

APARTMENT MANAGEMENT AGREEMENT

between

and



DENARAU
ISLAND RESORT

THIS AGREEMENT is dated the _____ day of _____ 2003

BETWEEN [_____] ("**Manager**")

AND [_____] of [_____] ("**Owner**")

BACKGROUND

- A.** The Owner has entered into a "Sale, Purchase and Construction Agreement" to acquire the Apartment, which is one of the "Denarau Golf Terrace Apartments".
- B.** The Manager has agreed to procure the letting and management of the Apartment on behalf of the Owner in accordance with the terms of this agreement.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

"**Account**" means the bank account to be operated by the Manager in accordance with clause 7;

"**Ancillary Services**" means services supplied to Guests at the Guests' cost incidental to use of the Apartment which may include (but without limitation):

- (a) food and beverages including provision of room service;
- (b) laundry and dry cleaning;
- (c) telephone and facsimile;
- (d) arranging transportation; and
- (e) foreign exchange transactions;

"**Apartment**" means the Owner's apartment(s) in the Property being the apartment(s) numbered [_____];

"**Authority**" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Property, Apartment or their use and includes the Body Corporate and DCL;

"**Body Corporate**" means Denarau Golf Terrace Apartments, Inc.;

"**Body Corporate Management Agreement**" means the management agreement between the Manager and the Body Corporate relating to the management and maintenance of the exterior of the buildings and common facilities comprised in the Property;

"**Business Day**" means the period commencing 9am and ending 4.30pm Standard Time of any day in Suva, Fiji other than Saturday, Sunday or any public holiday;

"**Commencement Date**" means the date of "Practical Completion" as defined in the "Sale, Purchase and Construction Agreement" entered into by the Owner in respect of the Apartment;

"**DCL**" means Denarau Corporation Limited;

"**Default Rate**" means the rate of 16% per annum;

"**FFE**" means the furniture, fittings and equipment installed in the Apartment including those items described in Schedule 2;

"**FFE Account**" means the account operated by the Manager into which the FFE Reserve is paid and operated in accordance with clause 6;

"**FFE Reserve**" means a reserve for replacement of FFE into which the Owner will pay 3% of Gross Income in accordance with clause 6;

"**Gross Income**" means the total of all payments (excluding VAT) paid by Guests to use the Apartment but excluding any payments for Ancillary Services;

"**Gross Operating Profit**" means the Gross Income less the Outgoings and the FFE Reserve;

"**Guests**" means all guests paying to stay in the Apartment;

"**Management Fee**" means, in respect of a Year, a fee equal to 15 per cent of the Gross Operating Profit for that Year or that sum which, when multiplied by the number of Management Scheme Apartment, equals FJ\$15,000, whichever is the greater;

"**Management Scheme**" means the scheme under which the Manager has agreed to manage the Apartments for the owners of those Apartments pursuant to apartment management agreements on terms similar to this agreement;

"**Management Scheme Apartments**" means all of the apartments within the Property which are part of the Management Scheme at the relevant time;

"**Manager's Duties**" means those duties set out in Schedule 1;

"**Manager's Report**" means the report, to be completed by the Manager at the end of each Month and each half year, setting out the details referred to in clause 4;

"**Month**" means a calendar month;

"**Outgoings**" means all outgoings (but excluding any costs relating to the provision of Ancillary Services) relating to the Apartment (provided that where it is not practicable to allocate such outgoings specifically to an Apartment, a portion of such outgoings for all Management Scheme Apartments shall be allocated to the Apartment according to the proportion that the Gross Income applicable to the Apartment bore to the aggregate

Gross Income of all Management Scheme Apartments during the applicable period) including (but not limited to):

- (a) the costs of provision of consumable items used in the letting of the Apartment such as soap, cleaning materials, stationery, toilet paper, toiletry items, and all other similar items;
- (b) the costs of supplying bed linen, towels, crockery, cutlery, glassware and kitchen utensils;
- (c) a proportion (allocated in accordance with the first part of this definition) of the costs associated with advertising and marketing the Management Scheme Apartments provided that such costs shall not exceed 4% of the Gross Income in any year without the Owner's express written consent;
- (d) all utility charges; and
- (e) all levies payable to the Body Corporate by the Owner;

"**Property**" means the property known as "Denarau Golf Terrace Apartments" on Denarau Island, Fiji;

"**Term**" means the term of this agreement described in clause 2.2;

"**VAT**" means value added tax pursuant to the VAT Act;

"**VAT Act**" means Value Added Tax Decree 1991;

"**Year**" means a calendar year;

- 1.2 Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background and the schedule;
 - 1.3 Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this agreement's interpretation;
 - 1.4 Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
 - 1.5 Parties:** references to parties are references to parties to this agreement and include each party's executors, administrators and successors;
 - 1.6 Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
 - 1.7 Plural and Singular:** singular words include the plural and vice versa;
 - 1.8 Schedule:** the schedule and its contents have the same effect as if set out in the body of this agreement;
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1.9 Sections, Clauses and the Schedule: references to sections, clauses and the schedule are references to this agreement's sections and clauses and schedule; and

1.10 Statutes and Regulations: references to a statute include references to regulations, orders or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.

2. APPOINTMENT AND TERM

2.1 Appointment: The Owner appoints the Manager, to procure the letting and management of the Apartment and to carry out the Managers Duties, and the Manager accepts the appointment on the terms of this agreement.

2.2 Term: The term of the Manager's appointment will start on the Commencement Date and will continue for a period of 10 years from that date unless it is terminated in accordance with either clause 15 or 16.

2.3 Renewal: 6 months before the end of the term of this agreement the parties agree to negotiate in good faith whether to renew this agreement for a further term of 10 years (or such other term as the parties may agree) and the terms of any such renewal.

3. LETTING APARTMENT

3.1 Letting Agent: The Owner appoints the Manager as its exclusive agent to let the Apartment to Guests during the Term. The Manager agrees to use its reasonable endeavours to let the Apartment to Guests during all periods it is available for letting by the Manager.

3.2 Acceptance of Bookings: Subject to clause 11.1 the Owner may, by notice to the Manager, specify periods where the Apartment is not available for letting to Guests provided that, if prior to receiving such a notice from the Owner the Manager has agreed to let the Apartment to a Guest then the Manager shall be permitted to let the Apartment to the Guest.

3.3 Setting Rates: The Manager shall be responsible for setting an appropriate rate for letting of the Apartment, including any special or promotional rates that the Manager considers are appropriate.

3.4 Collection of Income: The Manager shall be responsible for collecting all payments due from Guests for use of the Apartment. The Manager shall account to the Owner for all such income on a monthly basis in accordance with clause 5.

3.5 Allocation of Bookings: The Owner acknowledges that the Manager has entered or may enter into apartment management agreements with other apartment owners and that the Manager may allocate bookings for use of the other apartments in the Manager's discretion. The Manager agrees to allocate bookings for apartments on a fair and equitable basis.

4. MANAGER'S REPORTING

4.1 Monthly Report: Within 10 Business Days after the end of each Month the Manager shall deliver to the Owner a monthly statement containing, in respect of the Apartment for the previous Month, details of:

- 4.1.1 the occupancy of the Apartment;
- 4.1.2 the Gross Income received for the Owner;
- 4.1.3 the Outgoings paid on behalf of the Owner;
- 4.1.4 the amount set aside to the FFE Reserve on the Owner's behalf;
- 4.1.5 the Gross Operating Profit; and
- 4.1.6 the Management Fee.

4.2 Half Yearly and Annual Reports: Within 20 Business Days of 30 June and 31 December of each Year during the Term the Manager shall deliver to the Owner the Manager's Report. The Manager's Report shall set out details of all matters relevant to this agreement in respect of that 6 month period and in respect of reports for 31 December the full 12 month period as well, including details of:

- 4.2.1 **Occupancy:** the occupancy of the Apartment in days and as a percentage of available days;
 - 4.2.2 **Scheme Occupancy:** the occupancy of all the Management Scheme Apartments as a percentage of available days;
 - 4.2.3 **Gross Income and Outgoings:** the Gross Income actually received and Outgoings paid on a cash accounting basis including a comparison to budget;
 - 4.2.4 **Fees:** the Management Fees paid or payable (including any VAT);
 - 4.2.5 **FFE Reserve:** the FFE Reserve applied in accordance with clause 6.2 and any payments from the FFE Account;
 - 4.2.6 **Bad Debts:** any bad debts;
 - 4.2.7 **Damage:** any damage or wear and tear suffered by the Apartment, including details of how any damage was caused and whether any compensation was sought against any Guest or other third party in respect of such damage and the status of any such claim;
 - 4.2.8 **Repairs and Maintenance:** any repairs and maintenance carried out on the Apartment;
 - 4.2.9 **Marketing:** a description of the marketing activities carried out and marketing plans for the next period;
 - 4.2.10 **Forecasts:** the Manager's forecasts of likely bookings, Gross Income and Gross Operating Profit for the next half year; and
 - 4.2.11 **Other:** any other matters the Manager considers appropriate to bring to the attention of the Owner or which the Owner reasonably requests the Manager to provide, including, without limitation, any details required by the Owner for Fijian taxation or other statutory requirements.
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- 4.3 Accounting Records and Books:** The Manager shall keep proper books of account and records relating to all transactions conducted in the course of managing the Apartment and those books together with all supporting data, including sales receipts, bank deposit records and tax returns, shall be kept available for at least 5 years from expiry of the applicable Year.
- 4.4 Owners Right to Inspect Accounting Records and Apartment:** The Owner shall have the right at any reasonable time and from time to time to inspect the Apartment and the Manager's accounts and records referred to in clause 4.3 and the Manager shall, at the request of the Owner, make the same available for such inspection at the Property and place of business of the Manager respectively.
- 4.5 Audit:** The Owner may appoint an auditor to review the books and records of the Manager relating to the Apartment once per Year. The Manager shall respond to all reasonable requests from the auditor and provide reasonable assistance to the auditor. If any audit shows that the Manager has underpaid the Owner or failed to properly account to the Owner in accordance with the terms of this agreement then the Manager shall promptly pay such amount to the Owner.
- 4.6 Cost of Audit:** The Owner shall bear its own costs of conducting such audits, except that in the event that an audit shows that the amounts paid by the Manager to the Owner during the period covered by the audit are less than the amount that ought to have been paid by the Manager in accordance with this agreement by a margin greater than 4% in which case the audit costs incurred by the Owner in instructing the auditors to carry out the audit shall be borne by the Manager (and the Manager shall pay such costs to the Owner on demand).

5. MANAGEMENT FEE AND OUTGOINGS

- 5.1 Payment of Fees:** The Management Fee is payable by monthly instalments in arrears based on the Gross Operating Profit for the expired Month. The Manager may deduct the Management Fee (and any VAT) and any Outgoings payable from any sums due to the Owner under this agreement, including payments pursuant to clause 5.4.
- 5.2 Payment of Outgoings:** Subject to the Manager having sufficient funds from the Owner the Manager will pay all Outgoings relating to the Apartment on behalf of the Owner. Where the Manager anticipates that the Outgoings in an upcoming month will exceed the Gross Income for that month then the Manager may, at its discretion, withhold from any payments due to the Owner such amount as the Manager considers prudent to meet the expected shortfall.
- 5.3 VAT:** The Owner must pay all VAT on the Management Fee and on any other money payable by the Owner to the Manager under this agreement.
- 5.4 Payment of Gross Operating Profit:** Subject to clause 5.2, the Manager shall account to the Owner for the Gross Operating Profit received during the previous Month. Payments due to the Owner shall be paid (after deducting any amounts due to the Manager under this agreement) within 5 Business Days of delivery of the statement relating to the preceding Month. Payment shall be made in Fijian dollars either, at the Owner's discretion, by
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cheque to an address nominated by the Owner or a bank account in Fiji nominated by the Owner.

- 5.5 Adjustments to Payments:** In the event that the Manager becomes aware that any payments or deductions recorded in any Manager's Report are inaccurate the Manager shall record such inaccuracy in the next Manager's Report and any payments to the Owner shall be adjusted accordingly.

6. FURNITURE, FITTINGS AND EQUIPMENT

- 6.1 FFE Account:** During the term of this agreement, the Owner agrees to pay the FFE Reserve to an account to be held in trust by the Manager for the Owner (which account may be a consolidated account into which FFE Reserve amounts for other owners of Management Scheme Apartments are paid, provided that the Manager keeps separate ledgers to identify the FFE Reserve amount held in trust for each owner in the same manner as contemplated for the Account pursuant to clause 7.4). The FFE Account is to be applied by the Manager towards the repair, maintenance and replacement of the Owner's FFE and refurbishment of the Apartment when the Manager, in its reasonable discretion, considers that maintenance, replacement and repair is necessary or desirable.
- 6.2 FFE Reserve:** The Owner's FFE Reserve shall be deducted from payments due to the Owner under clause 5.4 and the Owner irrevocably authorises the Manager to deduct the FFE Reserve accordingly.
- 6.3 Drawings and Accounting:** Subject to clause 9.1.3 the Manager may draw on the FFE Account as and when required to meet the expenses referred to in clause 6.1 provided it shall include a statement of all such drawings made with each Manager's Report.
- 6.4 Excess Expenditure:** In the event the balance on the FFE Account is at any time insufficient to cover expenses which would otherwise be properly deductible from the FFE Account under clause 6.1 and which in the Manager's opinion should be expended in the interests of the Apartment then the Manager shall not be obliged to incur such expenses unless the Owner provides sufficient funds to meet the expenses or until the FFE Account has sufficient credit to meet the expenses.
- 6.5 Investment Powers:** The Manager must deposit the FFE Reserve together with other similar contributions derived from other Management Scheme Apartments on deposit with a registered bank in Fiji and withdrawals may be made by the Manager in accordance with of clauses 6.1 and 6.3.
- 6.6 Balance of Fund:** The balance in the FFE Account (if any) shall be paid to the Owner by the Manager at the termination of this agreement. If the Owner sells the Apartment prior to expiry of this agreement, such sale shall include the transfer of the Owner's interest in the FFE Account.
- 6.7 Exercise of Rights:** The Manager may, subject to clause 9.1.3, exercise its rights under clause 6.1, 6.2, 6.3 and 6.4 without reference to the Owner.

7. BANK ACCOUNT

- 7.1 Establishment of Apartment Owners Account:** The Manager will establish as soon as reasonably practicable after the Commencement Date
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the Account (or Accounts) for the purposes of the Management Scheme. The Account will be opened and maintained in the name of the Manager on trust for the Owner and the other owners of Management Scheme Apartments and will bear the name "Denarau Golf Terraces Apartment Owners Account".

7.2 Gross Income Paid to Account: The Manager shall ensure that all Gross Income in respect of the Apartment is paid into the Account and shall hold all Gross Income on trust for the benefit of the Owner.

7.3 Use of Account: The Manager will be entitled to pay from the Account:

7.3.1 Outgoings: the Outgoings;

7.3.2 FFE Reserve: amounts payable to the FFE Reserve;

7.3.3 Management Fee: the Management Fee payable to the Manager under this agreement;

7.3.4 Gross Operating Profit: any Gross Operating Profit to the Owner; and

7.3.5 Authorised Payments: any other payments authorised in writing by the Owner.

7.4 Combined Account: The Owner acknowledges that the Manager shall not be obliged to operate a separate Account in respect of each Management Scheme Apartment and may operate one or more Accounts into which payments received in respect of the Management Scheme Apartments shall be paid and from which authorised payments shall be made. The Manager shall maintain a ledger for each owner of a Management Scheme Apartment recording all payments into and out of the Account relating to that owner and all references to the Account in this agreement will, where the context requires, refer to the Owner's ledger in respect of the Account.

8. MANAGER'S DUTIES

8.1 Duties: In addition to its duties specified elsewhere in this agreement the Manager will carry out the Manager's Duties:

8.1.1 General Standard: in a proper, efficient and professional manner;

8.1.2 Good Faith: in good faith; and

8.1.3 Authorities: following the proper requirements of all Authorities.

8.2 Additional Duties: The Manager will also carry out any additional duties agreed in writing between the parties. Additional duties carried out by the Manager at the request of the Owner will be subject to additional charges at a rate which, in the Manager's reasonable opinion, fairly compensates the Manager for the Manager's costs in carrying out the additional duties. Such charges shall be agreed by the Manager with the Owner before carrying out any additional duties.

9. LIMITATIONS ON MANAGER

9.1 Restrictions: The Manager may not, without the prior written consent of the Owner:

9.1.1 Borrowing and Security: borrow any money on behalf of the Owner or grant or agree to grant a security interest in or over the Apartment;

9.1.2 Proceedings: commence or settle any legal proceedings or arbitration affecting the Owner or the Apartment;

9.1.3 Expenditure: incur or commit the Owner to any expense on the Apartment greater than FJ\$1,500 (exclusive of VAT) in any one Month period provided that no consent shall be required where the Manager reasonably considers:

- (a) there is an urgent need to commit the expense;
- (b) it is impractical to obtain the consent of the Owner in the time available; and
- (c) the Owner's FFE Account is in sufficient credit to meet the expense required,

in which event the Manager may incur the relevant expense but shall, within 5 Business Days of the expense being incurred, notify the Owner of the nature of the expense and the reasons for not obtaining the Owner's prior consent; or

9.1.4 Marketing: incur or commit any expenditure on behalf of the Owners for marketing purposes unless such expenditure is in accordance with a marketing plan approved by the Body Corporate.

9.2 Exception: Nothing in this agreement shall prevent the Manager from offering any other services including any Ancillary Services to Guests and to charge Guests for those services for the Manager's personal account.

10. RIGHT OF ENTRY

The Manager and all persons authorised by the Manager may enter the Apartment at all reasonable times in order to carry out the Manager's obligations under this agreement.

11. OWNER'S DUTIES

11.1 Minimum Availability: The Owner undertakes to make the Apartment available to the Manager for letting to Guests for at least 9 months of each Year. Nothing in this agreement shall entitle the Owner to use any other apartment or facilities on the Property during periods when the Apartment is available to the Manager.

11.2 Standards of Apartment: The Owner undertakes to keep the Apartment in a fit state for letting to Guests as specified from time to time by the Manager. If at any time the Manager considers the Apartment does not satisfy the appropriate standard the Manager shall notify the Owner of such deficiency and indicate the remedial work required. If the Apartment is not returned to a satisfactory standard within 20 Business Days of the Manager

giving notice to the Owner pursuant to this clause then for so long as the Apartment fails to meet the standards specified by the Manager, the Manager may, by further notice in writing to the Owner ("Suspension Notice"), suspend the Apartment from the Management Scheme and the Manager shall have no further obligations in respect of the Apartment until it is returned to the standards specified by the Manager. In particular, but without limitation, the Manager shall not be obliged to let the Apartment to Guests or report to the Owner pursuant to clause 4. Nothing in this clause shall limit in any way the Owner's obligations under this agreement.

- 11.3 Remedial Work:** Subject to acceptable payment arrangements being made, the Manager agrees to organise and supervise any remedial work required to maintain the Apartment and authorised by the Owner at the Owner's cost subject to a supervision charge being paid to the Manager of 10% (plus VAT) of the cost of the work carried out. If requested by the Owner and subject to the adequacy of such amounts, the Manager will make payment for any remedial work out of amounts held by the Manager for the Owner and shall include details of any payments made in the Manager's Report.
- 11.4 Outgoings:** The Owner shall be responsible for all Outgoings. The Owner authorises the Manager to make payment for any outgoings on the Apartment out of amounts held by the Manager for the Owner. The Manager shall include details of any payments made in the Manager's Report.
- 11.5 Shortfall:** In the event that in any Month the Manager has received insufficient Gross Income from letting the Apartment to cover the Outgoings and other payments due to the Manager then the Owner shall promptly pay any shortfall within 20 Business Days of delivery of the Manager's Report showing such shortfall.

12. DEFAULT INTEREST

If a party fails to pay any sum due to the other party under this agreement on the due date, that party must pay interest to the other party at the Default Rate calculated on a daily basis on the amount unpaid from the due date until payment in full. The right to require payment of interest under this clause is without prejudice to any of the other party's other rights and remedies.

13. ASSIGNMENT AND NOVATION

- 13.1 Assignment:** The Manager may only assign its rights and obligations under this Agreement if it is assigning all its rights and obligations in respect of Management Scheme Apartments and the Body Corporate Management Agreement to an nominee approved by the Body Corporate under the Body Corporate Management Agreement.
- 13.2 Manager May Subcontract:** The Manager may subcontract any of its obligations under this agreement, including without limitation any of the Manager's Duties or those duties set out in clause 3 provided however that the Manager remains responsible for the performance of its obligations under this agreement.
- 13.3 Compulsory Novation:** If the Body Corporate terminates the Body Corporate Management Agreement (having passed a motion to replace the Manager in accordance with clause 13 of its constitution (or any clause
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inserted in substitution for such clause) and nominates a new manager to take over the role of the Manager (the "New Manager") then, without prejudice to any accrued rights of either the Owner or the Manager:

13.3.1 this agreement shall be deemed to be novated from a date nominated by the Body Corporate ("Novation Date") in favour of the Owner but subject to the New Manager having signed and delivered to the Owner a deed of covenant in a form approved by the Body Corporate in favour of the Owner agreeing to comply with the Manager's obligations under this agreement such that:

- (a) the New Manager shall be substituted for the Manager as if the New Manager had been a party to this agreement;
- (b) all references in this agreement to the Manager shall be read and construed as if they were references to the New Manager;
- (c) the New Manager shall be bound by and comply with the provisions of this agreement; and

13.3.2 the Owner and the Manager shall release each other from all further obligations to each under this agreement but without prejudicing each parties obligations to each other up until the Novation Date or releasing any party from liability for any breach which occurred prior to that date.

14. CONFIDENTIALITY

14.1 Announcements and Disclosures: The Manager must not make any announcements or disclosures about the Apartment or the subject matter of this agreement except in a form and at a time agreed by the parties or as required by law.

14.2 Records and Reports: The Manager must keep all accounts, documents, records and reports about the Apartment confidential and must store them in a secure place. The Manager must deliver the originals and all copies of all accounts, documents, records and reports about the Apartment to the Owner on the expiry or termination of this agreement.

15. DESTRUCTION OR DAMAGE

15.1 Irreparable Damage: If the Apartment is destroyed or damaged:

15.1.1 Untenantable: so as to be substantially untenable or unfit for use;

15.1.2 Requiring Demolition: so as to require demolition; or

15.1.3 Permits and Consents: in circumstances where any consent necessary for its reinstatement or repair is not available on terms reasonably acceptable to the Owner;

then this agreement and the appointment of the Manager will terminate with effect from the date of the damage or destruction.

15.2 Repairable Damage: If the Apartment is damaged but not so as to give rise to termination of this agreement under clause 15.1, the Owner must, subject to clause 15.3, take all reasonable steps to reinstate and repair the Apartment as soon as practical.

15.3 Where Reinstatement Prevented: If clause 15.2 applies but either:

15.3.1 Insurance Proceeds Insufficient: the insurance proceeds received by the Owner are insufficient to pay for the repair or reinstatement of the Apartment; or

15.3.2 Consents and Approvals: any consent or approval required to permit reinstatement is not available;

then this agreement and the appointment of the Manager will terminate with effect from the date of the damage.

16. TERMINATION

16.1 Events of Default: Subject to clause 16.2 either party ("Terminating Party") may terminate this agreement by giving written notice to the other ("Defaulting Party") if:

16.1.1 Failure to Pay: the Defaulting Party fails to pay any money payable under this agreement within 10 Business Days of the due date;

16.1.2 Breach: the Defaulting Party materially breaches any term of this agreement including, in the case of the Manager, where the Manager has been negligent or grossly incompetent in the conduct of the Manager's Duties under this agreement; or

16.1.3 Insolvency and Liquidation: the Defaulting Party is declared bankrupt or insolvent according to law or goes into liquidation or is wound up or dissolved.

16.2 Notice of Termination: The Terminating Party may not terminate this agreement under clauses 16.1.1 or 16.1.2 unless the Terminating Party has given written notice to the Defaulting Party requiring the Defaulting Party to remedy the breach and the Defaulting Party has failed to remedy the breach within 10 Business Days after that written notice was given.

16.3 Termination by Manager: The Manager may terminate this agreement by giving written notice to the Owner if after serving a Suspension Notice pursuant to clause 11.2 the Apartment continues to fail to meet any reasonable standard as determined by the Manager with respect to the Apartment's intended use and the Owner fails to repair, or instruct the Manager to repair, the Apartment for a period greater than 120 Business Days.

16.4 Termination by Owner with Notice: The Owner may terminate this agreement without cause by giving 6 months notice of termination in writing ("Termination Notice") to the Manager provided that a Termination Notice will not have effect if it will result in there being less than 30 Management Scheme Apartments ("Minimum Managed Apartments Requirement"). If the Manager receives a Termination Notice which will not be effective by reason of the Minimum Managed Apartments Requirement then the

Manager shall promptly give notice to the Owner to that effect and the Termination Notice will be held in abeyance until the later of:

16.4.1 Minimum Managed Apartments Requirement: such time as additional apartments become part of the Management Scheme so that the Termination Notice can be given effect without breaching the Minimum Managed Apartment Requirement; or

16.4.2 6 Months: the date 6 months from delivery of the Termination Notice.

If termination notices from other apartment owners have also been received by the Manager and are being similarly held in abeyance, the notices of termination shall be given effect in the order in which they were given.

17. SALE OF PROPERTY

17.1 Owner's Option: If the Owner sells or otherwise disposes of the Owner's interest in the Apartment during the term of this agreement, the Owner may at the Owner's option either:

17.1.1 Continuation of Agreement: complete the sale of the Apartment subject to this agreement, in which case this agreement will be deemed to be novated to the new Apartment owner and continue to have effect as if that person had been named as the Owner in this Agreement and the Manager's Duties and rights under this agreement will continue provided that the new owner enters into a deed of accession to this agreement in a form reasonably acceptable to the Manager under which the new owner agrees to be bound by the terms of this agreement as if the new owner were a party to this agreement; or

17.1.2 Termination of Agreement: if permitted by clause 17.2, terminate this agreement with effect from completion of the sale or other disposition of the Apartment.

17.2 Restrictions on Termination: The Owner may not terminate this agreement under clause 17.1.2 without first giving the Manager at least 6 months written notice of the expected completion date of the sale or other disposition of the Apartment and then only if termination would be permitted under clause 16.4.

18. RIGHTS BEFORE TERMINATION

Any termination of this agreement under sections 15, 16 or 17 will not limit or affect the rights, powers and obligations of the parties arising before termination.

19. FORCE MAJEURE

Neither party will be liable to the other for any failure or delay in the performance of any obligations under this agreement or for any loss or damage caused by that failure or delay if the failure or delay arises from a cause which is beyond the party's reasonable control.

20. OWNER'S INDEMNITY

The Owner indemnifies the Manager against all actions, proceedings, claims, costs, losses, calls, demands, damages, expenses or liabilities of any kind suffered or incurred by the Manager resulting from the performance of its Manager's Duties and obligations under this agreement unless resulting from the Manager's failure to comply with the standards required under clause 8.1, or from the Manager's negligence.

21. NO IMPLIED RELATIONSHIPS

Nothing in this agreement constitutes either party as the partner, agent or employee of the other party or creates any trust or partnership. Neither party has power to act for or to incur any obligation or liability on behalf of the other party except as expressly authorised by this agreement.

22. NO VARIATION

No amendment or waiver of any provision of this agreement or consent to any departure from it will be effective unless the parties agree in writing. An amendment, waiver or consent will be effective only in the specific instance to which it relates and for the purpose and to the extent for which it is made or given.

23. ENTIRE AGREEMENT

This agreement sets out the parties' entire agreement on its subject matter and replaces all earlier agreements and negotiations in connection with it.

24. COSTS

Each party must pay that party's own costs of and incidental to the preparation and execution of this agreement.

25. GOVERNING LAW

This agreement shall be governed by the laws of the Fiji Islands. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the Fiji Islands.

Signed as an agreement.

SIGNED by the **OWNER** in the
presence of:

Full name of Owner

Signature of Owner

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by [] as Manager by:

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

SCHEDULE 1

Manager's Duties

The duties of the Manager will be to:

1. Letting

- 1.1** use reasonable endeavours to maximise Gross Income;
- 1.2** carry out the Owner's functions and duties as landlord which can be performed by a manager on the Owner's behalf;
- 1.3** collect and record the Gross Income payable to the Owner;
- 1.4** collect and record the outgoings payable by the Owner;
- 1.5** pay any outgoings when the same are due;
- 1.6** supervise Guests' occupation of the Apartment and deal with any issues raised by Guests during their stay at the Apartment;

2. Maintenance

- 2.1** carry out regular inspections of the Apartment to assess the need or desirability for any repairs or maintenance to the Apartment;
- 2.2** notify the Owner of any material damage to the Apartment and any maintenance or repairs likely to require expense on the Apartment or to maintain the Apartment to the required standard;

3. Safety and Emergencies

- 3.1** arrange emergency evacuation procedures and fire safety precautions;
- 3.2** arrange for the provision of security and caretaking services;

4. Communications and Reports

- 4.1** receive and respond to all communications, complaints and representations from Guests about the Apartment;
- 4.2** produce the Managers Report in accordance with this Agreement;
- 4.3** consult with and advise the Owner generally as necessary on all matters affecting the management and administration of the Apartment;

5. Regulatory

- 5.1** advise the Owner from time to time on the requirements of any Authority relating to the Apartment;

6. Marketing

- 6.1** undertake and arrange for all marketing to be undertaken in accordance with the marketing plan circulated to and approved by the Owner and other owners of the Management Scheme Apartment.
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7. Insurance

7.1 effect and keep current:

7.1.1 a public liability insurance policy for the Apartment;

7.1.2 an insurance policy for the full insurable value of the Apartment on a replacement basis; and

7.2 give the Owner copies of the above insurance policies together with copies of all premium accounts, notices and claims; and

8. General

8.1 generally manage and administer the Apartment.

SCHEDULE 2

Furniture, Fittings and Equipment

