

**ALBERTA SECURITIES COMMISSION**

IN THE MATTER OF the Securities Act, S.A. 1981,  
Chapter S-6.1, as amended

- and -

IN THE MATTER OF Go Vacations Inc. (the "Respondent")

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**REASONS FOR THE DECISION OF  
THE ALBERTA SECURITIES COMMISSION BOARD**

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**BEFORE**

Ronald J. Will	Chairman of the Alberta Securities Commission Board (the "Board")
Edward B. Allen and Frans F. Slatter	Members of the Board

**APPEARANCES**

R.J. Poole	for the Alberta Securities Commission Agency (the "Agency")
B.W. Crotty	for the Respondent Go Vacations Inc.

**HEARD** IN EDMONTON, DECEMBER 20, 1989

**THE HEARING**

This is an application for a declaration as to whether a certain "Motorhome Management Agreement" used at one time by the Respondent is a "security" within the meaning of the Securities Act. The matter is apparently one of first impression, and the Hearing proceeded on an Agreed Statement of Facts as both the Agency and the Respondent are anxious to know whether or not the Motorhome Management Agreement falls under the Act.

Declaratory orders are not often granted by the Board, and indeed this may be the first such order. The shortcomings of such orders in the absence of a real dispute between the parties are well known, and are present in this case because of the inadequacy of the record before the Board and because the Respondent took "no position" as to whether the Agreement is a security. The Board has nevertheless issued these reasons, as the parties were advised at the conclusion of the hearing that we would do so. However, in the future requests for declaratory type orders will be carefully reviewed, and such orders will only be issued in cases where good reasons exist for doing so, a full and complete record is presented, and the matter is fully argued.

#### **THE BACKGROUND FACTS**

It is agreed that the Respondent has never been a reporting issuer in Alberta. In 1988 and 1989, it made use of the Motorhome Management Agreement ("the Agreement") which is annexed to these Reasons, and seven or eight Alberta residents signed this form of agreement with the Respondent. At the time of the use of the Agreement, neither the Respondent nor its employees were registered under Section 54 of the Act, and a receipt for a prospectus was not issued with respect to the Agreement under Section 81 of the Act.

The Board was advised that the Respondent no longer uses the Agreement in the manner complained of. Receipts have now been issued to the Respondent for one or more prospectuses.

The Agreed Statement of Facts filed in this hearing included copies of advertisements placed by the Respondent

in support of their prospectus offerings. While these advertisements do not relate to the Motorhome Management Agreement, and relate to investments offered by prospectus, they do give an indication of the nature of the Respondent's business. An advertisement placed in the Edmonton Journal of June 29, 1989 said in part:

#### YACHT TAX SHELTER

Other yacht charter companies only give you a small slice of the charter income. With GO VACATIONS' New British Virgin Islands investment program, investors own both the charter fleet and 100% of the off-shore management company. In addition they enjoy: Exceptional Tax Benefits - Priority Return on Investment - Outstanding Security and Liquidity - Worldwide Vacation opportunities.

Invest in a Motorhome and Make It Pay: The Fun Tax Shelter.

21% 1989 Tax write-off - worry free business strong cash flow - equity and liquidity from a specific asset.

An advertisement in the Edmonton Journal of November 16, 1989 gave notice of "Tax Assisted Investments in the Booming Tourist Industry". The advertisement referred to:

#### Tax Benefits

Income: Substantial after-tax cash flow

Security: Your investment is always secured by our 'Elite' motorhome.

A second advertisement in the Edmonton Journal of November 16, 1989 gave notice of Go Vacations seminars. This advertisement stated "Go Vacations is the recognized world leader in motorhome, houseboat, sailboat vacations and TAX ASSISTED investments." The advertisement also referred to "Tax Benefits - Income - Security -Personal Use".

In addition to the Agreed Statement of Facts, Mr. Peter Dickins, a Vice-President of the Respondent, advised the Board that the Respondent was selling motorhomes on the basis and under the assumption that the Management Agreement would be applied to them.

While the advertisements placed by the Respondent do refer in part to personal use of the motorhomes and yachts, it is noteworthy that they all emphasize words traditionally associated with investments: "cash flow", "equity", "liquidity", "tax benefits", "business", "security", and also the word "investment" itself.

The Securities Act contains a detailed definition of a "security" in Section 1(v) of the Act. The Agency took the position that the Agreement was an "investment contract" within the meaning of Section 1(v)(xiv).

#### **THE AGREEMENT**

The Agreement describes the Respondent as the "Manager". The owner of the motor vehicle, who would be the investor if the Agreement is in fact an investment contract, is described as the "Proprietor". The Agreement operates by the Proprietor turning over the recreational vehicle to the Manager in accordance with clause 2.2 of the Agreement. The Manager then deals with the vehicle as provided in the Agreement.

The Manager is given a wide exclusive right under clause 3.1 to make use of the recreational vehicle by providing it to retail clients. It is significant that the revenue from the recreational vehicle is not pooled with revenue from other recreational vehicles, and clause 4.1 makes it clear that the Manager will maintain a separate account for each Proprietor. The Manager hopes to make a profit because the rental revenue generated by the motorhome is split equally between the Proprietor and the Manager. Presumably the Manager has to pay the expenses resulting from its obligations under the Agreement, and if its share of the revenues exceed the expenses it will make a profit. The Proprietor on the other hand would have to retire the capital cost of the motorhome from the Proprietor's share of the revenue, and also therefore has an opportunity for profit.

While there is no pooling of revenues from more than one motorhome, it is clear that the Agreement contemplates that the motorhome will be made available to retail customers as a portion of a larger fleet of motorhomes. The Manager is responsible for the marketing of the fleet under clause 5.2, and must also administer the accounting records, and the reservation system under clause 5.3. It would appear from clause 5.3(d) that the fleet is insured, to some extent at least, on a group basis. The Manager is also completely responsible for dealing with the retail customers under clause 5.4, and under clause 5.5 the Manager is responsible for the maintenance and physical preservation of the motorhome.

On the other hand, the obligations of the Proprietor are quite limited. After turning over the motorhome to the Manager, his obligations are primarily financial, such as the obligations under article VI to obtain insurance and motor vehicle permits. Even in these

instances the Manager, as has been noted, appears to play a role in assisting the Proprietor in fulfilling his obligations.

It has already been pointed out that the Proprietor has an opportunity to profit from the arrangement. In addition, Article VII allows the Proprietor some personal use of the motorhome. There is also a mechanism, through the use of what are called "Go Vacation Dollars", to provide to the Proprietor discounted personal use of other motorhomes and boats in the fleet. The Agency submitted that this extra incentive helps to characterize the agreement as an investment contract.

On the face of it, the Agreement could be read as what its title suggests it is: a Management Agreement for the operation of a specific chattel. There are few, if any, provisions of the Agreement which make it obviously an instrument of investment as opposed to management. It is noteworthy that the Agreement does not call for the payment of any money by the Proprietor, which is one of the usual indicia of an investment. The Agency's submission on this point is that the motorhome itself is a valuable chattel which is invested by turning it over to the Manager, with the expectation of a profit in the future. As was pointed out by Mr. Dickins, the Respondent was selling motorhomes on the expectation that the Management Agreement would be applied to them, so it would appear that, in some cases at least, money was paid indirectly by the Proprietor to the Respondent for the "investment".

The Agency also submitted that the Agreement is an investment contract because the Proprietor takes a totally passive role in the undertaking. The marketing and management of the motorhome is clearly the key to the business, and those are left entirely in the hands of the

Manager. The Proprietor has little to do but to await his share of the revenue.

Clause 1.2 of the Agreement defines "business" in part as "deriving income from the use of the Proprietor's recreational vehicle by retail clients. Clause 2.3 alludes to the tax consequences of the operation and usage of the recreational vehicle. There are also the general clauses relating to receipt of and accounting for the revenue derived from the motorhome, but other than these few clauses there is little use of "investment" terminology. The Agreement certainly contains very different wording from the advertisements used by the Respondent.

#### **THE DEFINITION OF INVESTMENT CONTRACTS**

The seemingly innocuous inclusion of "investment contracts" under the definition of "security" has generated a considerable body of case law: see Alboini, Securities Law (Toronto: Carswell Limited, 1981) pages 0-39 to 0-61. A number of difficult cases have arisen where the alleged investor retains or acquires ownership of specific real or personal property, but the property itself is devoted in some way to an enterprise on the expectation of some profit. As Alboini points out (at page 0-43) the buyer receives property that has a fair market value independent of the enterprise's success or failure, but because the property has been re-committed in some way to the enterprise there is a risk of loss if the enterprise fails. This is particularly so in the case of a depreciating asset like a motorhome which will eventually be consumed and lose all its value through use. It is interesting to note that clause 8.3 of the Agreement provides for automatic termination of the Agreement when the motorhome is four years old, which is perhaps some evidence of the economic life of a motorhome.

The failure of the enterprise may also result in the return to the Proprietor of a chattel which he cannot economically market when it is separated from the rest of the fleet. While it can be assumed that the personal use of the motorhome is one of the inducements for entering into the agreement, it cannot be assumed that the prospect of personal use is so dominant that the Proprietor would be content with continuous personal use in place of the rental revenue expected under the agreement.

The starting point for the discussion is S.E.C. v. W.J. Howey Co. (1946), 328 U.S. 293. Howey involved the sale of portions of citrus groves in Florida such that the purchaser would actually acquire title to a parcel of land. The purchasers were also offered a ten-year leaseback and service contract whereby Howey would take charge of the cultivation, harvesting, and marketing of the crops, and indeed 85% of the purchasers of land took advantage of the service contract. The bulk of the purchasers did not live in Florida, and in any event few of them had the equipment and expertise required to manage the citrus groves themselves. It was clear that the lands were being purchased because of the potential profit that might arise from the cultivation of the citrus trees.

The lower courts treated the conveyance and the service contract as separate transactions, and held that there was no security involved. The United States Supreme Court reversed these decisions, and held that the transaction was an investment contract. The Court made it clear that in interpreting this section of the Act, form should be disregarded and emphasis should be placed on the economic realities of the arrangement. The Court at page 298 set out the following broad test:

In other words, an investment contract for



purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.

In Howey the Court held that what was really sold was the opportunity to share in the profits of a large citrus fruit enterprise. of significance was the fact that the purchasers had no desire or ability to manage their lands themselves, and indeed the plots sold were too small to be economically viable. It followed that the plots only had value as part of the larger enterprise. It was also clear that the skill and efforts of the issuer were of critical importance to whether or not the purchasers would realize a profit. The investors were providing the capital for the enterprise, and the promoters were managing the enterprise, and this was the essence of an investment contract.

The transaction in Howey has several similarities with the transactions entered into by the Respondent. In both cases the purchaser acquires title to property which has intrinsic value. In both cases the property is sold to the investor in combination with a service and management contract, and with the expectation of profit. The property is to be made profitable by using it with other similar property in a larger enterprise, in this case the fleet of motorhomes controlled by the Respondent. In both cases the investor has no realistic opportunity of managing his property in a profitable way apart from the rest of the enterprise, and cannot realistically be expected to take

possession of his portion of the property and operate it on his own.

On the other hand, there are certain significant differences between the Howey scheme and the one operated by the Respondent. First of all, there is the element of personal use available to the owner of the motorhome. This element does not appear to have been present in the Howey situation, and it might arguably be one of the inducements to the purchaser in this case. Secondly, there was an element of pooling present in the Howey case, because it appears that the entire crop was co-mingled and marketed as a whole. As has been pointed out, the Respondents did not operate a rental pool, and kept separate accounts for each motorhome. Finally, in Howey the issuer was selling its own property, namely portions of the citrus groves it owned. In this case it is unclear whether the Respondent owned the motorhomes before it sold them, or whether it simply assisted the investor in acquiring a motorhome. This however would not seem to be a significant distinction given the acknowledgment by Mr. Dickins that the Respondent was selling motorhomes on the expectation that the Management Agreement would be applied to them. Given that it is clear from the cases that substance is to prevail over form in these matters, it is unfortunate that the Agreed Statement of Facts in this case essentially provides only the form to the Board, and none of the detail about how the investment opportunity was actually marketed and operated.

The Howey test has been discussed and refined extensively since 1946. In particular, the word "solely" has been watered down to recognize that insignificant efforts by the investor in making the enterprise work will not defeat the characterization of the transaction as an investment contract. Considerable discussion has also taken place on the extent to which the enterprise must be

"common". Some courts have required that the commonality be horizontal, in that all the investors are somehow engaged in a common enterprise. This generally requires some pooling of revenue or product between the investors before an investment contract exists. Other courts, on the other hand, have found that vertical commonality is sufficient. In other words, it is sufficient if there is some common enterprise between the issuer and the investor, for example where the investor provides the capital and the issuer provides the management expertise. As was pointed out in Deckebach v. La Vida Charters, Inc. of Florida (1989) Federal Securities Law Reports 94, 182 (USCA, Sixth Circuit) the Sixth Circuit and the Seventh Circuit of the United States Court of Appeal have required horizontal commonality. The Second, Fifth and Ninth Circuits (and perhaps the Eighth and Tenth Circuits as well) have held that vertical commonality is sufficient. In Canada this issue has been resolved by the decision of the Supreme Court of Canada in Pacific Coast Coin Exchange of Canada v. Ontario Securities Commission (1977), 80 D.L.R. (3d) 529 (SCC) where the Court held that vertical commonality is sufficient. It is accordingly not of great significance that the Respondent's scheme did not involve a pooling of revenues.

In State of Hawaii v. Hawaii Market Centre, Inc. (1971), 485 P. 2d. 105 (S.C. Haw.) a different test was formulated for determining whether or not an investment contract existed. In the Hawaii case, the issuer planned to open a retail store, and planned to finance the store by recruiting "founder-members". The founder-members were entitled to income both before and after the store became operational. To become a founder-member, an investor had to purchase a sewing machine or cookware set for \$320.00, which was over four times the wholesale value of the goods, and then was entitled to recruit other founder-members, or

distribute buyers cards to potential customers of the proposed retail store. The founder-member would receive a commission on the retail sales by those persons recruited by the founder-member. There were various levels of membership available.

The Supreme Court of Hawaii analyzed these facts and held that the Howey test was too mechanical to protect the public. In the Hawaii case, the success of the investment did not depend "solely" on the efforts of the issuer, because the purchasers were expected to recruit retail customers, and their income would depend on how many customers they recruited. The Supreme Court of Hawaii found this reliance on investor participation to be unduly narrow, and preferred a definition of an investment contract as "the placing of capital or laying out of money in a way intended to secure income or profit from its employment". This test placed an emphasis on the placement of risk capital by the investor in the enterprise. In the Hawaii case the investors contributed capital by the overvalue paid for the merchandise they purchased. Their ability to receive back this risk capital depended upon the successful operation of the retail store by the issuer. As such the transaction met the risk capital test, and was an investment contract. Many courts and Securities Commissions now apply both the Howey and the Hawaii tests to determine if an investment contract exists, and in most cases both tests are satisfied.

The scheme offered by the Respondents also meets the Hawaii test. The investor provides initial capital, either in the form of a motorhome, or if the transaction is viewed as a whole in the form of cash used to purchase a motorhome. We see no reason in principle why an investment contract can only arise when cash is invested, but in any event on the admission made by Mr. Dickins it would appear that cash was involved in this scheme. The capital thus

contributed is used by the issuer in the enterprise, and is subjected to the risks of the enterprise. This is because, as was pointed out, the investor has no realistic alternative for obtaining the return of his capital by withdrawing his motorhome from the fleet and attempting to market it on his own. In addition, the inducement to advance the risk capital is the prospect of profit, even if there is a secondary inducement arising from the potential for personal use of the motorhome. Finally, it is clear that the success of the enterprise rests largely on the managerial skills of the issuer, particularly in their marketing and operation of the entire fleet as a unit.

In all the circumstances, it is the view of the Board that the motorhome Management Agreement as used by the Respondent constitutes an investment contract within the meaning of the Securities Act, and an order to that effect will be issued.

DATED at Edmonton, in the Province of Alberta, this 1st day of August, 1990.

"original signed by"  
Ronald J. Will, Chairman

"original signed by"  
Edward B. Allen, Board Member

"original signed by"  
Frans F. Slatter, Board Member

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## ARTICLE 1 - DEFINITIONS

As used herein, the term:

- 1.1 "Additional Charges" means those charges to retail users of the Motorhome for services not provided for by the Proprietor such as premiums for collision damage waiver, or other insurance offered, charges for repairs incurred by the user, charges for convenience kits and one-way booking fees and preparation fees but does not include daily and mileage charges.
- 1.2 "Business" means the business of providing services to the travelling public through the operation and management of the Motorhome and deriving income from the use of the Proprietor's recreational vehicle by Retail Clients
- 1.3 "Go Group" means Go Vacations and its subsidiaries.
- 1.4 "Go Locations" means any locations operated and owned by Go Vacations its affiliates or their franchises.
- 1.5 "Go Vacations" means Go Vacations Inc.
- 1.6 "Go Vacations Dollars" means credits issued by the Manager in accordance with Article 7 that will entitle the user to discounts on daily and mileage charges for the use of recreational vehicles and recreational boats at Go Locations, subject to the limitations set out in such section, only at a rate of 1 Go Vacation Dollar for each CDN \$1.00 of the applicable retail use charge (but have no cash surrender or other value).
- 1.7 "Gross Revenue" means the total of Additional Charges and Rental Revenue.
- 1.8 "High Season" means that part of the year which is advertised by Go Vacations from time to time to be the business session for the Business which part of the year may vary from Go Location to Go Location.
- 1.9 "Low or Off Season" means that part of the year which is advertised by Go Vacations from time to time to be the least busy season for the Business which part of the year may vary from Go Location to Go Location.
- 1.10 "Manager" means Go Vacations Inc., a member of the Go Group.
- 1.11 "Manager's Fee" means the aggregate fees set out in Article V of the Agreement.
- 1.12 "Mid or Shoulder Season" means that part of the year from time to time at a Go Location on which is neither the High Season nor the Low Season and which may vary from Go Location to Go Location.
- 1.13 "Motorhome" means the recreational vehicle described herein.
- 1.14 "Net Revenue" means annually 50% of the Rental Revenue generated by the Motorhome.
- 1.15 "Person" means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associates, consortiums, companies, trusts, banks, trust companies or other entities.
- 1.16 "Proprietor" means the registered owner of the recreational vehicle described herein.
- 1.17 "Rental Revenue" means the gross revenue generated by the daily and mileage charges for the Motorhome, less commissions paid to tour wholesalers or travel agents or, in lieu thereof, the Go Group, acting as a tour wholesaler or travel agent at the same rates.

## ARTICLE II - GENERAL

2.1 The Manager in the business of providing various services relating to the vacation business and the Proprietor is the owner of the recreational vehicle described herein, and the Proprietor desires to engage the Manager so that he may perform such services as are provided herein.

2.2 The Proprietor shall deliver the recreational vehicle to the Go Location set out herein no later than the delivery date set out herein. The term of this Agreement shall commence upon delivery of the recreational vehicle to the Manager's Station by the Proprietor and the acceptance of the recreational vehicle by the Manager at being in a good and substantial state of repair, and shall continue to the end of the calendar year and shall be automatically renewed for further periods of one year, the terms of renewals thereof being subject to the termination section of this Agreement.

2.3 The Proprietor acknowledges that there may be various options and allowances available to him under the various income tax statutes and regulations as may be applicable from time to time, with respect to the operation and usage of the recreational vehicle which may vary depending upon various facts and that he has been directed by the Manager to obtain independent tax counsel in this regard. no Proprietor- understands and agrees that there are companies or representations expressed or imply the Manner with regard to the tax consequences to the Proprietor at the recreational vehicle or the usage of the recreational vehicle.

2.4 The Proprietor acknowledges that, save as expressly set out herein, the Manager shall have no positive obligation to utilize the Proprietor's recreational vehicle for any specific time period.

2.5 Any notice required to be delivered to a party under this agreement shall be delivered by registered mail to the address shown herein, unless otherwise notified in writing, and notice shall be deemed to be received three business days after date of mailing.

2.6 Neither the Proprietor nor the Manager shall commence any suit, action or other proceeding whatsoever against the other later than ninety days after the termination of this Agreement.

2.7 The Manager may contract out the Manager's obligations hereunder provided it ensure fulfillment of such obligations.

2.8 This agreement constitutes the entire agreement between the parties pertaining to the recreational vehicle and supercedes all prior negotiations written or oral, and there are no warranties, representations or other agreements between the parties with respect to the recreational vehicle except as set forth herein. No amendment or modification shall be made to this Agreement unless such agreement or modification is executed in writing by the parties.

### ARTICLE III - AUTHORITY

3.1 The Proprietor acknowledges and agrees that the Manager is hereby granted and shall have the right to exclusively make the recreational vehicle available at the Go Location described herein to any retail clients it considers advisable on such terms as it sees fit.

3.2 The Proprietor agrees that in order to promote additional business, the Manager shall have the right to provide the recreational vehicle at no charge for familiarization tours by the travel wade and the Manager completely waives his Manager's Fee herein in connection with such familiarization tours.

3.3 The Proprietor agrees that in order to promote additional business, the Manager shall have the fight to discount from time to time the rates otherwise charged to customers. The Proprietor shall accept the same percentage discount in the Net Revenue.

### ARTICLE IV - PROPRIETOR'S ACCOUNT

4.1 The Manager shall for each recreational vehicle of the Proprietor set up a separated account (the "Proprietor's Account"). The Manager shell credit the Proprietor's Account on or before the last day of each month during the term of this agreement with the Net Revenue generated by the Motorhome in the previous month fully paid and fully complete and this account will be be debited with the cost of all motor vehicle permits. The Manager shall pay the amount in the Proprietor's Account to the Proprietor on the same day that the account is credited.

4.2 The Proprietor agrees to accept the validity and accuracy of all accounting records or events that are not objected to as per Article 2.5 of this agreement within ninety calendar days of the event's occurrence.

## ARTICLE V - OBLIGATIONS OF THE MANAGER

The Manager shall be responsible for:

### 5.1 - INITIAL SERVICES

- (a) retaining such lawyers and other consultants as the Manager deems advisable to prepare this agreement;
- (b) providing initial administrative, supervisory and management services;
- (c) pre-delivery inspection for recreational vehicles; and
- (g) the cost of the initial delivery of the recreational vehicle to a specified location as required.

In consideration of the Proprietor paying the Manager a fee as a marketing commission and a management fee which is equal to all Gross Revenue in excess of Net Revenue, the manager shall be responsible for and shall pay for:

### 5.2 - MARKETING /SALES

- (a) marketing recreational vehicle vacations to international tour wholesalers through international vacarica companies and world travel shows;
- (b) assisting tour wholesalers in developing brochures and travel literature which promote recreational motorhome vacations and provide travel agents and the travelling public with full information on available sizes, destinations, and rates for recreational vehicle within the fleet;
- (c) assisting travel agents in arranging "full package tours" for retail customers which would include round trip air and/or ground transportation from the country of origin, all necessary hotel accomodations and utilization of a pre-selected recreational vehicle including, where applicable, multilingual orientation, pre-planned itineraries, and convenience kits;
- (d) marketing recreational motorhome vacations to North American travel agents through air line reservations systems, brochures and travel literature, travel trade shows, and travel industry advertising media;
- (e) marketing recreational motorhome vacations directly to the North American travelling public through Go Locations including, but no! limited to, local media advertising, brochures, public travel shows, and local sales and marketing personnel; and

### 5.3 ADMINISTRATION RESPONSIBILITIES

providing administration services at its expense with respect to the recreational vehicle and the Business including, without limitation;

- (a) keeping accurate records relating to the Proprietor's Account. maintenance, mileage, and usage of the Proprietor's recreational vehicle;
- (b) using the Go Group's computerized reservation network;
- (c) handling charges including processing all reservations, forms, telex costs, computer costs and administration;
- (d) arranging Group Insurance coverage, and renewals thereof during the term of this agreement, which shall be equivalent to that described in 6.1 of this agreement and which shall be arranged at the expense of the Proprietor;
- (e) providing and supervising on-premises personnel which the Manager shall deem necessary to perform the obligations of Article V. including the monitoring of maintenance and servicing of the recreational vehicle;



- (f) employing 23 its agents such accountants, auditors, translators or other professionals as may be necessary to perform the obligations of Article V; and

#### 5.4 OPERATIONAL RESPONSIBILITIES

providing operational services at its expense with respect to the Proprietor's recreational vehicle and the Business including, without limitation:

- (a) providing retail clients with insurance options which will provide for legal expenses for processing through the judicial system such monetary claims as are not in excess of \$1500 which arise to retail clients, either as plaintiff or defendant including the first \$1500 in damages resulting from recreational vehicle accidents which are not paid by insurance because of a deductible;
- (b) providing all retail clients with a recreational vehicle in clean condition and coming that the recreational vehicle returns in like condition;
- (c) providing retail clients with multilingual demonstrations and operator's manuals as may be reasonably required;
- (d) providing retail clients with pre-planned itineraries as required;
- (e) collecting receipts from retail clients including credit card discounts;
- (f) transporting retail clients to and from the airport and airport area hotels to the Go Location as required;
- (g) supplying retail clients with convenience kits as required;
- (h) arranging for the purchase and renewal, at cost and where permitted by law, of all motor vehicle permits as are required for recreational vehicle's on the Manager's fleet;
- (i) determining the rates to charge retail clients for services and recreational vehicle or provided; and

#### 5.5 MAINTENANCE RESPONSIBILITIES

providing maintenance services with respect to the recreational vehicle including, without limitation;

- (a) assisting the retail client in arranging on-road repairs, including sublet, incurred by reason of mechanical breakdown including parts, labour, transportation and long distance telephone costs;
- (b) providing settlements, which the Manager in his sole discretion determines necessary, to compensate retail clients for inconvenience caused by malfunction of the recreational vehicle with which they have been provided;
- (c) repairing equipment malfunctions which are due to defects in manufacturer's designs;
- (d) providing periodic inspections and maintenance including oil change, lubrication and tune-ups;
- (e) preparing the Motorhome for the winter;
- (f) Providing such other remedial work as the Manager, in his sole discretion, determines to undertake to encourage the continued utilization of the Motorhome, including without limiting the generality of the foregoing, repairs, maintenance and services, replacement of the following:
  - Engine(s), running gear, exhaust system(s) electrical supply, lights, AM radio, heating system fridge, stove, 110- 12 V converter, water pump, water heater, holding tank(s) and toilet, tires, transmission, brakes carburetor, radiator, wheel alignment, and balancing.
- (g) providing or storage for the Motorhome; and
- (h) providing turnaround inspection checks between periods of utilization.

## ARTICLE VI - OBLIGATIONS OF THE PROPRIETOR

6.1 The Proprietor shall be responsible for insurances to protect against theft, third party liability and Motorhome damage, collision and comprehensive damages, repair and compensations for damage or injury caused by the negligent or intentional misuse by the retail customer or any other party, and all loss, expense or injury respecting the recreational vehicle. Such insurance shall be in the amount as may be determined as necessary by the Manager and shall permit commercial usage.

Upon the request of the Proprietor or if the Proprietor has not notified the Manager before the dam that is 60 days prior to the expiration of the existing insurance coverage of his intent to place such coverage, the Manager will arrange and pay for the insurance coverage required hereunder and will reimburse himself to the extent available by deducting the amount of the premiums therefor from the Proprietor's Account.

Insurance proceeds shall be used by the Manager to repair or replace if necessary the recreational vehicle with a recreational vehicle deemed by the Manager to be a comparable recreational vehicle.

6.2 The Proprietor shall be responsible for all motor vehicle permits and other regulatory permits as are required from time to time.

## ARTICLE VII - PERSONAL USE OF THE MOTORHOME

7.1 The Proprietor shall indicate by his signature on the last page of this agreement his acceptance of one of the following options:

### 7.2 THE GO VACATION DOLLAR OPTION

(a) A Go Vacation Dollar Credit Account will be established for the Proprietor (the "Go Dollar Account"). Upon the signing of this agreement and on May 31 in my subsequent year that this agreement is in force, the Go Vacation Account will be credited with Go Vacation Dollars equal to up to 90% of the current daily charges (with 200 kms per day. as -plicable) for a period of eight weeks during the Low Season on the Motorhome.

(b) Go Vacation Dollars entitle the Proprietor to the following discounts on the daily and mileage charges for the use of any vehicle or recreational boat in the Go Vacations fleet, subject to availability

- (i) 90% discount in Low, Off or Shoulder Season;
- (ii) 50% discount in Mid Season; and
- (iii) 25% discount in High Season.

The Go Group agrees to accept each Go Vacation Dollar at a incs value of CDN \$1.00 when so used.

(c) Subject to paragraph 7.2(h)), Go Vacation Dollars are transferable to prospective retail customers provided that the transfer occurs more than thirty days before the intended use date of the transfers and provided that the ransferor and transferee both complete and remit to the Go Group a form indicating the amount of Go Vacation Dollar transferred and the value received by the transferor. Go Vacation Dollars may not be advertised for sale.

(d) GO Vacation Dollars entitle the user to a discount daily and mileage charges only, based on the then current retail agreement. All additional charges shall be paid at the current retail rate as required. Payment for additional charges must be made in the currency of the country of departure and will include, even if Go Vacations it marketing an "all-incluside" rate to clients without limitation, local sales tax, conveniences kits, airport transfers, preparation fees. insurance deductible and the rental of any ancillary equipment.

(e) The Proprietor shall make application in writing to the Manager for all periods of use involving Go Vacation Dollars no less than 30 days prior to the intended dam of departure.

(g) All credits in the Go Dollar Account shall become void upon the termination of this agreement.

### 7.3 PRIVATE USE OPTION

(a) The Proprietor shall be entitled to use the Motorhome at no charge for the following periods of time:

- (i) 14 nights of occupancy during the High Season;
- (ii) 28 nights of occupancy during the Mid Season; or
- (iii) 56 nights of occupancy during the Low, Off or Shoulder Season.

- (b) The Proprietor will be required to pay all Additional Charges at the current retail rate as required. Payment for additional charges will include, without limitation, local sales tax, convenience kits, airport transfers, preparation fees, insurance deductible and the rental of any ancillary equipment.
- (c) The Proprietor shall make application in writing to the Manager for all periods private use no less than 30 days prior to the intended date of departure. The Proprietor's booking shall be subject to the availability of the Motorhome.
- (d) Proprietor use will be subject to minimum booking requirements as described in the then current retail rental brochure and agreement.
- (c) Utilization will be proportional, based on the season of use. One day at High Season utilization would be equivalent to two days of Mid Season use or four days of Low, Off or Shoulder Season Use.

#### ARTICLE VIII - TERMINATION

8.1 Subject to the terms and conditions of this agreement, the Proprietor shall have the right to terminate this agreement on January 2 in any year upon giving written notice to the Manager once before the previous February 1 provided the Proprietor's Account is not in a debit (overdrawn) position. The Manager in its sole discretion, may allow the Proprietor to exercise this right at any time notwithstanding that the circumstances in the preceding sentence do not exist at such time.

8.2 The Proprietor shall have ten business days in the case of a recreational vehicle to stand at the Go Location to conduct a termination inspection of the recreational vehicle (in the presence of the Manager's representative it required by the Manager), and to list the deficiencies in the performance of the Manager's obligations in the Agreement. Failure to do so shall be deemed to be an acceptance of the recreational vehicle in its delivered state. The Manager shall rectify all properly listed deficiencies forthwith. The Motorhome shall be acceptable if all appliances are in working condition and the Motorhome is capable of satisfying off-fleet standards as described in the Go Vacations operations manual from time to time. Copies of the standards currently in force may be obtained upon request from the Manager or reviewed at any Go Location. In particular, deficiencies shall not include:

- (a) year and deterioration due to aging, use and environment which do not impair the normal use of the recreational vehicle; or
- (b) the need to repair options on the recreational vehicle that were not required for the Management Agreement including without limitation cassette tape players, roll-up awnings cruise control, roof rack, ladders and CB radios.

8.3 At any time after the Motorhome is four years old (i.e. after December 31, 1991 for a 1988 model year motorhome) the Manager shall have the right upon giving 60 days written notice to require the Proprietor to terminate the agreement upon the same terms and conditions as set out in section 8.2.

8.4 Neither party shall have any further rights or claims arising by virtue of this agreement and any amendments or addends to this agreement once the obligations of Article VII have been completed.

8.5 The Proprietor shall provide a purchase exemption certificate or equivalent document exempting him from retail sales tax, federal sales tax or such other tax as may be applicable from time to time or shall pay the Manager any tax which may be payable as determined by the Manager on the date of termination.

#### ARTICLE IX - MISCELLANEOUS AND DEFINITIONS

9.1 Whenever the context of this agreement requires, masculine gender includes feminine and neuter and singular number includes the plural and vice-versa.

9.2 The headings preceding the text, articles and sections hereof have been inserted for convenience of reference only and shall not be construed to affect the meaning, construction or effect of this agreement.

9.3 Subject to the restriction on assignment and transfer herein contained, this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

9.4 This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

9.5 The parties hereto confirm that it is their wish that this Agreement as well as all other documents related hereto, including notices, have been and shall be drawn up in the English language only.

9.6 Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents, y compris tous avis, s'y rattachant, soient rédigés en langue anglaise seulement.

IN WITNESS WHEREOF the parties hereto have executed their signatures as of the day and year first above written

) GO VACATIONS INC.  
)  
) BY \_\_\_\_\_  
) \_\_\_\_\_  
) TITLE  
)

THE PROPRIETOR SHALL SIGN FOR EITHER:

(A) THE MANAGEMENT AGREEMENT WITH THE GO VACATION DOLLAR OPTION

\_\_\_\_\_, \_\_\_\_\_  
WITNESS THE PROPRIETOR  
(AT GO LOCATION)

O R

(B) THE MANAGEMENT AGREEMENT WITH THE PRIVATE USE OPTION

\_\_\_\_\_, \_\_\_\_\_  
WITNESS THE PROPRIETOR  
(AT GO LOCATION)

MOTORHOME MANAGEMENT AGREEMENT

THIS AGREEMENT made this day of \_\_\_\_\_, 198\_

BETWEEN:

GO VACATIONS INC. a corporation incorporated under the issue of  
the Province of Ontario. having its Head Office in the City of  
Etobicoke, in the Municipality of Metropolitan Toronto, (hereinafter  
called the "Manager")

OF THE FIRST PART,

-and-

NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, PROVINCE

\_\_\_\_\_  
POSTAL CODE \_\_\_\_\_ TELEPHONE( ) \_\_\_\_\_

(hereinafter called the "Proprietor")

OF THE SECOND PART.

FOR:

RECREATIONAL VEHICLE MAKE \_\_\_\_\_ MODEL \_\_\_\_\_ YEAR \_\_\_\_\_

SERIAL NUMBER \_\_\_\_\_

GO LOCATION \_\_\_\_\_ UNIT NO. \_\_\_\_\_

DATE OF DELIVERY TO GO LOCATION \_\_\_\_\_  
MONTH DAY YEAR