. #105  
Mesa, AZ 85213-9275

Apartment Interior Supply  
POB 41570  
Mesa, AZ 85274

Maria Gonzales  
dba Allshine Cleaning  
POB 41253  
Mesa, AZ 85274

Burns Pest Elimination Inc  
2620 W. Grovers Ave.  
Phoenix, AZ 85053

Leslies Poolmart, Inc.  
POB 501162  
St. Louis, MO 63150

Maintenance Supply Headquarters  
POB 301451  
Dallas TX 75303

Koglmeier Law Group, PLC  
715 Gilbert Rd #2  
Mesa AZ 85203

AAA Landlord Services, Inc.  
POB 5960  
Mesa AZ 85211

**OTHER**

Morrison, Ekre & Bart  
Management Services, Inc.  
1039 N. 6th Ave  
Tucson, AZ 85705