

BODY CORPORATE MANAGEMENT AGREEMENT

between DENARAU GOLF TERRACE APARTMENTS, INC

and

[*MANAGER*]



DENARAU
ISLAND RESORT

THIS AGREEMENT is dated the _____ day of _____ 2003

BETWEEN DENARAU GOLF TERRACE APARTMENTS, INC a New Zealand incorporated society ("Body Corporate")

AND [] of [] ("Manager")

BACKGROUND

- A.** The Body Corporate is the head lessee of the Property.
- B.** The Body Corporate was formed by its members for the purpose, among others, of managing the buildings and common facilities of the Property for the benefit of its members.
- C.** The Manager has agreed to act as caretaker and manager of the common facilities of the Property on behalf of the Body Corporate in accordance with the terms of this agreement.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

"**Ancillary Services**" means services supplied to Members or Guests at the Member's or Guest's cost incidental to use of the Member's Apartment including (but not limited to):

- 1.1.1** food and beverages including provision of room service;
- 1.1.2** laundry and dry cleaning;
- 1.1.3** telephone and facsimile;
- 1.1.4** arranging transportation; and
- 1.1.5** foreign exchange transactions.

"**Apartment**" means an apartment in the Property;

"**Apartment Management Agreement**" means an agreement entered into between a Member and the Manager under which the Manager is engaged by a Member to let the Apartment to short term tenants;

"**Approved Budget**" means the current budget approved in accordance with clause 8 for the applicable Year;

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

"**BC Account**" means the bank account in the name of the Body Corporate to be operated in accordance with clause 7;

"**Board**" means the board members of the Body Corporate acting in accordance with the Constitution;

"**Body Corporate Expenses**" means all costs and expenses reasonably incurred on the Body Corporate's behalf by the Manager in fulfilling its obligations under this agreement (which are within the applicable Approved Budget or other expenditure limits approved by the Body Corporate);

"**Buildings**" means the buildings which comprise the Apartments;

"**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 on which Aotea Limited gives the first notice to a purchaser of an Apartment that the vendor pre-conditions to settlement of an Apartment sale (being practical completion and the issue of sublease title) have been achieved;

"**Common Facilities**" means all areas and shared facilities within the Property excluding the Apartments themselves and facilities exclusively servicing an individual Apartment and includes, without limitation, the exterior, structure and common areas of the Buildings, the swimming pool, pool bure (including BBQ facilities), paths and driveways, utility rooms, landscaped areas, airconditioning, fire protection and fire fighting equipment and the management office;

"**Constitution**" means the constitution of the Body Corporate in force from time to time;

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

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

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

"**Management Fee**" means the fee payable by the Body Corporate to the Manager in respect of the Manager's Duties (excluding acting as secretary to the Body Corporate under this agreement) being FJ\$33,000 (plus VAT) per annum subject to adjustment in accordance with clause 4;

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

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

"**Members**" means members from time to time of the Body Corporate;

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

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

"**Secretarial Duties**" means those duties set out in Schedule 2;

"**Secretarial Fee**" means the fee payable by the Body Corporate to the Manager in respect of the Secretarial Duties, being FJ\$2,000 (plus VAT) per annum, subject to adjustment in accordance with clause 4.

"**Term**" means the term of this agreement described in clause 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 or in the Constitution 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 schedules and their contents have the same effect as if set out in the body of this agreement;

1.9 Sections, Clauses and the Schedule: references to sections, clauses and the schedules are references to this agreement's sections and clauses and schedules;

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; and

1.11 Dollars: references to dollars and FJ\$ are references to Fijian dollars.

2. APPOINTMENT AND TERM

The Body Corporate appoints the Manager to act as the manager of the Common Facilities and to carry out the Manager's Duties. The Manager's appointment will start on the Commencement Date and continue for a period of 10 years from that date unless it is terminated in accordance with either clause 13 or 14.

3. RELATIONSHIP OF PARTIES

- 3.1 Agency:** The relationship between the Body Corporate and the Manager shall be that of principal and agent.
- 3.2 No Partnership:** Nothing in this agreement shall be deemed or construed to constitute either party a partner of the other party or to create any trust. Neither party shall have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided in this agreement or as otherwise agreed in writing between the parties.
- 3.3 Manager not Liable:** The Manager shall not by reason of its management of the Common Facilities be liable for any of the Body Corporate's legal, equitable, statutory or other obligations.
- 3.4 Manager's Powers:** Subject to this agreement, the Manager may exercise all powers, authority and discretions of the Body Corporate as set out in the Constitution, and do on its behalf all such acts as it deems necessary or expedient.

4. MANAGEMENT FEE AND SECRETARIAL FEE

- 4.1 Body Corporate to Pay Management Fee and Secretarial Fee:** Within 10 Business Days after expiry of each Month, the Manager shall prepare and deliver to the Body Corporate for that Month:
- 4.1.1** a copy of the BC Account bank statements;
 - 4.1.2** VAT invoices for the Management Fee and Secretarial Fee; and
 - 4.1.3** a statement detailing the Body Corporate Expenses for the Year to date against the Approved Budget.
- 4.2 Increase in Management and Secretarial Fee:** When the Manager submits a budget to the Body Corporate for approval pursuant to clause 8.1, the Manager may also request that the Management Fee and/or the Secretarial Fee be increased. If an increase in the Management Fee or Secretarial Fee is requested then the Manager shall include with the request a statement saying why the Manager believes the increase is justified and any supporting data for the increase. Following receipt of such a request the Manager and the Body Corporate shall negotiate in good faith to agree what, if any, increase should be paid. If the Manager and the Body Corporate are unable to agree on the amount, if any, of the increase within 30 Business Days of the Manager submitting a request then the issue will be referred to the President for the time being of the Fiji Institute of Accountants to nominate an independent expert to determine the fair increase in the relevant fee having regard to the reasonable market remuneration for performing the relevant services. The parties agree that the determination of the independent expert will be final and binding on the parties and the costs of the independent expert shall be borne as determined by the independent expert or equally if the independent expert does not make a determination as to costs. Pending determination of the increase the Manager shall continue to perform its obligations under this agreement for the then current fees.
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5. MANAGER'S OBLIGATIONS

5.1 Manager's Obligations: The Manager shall:

5.1.1 manage the Common Facilities in accordance with:

- (a) sound commercial practice; and
- (b) any reasonable directions which the Body Corporate may give to the Manager from time to time;

5.1.2 use all reasonable endeavours to promote the interests and welfare of the Body Corporate and its Members;

5.1.3 employ sufficient competent staff to manage the Common Facilities effectively; and

5.1.4 act as body corporate secretary to the Body Corporate.

5.2 Manager's Duties: The Manager's Duties shall include (without limiting the provisions of clause 5.1) those duties specified in schedule 1, subject to:

5.2.1 any reasonable directions which the Body Corporate may from time to time give to the Manager, and

5.2.2 the restrictions set out in clause 5.4.

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

5.3.1 in a proper, efficient and professional manner;

5.3.2 in good faith; and

5.3.3 following the proper requirements of all Authorities.

5.4 Matters Requiring Approval: The Manager shall not without the Body Corporate's prior written approval:

5.4.1 enter into any agreement, arrangement, transaction or contract on behalf of the Body Corporate which does not fall within any class of contract (including contracts for a consideration less than a sum specified by the Body Corporate) which the Manager is approved to enter into on behalf of the Body Corporate;

5.4.2 borrow any money on behalf of the Body Corporate or grant or agree to grant a security interest in or over the Property;

5.4.3 commence or settle any legal proceedings or arbitration affecting any Member or the Property;

5.4.4 incur or commit the Body Corporate to any expense on the Property greater than **FJ\$1,500** (exclusive of VAT) in any one Month period unless provided for in the current Approved Budget;

5.4.5 carry out any capital improvements to the Property unless provided for in the current Approved Budget;

- 5.4.6 levy any Members;
- 5.4.7 promulgate any rules under the Constitution;
- 5.4.8 allow any person, other than a Member or Guest or an invitee of a Member or a Guest to use the Common Facilities; or
- 5.4.9 initiate any action at law or equity, or enter into any dispute resolution or mediation, on behalf of the Body Corporate.

5.5 Manager's Authority: Notwithstanding the above restrictions, there shall be no limits on the Manager's authority where the Manager, in its reasonable discretion, decides that to delay a decision or an action while awaiting the approval of the Body Corporate would be detrimental to the Body Corporate's best interests as long as the Manager has first given written notice of the intended decision or action to the Body Corporate and has not received a response to that notice (after having waited a reasonable time where practical and made reasonable efforts to obtain a response during that period).

5.6 Additional Duties: The Manager will also carry out any additional duties agreed between the parties. Additional duties carried out by the Manager at the request of the Body Corporate 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 Body Corporate before carrying out any additional duties.

5.7 Exception: Nothing in this clause 5 shall prevent the Manager from offering any other services including any Ancillary Services to Members and Guests and to charge Members and Guests for those services for the Manager's personal account.

6. BODY CORPORATE'S OBLIGATIONS

The Body Corporate shall:

- 6.1 **Not Disturb:** permit the Manager to manage the Body Corporate without interruption or disturbance by the Body Corporate or its agents, officers, employees or contractors;
- 6.2 **Allow Access to Common Facilities:** allow the Manager and all persons authorised by the Manager the right to enter upon the Common Facilities at all times in connection with the fulfilment of the Manager's Duties, obligations and functions; and
- 6.3 **Execute Documents:** promptly do all things which may reasonably be necessary to enable the Manager fully and effectively to manage the Common Facilities in the manner contemplated, including (without limitation) executing all notices, papers and documents reasonably required by the Manager to enable the Manager to carry out the Manager's Duties, obligations and functions.

7. BANK ACCOUNT

- 7.1 **Establishment of Account:**
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7.1.1 The Body Corporate and the Manager will establish the **BC** Account as soon as reasonably practicable after the Commencement Date.

7.1.2 The **BC** Account will be opened and maintained at all times solely in the name of the Body Corporate and will bear the name "Denarau Golf Terrace Apartments Account".

7.1.3 The parties agree that cheques drawn for an amount equal to or in excess of FJ\$1,500 or payable to the Manager must be countersigned by a nominee of the Body Corporate. All other cheques may be signed by a signatory nominated by the Manager.

7.1.4 The Body Corporate and the Manager will do all things necessary regarding the establishment of the **BC** Account including the nomination of signatories.

7.2 **Body Corporate to Provide Sufficient Funds:** The Body Corporate at all times will provide sufficient funds to be held in the **BC** Account to cover all budgeted Body Corporate Expenses for the next succeeding Month plus a prudent contingency sum.

7.3 **Use of BC Account:**

7.3.1 All funds received by the Manager in the performance of its obligations under this agreement must be deposited by the Manager in the **BC** Account.

7.3.2 Without compromising the cheque signing requirements in clause 7.1, the Manager will be entitled to pay from the **BC** Account all:

- (a) Body Corporate Expenses incurred by the Manager; and
- (b) all amounts due and payable to the Manager under this agreement.

7.4 **Balance at End of Term:** Upon expiry or termination of this agreement, all amounts remaining in the **BC** Account must be paid forthwith to the Body Corporate or as the Body Corporate otherwise directs except for amounts then due to the Manager.

7.5 **Risk:** Except for the Manager's negligence, fraud or failure to act in accordance with this agreement, moneys held in the **BC** Account are at the Body Corporate's risk.

8. BUDGET

8.1 **Budget:** The Manager must submit to the Body Corporate for approval, not later than September each Year, a budget for the forthcoming Year. The budget must be a detailed, full and comprehensive budget for that Year and include all information reasonably required by the Body Corporate including recommendations relating to capital expenditure.

8.2 Approval of the budget:

8.2.1 If the Body Corporate does not approve of the budget submitted in accordance with clause 8.1, the Body Corporate shall give notice in writing to the Manager that the budget or any item therein is not acceptable within 1 Month after the date of the submission of the budget. If no such notice is given within the 1 Month period the budget will be deemed to be approved.

8.2.2 If the Body Corporate and the Manager are unable to agree on the budget or any part thereof, then:

(a) the Manager must continue to carry out its obligations under this agreement based on the previous year's budget (except for expenditure clearly tagged as being of a one-off nature for that previous year) pending approval of the current budget; and

(b) the issue will be referred to the President for the time being of the Fiji Institute of Accountants to nominate an independent expert to determine the issue. The parties agree that the determination of the independent expert will be final and binding on the parties and the costs of the independent expert shall be borne as determined by the independent expert or equally if the independent expert does not make a determination as to costs.

9. LIABILITY AND INDEMNITIES

9.1 No Claim: The Body Corporate shall not make any claim against the Manager in its capacity as Manager in respect of any alleged errors of judgment made in good faith in connection with the performance of its obligations and functions under this agreement and this limitation shall apply equally to claims against third parties performing such services pursuant to contracts with the Manager in its capacity as manager of the Common Facilities.

9.2 Body Corporate's Indemnity: If any third party makes or brings a claim, demand, action or proceeding against the Manager in respect of or arising out of the performance of the Manager's obligations and functions under this agreement, the Body Corporate shall indemnify the Manager against all losses, damages, costs and expenses in connection therewith except to the extent that the same may arise out of or be attributed to the breach of this agreement or the negligence or wilful misconduct of the Manager or the Manager's employees or agents.

9.3 Manager's Indemnity: The Manager shall indemnify the Body Corporate against any claim, demand, action or proceeding made or brought by any third party against the Body Corporate in respect of or arising out of any breach of this agreement by the Manager.

10. 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.

11. ASSIGNMENT AND NOVATION

11.1 Assignment: The Manager may only assign its rights and obligations under this agreement if it is assigning all its rights and obligations under all Apartment Management Agreements and this agreement to a nominee approved by the Body Corporate.

11.2 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 5 provided however that the Manager remains responsible for the performance of its obligations under this agreement.

12. CONFIDENTIALITY

12.1 Announcements and Disclosures: The Manager must not make any announcements or disclosures about the Property or any 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.

12.2 Records and Reports: The Manager must keep all accounts, documents, records and reports about the Property 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 Property to the Body Corporate on the termination of this agreement.

13. DESTRUCTION OR DAMAGE

If the Property and/or the Buildings are destroyed or damaged:

13.1 Untenantable: so as to be substantially untenantable or unfit for use;

13.2 Requiring Demolition: so as to require demolition; or

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

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

14. TERMINATION

14.1 Events of Default: Subject to clause 14.2 either party ("Terminating Party") may terminate this agreement by giving written notice to the other ("Defaulting Party") if:

14.1.1 Failure to Pay: the Defaulting Party fails to pay any money payable under this agreement within 20 Business Days of the due date;

14.1.2 Breach: the Defaulting Party materially breaches any term of this agreement which, in the case of the Manger, will include where the Manager has been negligent or grossly incompetent in the conduct

of the Manager's Duties, obligations and functions under this agreement; or

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

14.2 Notice of Termination: The Terminating Party may not terminate this agreement under clause 14.1.1 or 14.1.2 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.

14.3 Termination by Body Corporate: The Body Corporate may terminate this agreement on 20 Business Days written notice to the Manager if the Body Corporate passes a resolution to remove the Manager in accordance with clause 13 of the Constitution (or any clause inserted in substitution for that clause).

14.4 Termination of Secretarial Services: The Body Corporate may on giving one Months notice to the Manager terminate the Manager's appointment as the secretary to the Body Corporate. On termination of such appointment:

14.4.1 the Body Corporate shall have no further obligation to pay the Secretarial Fee;

14.4.2 the Manager shall sign all papers reasonably requested by the Body Corporate relating to the Manager's removal as secretary and deliver up all Body Corporate records as designated by the Body Corporate;

14.4.3 the Manager shall have no claim for any compensation for loss of office; and

14.4.4 save as expressly provided in this clause 14.4 of this agreement, shall continue to perform its Manager's Duties, obligations and functions under this agreement.

15. RIGHTS BEFORE TERMINATION

Any termination of this agreement under either clause 13 or 14 will not limit or affect the rights, powers and obligations of the parties arising before termination.

16. 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.

17. 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.

18. 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.

19. COSTS

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

20. 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.

THE COMMON SEAL of **DENARAU GOLF TERRACES CLUB, INC** was affixed in the presence of:

Full name of authorised signatory

Signature of authorised signatory

Full name of authorised signatory

Signature of authorised signatory

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

1. COMMON FACILITIES

- 1.1** Ensuring the proper operation, maintenance, repair, renovation and replacement of the Common Facilities.
- 1.2** Recommending to the Body Corporate as to what capital improvements to the Common Facilities should be carried out, and carrying out those capital improvements approved by the Body Corporate.

2. RULES AND COVENANTS

- 2.1** Enforcing any rules promulgated by the Body Corporate under the Constitution, and making recommendations to the Body Corporate as to any addition or amendments to those rules.
- 2.2** Enforcing any contract to which the Body Corporate is a party.

3. GENERAL

- 3.1** Responsibility for the day to day management of the Common Facilities.
- 3.2** Endeavouring to improve the efficiency of the Body Corporate.
- 3.3** Providing technical know-how and expertise to enable the Body Corporate to improve and sustain the quality of life within the Property.
- 3.4** Depositing immediately all sums received on behalf of the Body Corporate to the credit of the Body Corporate into the BC Account.
- 3.5** Ensuring the Body Corporate honours any contract to which it is a party, and that the Body Corporate operates in accordance with law and the requirements of any statutory or regulatory authority.

4. SECURITY

Arranging for and supervising security control of the Property.

5. INSURANCE

Obtain and maintain full and effective insurance for the Body Corporate for all of its property, assets and undertakings against all risks normally insured against by businesses carrying on similar businesses or owning property or assets of a similar nature.

6. DCL LEVIES

- 6.1** Pay all levies due to DCL and other outgoings relating to the Property on behalf of the Body Corporate.
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SCHEDULE 2

Secretarial Duties

The Body Corporate Secretary shall cause the following to be carried out:

- 1.** convene and attend general meetings of the Body Corporate when required to do so in accordance with the Constitution;
 - 2.** attend all meetings of the Board and have full speaking rights at such meetings;
 - 3.** give all notices required to be given by the provisions of the Constitution or as directed from time to time by the Body Corporate or the Board;
 - 4.** keep minutes at all general meetings and Board meetings and enter into the minute book the time, date and venue of such meeting and all business considered and resolutions passed at such meeting;
 - 5.** hold in safe custody the common seal of the Body Corporate (if any);
 - 6.** receive, and issue receipts for, all Body Corporate levies, additional fees, and any other moneys paid to the Body Corporate;
 - 7.** pay all accounts properly incurred by or on behalf of the Body Corporate;
 - 8.** report immediately to the Body Corporate any Member who fails to pay any levies, additional fees or other money payable by the Member to the Body Corporate within the prescribed period;
 - 9.** keep all financial records and any security documents in safe custody;
 - 10.** compile all proper accounting records from time to time as required by the Incorporated Societies Act 1908 (New Zealand) or by the Board which give a true, fair and complete account of the financial affairs and transactions of the Body Corporate;
 - 11.** compile the financial statements immediately following each financial year as required by the Incorporated Societies Act 1908 (New Zealand), and provide for the auditing of those records and the distribution of the audited financial statements to Members;
 - 12.** ensure the Register of Members is maintained in accordance with clause 4.6 of the Constitution; and
 - 13.** such other matters specified as duties of the Secretary in the Constitution.
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