

RENTAL POOL AGREEMENT

WHEREAS Chamber Lane Properties 11 (Pty) Limited (or its successor in title) owns the Accommodation Establishment;

AND WHEREAS the Owner has acquired sectional title Ownership of the Suite to derive income by including the Suite in the Rental Pool (when not required by the Owner for his own use) to be used in connection with the Accommodation Establishment conducted by the Resort Operator;

AND WHEREAS the Resort Operator is desirous of obtaining use from the Owner of the suite, together with the use of the other Suites constituting the Rental Pool, to enable the Resort Operator to conduct on behalf of the Rental Pool the business of short term letting of Suites to members of the public;

AND WHEREAS the Owner agrees to make available to the Resort Operator the use of the Suite and appoints the Resort Operator as his exclusive agent to lease the Suite on behalf of the Owner on the terms and conditions as set out hereunder;

AND WHEREAS the Resort Operator will for the duration of this contract offer a facility to the Owners to provide services to the suite Owners, the accommodation establishment and to undertake on behalf of the Body Corporate the maintenance and servicing and upkeep of the common property;

AND WHEREAS the developer, when submitting an application to open the Sectional Title Register will provide for the inclusion of a rule whereby the Body Corporate shall accept the benefits of this contract.

NOW THEREFORE the Parties agree as follows:

1. PARTIES

The parties to this agreement are:

1.1 Hotel Reservation Worldwide (Proprietary) Limited

(Registration Number: 2002/010924/07) herein represented by Vyadislav Nassimov who warrants his authority to sign and **who chooses as *domicilium citandi et executandi* 12 Mashona Terrace, Quigney, East London.**

("the Resort Operator")

AND

- 1.2 NAME: _____
- IDENTITY/REGISTRATION NUMBER: _____
- Address: _____
- Telefax number: _____
- Email address: _____
- UNIT NUMBER: _____

("the Owner")

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement the following words or expressions shall have the meanings assigned to them below, unless it appears otherwise from the context:
- 2.1.1 "ACCOMMODATION ESTABLISHMENT" means the business of the supply of accommodation, and related services and facilities conducted by the Resort Operator in respect of the Scheme.
- 2.1.2 "ACCOMMODATION STANDARD" means a standard commensurate with a 4 star rating as awarded by Tourism South Africa.
- 2.1.3 "AGREEMENT " or "THIS AGREEMENT" means this Rental Pool Agreement together with any Schedules, Annexures, Amendments and Addendums hereto;
- 2.1.4 "AGREEMENT OF SALE" means the agreement between the Owner and Chamber Lane in terms of which Chamber Lane as seller sold and the Owner purchased, *inter alia*, the Suite;
- 2.1.5 "AUDITORS" means the auditors appointed by Chamber Lane and the Resort Operator by mutual agreement;
- 2.1.6 "CHAMBER LANE" means Chamber Lane Properties 11 (Pty) Limited Registration Number 2007/002262/07), the developer of the Scheme;
- 2.1.7 "FINANCIAL YEAR" The fiscal accounting year of Chamber Lane from 1 March to 28 February;
- 2.1.8 "FURNITURE" means movable goods and fittings of whatsoever nature or kind in the Suite which were acquired by the Owner in terms of the Agreement of Sale;
- 2.1.9 "GUEST" means any person who has short term occupation of any Suite in the Rental Pool, other than the Owner or any person occupying through the Owner as its non-paying guest or invitee;
- 2.1.10 "MANAGEMENT FEE" means a fixed fee of 7% of gross rentals payable to the Resort Operator in respect of the financial administration and management of the Accommodation Establishment;
- 2.1.11 "OPERATIONAL UNIT" means sections in the Scheme used for commercial purposes other than Suites namely the Restaurant building, the Conference Facility, the Reception Building and the Spa as per the attached plan marked "A", which units shall be managed by The Resort Operator;
- 2.1.12 "OPERATION AND ADMINISTRATION FEE" means the operation and administration fee described in clause 6.2 below.
- 2.1.13 "PRO RATA SHARE OF ACCUMULATED RENTAL POOL" shall mean the amount due to the Owner calculated according to the following formula:

The Suite's Participation Quota multiplied by the number of days the Suite was available to the Rental Pool during the particular month is the Suite's "Participation Factor" ("PF").

The "Total Participation Factor" is the total of the Participation Factors for all participating Suites during the particular month ("TPF").

The total rental received from all Suites in the Rental Pool during the particular month minus the Operation and Administration Fee and minus the charges

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against the Rental Pool as provided in clause 7 hereof (other than Body Corporate levies) is the Net Rental ("NR")

The pro rata share of the RENTAL POOL RENTALS for the particular month shall then be calculated in accordance with the formula:

$$NR \times PF \div TPF$$

- 2.1.14 "RENTAL POOL" means those Suites (other than the Operational Unit), made available for use to The Resort Operator in accordance with provisions of this Pool Agreement;
- 2.1.15 "RENTAL POOL PERIOD" shall mean 365 days per annum subject to the Owner's rights to Owner's Time as defined in clause 5 hereof;
- 2.1.16 "RENTAL POOL INCOME" shall mean rental income derived from participating Suites room rental only and shall exclude any income earned from the hiring out of the whole of or any portion of the Operational Unit, and shall exclude income derived from any hospitality services, including but not limited to telephone, laundry and bar facilities;
- 2.1.17 "RULES" means the management and conduct rules prescribed by the Sectional Titles Act No. 95 of 1986 as amended ("Act"), and as amended by Chamber Lane when registering the scheme to and which may be amended from time to time;
- 2.1.18 "SCHEME" means the "The Moorings" Sectional Title Scheme to be registered in terms of the Act;
- 2.1.19 "SERVICE AGREEMENT" means the agreement entered into between the Body Corporate of The Moorings and the Resort Operator appointing the latter as Managing Agent and manager of the rental pool.
- 2.1.20 "SUITE" means a Unit comprising a Section purchased by the Owner in terms of the Agreement of Sale together with its undivided share in the common property apportioned to the Section in accordance with the participation quota, any exclusive use areas relating thereto, and the movables in the Section and any reference to the Property shall have a corresponding meaning.
- 2.2 In this Agreement :
- 2.2.1 words importing any one gender shall include the other;
- 2.2.2 words importing the singular shall include the plural and *vice versa*;
- 2.2.3 any reference to a natural person shall include a legal person and/or an association of persons and *vice versa*;
- 2.2.4 any reference to the Owner and the Resort Operator shall include their respective successors-in-title or assigns;
- 2.2.5 any reference to any statute, legislation or regulations shall be deemed to include any lawful amendments thereto or re-enactments thereof.
- 2.1 This Agreement is the sole memorandum of the agreement reached between the parties with respect to the subject matter referred to herein and no conditions, stipulations, warranties or representatives shall be binding between the parties other than those recorded herein,
- 2.3 Any amendment or alteration to this Agreement shall only be binding on the Parties if reduced to writing and signed by the Parties or their duly authorized representatives.

- 2.4 If any of the provisions of this Agreement are ruled invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, and any such remaining terms shall continue to be valid and enforceable.

3. POOLING

- 3.1 The Owner hereby irrevocably grants to the Resort Operator for the duration of this Agreement, the use of the Suite for the operation of the Rental Pool upon the terms and conditions set out herein.
- 3.2 The Resort Operator will conclude agreements to acquire use of other Suites at the Accommodation Establishment for the operation of the Rental Pool.
- 3.3 Notwithstanding clauses 2.3 and 2.4 above, any amendments to this Agreement agreed upon by the Resort Operator and the majority in number of the Owners of Suites in the Rental Pool shall be binding on all Owners.

4. PERIOD

- 4.1 The duration of this agreement shall be governed by clause 3 of the Service Agreement. This agreement shall terminate simultaneously with the termination of the Service Agreement as further provided for in clause 14 below.
- 4.2 The Resort Operator shall be obliged to rent the Suite out to guests for as much of the rental pool period in each year as possible.
- 4.3 An Owner shall not rent out any Suite other than through the Resort Operator in terms of this Agreement. The Owner shall under no circumstances obtain any remuneration directly from any guest.

5. OCCUPANCY BY OWNER

- 5.1 The Owner or his invitee shall have the right to occupy his Suite at any time and for so long as desired, provided that:
- 5.1.1 the Owner shall give The Resort Operator no less than 30 (thirty) days prior written notice of his intention to occupy the Suite and the date and length of his intended occupation;
- 5.1.2 In the event that the Owner's Suite is not available, the Resort Operator shall provide him with another Suite in the Rental Pool provided that another Suite is available.
- 5.2 If an Owner has made a reservation for use in terms of clause 5.1 and has failed to cancel such reservation in writing at least 21 (twenty one) days prior to the first night of the reservation in question, there shall be a deemed usage of the number of nights reserved.
- 5.3 The Owner undertakes to observe all rules as may be imposed by the Resort Operator relating to *inter alia* the use of the Suite by the Owner and its invitees and regulating matters *inter alia* as check-in and out times, identification of the Owner and his invitees and declaration of compliance with the provisions of this Agreement, in particular the provisions of this clause 5.
- 5.4 While an Owner or his invitee occupies the Suite all food, beverage, telephone usage and other services offered at the Accommodation Establishment and utilized by the Owner and his invitee shall be for the Owner's account.
- 5.5 A cleaning service, will be levied at a rate of R250.00 per day when Owners or their guests occupy a Suite. This fee shall include a service to maintain fixtures and fittings in the Suite, as

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well as gas, electricity, and guest amenities. This rate shall be reviewed and if necessary adjusted annually by the Resort Operator in his sole and unfettered discretion.

6. USE CONSIDERATION

6.1 Rental

The Resort Operator shall set rentals to guests at its sole discretion, having regard to the need to provide Owners with acceptable rental returns and its obligations.

6.2 Operation and Administration Fee

6.2.1 As compensation for its services in terms of this Agreement the Resort Operator shall be entitled to an Operation and Administration Fee of 43% plus VAT of gross rentals actually received from all Units in the Rental Pool (excluding VAT on such rentals). This percentage shall be reduced to 40% plus VAT once the number of Units in the Rental Pool exceeds or equals 70 (SEVENTY).

6.2.2 The following expenses (and no other expenses) shall be payable out of the Operation and Administration Fee:

Salaries and wages of persons employed by the Resort Operator, laundry, room amenities, electricity charges in respect of the Operational Unit, telephone, public liability and business insurance, marketing, and cost of connectivity to Global Distribution Systems (GDS).

6.2.3 The following expenses shall not be deducted from the Operation and Administration Fee:

- Commissions including but not limited to commissions payable to travel agents, professional conference organizers, accommodation agencies and wedding planners;
- booking fees payable to GDS; and
- credit card fees.

These expenses shall be charges against the Rental Pool Income as provided for in clause 7 below.

The said operation and administration fee shall be payable monthly as provided for in clause 7 below.

7. CHARGES AGAINST RENTAL POOL


7.1 The Owner irrevocably authorizes the Resort Operator to pay the following expenses relating to the Suite on behalf of the Owner out of the Pro Rata Share of Accumulated Rental Pool:

7.1.1 Monthly Body Corporate levies;

7.1.2 Auditor's fees including the cost of the audit of the replacement reserve fund (referred to in clause 7.1.6 below) twice per annum;

7.1.3 The operating and administration fee as per clause 6.2 hereof;

7.1.4 Management Fees as defined in clause 2.1.12 above;



- 7.1.5 Any other necessary expense in the sole discretion of the Resort Operator which are not covered by the Operation and Administration Fee; and
- 7.1.6 A contribution of 2.5% (Two Comma Five Per Centum) of the entire Rental Pool Income monthly into a separate interest bearing account under the name of The Moorings which will be a combined fund for all the Suites in the Scheme and shall be utilized for the replacement or repair of any of the following items which may be damaged or unlawfully removed by persons other than Owners or their guests (the '**Replacement Reserve Fund**');
- Furniture
 - Electrical appliances
 - Curtains
 - Cutlery and crockery
 - All linen including towels and bedding
 - Carpeting and tiling
 - Décor items such as paintings, vases, ornaments and the like.
- 7.1.7 All repairs or replacements will be identified by the Resort Operator, approved by the Auditor and effected by the Resort Operator following receipt of the Auditor's approval.
- 7.1.8 Commissions including but not limited to:
- Commissions payable to travel agents, professional conference organizers, accommodation agencies and wedding planners,
 - Booking fees payable to GDS; and
 - Credit card fees.

8. PAYMENT TO OWNERS

- 8.1 Subject to the provisions of clause 5 hereof and after all deductions in terms of clause 7 hereof have been effected the Resort Operator shall cause each Owner's *pro rata* share of the accumulated Rental Pool as per the relevant income participation quota to be transferred to his bank account. In the event that an Owner's *pro rata* share is not sufficient to cover his body corporate levies or any other expenses for which the Owner is liable to the Resort Operator, such Owner shall cause the deficit to be paid to the Resort Operator on demand.
- 8.2 The Resort Operator shall cause the Rental Pool as an entity to register for Value Added Tax and shall pay all VAT on Rentals received over to SARS. All distributions paid to owners shall therefore be paid Net of VAT. Owners who are registered for VAT would be paid their share of the distribution inclusive of VAT.
- 8.3 It is agreed that rentals accrued in a particular month will not be distributed until payment thereof is received.
- 8.4 The calculation of the amount due to the Owner shall be made each month and the Resort Operator shall pay to the Owner rental due to the Owner by no later than the 15th day of the following month.



9. RIGHTS AND OBLIGATIONS OF THE RESORT OPERATOR

- 9.1 The Resort Operator shall be entitled to utilize the Suite in the operation of the Accommodation Establishment every night for the duration of this Agreement, subject to the Owner's right of use set out in clause 5 hereof.
- 9.2 The Resort Operator shall not hold the Owner liable for any contribution towards the running cost of the Accommodation Establishment or Operational Unit over and above the Operation and Administration Fee, except for such charges as are specifically stipulated in this Agreement.
- 9.3 The Resort Operator may from time to time and for such period as deemed appropriate, outsource or subcontract the management of the Accommodation Establishment to a competent third party. Notwithstanding such outsourcing and/or subcontracting, the Resort Operator will be liable to the Owner for the performance of its obligations in terms of this Agreement.
- 9.4 For the duration of this Agreement the Resort Operator shall ensure that the Suite is maintained to the Accommodation standards while the Suite is not utilized by the Owner; and
- 9.4.1 Create and apply the Replacement Reserve Fund as provided for herein;
- 9.4.2 Arrange for and ensure adequate public liability insurance cover;
- 9.4.3 Undertake an adequate and ongoing marketing campaign to ensure reasonable levels of occupancy.
- 9.4.4 Maintain the interior of the unit, the cost of which shall be for the account of the Owner to the extent that such costs are not recovered out of the Replacement Reserve Fund;
- 9.4.5 Control all guests while in occupation of the unit; and
- 9.4.6 Control and manage all staff employed by the Resort Operator and Body Corporate.
- 9.5 In the provision of these services, the Resort Operator is an independent contractor and as such shall have absolute autonomy in the provision thereof which will include but not be limited to marketing and management of the Accommodation Establishment, employment of staff, food and beverage policy, pricing, stock and stock control, purchase of goods, supplies and services, reservation and general autonomy in the management of the Accommodation Establishment of the Suites.
- 9.6 The Resort Operator shall ensure that monies in the Replacement Reserve Fund are invested at a competitive rate of interest. The Replacement Reserve Fund shall be audited by the Auditors for the period ending 28 February and 31 August in each year and the Auditors shall prepare a certificate which certifies the correctness of the accounts which shall be delivered to each Owner within 90 (ninety) days after the end of the aforesaid two periods. The Owner shall have the right at all reasonable times to inspect the financial records of the Replacement Reserve Fund.
- 9.7 The Resort Operator reserves the right to cede and assign its right, title and interest in and to this Agreement or to assign both its rights and obligations in terms hereof.
- 9.8 The Resort Operator has the exclusive right to hire out the whole of the Operational Unit or such portions thereof as it considers desirable. All rental so received shall accrue to the Resort Operator and no Owner nor the Body Corporate shall be entitled to any portion thereof whatsoever. It is expressly recorded that the owner of the Operational Unit shall not be obliged to pay levies to the Body Corporate in respect of the Operational Unit.
- 9.9 Subject to the provisions of this Agreement being that the Accommodation Establishment is maintained as a 4 Star establishment, the Resort Operator has an absolute and unfettered discretion in implementing its duties pursuant to clause 9.



- 9.10 The Resort Operator shall be entitled to use any Suite in the promotion, marketing and administration of the Accommodation Establishment which use shall include the provision of complimentary accommodation and services to such persons as the Resort Operator considers, in its sole discretion, will further the said marketing and administration. No direct revenue shall accrue from the promotional, marketing and administrative use.

10. DUTIES AND OBLIGATIONS OF THE OWNER

- 10.1 The Owner shall not be entitled to interfere in any way whatsoever with the control and management of the Accommodation Establishment.
- 10.2 The Owner undertakes:
- 10.2.1 not to remove any item of furniture, any appliance or utensil from the Suite without replacing such item with an item of a like nature and quality;
 - 10.2.2 not to alter any lock or install any new lock on any doors to the Suite nor make any alteration thereto, nor remove any item of furnishing or change the décor in any way during the operation of this Agreement;
 - 10.2.3 not to breach this Agreement or any service agreement entered into by the Body Corporate;
 - 10.2.4 not to cause or allow its invitee to cause any damage to the Suite or any movable goods contained therein and to make good any such damage on the same basis as any other guest of the Accommodation Establishment;
 - 10.2.5 to insure, at his own cost, all movable items in the Suite including the furniture and appliances. The Owner shall make the necessary arrangements to enable the Resort Operator to manage any claims on his behalf;
 - 10.2.6 to sell his Unit subject to the terms and conditions herein contained and subject to the Rules; and
 - 10.2.7 to accept any offer to purchase his Unit from a third party (the "first offer") only on condition that the Unit is first offered to the Resort Operator for sale on the same terms and conditions and at the same purchase price which offer shall be valid for 7 (seven) working days of receipt. In the event that the Resort Operator agrees to purchase the Unit on the same terms and conditions and at the same price as the "first offer", the "first offer" shall lapse and become of no further force or effect. If the Resort Operator rejects the offer to purchase the Unit as aforesaid, then the "first offer" shall become final and binding on the parties, provided all other suspensive conditions contained therein have been met.
- 10.3 No Owner shall rent out his or any other Suite other than through the Resort Operator in terms of this Agreement. The Owner shall under no circumstances obtain any remuneration directly from any guest.
- 10.4 If the Owner sells or otherwise disposes of the Suite, he undertakes to make it a condition of such sale or disposal that the transferee of the suite enters into a Rental Pool Agreement with the Resort Operator.

11. ACKNOWLEDGEMENT BY OWNER

- 11.1 The Owner acknowledges that:
- 11.1.1 the Resort Operator intends to enter into similar agreements with other Owners of Suites in the Scheme;



- 11.1.2 the only claim that the Owner has to the income received by the Resort Operator from the letting and hiring of the Suite is the amount as calculated in terms of clause 7 of this Agreement; and
- 11.1.3 the Owner shall subject to the provisions of clause 6 of the Service Agreement between the Body Corporate of The Moorings and the Resort Operator not have any claim or cause of action against the Resort Operator and/or the manager, other than as set out in this Agreement, arising out of:
- 11.1.4 the letting of the Suite by the Resort Operator to guests;
- 11.1.5 the failure of the Resort Operator to let the Suite, or any other suite forming part of the pool to guests;
- 11.1.6 during the operation of this Agreement, the Owner shall not be entitled to let or otherwise confer rights or occupation in and to the Suite in any manner whatsoever and that the Owner's rights of occupation of the Suite shall be limited to those set out in clause 5 of this Agreement.

12. VOETSTOOTS

Subject to any provisions contained in this Agreement to the contrary, the Suite is made available to the Resort Operator *voetstoots*, as it stands upon the commencement of this Agreement. The Owner shall not make any alterations, repairs or replacements of whatsoever nature.

13. DOMICILIUM AND NOTICES

- 13.1 The Parties choose as their address for the purposes of giving notice, the payment of any sum, the service of any process and for any other purpose arising from the agreement at the addresses as stated in item 2 of the Schedule. Each of the parties shall be entitled from time to time on written notice to the other to vary its address to any other address which is not a post office box or *poste restante*.
- 13.2 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 13.3 Any notice given and any payment made by one party to the other ("the Addressee") which:
 - 13.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's address for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
 - 13.3.2 is transmitted by facsimile shall be deemed (in the absence of proof to the contrary) to have been received on the day of transmission.
- 13.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by the addressee/s shall be regarded as an adequate written notice or communication to it or him notwithstanding that it was not sent to or delivered at his or its chosen *domicilium*.

14. BREACH

- 14.1 In the event of a party breaching any of the terms and conditions of this agreement and failing to remedy such breach within 14 (fourteen) days of written notice from an aggrieved party such aggrieved party may not cancel this Agreement but may forthwith either:
 - 14.1.1 claim specific performance; or



- 14.1.2 remedy the breach and recover the costs incurred in doing so including interest thereon at the rate of 2 (two) percentage points above the publicly quoted prime rate of Nedbank from the date of remedy to the date the costs are recovered in full (both days inclusive);
- 14.2 The non-defaulting aggrieved party may, in addition to the remedies specified clauses 14.1.1 and 14.1.2 claim damages.
- 14.3 It is expressly recorded that in the event that the Service Agreement between the Body Corporate of The Moorings and the Resort Operator is terminated in accordance with its terms, then this agreement shall automatically terminate without further notice.

15. WAIVER AND INDULGENCES


- 15.1 No lenience, extension of time or indulgence granted by any party to the other, shall be without prejudice to the rights of that party granting such leniency, extension of time or indulgence, and such party shall at any time be entitled to enforce his rights in terms of this Agreement.
- 15.2 No waiver of any terms or conditions of this Agreement will be binding for any purpose unless expressed in writing and signed by the party giving such waiver and any such waiver will be effective only in the specific instance and for the purpose given.
- 15.3 No failure or delay on the part of either party in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16. ARBITRATION

- 16.1 Save where otherwise provided in this Agreement, should any dispute arise between the Parties in connection with –
- 16.1.1 the formation or existence of;
- 16.1.2 the implementation of;
- 16.1.3 the interpretation or application of the provisions of;
- 16.1.4 the Parties' respective rights and obligations in terms of or arising out of this Agreement or the breach or termination of;
- 16.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of; and/or
- 16.1.6 any documents furnished by the Parties pursuant to the provisions of,
- this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, that dispute shall, unless resolved amongst the Parties, be referred to and be determined by arbitration in terms of this clause
- 16.2 This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 16.3 Save as provided in 16.1 and 16.2, neither Party shall be entitled to institute any legal proceedings against the/any other in connection with any dispute referred to in 16.1 above unless and until such dispute has been submitted to arbitration as provided for herein and such arbitration has been concluded, and then only to the extent that such legal proceedings are not otherwise prohibited in accordance with the provisions of this clause.



- 16.4 Any Party may demand that a dispute be determined in terms of this clause by written notice given to the other Party.
- 16.5 The arbitration shall be held -
- 16.5.1 at Cape Town or East London, as the Parties may agree;
- 16.5.2 on the basis that the proper law of the agreement contained in this clause and of the Agreement in which this clause is contained shall be the law of the Republic of South Africa;
- 16.5.3 with only the legal and other representatives of the Parties present thereat; and
- 16.5.4 in terms of the Arbitration Act, No. 42 of 1965, as amended, except as otherwise provided in this sub-clause and in 16.9 below,
- it being the intention that the arbitration shall be held and completed as soon as possible.
- 16.6 The arbitrator shall be, if the matter in dispute is principally -
- 16.6.1 a legal matter, a practising senior advocate or commercial attorney of at least 15 (fifteen) years standing;
- 16.6.2 an accounting matter, a practising chartered accountant of at least 15 (fifteen) years standing; and
- 16.6.3 any other matter, an independent person,
- agreed upon between the Parties.
- 16.7 Should the Parties fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after arbitration was demanded, the matter shall be deemed to be a legal matter.
- 16.8 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after giving of notice in terms of 16.4 the arbitrator shall be appointed at the request of either Party by the Chairman for the time being of the Cape Town Bar Council (as presently constituted) according to the provisions of 16.6
- 16.9 The arbitrator shall have the power to fix all procedural rules for the holding of the arbitration, including discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, discovery, inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration. The arbitrator may receive and act on all such evidence, whether oral or written, strictly admissible or not, as he in his discretion may deem fit. Unless the arbitrator otherwise expressly directs, the arbitration shall be conducted according to the procedures laid down by the Uniform Rules of the High Court of South Africa as amended and adapted by any special rules or practices applicable in the Western Cape High Court, Cape Town (as presently constituted).
- 16.10 The award of the arbitrator shall be final and binding upon the Parties (who hereby agree to carry out the award). The Parties hereby exclude all rights of appeal which might otherwise be conferred on them by law.
- 16.11 The arbitrator's award may be made an order of any court of competent jurisdiction including, for the avoidance of doubt, any court which is authorised to make such an order by virtue of any treaty or legislation relating to the reciprocal enforcement of foreign arbitral awards or judgments.



16.12 The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa (Western Cape High Court) Cape Town in respect of the proceedings referred to in 16.2 and 16.11.

16.13 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose the same to anyone except for the purposes of the arbitration proceedings in terms of this clause, any review thereof and obtaining interim relief in terms of 16.2 or an order in terms of 16.11.

16.14 The provisions of this clause -

16.14.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

16.14.2 constitute a separate agreement, severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

Signed at _____ on _____ 20_____.

WITNESS _____

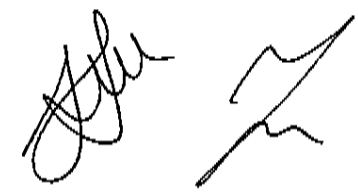
For and on behalf of the Owner, who warrants his authority to sign.

Signed at SEA POINT on 23 MAY 2009.

WITNESS _____



For and on behalf of the Resort Operator, who warrants his authority to sign.



SCHEDULE

Item 1

Full Name of Owner: _____

Item 2

Physical address of Owner: _____

Fax No of Owner: (_____) _____

Email address for the Owner: _____

Physical address of the Resort Operator: _____

Email address for the Resort Operator: _____

Item 3

Commencement Date: _____

Termination Date: _____