

**PROPRIETOR UNIT .....**

**and**

**GRANT STUART BOWATER**  
**Manager**

**DEED OF UNIT  
MANAGEMENT  
AGREEMENT**

**BUDDLE BENTLEY TWEED**  
**Solicitors**  
**Whakatane**

# DEED OF UNIT MANAGEMENT AGREEMENT

**Dated:** \_\_\_\_\_ **2008**

## **PARTIES:**

1. \_\_\_\_\_ (“the Owner”)
2. Grant Stuart Bowater (“the Unit Manager”)

## **BACKGROUND:**

- A. The Owner is the unit proprietor of a stratum estate in freehold under the Unit Titles Act 1972 in principal unit number \_\_\_\_\_ and associated accessory units on Unit Plan number \_\_\_\_\_ (“the Unit”).
- B. The Owner desires to appoint the Unit Manager as manager of the Unit and the Unit Manager desires to take up such appointment.
- C. The parties desire to be bound by the terms of this Deed.

## **OPERATIVE PART:**

### **1. DEFINITIONS AND INTERPRETATION**

#### 1.1 In this Agreement:

“**Accounting Period**” means each period of one calendar month duration during the term of this Deed beginning and terminating on the first and last day of such month and shall include the appropriate portion of the month at the beginning and end of such term.

“**Act**” means the Unit Titles Act 1972.

“**Base Management Fee**” means a fee payable to the Unit Manager as commission for the management of the letting exclusive of any other costs and being equal to 10% of Gross Income of the Business.

“**Body Corporate**” means Body Corporate No. 387500 (South Auckland Registry) constituted under the Unit Titles Act 1972.

“**Body Corporate Management Agreement**” means an agreement between the Body Corporate and the Body Corporate Manager for the management of the Body Corporate and the common areas.

“**Body Corporate Rules**” means the rules of the Body Corporate as amended or replaced from time to time.

“**Budget**” means the budget referred to in clause 7.8.

“**Business**” means the business of letting out or hiring the Unit for the Permitted Use thereof and the provision of services incidental thereto including without limitation (but at all times conforming with the Permitted Use):

- (a) Advertising and promotion;
- (b) Offering the Unit for letting as a serviced apartment;
- (c) Entering into agreements with travel agents, tourist agencies and others;
- (d) Negotiating with persons to occupy or use the Unit for reward;
- (e) Terminating any agreement or arrangement for occupation and use of the Unit;
- (f) Collecting fees and other moneys payable for occupation and use of the Unit;
- (g) Instituting proceedings for recovery of possession of the Unit or any fees or money payable for occupation or use of the Unit.
- (h) Arranging for the cleaning of the Unit as required and all associated Laundry.

“**Commencement Date**” means the date from which this agreement is signed.

“**Complex**” means the units and common property of Ohope Beach Resort shown on Lot 1 DP362471 situated at 307-309 Harbour Road, Ohope.

“**Equipment and Capital Improvements Reserve Account**” means the account referred to in **Clause 8.1**.

“**Furnishings**” means the furniture, fittings and equipment itemised in **Schedule C**, and shall include any replacement furniture, fittings and equipment.

“**Gross Income**” means the total income resulting from the Business.

“**Net Profit**” means the excess of Gross Income after deduction of Base Management Fee and Operating Expenses as hereafter defined.

“**Operating Expenses**” means all costs and expenses incurred or payable in connection with the Business and management of the Unit (including those items specified in Schedule A hereto) but does not include any interest charges, depreciation or any items which according to generally accepted accounting principles are regarded as capital items.

“**Owner**” means the Owner named as a party to this Deed and the Owner’s executors, administrators, successors and assigns and where appropriate to the context, includes the employees, agents, contractors and authorised representatives of the Owner.

“**Permitted Use**” means the use of the Unit for short term occupancy by itinerant visitors (including the Owner) in accordance with the Body Corporate Rules and uses permitted or approved from time to time under the provisions of the district plan of the appropriate Relevant Authority and the Resource Management Act 1991.

“**Relevant Authority**” means any local body, governmental or other authority, regulatory body or agency having jurisdiction or authority over or in respect of, the Unit.

“**Renewal Date**” means the renewal date specified in this Deed.

“**Term**” means ten (10) years from the Commencement Date.

“**Termination Date**” means either the date from which the Owner chooses to terminate this agreement having given reasonable notice or the date of termination of the Body Corporate Management Agreement.

“**Unit Manager**” means the Unit Manager named as a party to this Deed and the Unit Manager’s executors, administrators, successors and permitted assigns and where appropriate to the context includes the employees, agents, licensees, invitees, contractors and any other persons under the control or direction of the Unit Manager.

“**Unit Manager’s Account**” shall be the bank account referred to in **Clause 7.4**.

1.2 In this Deed, unless the context otherwise requires:

- (a) Words denoting the singular shall include the plural and vice versa;
- (b) One gender shall include the other genders;
- (c) Words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- (d) Any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- (e) Reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- (f) Any reference to “month” or “monthly” shall mean, respectively, calendar month or calendar monthly;
- (g) References to sections, clauses and schedules are references to sections, clauses and schedules of this Deed;
- (h) The table of contents, the section headings and clause headings have been inserted for convenience only and shall not form part of this Deed or affect its interpretation in any way; and
- (i) Reference to any statute, regulation, ordinance or by-law shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

## 2. APPOINTMENT OF UNIT MANAGER

### 2.1 Management

The Owner hereby appoints the Unit Manager as the sole and exclusive manager of the Unit to manage the Business but always within the Permitted Use, and the Owner hereby grants to the Unit Manager during the Term of this Deed, the management and control of all occupation rights in respect of the Unit to the exclusion of the Owner.

### 2.2 No Partnership

Nothing herein contained is to be construed as creating a partnership, joint venture or any relationship other than that of owner and manager.

### 2.3 No Pledge

The Unit Manager agrees not to pledge the credit of the Owner without the Owner's consent, except in the purchase of goods, merchandise, materials, supplies and services reasonably required in the ordinary course of carrying on the Business or as may be otherwise required in the performance of the Unit Manager's obligations under this Deed. The Unit Manager agrees to indemnify the Owner against any claims arising as a result of the pledging of the credit of the Owner in circumstances not authorised by this Deed.

### 2.4 No Tenancy

Notwithstanding **Clause 2.1** no tenancy exists between the Owner and the Unit Manager in respect of the Unit but the relationship between the parties is that of owner and manager and of licensor and licensee, whereby the right to grant occupational rights in respect of the Unit to visitors (including the Owner) is hereby exclusively vested in the Unit Manager.

### 2.5 Voting Rights

Notwithstanding the previous subclauses of this clause voting rights in the Body Corporate remain at all times with the Owner personally, and furthermore the Unit Manager shall have no right to attend Body Corporate meetings on behalf of the Owner simply by virtue of the appointment of the Unit Manager as Manager of the Unit and the Business.

## 3. TERM

3.1 The Term shall commence on the Commencement Date and terminate on the Termination Date.

## 4. RENEWAL OF TERM

4.1 The Unit Manager and the Owner may by agreement, extend the term of this Deed for a further period of five (5) years from expiry of the Term. This Deed will then automatically continue for a further period on the same terms including this clause, to the intent that the maximum term of this Deed, should the Unit Manager and the Owner

extend the term pursuant to this clause, will be up to twenty (20) years from the Commencement Date.

## 5. USE OF UNIT

### 5.1 Permitted Use

The Unit Manager shall only permit the Unit to be used for the Permitted Use.

### 5.2 Furnishings

The Unit Manager shall use or permit the use of the Furnishings only in conjunction with the Unit.

### 5.3 Use by Owner

Notwithstanding **Clauses 2.1 and 2.4** the Unit Manager shall permit the Owner and any other person or persons nominated by the Owner to occupy the Unit on terms and conditions stipulated by the Owner but subject to and conditional on the following:

- (a) that the Unit is available for such occupancy and not subject to some other booking arranged by the Unit Manager.
- (b) there will be no remuneration to the Unit Manager during the period of such occupancy by the Owner but the Owner will be liable for any Operating Expenses incurred during the period of his occupancy, but restricted to cleaning expenses, laundry expenses, power expenses and stock supplies to the Unit, together with any telephone, Sky TV or similar type expenses.
- (c) that such occupancy is not on such terms or for such period as shall constitute a non-compliance with the Permitted Use for the Unit.
- (d) the Owner paying the Unit Manager the equivalent of the appropriate percentage under clause 8.1 for the Equipment and Capital Improvements Reserve Account, based on the daily tariff at the time, and for the period the Owner is in occupation. The Unit Manager shall credit such payment immediately into the Equipment and Capital Improvements Reserve Account of the Owner.

### 5.4 Terms of Occupancy

Terms of occupancy of the Unit are to be set by the Unit Manager and may be altered by it from time to time, but shall be equivalent to terms accepted as standard in the serviced apartment industry. However the Owner has the discretion to stipulate that the Unit be designated as being for non-smokers only, and the Unit Manager shall enforce such designation accordingly.

### 5.5 Rotation of Unit

The Unit Manager shall at all times during the Term use its best endeavours, fairly and equitably to rotate the occupancy cycle of the Unit in conjunction with other Units in the

Complex that it may also manage, even when visitors may request a particular Unit.

## 5.6 Tariffs

The Unit Manager has the sole discretion to stipulate tariffs and other charges applicable from time to time in relation to the Unit, provided that such tariffs and charges are competitive in the market place. The Unit Manager shall give regard to the wishes of the Owner in setting such tariffs and charges taking into consideration any particular features of the Unit. Tariff variations between Units, determined by the particular features of each unit, shall be applicable to similar Units so that a continuity of tariffs is maintained within the complex. All tariffs set at any time for any particular period of time for all Units in the Letting Pool shall be made available to all Owners of Units in the Letting Pool. No discounting shall be applied to any Unit without the prior approval of the Owner and any such discounting will be made known to all other Owners in the Letting Pool.

## 6. **REMUNERATION**

### 6.1 Base Management Fee

The Owner agrees to pay the Unit Manager the Base Management Fee, payable pursuant to **Clause 7.9**.

### 6.2 Determination of Fees

The Base Management Fee is to be determined in accordance with the accounts for each Accounting Period for the Business prepared as at the last day of each month during the term of this Deed.

### 6.3 GST

The Base Management Fee calculated in accordance with **Sub-clause 6.1** does not include Goods and Services Tax. The Owner must pay Goods and Services Tax in addition to the Base Management Fee.

## 7. **REPORTS, RECORDS, ACCOUNTS ETC**

### 7.1 Records

The Unit Manager must keep proper records of all receipts and payments in connection with the Business and must complete such weekly assessments of all stock provided to the Unit as are usual in the serviced apartment industry. All such records are to be available at all reasonable times for inspection by the Owner or the Owner's authorised agents, and the Unit Manager will promptly give all information and explanations with regard to such records and any other affairs relating to the Business as the Owner or the Owner's duly authorised representatives may reasonably require.

### 7.2 Monthly Accounts

The Unit Manager must ensure that accounts for each Accounting Period for the

Business are prepared in accordance with generally accepted accounting principles and practices and must show in respect of each Accounting Period the Gross Income, Operating Expenses and Net Profit for the operation of the Business in respect of that Accounting Period. The accounts must be supplied by the Unit Manager to the Owner not later than the 25th day of the month following the Accounting Period to which they relate.

### 7.3 Stocktake

On the Commencement Date and on the Termination Date or earlier termination of this Deed the parties agree to complete a stocktake and inventory of all stock in trade, plant and equipment and chattels utilised in the operation of the Business.

### 7.4 Bank Account

All moneys received from the operation of the Business must be within the control of the Unit Manager and are to be deposited in an account of the Unit Manager at such trading bank as he may nominate. The Unit Manager shall have sole signing authority in respect of such account.

### 7.5 Working Capital

All Gross Income derived from the operation of the Business and all Operating Expenses and other expenses incurred in maintaining and operating the Business is to the account of the Owner who must provide the Unit Manager with such working capital as may from time to time be reasonably required by the Unit Manager to effectively operate the Business, subject to **Clause 8.4**.

### 7.6 Operating Loss

The Owner will bear any operating loss on the Business and the fees payable to the Unit Manager herein will not be reduced on account of any such loss.

### 7.7 No Warranty

The Owner acknowledges that the Unit Manager does not warrant that the Business is or will be profitable notwithstanding any advice or assistance which the Unit Manager may have provided to the Owner prior to or after the date of this Deed in terms of preparation of budgets.

### 7.8 Budget

(a) The Unit Manager is to be responsible for preparing the Budget in connection with the operation of the Business. The first Budget is to be prepared immediately following execution of this Deed and thereafter during each year of this Deed the Budget is to be prepared by the Unit Manager not later than the 31<sup>st</sup> March in each year for the ensuing year. Each Budget will in reasonable detail include:

An estimate of Gross Income, an estimate of Operating Expenses, any anticipated trading shortfall, marketing plans and proposals, proposed capital expenditure,

proposed expenditure from Equipment and Capital Improvements Reserve Account, estimated occupancy, room rate, and other estimates and projections which are appropriate for a plan of this nature.

- (b) The Owner will not unreasonably withhold its approval of the Budget and unless a specific written objection to the Budget is delivered to the Unit Manager within 7 days after submission, the Owner is deemed to have approved it.
- (c) If the Owner and Unit Manager dispute any issues in the Budget they will endeavour to resolve by negotiations conducted in good faith. Alternatively either party may request to have a resolution of the matter pursuant to clause 19 of this agreement. If the issues in dispute have not been resolved before the start of the trading year commencing on 1<sup>st</sup> April in the year in question, the Unit Manager will proceed to implement so much of the Budget as is approved and the balance will be suspended until resolved and will be replaced by the amount included in the Budget for the previous trading year, if any.
- (d) Both the Owner and the Unit Manager shall notify the other in writing of any significant event or circumstance which it considers likely to adversely impact on the profitable operation of the Business. In any such event the Unit Manager may with all due diligence cause a revised Budget to issue for the relevant trading year so as to properly take into account and fairly reflect the likelihood of such event or circumstance occurring. The provisions contained in clause 7.8 b) and c) shall apply in respect of the revised Budget.

#### 7.9 Payments from Unit Manager's Account

The following payments will be made from the Unit Manager's Account at the end of each Accounting Period in the following order:

- (a) The Base Management Fee to the Unit Manager
- (b) Operating Expenses in respect of the previous Accounting Period.
- (c) Amounts required to be paid to the Equipment and Capital Improvements Reserve Account in respect of the previous Accounting Period.
- (d) Any residual cash surplus to the Owner or as directed by the Owner.

### **8. EQUIPMENT AND CAPITAL IMPROVEMENTS RESERVE ACCOUNT**

#### 8.1 Deduction

The Manager will deduct from the Unit Manager's Account and pay into the Equipment and Capital Improvements Reserve Account an amount equal to 1.5% of Gross Income until the end of the first full 12 month's trading, and 2% of Gross Income thereafter. The Equipment and Capital Improvements Reserve Account will be a separate bank account established in the name of the Owner but with sole drawing rights vested in the Unit Manager (but subject to **Clause 8.3** hereof).

## 8.2 Proceeds of Sale and Insurance

Proceeds from the sale of Furnishings and proceeds from insurance covering Furnishings will be paid into the Equipment and Capital Improvements Reserve Account.

## 8.3 Expenditure

The Equipment and Capital Improvements Reserve Account will be applied solely for expenditure on major refurbishment, alterations or extraordinary repairs to the Unit or replacement of the Furnishings as set out in the Budget or otherwise as agreed between the parties and includes all reinstatement and repairs for which insurance proceeds have been paid to the Equipment and Capital Improvements Reserve Account.

## 8.4 Insufficient Cash Surplus

If the Equipment and Capital Improvements Reserve Account and any retained available cash surplus is insufficient to allow for any proposed capital expenditure the Owner is under no obligation to pay the costs of any excess capital expenditure in which case the Owner may confer with the Unit Manager to determine which capital expenditure if any may be deferred to future trading years in which case such deferred capital expenditure shall be funded by available cash surplus prior to any distribution pursuant to **Clause 7.9**.

## 8.5 The Balance in Account

The balance of the Equipment and Capital Improvements Reserve Account at the end of each trading year will be carried forward. The balance remaining in the Equipment and Capital Improvements Reserve Account at the end of the Term will be paid to the Owner unless the Term is renewed in accordance with this Deed in which case it will likewise be carried forward.

# 9. **LIQUOR LICENCES**

## 9.1 Prejudice to Licence

The Unit Manager will not do anything during the Term to prejudice or affect the currency of any licence in force in respect of the Complex or the Business pursuant to the Sale of Liquor Act 1989.

## 9.2 Compliance

The Unit Manager must ensure that the Business complies in all respects with the provisions of the Sale of Liquor Act 1989 as they relate to the maintenance of all licences issued in respect of the Complex.

## 9.3 Manager's Certificate

The Unit Manager prior to the Commencement Date must obtain at its cost a Manager's Certificate under the Sale of Liquor Act 1989 and must keep at its cost such Certificate current during the Term.

## 10. DUTIES OF THE UNIT MANAGER

### 10.1 Duties

The Unit Manager shall on behalf of the Owner:

- (a) Manage, supervise, and conduct the Business and supervise and control the performance of all services to or in the Unit and will do or cause to be done all things reasonably necessary for the efficient and proper operation of the Business, and the use of the Unit in accordance with the Permitted Use.
- (b) Without limiting the generality of **Clause 10.1(a)** the services and duties to be performed by the Unit Manager will include those services set out in **Schedule B**.
- (c) The services and duties to be performed by the Unit Manager may be delegated to any employee or contractor of the Unit Manager but such delegation will not in any way relieve the Unit Manager from the obligations imposed by this Deed.
- (d) Subject to the terms of this Deed the Owner agrees to give the Unit Manager uninterrupted control and operation of the Business and agrees not to interfere or be involved in any way with the day to day management of the Business except as expressly permitted by this Deed.
- (e) Ensure that all rates, taxes, charges and other outgoings from time to time payable in respect of the Unit to any Relevant Authority are duly and punctually paid;
- (f) Keep the Unit and the Furnishings properly maintained and in good order and repair, and replace such of the Furnishings as require replacement, to the intent that at the Termination Date the Unit Manager shall yield up and deliver the Unit, including the Furnishings in a good state of repair and condition;
- (g) Ensure that all charges incurred by the occupants of the Unit from time to time will be paid by such occupants such as without limitation, the tariff, food and beverage costs, and any phone and related charges.
- (h) Ensure that the body corporate levies in respect of the Unit are duly and punctually paid to the Body Corporate.

### 10.2 No Personal Liability

The Owner acknowledges that the liability of the Unit Manager to pay the Operating Expenses referred to in **Schedule A** shall not, subject to **Clause 10.3**, constitute a personal liability but only a liability to effect payment out of such revenues as are available for the purpose.

### 10.3 Liability for Damage

Notwithstanding the foregoing, the Unit Manager shall be personally liable for any damage caused or resulting to the Unit or the Furnishings which is the result of any negligent act or omission of the Unit Manager and every such liability shall be satisfied

by the Unit Manager otherwise than from the revenue derived from the Unit.

#### 10.4 Compliance with Laws

The Unit Manager shall comply with all laws relating to the use of the Unit for the Permitted Use including without limitation any requirements, notices or orders of any Relevant Authority PROVIDED THAT the Unit Manager shall not be required to make any structural repairs or alterations to the Unit other than those required by reason of the particular nature of the Business.

#### 10.5 Undertakings

The Unit Manager:

10.5.1 undertakes to comply with its obligations under the Body Corporate Management Agreement;

10.5.2 is aware of the terms of the Body Corporate Management Agreement in respect of the Common Property between the Owner and the Body Corporate and agrees to carry out its obligations under the Agreement in a manner consistent with the Body Corporate Management Agreement and will, if requested and where consistent with the terms of the Agreement, perform the Owner's obligations under the Body Corporate Management Agreement.

### 11. **OWNER'S COVENANTS**

#### 11.1 Covenants

The Owner shall:

- (a) Not enter into any arrangement, which would in any way detrimentally affect the exercise by the Unit Manager of the Permitted Use;
- (b) Comply with the provisions of the Act and the Body Corporate Rules; and
- (c) Comply with the provisions of all laws relating to the Unit including without limitation any requirements, notices or orders of any Relevant Authority other than those provisions and requirements which are the responsibility of the Unit Manager hereunder.
- (d) Authorise the replacement of such of the Furnishings and chattels as require replacement from time to time and the expenditure of any other money of a capital nature as may reasonably be required for the proper and efficient management of the Business, but subject to **Clause 8.4**.

#### 11.2 Acknowledgment

The Owner acknowledges that the Unit is or will be a part of the premises in the Complex licensed for the sale of liquor under the Sale of Liquor Act 1989.

## **12. ASSIGNMENT**

### **12.1 Assignment by the Owner**

Sale of the Unit by the Owner shall terminate this Agreement automatically, as at date of settlement of the sale of the unit, and notice of the sale is to be given by the Owner to the Unit Manager together with the full name and address of the Purchaser for the purpose of levying of future Body Corporate charges, and also should such Purchaser wish to enter into a Deed similar to this Deed with the Unit Manager.

### **12.2 Assignment by the Unit Manager**

The Unit Manager covenants that while it is manager of the Unit it will at all times remain manager of the Body Corporate and further covenants that should it with the consent of the Body Corporate as provided in the Body Corporate Management Agreement, assign its interest as manager of the Body Corporate to a third party, then it shall also simultaneously assign its interest as manager under this Agreement to the same third party, to the intent that the manager under this Agreement and the manager of the Body Corporate will be identical at all times. For the purpose of this clause, an effective change in the control of the Unit Manager shall be deemed to be an assignment of this Agreement.

## **13. EMPLOYEES / CONTRACTORS**

All personnel employed or contracted in the Business are employees or contractors of the Unit Manager.

## **14. POWER TO ENTER INTO CONTRACTS**

All liabilities properly or reasonably incurred to third persons in relation to the Business by the Unit Manager shall be liabilities of the Owner and the Owner indemnifies the Unit Manager against any claims by third persons in respect to such liabilities.

## **15. RE-ENTRY**

### **15.1 Owner may Re-enter**

This Agreement is automatically terminated, if the Body Corporate Management Agreement is terminated by either the Body Corporate or the manager of the Body Corporate in which case the Owner may re-enter the Unit, and the Term shall terminate on such re-entry but without prejudice to the rights of either party against the other for existing breaches of this agreement.

## **16. FORCE MAJEURE**

Neither party is liable in damages to the other for any act or omission which (but for this clause) might constitute a breach of this Deed if such act or omission is caused by any act of God, force majeure or any other cause which is not within the reasonable control of the party affected thereby.



If:

- (a) a party has given to the other party notice of a dispute in connection with this Deed;  
and
- (b) the parties are unable in good faith to settle the dispute within 14 days after notice under sub-clause (a) has been received by the other party,

then the dispute may be submitted by either party to such person as may be nominated by the president or vice-president for the time being of the District Law Society of the district in which the Complex is situated. The person nominated is to act as an expert and not as an arbitrator.

19.3 Submissions to Expert

Both parties are entitled to make written submissions to the expert so appointed upon the matter the subject of the dispute.

19.4 Expert's Decision

The expert's decision is final and binding upon the parties and the cost of the expert's decision will be borne by the parties in such shares as the expert may determine.

**SIGNED** by )  
 )  
 as Owner in the presence of: ) \_\_\_\_\_

Witness: .....

Occupation:.....

Address: .....

**SIGNED** by )  
 )  
 as Unit Manager in the presence of: ) \_\_\_\_\_

Witness: .....

Occupation:.....

Address: .....

## **SCHEDULE A**

### **Operating Expenses (Clause 1.1)**

1. The base management fee payable to the Unit Manager as commission for letting service.
2. All Unit cleaning costs including exterior glass and balustrading as required.
3. All Laundry service costs.
4. Stock items – Amenities: (e.g. tea/coffee, sugar, salt, detergents, soaps, tissues, and the like).
5. All electricity, water, telephone, internet, Sky TV, apartment stationery, or other such specific Unit costs incurred in the Business. (It is expected that any phone, internet, toll, or fax charges will be charged direct to the occupants).
6. Administrative and general expenses (including telephone, tolls, stationery, postage, web-hosting, and reception/office related costs), bank and credit card fees, advertising and promotion expenses authorised in accordance with this Deed, subscriptions, and business promotion expenses authorised by this Deed.
7. The cost of repairs and maintenance of the Unit authorised by this Deed or as required for the safety, security or structural integrity thereof or the cost of complying with the requirements of any statute, regulation, by-law or Relevant Authority.
8. Insurance expenses on all insurances procured and maintained in accordance with this Deed.
9. All rates, taxes, charges and other outgoings from time to time payable in respect of the Unit to any Relevant Authority and costs incurred in connection with renewing and maintaining any licences (excluding liquor licences) necessary for the operation of the Unit.
10. All other expenses, sundry expenditure, and all other costs reasonably incurred in connection with the Business or necessary for the operation of the Business or in performing the functions of the Manager set out in this Deed.
11. All costs and expenditure (including the cost of obtaining any necessary report) payable, incurred or suffered by or on behalf of the Owner in complying with the Owner's obligations under section 45 of the Building Act 1991.
12. All amounts levied against the Owner by the Body Corporate.

## **SCHEDULE B**

### **Services and Duties of the Manager (Clause 10.1(b))**

1. The management and conduct of the Business in a competent, efficient and businesslike manner with all courtesy and maintaining a pleasant manner at all times.
2. Maintain and operate the reception area, whether by manning or by remote operation, for set periods of normal business hours, including 4 hours on each of Saturday and Sunday.
3. The exercise by the Unit Manager of the Unit Manager's best endeavours to promote and improve the Business.
4. The granting and limiting of credit to clients and customers in relation to the Unit.
5. The observance of all laws, by-laws, rules and regulations in any way affecting the Unit so far as the observance of such laws, by-laws, rules and regulations is within the reasonable control of the Unit Manager.
6. The negotiation and execution of contracts reasonably necessary or desirable in connection with the management of the Unit.
7. The planning, preparation and contracting of advertising and promotional programmes (incorporating the maintaining of web-site advertising and related promotion and booking agencies) for the Business, the cost thereof not to exceed 4% of the Gross Income of the Business for the financial year in respect of which the same is expended without the prior written approval of the Owner, except that the Unit Manager may exceed the 4% threshold without reference to the Owner if the Unit Manager is willing to accept liability for the cost beyond such threshold.
8. The obtaining and granting of such concessions, privileges and arrangements as the Manager may deem reasonably necessary or desirable for the operation of the Business.
9. The establishment and use of books of control and account.
10. The purchasing of all provisions, supplies and replacements reasonably necessary or desirable in connection with the operation of the Business.
11. The arranging and managing of all cleaning and servicing of the Unit between occupancies and during occupancy where required to a high standard of hygiene.
12. The arranging and managing of related Resort facilities such as the Café and Conference Room (including room service) for the benefit of occupants of the Unit.
13. Negotiating and arranging independent recreational providers for services as appropriate for both individual and group occupancies.
14. The arranging or engaging of contractors for repairs and maintenance of the Unit as the

Unit Manager may deem reasonably necessary for the proper maintenance and operation of the Business but the Unit Manager is not authorised to incur any single item of expenditure under this clause exceeding \$200.00 without the prior approval of the Owner.

15. Notwithstanding Clause 5.6 of this Agreement, the right to establish and vary prices and price schedules, rates and rate schedules in connection with the Business. The collection of all debts and payments, the issue of receipts for all services or income from the operation of the Business and the payment of all outgoings in connection therewith.
16. Subject to the approval of the Owner the taking of any action at law or equity in the name of the Unit Manager or in the name of the Owner which the Unit Manager may deem reasonably necessary and proper in connection with the operation of the Business.
17. Without limiting the scope of **Paragraph 5** of this schedule, the compliance with the Owner's obligations under section 45 of the Building Act 1991.
18. Ensuring that all work whether capital or otherwise relating to repairs and maintenance of the Unit required for the safety, security or structural integrity thereof or to comply with the requirements of any statute, regulation by law or Relevant Authority is duly and punctually carried out and completed.
19. The checking of the condition of the Unit and Furnishings from time to time and ensuring that nothing is illegally removed or damaged by occupiers, and the keeping of the Unit and Furnishings properly maintained and in good order and repair and replacing such of the Furnishings as require replacement to the intent that at the Termination Date the Unit Manager shall yield up and deliver the Unit including the Furnishings in a good state of repair and condition.
20. To allow the Owner and the duly authorised representative of the Owner to inspect the operation of the Business at all reasonable times.
21. The performance of all other acts reasonably necessary in connection with the operation of the Business in a proper and efficient manner.

#### **Services and Duties of the Manager Only When Instructed by Owner**

22. The payment of any amounts levied against the Owner by the Body Corporate, and the carrying out of all the obligations of the Owner in respect of the Unit.
23. Insuring the Furnishings for the full replacement value thereof including full multi perils extensions and taking out and keeping on hand cover against malicious damage. The costs of such insurances are to be an Operating Expense of the Business.

**SCHEDULE C**

**(Furnishings)**