

STRATA MANAGEMENT AGREEMENT

THIS STRATA MANAGEMENT AGREEMENT (this "Agreement") made this ___ day of _____ 2021.

BETWEEN:

THE PROPRIETORS, STRATA PLAN NO. 25
(the "Strata Corporation")

OF THE FIRST PART

AND

OCEANSIDE MARKETING CORPORATION LTD
(the "Manager")

OF THE SECOND PART

WHEREAS the Strata Corporation has been created pursuant to the provisions of the Strata Titles Ordinance CAP 9.04 (the "**Ordinance**") and is the registered proprietor of Parcel 60905/137 Leeward Going Through, Providenciales, Turks and Caicos Islands (the "**Property**") which includes the common property owned by the Strata Corporation (as defined in the Ordinance) within the development known as "*The Sands at Grace Bay*" and named as such by the Manager or its Affiliate.

WHEREAS the Strata Corporation and the Manager previously entered into a Strata Management Agreement dated 19th December 1998 (the "**Original Management Agreement**").

WHEREAS the Strata Corporation and the Manager desire to replace the Original Management Agreement with this Agreement to provide for the management of the Property and assets of the Strata Corporation by the Manager in accordance with the terms and provisions herein.

WHEREAS an affiliate of the Manager owns certain assets and properties at the Property and associated with "*The Sands at Grace Bay*"

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises and mutual covenants and agreements herein contained, the parties hereto covenant and agree with each other as follows:

1. DEFINITIONS

1.1 "**By-Laws**" means the registered by-laws of the Strata Corporation;

"**Clause**" means clause or sub-clause of this Agreement;

"**Confidential Contact List**" means the separate and confidential list of contact details in respect of Owners maintained by the Manager in accordance with Clause 5.3;

"Exclusive Licence" means the licence granted pursuant to Clause 13.2;

"Exclusive Licence Fee" means a fee in the sum of U\$60,000 payable annually in arrears by the Manager to the Strata Corporation which shall be payable only on satisfaction by the Strata Corporation of the conditions at Clause 13.9 and which shall be increased annually proportionately to the management fee increase payable by the Strata Corporation to the Manager pursuant to Schedule "A" to this Agreement, namely two and one half *per cent* (2.5%) annually and which may be adjusted proportionately to the determination of an Increased Management Fee Review;

"Executive Committee" means the Executive Committee of the Strata Corporation elected pursuant to the By-Laws, or any individual member of the Executive Committee authorised by the Executive Committee to act on its behalf;

"Fee Increase Assessor" means a suitably qualified independent expert agreed and appointed by the Parties pursuant to Clause 2.7;

"Fiscal Year" means year ending 31st December;

"Holiday Rental" means any rental of a Strata Lot to which the Hotel, Restaurant and Tourism (Taxation) Ordinance 2019, or equivalent legislation, applies;

"License" means the license to occupy the Property conferred upon the Manager by the Corporation in accordance with the terms of Section 6.2 hereof;

"Major Capital Project" means any capital project in relation to the Property involving construction work with an estimated value in excess of four (4) times the Specified Amount;

"Manager" means Oceanside Marketing Corporation Ltd, its successors or assignees;

"Manager's Strata Lots" means Parcels 60905/137/**K28**, 60905/137/**K29**, 60905/137/**K61**, 60905/137/**K62**, 60905/137/**K63**, 60905/137/**K95** and 60905/137/**K114**;

"Operations Manager" means the Operations Manager appointed by the Manager;

"Ordinance" means the Strata Titles Ordinance *CAP* 9.04 or equivalent legislation;

"Original Management Agreement" means the strata management agreement dated 19th December 1998 between the Strata Corporation and Oceanside Marketing Corporation Ltd;

"Owner" refers to the proprietor(s) of a Strata Lot (as defined in the Ordinance) contained within Strata Plan No. 25;

"Party" or **"Parties"** shall mean either individually or collectively, as applicable, the Strata Corporation and/or the Manager;

"Performance Assessor" means a suitably qualified independent expert agreed and appointed by the Parties pursuant to Clause 9.8;

"Performance Penalties" means any penalty imposed on the Manager by the Performance Assessor pursuant to Clause 9.9;

"Performance Warning" means a valid warning given by the Strata Corporation to the Manager pursuant to Clause 9.3;

"Related Party" means (i) any person who is a spouse, parent, sibling, child, grandchild or other issue of any owner, partner, member, shareholder, director or officer of Manager and (ii) any "affiliate" of Manager. For purposes of this Agreement, an "affiliate" as applied to Manager means any other party who directly or indirectly controls, or is controlled by, or is under common control with Manager. As used in this paragraph, the term "control" (including the terms "controlling," "controlled by," or "under common control with"), as applied to Manager, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such party, whether through ownership of voting securities, by contract or otherwise;

"Rental Management Agreement" means a standard rental management agreement the terms of which were in use by Owners and the Manager during the operation of the Original Management Agreement or as modified as provided by Clause 13.4;

"Residential Strata Lot" means a strata lot contained within the Property but excludes the Manager's Strata Lots;

"Resort" means the resort development located at Grace Bay, Providenciales, Turks and Caicos Islands, and currently known as "*The Sands at Grace Bay*", Grace Bay, Providenciales;

"Services Contribution" means additional consideration given by the Manager in addition to the Exclusive Licence Fee in accordance with Clause 13.10 and 13.11.

"Specified Amount" means Five Thousand United States Dollars (\$5,000) at the date of this Agreement and which shall increase annually in each Fiscal Year by two and one half *per cent* (2.5%) and which may otherwise be varied from time to time in advance by agreement in writing between the Manager and the Executive Committee and the amount of which shall be reviewed every five years;

"Strata Lot" means a strata lot contained within the Property and "Strata Lots" shall mean all or a number of the strata lots contained within the Property;

"Strata Personnel" means any person engaged in any capacity by the Manager for the performance of any of the Manager's obligations or duties pursuant to this Agreement, whether they be an employee or the Manager, or otherwise;

"Unit" has the same meaning as **"Strata Lot"**.

- 1.2 The terms, expressions, words and phrases used herein and not specifically defined herein have ascribed to them the definitions contained in the Ordinance.
- 1.3 Whenever the singular number and neuter gender are used in this Agreement, the same shall be construed as indicating the plural and feminine and masculine respectively where the fact or context requires.
- 1.4 This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by written amendment signed by the Parties.

2. APPOINTMENT, TERM AND REVIEW

- 2.1 The Strata Corporation hereby appoints the Manager, and the Manager hereby accepts such appointment, on the terms and conditions herein as the exclusive management agent of the Property, to do all things necessary to provide the Owners of the Strata Lots in the Property through the Strata Corporation with efficient and attentive management under the supervision and direction of the Executive Committee. The Manager shall perform its duties hereunder in a faithful, diligent and honest manner.
- 2.2 Unless sooner terminated, as elsewhere herein provided, this Agreement shall remain in full force and effect for a period of fifteen (15) years commencing on the 1st January 2022.
- 2.3 On the 5th and 10th anniversary of the commencement of this Agreement, the Strata Corporation and/or the Manager may, by written notice to the other Party in accordance with Clause 14 delivered within three (3) calendar months of the date of the 5th or 10th anniversary, require a review of the annual management fee increase payable by the Strata Corporation to the Manager pursuant to Schedule "A" to this Agreement (an **"Increased Management Fee Review"**).

- 2.4 Where valid notice of an “Increased Management Fee Review” is given:
- (a) in the case of notice given by the Strata Corporation, the Strata Corporation shall, within one (1) calendar month of giving notice, provide to the Manager the Strata Corporation’s written submissions (including calculations) as to why the CPI adjusted management fee increase due to the Manager is excessive, or otherwise unjustified;
 - (b) in the case of notice given by the Manager, the Manager shall, within one (1) calendar month of giving notice, provide to the Strata Corporation the Manager’s written submissions (including calculations) as to why the CPI adjusted management fee increase due to the Manager is inadequate, or otherwise unjustified;
 - (c) each Party shall, within two (2) calendar months of receiving notice, provide to the other Party their written response to the notice.
- 2.5 The Manager shall provide to the Strata Corporation information reasonably required of the Manager by the Strata Corporation for the purpose of the Strata Corporation formulating its written submissions in support of, or response to, an Increased Management Fee Review. The Strata Corporation shall permit the reasonable use by the Manager of information held by the Manager on behalf of the Strata Corporation for the purpose of the Manager formulating its written submissions in support of, or response to, an Increased Management Fee Review.
- 2.6 Save as agreed in writing by the Parties in advance, determination of any Increased Management Fee Review shall take place within four (4) months of the date of the notice. Where both the Strata Corporation and the Manager give valid notice of an Increased Management Fee Review, both reviews shall be determined together. For the purposes of determination of an Increased Management Fee Review, it shall be a rebuttable presumption that the Increased Management Fee due by the Strata Corporation to the Manager pursuant to Schedule “A” is fair.
- 2.7 An Increased Management Fee Review shall be determined by a suitably qualified independent expert agreed and appointed by the Parties (“**Fee Increase Assessor**”). The costs of the assessment and determination of the Fee Increase Assessor shall be borne by the Parties in equal shares. Where, on proper assessment and determination of an Increased Management Fee Review, the Fee Increase Assessor concludes that:
- (a) the CPI adjusted management fee increase is excessive, inadequate or otherwise unjustified by a margin of not less than ten (10) *per cent* of the CPI calculation; and
 - (b) in the circumstances, the rebuttable presumption pursuant to Clause 2.6 should be disapplied

then the Fee Increase Assessor may determine the appropriate Management Fee Increase for that Fiscal Year (but not the Management Fee of any previous Fiscal Year) and determine that the costs of the Fee Increase Assessor be added to, or deducted from, the Management fee, as appropriate. The determination of the Fee Increase Assessor shall be binding on the Parties and shall be final. Upon determination of the Fee Increase Assessor, the Increased Management Fee Review shall be rescinded and of no further effect or consequence. The Management Fee increase in years subsequent to a determination by a Fee Increase Assessor shall be calculated in accordance with Schedule "A".

- 2.8 Pending agreement or determination of an Increased Management Fee Review pursuant to this Clause, the Strata Corporation shall remain liable for payment of annual management fee payable to the Manager pursuant to this Agreement.
- 2.9 A valid notice of an Increased Management Fee Review shall be of no effect where the Party giving notice is in breach of its obligations pursuant to this Agreement, including but not limited to, the Strata Corporation's obligations to pay expenses and annual management fees to the Manager.

3. POWERS AND DUTIES OF MANAGER

- 3.1 The Manager shall be responsible to the Executive Committee in the administration of the Strata Corporation's Property and assets as hereinafter more specifically set forth. It is not the intention of the Parties to transfer control of the Strata Corporation's corporate officers, their duties pursuant to the By-Laws or the Ordinance, or the responsibility thereof, to the Manager. The Manager shall be responsible for directing the implementation of the general management policy decisions of the Executive Committee with respect to the Property and affairs of the Strata Corporation and shall be subject to the Executive Committee with respect to matters of policy, but shall be entitled to exercise its discretion in the details of implementation of such policies.
- 3.2 The Manager shall at all times act in the best interest of the Strata Corporation and shall not be influenced to the detriment of the Strata Corporation by reason of any financial or other relationship or interest it may have with any other firm, person or corporation. The Manager shall immediately disclose in writing to the Strata Corporation any such relationship or interest and the particulars thereof which may pose a conflict of interest for the Manager, its employees or agents, in carrying out its management responsibilities and obligations hereunder, and shall provide annually a written report on any related party transactions affecting the Strata Corporation. All information regarding the Strata Corporation, whether financial or otherwise, shall be treated and forever held confidentially, except to the extent that disclosure is necessary to permit the Manager to perform its duties hereunder. The provisions of this Section 3.2 shall survive the expiration or earlier termination of this Agreement. (The Manager has, prior to execution hereof, disclosed the fact that Mr Stanley Hartling ("Mr Hartling") has developed and operates, through

various entities associated with him, “*The Palms*” and “*The Shore Club*” resorts, and the Strata Corporation hereby expressly acknowledges that such operations do not constitute and shall not constitute any conflict of interest, nor breach of the terms of this Agreement. Further, it is agreed that this Clause shall not prevent Mr Hartling nor any related company associated with him, nor his assigns, from undertaking development or management of hotels, condominiums or villa developments in the Turks and Caicos Islands or elsewhere in the world). For the avoidance of doubt, the development and/or operation of other resort(s) by the Manager or its affiliates, assignees or sub-contractors, does not constitute any conflict of interest, nor breach of the terms of this Agreement.

3.3 The Manager may subcontract services being provided under this Agreement provided that:

(i) The Manager shall at all times during the term of this Agreement remain primarily liable to the Strata Corporation for the performance of all of its obligations and responsibilities regardless of any such assignment or delegation, and

(ii) that the Strata Corporation shall have no liability for or responsibility to, nor any type of relationship with, whether contractual or by operation of law, any such contractors or subcontractors or their employees or representatives at any time during the term of this Agreement or after the expiration or termination thereof, unless the Strata Corporation for and on behalf of itself contracts in writing with such property management company or its employees, contractors or representatives. The provisions of this subsection 3.4 shall expressly survive any termination or expiration of this Agreement.

4. ACCOUNTING AND FINANCE

4.1 Upon the advice and counsel of the Executive Committee, the Manager shall prepare a proposed annual operating budget setting forth projected revenues and expenditures for each new accounting year for the Strata Corporation based upon anticipated operations and taking into account the general condition of the Property and the objectives for the ensuing year (the “Proposed Budget”). The Proposed Budget shall be submitted to the Executive Committee for its approval not later than thirty (30) days prior to the commencement of the new Fiscal Year, or, if applicable, thirty (30) days prior to the date of the annual meeting for adoption of the Proposed Budget by the Executive Committee. No actions or purchases under the Proposed Budget shall be undertaken by the Manager until the Proposed Budget has been approved by the Strata Corporation. Upon approval by the Strata Corporation, the Proposed Budget shall be the budget for the following or then current Fiscal Year (if approved after the expiry of the previous Fiscal Year) and thereupon become the budget for that Fiscal Year (the “Budget”). In the event that the Proposed Budget is not approved prior to the end of the previous financial year, the Manager shall continue to operate the terms hereof on the basis of the Budget applicable to the previous financial year until the Proposed Budget has been

approved by the Strata Corporation and thereupon becomes the Budget for that year and, upon such approval, there shall be adjustment of the accounts between the Manager and the Strata Corporation arising from the adoption of the Budget. The Manager agrees to adjust the Budget as may be requested by the Strata Corporation from time to time and such adjustment is mutually agreed between the Parties. Disputes in respect of the Proposed Budget shall be dealt with in accordance with Clause 10.

- 4.2 The Manager shall prepare, review, and analyze monthly financial reports on a cash basis of receipts and disbursements, itemized according to the Budget, and submit these statements to the Executive Committee within twenty (20) days of the end of each month. Such statements shall include:
- (a) detailed disbursements during the previous month;
 - (b) amount collected during the previous month;
 - (c) funds withheld as reserves to cover later expenditures for which current income may be insufficient;
 - (d) compensation retained by the Manager;
 - (e) bank reconciliation;
 - (f) cash receipts and disbursements statement;
 - (g) cumulative schedule of capital expenditure expenses for the year;
 - (h) disclosure of all Related Party transactions, including supporting invoices; and
 - (i) delinquency reports and accounts receivable.
- 4.3 The Manager shall maintain adequate and separate books of account and records for the Strata Corporation in connection with its management and operation of the Property. Such books and records shall be kept in accordance with international financial reporting standards regularly applied in the Turks and Caicos Islands to facilitate an annual audit, such audit to be undertaken only upon the request of the Executive Committee as provided for herein, and the preparation of tax returns (as may be required for the Strata Corporation) by an independent certified public accountant. Such records shall be kept at the office of the Manager located at the Resort and shall be available for inspection by the Strata Corporation's officers, Executive Committee, members, the Strata Corporation's duly authorized representatives and to any Owner on reasonable notice during office hours specified by the Executive Committee. In addition to making such documentation and information available for inspection as provided for above, the Manager shall, within five (5) business days of receipt of written request from the Executive Committee, deliver complete copies of all tax returns for the Strata Corporation, the subject matter of the request, and any schedules thereto, and, within twenty-eight (28) days after the end of each calendar year, provide the Executive Committee with all financial statements relating to the Strata Corporation. All such accounting records shall be held by the Manager in trust for the Corporation. If requested by the Strata Corporation, at the end of each Fiscal Year of Strata Corporation's business and as of the date of termination of this Agreement, the

Manager shall have an annual audit of the books and records of the Strata Corporation made by a firm of certified public accountants selected by the Strata Corporation. All reasonable expenses relating to the annual audit shall be deemed an expense of the Strata Corporation.

- 4.4 The Manager shall be the exclusive collection agent for the Strata Corporation to collect all assessments or amounts that may be due to the Corporation. In the name of the Strata Corporation, the Manager shall have the authority to bill, request, demand and (subject to Clause 5.8), sue for, collect, receive, and give receipt for, all assessments or other amounts that may be due to the Strata Corporation.
- 4.5 The Manager shall deposit all funds collected from the Owners or otherwise accruing to the Strata Corporation in an account or accounts of the Strata Corporation selected by the Strata Corporation at all times providing adequate and accurate allocation in its books in respect of those funds as to source, application and on whose behalf the funds may be held from time to time, such information being made available to the Strata Corporation from time to time upon demand. It is acknowledged that segregated accounts for the Strata Corporation cannot be maintained by the Manager due to practical considerations and the considerable increased cost that would arise therefrom, save that any major capital expenditure reserve fund or special assessment reserve fund shall be deposited to separate accounts to be established for these specific purposes. Notwithstanding the foregoing, the Strata Corporation shall have the authority to request segregated accounts provided that any and all additional costs associated with maintaining such accounts are the responsibility of the Strata Corporation and the Manager agrees to comply with such request as quickly as is reasonably practicable.
- 4.6 The Manager shall make all required disbursements for the Strata Corporation with invoices, bills or disbursement vouchers. The Manager shall make all disbursements from assessments and amounts collected for normal recurring expenses as provided in the Budget. The Manager will be granted authority to make any Budget expenditures as provided in the approved Budget at the Manager's own discretion. All non-Budget expenditures exceeding the Specified Amount and variations above the approved budget exceeding the Specified Amount will be made only with the prior written approval of the Executive Committee.
- 4.7 The Manager shall purchase out of the funds of the Strata Corporation equipment, tools, goods, supplies, and materials as shall be reasonably necessary to perform its duties, including the maintenance, upkeep, repair, replacement, refurbishing, and preservation of the Property as aforesaid in accordance with the Budget or in addition thereto where such equipment is a reasonable additional expense. Purchases shall be made in the name of the Strata Corporation. When making purchases, the Manager shall make an effort to obtain the best price available and to use bulk purchasing power whenever available. Where the Manager purchases any equipment, tools, goods or supplies, etc. in accordance with this Clause, the cost of which exceeds the Specified Amount, the Manager shall provide to the

Executive Committee a clear explanation of the ownership, use and cost-sharing applied to these assets where the purchased item(s) are intended by the Manager to be used for any purpose other than the exclusive use for the benefit of the Strata Corporation pursuant to this Agreement.

- 4.8 The Manager shall arrange for and assist in the preparation of all annual tax returns for the Strata Corporation as may be required in the Turks and Caicos Islands.
- 4.9 The Manager shall handle all correspondence related to business matters concerning financial transactions of the Strata Corporation.
- 4.10 The Manager is not obliged pursuant to this Agreement to oversee or manage, either at its own expense or at the Strata Corporation's expense, any Major Capital Project. The Manager may choose to engage a qualified project manager (such as BCQS, or similar) to oversee and/or manage the construction works of any Major Capital Project and where it does so, the costs and fees of the qualified project manager shall be borne by the Strata Corporation. The Manager's obligations in respect of any Major Capital Project shall be limited to obtaining bids of other contractors, for consideration by the Executive Committee, to undertake any Major Capital Projects and facilitate the coordination of the selected contractor and all warranties and liability in relation to any Major Capital Projects shall be exclusively the responsibility of the contractor appointed by the Executive Committee. Alternatively, the Manager may in its sole discretion submit a proposal (including the Manager's fees) to the Executive Committee for the Manager to manage any Major Capital Project. If the Manager proposes to charge a fee to carry out a Major Capital Project and the Executive Committee agrees to the Manager undertaking the Major Capital Project on those terms, the work shall be undertaken on contractual terms similar to those of an independent contractor. Where the Manager, in its sole discretion, agrees to oversee and/or manage any Major Capital Project without Manager's fees (by waiver of its entitlement to such fees), the Strata Corporation shall indemnify the Manager in relation to the costs or defects of any work in relation to the Major Capital Project. For the avoidance of doubt, the Parties hereby agree that the Manager is under no obligation pursuant to this Agreement to waive any Manager's fees in relation to any Major Capital Project. A Major Capital Project management fee shall not exceed ten (10) *per cent* of the Major Capital Project and the cost of such works including such fees shall be comparable with bids of other contractors or their costs estimates for the work to be undertaken.

5. ADMINISTRATION

- 5.1 The Manager shall confer freely and fully with the Executive Committee when so requested by it in connection with the performance of the Manager's duties. The Manager shall be available to attend all regularly scheduled meetings of the Executive Committee during the Fiscal Year (not to exceed 6 meetings per year or as mutually agreed save and except in the event of exceptional circumstances), and the annual meeting of the Strata Corporation. In addition, the Manager shall assist

the Executive Committee in preparing for all such meetings and at the direction of the Executive Committee shall provide the required notice of such meetings to the Owners.

- 5.2 The Manager shall, subject to the provisions of Clause 8, (i) carry out the instructions of the Executive Committee with respect to the enforcement of the terms of the By-Laws, rules and regulations, (ii) communicate to all Owners the text and import of any alterations and additions to the By-Laws or rules and regulations, and (iii) advise and consult with the Executive Committee with respect to any alterations and additions to the By-Laws which in the opinion of the Manager ought to be adopted by the Executive Committee or Owners, as applicable, to further the harmonious and satisfactory operation of the Property for the common benefit of the Owners.
- 5.3 (a) The Manager shall assist the officers of the Strata Corporation in maintaining the Strata Corporation's membership/owner list, all financial record books, accounts, and other records required to be kept by the Strata Corporation. Such records shall be kept by the Manager as provided for in Section 4.3 herein.
- (b) Separately, the Manager shall maintain at all times a current list of all Owners and their respective contact details to be held solely and exclusively for the limited purposes, and on the terms, specified in this Clause, which the Parties agree shall be kept at all times confidential by the Manager from all parties and which shall not be disclosed by the Manager to any third party save as permitted by this Clause, or required by law (the “**Confidential Contact List**”).
- (c) The Confidential Contact List shall contain the email, telephone and other electronic contact details of all Owners, save in respect of those Owners who have expressly stated their wish for their contact details to be excluded from the Confidential Contact List. The Manager shall from time to time (being not less than every six months) update the Confidential Contact List, including confirming those Owners who wish their contact details to be excluded from the Confidential Contact List.
- (d) The Executive Committee may authorise in writing one current member of the Executive Committee to receive and retain, during their tenure as a member of the Executive Committee, a copy of the Owners from the Manager and the Manager shall be duly authorised to provide the Confidential Contact List to the Designated Executive Committee Member.
- (e) The Confidential Contact List may only be used by the Manager or the Designated Executive Committee Member exclusively for the purpose of communicating any business of the Strata Corporation to the Owners which has been authorised in advance by the Executive Committee to be circulated to all Owners. The Confidential Contact List is not to be disclosed or used for the

purpose of, or in relation to, any promotion, campaign, leafleting, advocating or electioneering by, against, or on behalf of, any candidate seeking election to the Executive Committee. The Confidential Contact List is also not to be used in such a manner as causes or permits any Owner to contact directly all other Owners whose details are contained in the Confidential Contact List.

- (f) Where the Manager discloses the Confidential Contact List to any third party in accordance with this Clause or otherwise, the Manager shall firstly obtain from the third party a written undertaking as to the confidentiality of the Confidential Contact List, including a statement as to the authorised purpose for which the Confidential Contact List is proved and the third party's written undertaking to return or destroy forthwith any copy of the Confidential Contact List held by the third party upon the completion of the authorised purpose.
- 5.4 The Manager shall make recommendations to the Executive Committee as to the form or forms of insurance needed to protect the Property and the Strata Corporation, and which may be required to comply with the provisions of the By-Laws or the Ordinance, and shall assist the Executive Committee in acquiring insurance policies for the Strata Corporation as set forth in the By-Laws or the Ordinance.
- 5.5 The Manager shall negotiate the maintenance and service contracts that are needed for the Manager to fulfill its obligations and duties hereunder, hire, supervise and discharge janitors, groundskeepers, caretakers and other personnel required to maintain and operate the Property. The Manager shall decide the type of contractual or employment relationship it will have with its service providers and employees, and shall be solely responsible for payment of their fees, salaries, expenses, National Insurance and any other liabilities associated with contracting and employment which shall be the recoverable liabilities of the Strata Corporation. Any person employed by the Manager for the performance of any of the Manager's obligations or duties pursuant to this Agreement, shall be Strata Personnel. Where any Strata Personnel do not work exclusively for discharge of the Manager's obligations and duties pursuant to this Agreement but are engaged by the Manager to undertake work unrelated to this Agreement, the Manager shall provide, on request, details to the Executive Committee of the proportion of work and *pro rata* costs of the applicable Strata Personnel.
- 5.6 The Manager shall take such action as may be necessary for it and the Strata Corporation to comply with all laws, statutes, ordinances or rules of all appropriate governmental authorities. The Manager shall notify the Strata Corporation as soon as reasonably possible, (but in any event not more than 3 business days) or forward to the Strata Corporation promptly, any orders, complaints, warnings, notices, summons or like documents received by the Manager relating to such matters.
- 5.7 The Manager, at the direction and subject to the approval of the Executive Committee, and at the expense of the Strata Corporation, for and on behalf of the

Strata Corporation, shall retain and employ attorneys at law, accountants, and other such experts and professionals whose services are reasonably required by the Manager to perform its duties on behalf of the Strata Corporation effectively and to exercise its powers hereunder. It is acknowledged that the Parties are entitled to retain their own advisors as they deem fit at their own expense to advise them on the terms hereof and any dispute that might arise hereunder in the future.

- 5.8 The Manager has no authority to institute legal action against a defaulting Owner to foreclose a lien or otherwise unless the Manager is directed to do so in writing by the Executive Committee.
- 5.9 The Strata Corporation shall be liable to recompense the Manager fully and hereby indemnifies the Manager, in respect of all costs and disbursements associated with the employment of Strata Personnel, including but not limited to, employer National Insurance contributions, employer National Health Insurance contributions, work permit fees, vacation pay, maternity leave, sick leave with pay, compassionate leave, severance pay, or any other employee entitlement or expense, including redundancy entitlement, arising from the employment or termination of employment of Strata Personnel.

6. PROPERTY SUPERVISION

- 6.1 The Manager shall, with the assistance and/or guidance of the Executive Committee, at the expense of the Strata Corporation, cause the Property to be maintained and repaired, including landscaping, re-landscaping, painting, roofing, cleaning, and such other routine maintenance and repair work as may be necessary in accordance with the provisions of the By-Laws, the Budget for the applicable Fiscal Year, all applicable rules and policies promulgated by the Strata Corporation, and all applicable laws, rules, ordinances and regulations. The Manager shall have no authority without express instructions from the Executive Committee to the contrary, to make any physical or structural changes to, or in, the Property, or to make any other alterations or additions in, or to, any building or equipment therein, without the prior approval of the Executive Committee (excluding the Manager's Strata Lots, in respect of which the Manager shall require no such approval of the Executive Committee) except such emergency repairs which require prompt action to avoid further loss as provided herein. The Manager shall make regular inspections of the Property, except for that portion of the common property not accessible except through a Residential Strata Lot. A member of the Executive Committee or delegate shall be provided the opportunity to accompany the Manager on any such inspection. For any item of repair, replacement or refurbishing, the expense incurred may not exceed the Specified Amount, unless specifically authorized by the Executive Committee excepting, however, that emergency repair involving manifest danger to persons or property or immediately necessary for the preservation or safety of the property or for the safety of personnel; or required to avoid suspension of any necessary services to the Property, may be made by the Manager irrespective of the above limitation.

Notwithstanding this authority as to emergency repairs, it is understood that the Manager will confer as soon as reasonably possible with the Executive Committee regarding emergency expenditures.

- 6.2 The Strata Corporation grants to the Manager a license to access at all times all of the Property as may be necessary in carrying out the functions and purposes set forth in this Agreement or any Rental Management Agreement. Subject to the provisions of the By-Laws, the Strata Corporation grants to the Manager a license to access each individual Residential Strata Lot during reasonable hours when necessary for the maintenance, repair, or replacement of the Property contained therein or accessible therefrom or for the making of emergency repairs necessary for the Property. Except for the case of negligence or willful or wanton misconduct on the part of the Manager or its employees, the Strata Corporation shall indemnify the Manager from any claims, demands, judgments, or suits that may be brought against or incurred by the Manager by reason of the Manager exercising its right of access to individual Residential Strata Lots as herein provided.
- 6.3 The Manager shall on an ongoing basis liaise with the operators of the spa, cabana bar, and restaurant, as may from time to time exist at the Resort, with a view to ensuring the smooth overall operation of the Resort and the associated amenities.
- 6.4 This Agreement does not contemplate, nor is the Manager responsible or required to perform, the upkeep and repair of that property of the Strata Corporation, the responsibility for which under the By-Laws is that of an Owner; however, the Manager, may, in an emergency situation only, perform such maintenance and repair services for and to any Residential Strata Lot as may be required, in the Manager's reasonable discretion, and shall charge the Owner of the strata lot a reasonable charge therefore.
- 6.5 The Manager shall provide appropriate supervision and training of Strata Personnel and appropriate supervision of contractors providing services to the Strata Corporation, said duties to include setting up maintenance schedules, reviewing maintenance work, reviewing all items related to the building and grounds, reviewing all contracts and services and reviewing rules and regulations of the Strata Corporation.

7. MANAGER'S COMPENSATION

The compensation of the Manager for its services hereunder shall be fixed and paid as provided in Schedule "A" which may from time to time be amended or supplemented by written agreement of the Parties. Management fees shall be paid from the Strata Corporation's operating account, in monthly instalments as part of the operating expense of the Strata Corporation's business, as provided for in Schedule "A". All fees and reimbursements shall be paid to Manager within thirty (30) days of invoicing.

8. AUTHORITY

- 8.1 In the absence of other designation of authority by way of resolution of the Strata Corporation, a majority vote of the Executive Committee members present in person or by proxy at a duly called meeting of the Executive Committee at which a quorum exists or by written consent in lieu of a meeting of the Executive Committee members represents the actions and approvals of the Executive Committee with respect to the Manager and any matters relating to the management of the Property or this Agreement. The Manager is directed not to accept directions or instructions with regard to the management of the Property other than in accordance with this Agreement; and under no circumstances shall the Manager be obligated to follow instructions which are either inconsistent with the terms hereof, illegal, or contrary to public policy in the Turks and Caicos Islands. For purposes of this Agreement, a quorum of the Executive Committee consists of at least fifty percent (50%) of the Executive Committee members.
- 8.2 Any member of the Executive Committee with a financial interest in the Manager shall make the fact of their interest (but not the extent thereof) known to the Executive Committee and shall be invited to recuse himself/herself from any vote of the Executive Committee, but not from contributing to any discussion thereof, on a matter which relates directly and specifically to the Manager's remuneration or performance pursuant to this Agreement.

9. TERMINATION AND PERFORMANCE WARNING

- 9.1 This Agreement shall terminate upon the occurrence of the earliest of the following events:
- (a) upon the insolvency or proposed liquidation of the Manager; or
 - (b) upon any act or omission constituting a material default by a Party hereto and such default is finally judicially determined to be material to warrant termination by a court of competent jurisdiction, but only following the conclusion of the process set out at Clause 10.
- 9.2 The Manager may, at its sole option, terminate this Agreement upon giving the Corporation twenty-four (24) months' notice if the Manager is able to demonstrate to the Corporation that the cost in any Fiscal Year to the Manager of providing the services hereunder exceeds the Manager's Compensation in respect thereof as provided herein and the Corporation determines, in its discretion, that it does not wish to increase the Manager's Compensation to at least equate to such actual costs.
- 9.3 The Strata Corporation may at any time during the term of this Agreement serve a notice of substantial poor performance on the part of the Manager in respect of its obligations and duties pursuant to this Agreement ("**a Performance Warning**"). A

Performance Warning must be served pursuant to Clause 14 within six (6) months of the substantial poor performance complained of by the Strata Corporation.

- 9.4 Where a valid Performance Warning is given, the Strata Corporation shall, within one (1) calendar month of giving notice, provide to the Manager the Strata Corporation's full written particulars (including calculations, where appropriate) of the alleged substantial poor performance on the part of the Manager in respect of its obligations and duties pursuant to this Agreement. The Manager shall within one (1) calendar month of receipt of the Strata Corporation's full written particulars provide to the Strata Corporation the Manager's full written particulars of response.
- 9.5 The Parties shall use their best endeavours to resolve by agreement any issue in dispute arising from the Performance Warning and the Manager's response. The Manager shall have three (3) calendar months from the date of receipt by the Strata Corporation of the Manager's written response to resolve any issues arising from the Performance Warning.
- 9.6 The Manager shall provide to the Strata Corporation information reasonably required of the Manager by the Strata Corporation for the purpose of the Strata Corporation formulating its Performance Warning or full written particulars (including calculations, where appropriate). The Strata Corporation shall permit the reasonable use by the Manager of information held by the Manager on behalf of the Strata Corporation for the purpose of the Manager formulating its response to the Performance Warning and the Strata Corporation's written details.
- 9.7 Pending agreement or determination of a Performance Warning pursuant to this Clause, the Strata Corporation shall remain liable for payment of all liabilities to the Manager pursuant to this Agreement. A valid Performance Warning shall be of no effect where the Strata Corporation is in breach of its obligations pursuant to this Agreement, including but not limited to, the Strata Corporation's obligations to pay expenses and annual management fees to the Manager.
- 9.8 Where:
- (a) the Manager has had three (3) calendar months in accordance with Clause 9.5 to resolve any issues arising from a Performance Warning; and
 - (b) the Performance Warning has not been resolved to the satisfaction of the Executive Committee
- then the Parties hereby agree that the Performance Warning shall be referred for determination to a suitably qualified independent expert agreed and appointed by the Parties ("**the Performance Assessor**"). The costs of the assessment and determination of the Performance Assessor shall be borne by the Parties in equal shares.
- 9.9 Where, on proper assessment and determination of the Performance Warning, the Performance Assessor concludes that:

- (a) the Manager's performance in respect of those functions which are the subject of the Performance Warning have been inadequately resolved by the Manager within the three (3) months provided for by Clause 9.5; and
- (b) the Manager's performance of the functions which are the subject of the Performance Warning is substantially inadequate or negligent

then the Performance Assessor may determine the following penalties against the Manager, namely the Performance Assessor may:

- (i) authorise the Strata Corporation to sub-contract those functions of the Manager which were the subject of the Performance Warning, but not other functions, to another management service provider (not being a management service provider associated with the Performance Assessor) for a period prescribed by the Performance Assessor of not more than 12 months; and/or
- (ii) authorise the Strata Corporation to reduce the Management Fee for the period of the Performance Warning by an amount specified by the Performance Assessor, not to exceed twenty-five *per cent* (25%) of the Management Fee for one Fiscal Year; and/or
- (iii) authorise the Strata Corporation to deduct from the Management Fee for one Fiscal Year a sum equivalent to the Strata Corporation's equal share of the costs of the assessment and determination of the Performance Warning.

(collectively "**Performance Penalties**").

9.10 The imposition of any Performance Penalties by the Performance Assessor shall be binding on the Parties and shall be final. Upon the imposition of Performance Penalties by the Performance Assessor, the Performance Warning to which the Performance Penalties relate shall be rescinded and of no further effect or consequence.

10. DISPUTE RESOLUTION

10.1 The Executive Committee or the person designated by the Executive Committee in that regard, shall refer any grievance relating to the provisions hereof at first instance by formal written notice to the Operations Manager at the Resort and in the event that the Executive Committee is not satisfied with the decision of the Operations Manager or their method or timing of dealing with the matter complained of, the Operations Manager shall refer the matter to the Managing Director of the Manager from time to time who shall, if not capable of resolving the matter himself to the satisfaction of the Executive Committee, refer the matter to the Board of Directors of the Manager, and the reference will be dealt with by discussion with the Executive Committee or such other person as may be designated by the Executive Committee for this purpose with a view to mutual resolution by the Parties. It is acknowledged and agreed that the Manager shall be afforded at all stages the opportunity of a full and fair hearing in respect of the matter or matters complained of.

- 10.2 If any dispute (except in the case of a management fee increase dispute, or a dispute arising from the performance of the Manager's duties and obligations, for which separate provisions are made at Clauses 2 and 9 respectively) arises between the Parties and the matter in question is not capable of amicable resolution by way of reporting and discussion between the Executive Committee or its designated representative and Manager as described above within twenty one (21) days of the matter being raised by formal letter or written notice by one Party to the other, the dispute shall then be referred to mediation by a reputable resort/hotel financial officer or other knowledgeable individual experienced in the hotel/resort/condominium business, or a qualified accountant in the Turks and Caicos Islands or, where the dispute is in respect of the technical interpretation of the Agreement or in respect of possible legal conflict, a reputable attorney qualified in the Turks and Caicos Islands (the profession or experience of the mediator being selected depending on the nature of the matter of the dispute and the Parties agreeing the person so selected, acting reasonably but having regard to any potential conflicts of interest in respect of the person or persons so selected) whose costs shall be borne equally by the Parties. If the Parties cannot agree on a mediator, then they shall submit to mediation by such mediator as may be nominated from time to time by the President of the Turks and Caicos Islands Bar Association who shall be requested to appoint such person upon the joint instructions of the Parties. In the event that one Party refuses to join in such request for the appointment of a mediator within seven (7) days of the request being served upon it, then the other Party shall be entitled to make the request on its own and shall be entitled to cite this Clause and the other Party's refusal to participate in the request for selection process as enabling the request be submitted by one Party only. The mediation shall be held in Providenciales, or such other place as the Parties may agree in writing. The mediator shall be requested to set forth the method of mediation and the Parties shall act in good faith and comply with all reasonable requests of the mediator to ensure a timely and efficient mediation. Neither Party shall be obliged to comply with the mediator's decision or recommendation.
- 10.3 Any dispute or disagreement between the Parties not capable of resolution by mediation as described above shall be referred to the Supreme Court by way of action by the Party claiming default or seeking relief.
- 10.4 The Parties agree and acknowledge that, notwithstanding the provisions of the foregoing Clauses, each shall have the right of access to the Turks and Caicos Islands Supreme Court for urgent or interim relief in respect of matters in dispute; however, reference may be had by the Parties to this Clause and the requirement for mediation as set forth herein as being relevant to the issue of costs.

11. INDEPENDENT STATUS

By this Agreement, the Parties do not intend to enter into an employer/employee relationship, and it is expressly understood and agreed between the Strata Corporation and Manager that the services of Manager hereunder will be rendered

as an independent contractor and not as an employee of the Corporation. Nothing in this Agreement is intended to constitute either Party a legal representative, subsidiary, joint venturer, partner, employee, affiliate or servant of the other Party for any purpose whatsoever.

12. INDEMNIFICATION

Except in the case of negligence or wilful or wanton misconduct on the part of the Manager or its employees, the Strata Corporation hereby agrees to indemnify and hold harmless the Manager from all liability and from all claims and demands arising out of damage or injuries to any person or property or any other loss (whether financial or otherwise) in or about, or in any way connected with, the Property and/or any Strata Lots within the Property, including but not limited to, any penalties or fines which may become payable and budgetary overruns, and defend at the expense of the Strata Corporation all suits which may be rendered against the Manager from any liability to the Strata Corporation in respect of any breach of any of the Manager's covenants herein contained. In the event the Manager or any of its senior management employees is finally judicially determined by the Supreme Court of the Turks and Caicos Islands to be negligent or to have acted willfully or wantonly, the Manager hereby agrees to indemnify and hold harmless the Strata Corporation from all liability and from all claims and demands arising out of damage or injuries to any person or property or any other loss (whether financial or otherwise) in or about or in any way connected with the Property and/or any Strata Lots within the Property arising from the final judicial determination, including but not limited to any penalties or fines which may become payable and budgetary overruns, and defend at the expense of the Manager all suits which may be rendered against the Corporation from any liability to the Manager in respect of any breach of any of the Manager's covenants herein contained. In any suit or claim against the Strata Corporation wherein the Manager is required to indemnify and defend the Strata Corporation, the Strata Corporation shall have the right to choose its own legal counsel. The Strata Corporation and the Manager shall mutually obtain and maintain such public liability insurance in respect of the Strata Corporation and the Manager in respect of the matters set forth in this Agreement ensuring that both Parties are named as insured parties under said policy of insurance or, where deemed necessary or recommended by insurance industry advisors, separate policies of insurance shall be taken out by the Strata Corporation and the Manager in respect of such matters at their respective costs, and evidence of such insurance (satisfactory to each Party) shall be provided to each Party hereto within a reasonable time after such insurance is obtained and promptly upon request by either Party hereto. The Strata Corporation and the Manager will pay their *pro-rata* share of the insurance premiums required by this Agreement, as mutually determined by the Executive Committee and the Manager.

13. RESORT MANAGEMENT EXCLUSIVE LICENCE AND RESORT STANDARD

- 13.1 The Strata Corporation and the Manager acknowledge and agree that “*The Sands at Grace Bay*” has been and will continue to be operated as a resort that welcomes Holiday Rental occupancy, delivers appropriate amenities to such rental guests and provides revenue to Unit Owners.
- 13.2 The Strata Corporation hereby grants the Manager an exclusive licence to offer property management Holiday Rentals agency services for Units of the Strata Corporation and for access to the Property for such purposes (the “**Exclusive Licence**”). The Manager is specifically empowered to exclude persons from the Property who are doing so in their capacity as property managers, or rental agents and who are seeking to engage in that activity, but not otherwise.
- 13.3 This licence will be binding for the period of this Agreement unless and until a vote of no less than a two-thirds (2/3rds) majority of all Owners eligible to vote (excluding the Manager or any of its affiliates as Owners) in good standing pursuant to the By-Laws entitled to vote at general meetings of the Strata Corporation is passed voting in favour of cancelling this licence, whereupon the exclusivity afforded herein to the Manager shall be deemed terminated. It shall be a condition of such a vote that the Manager be given at least forty-five (45) days’ notice of the meeting of the Owners at which the motion is to be voted upon and the Manager, through its nominated representative, shall be afforded the opportunity to address the proposed motion with the Executive Committee and, where the Strata Corporation intends to proceed with the meeting at which the proposed motion is to be voted upon, attend at the said meeting and make presentation to the Owners attending thereat, but for clarification, without any entitlement to vote thereat.
- 13.4 Owners who choose to make their Units available for Holiday Rental shall do so only under the terms of a standard Rental Management Agreement. The terms of the Rental Management Agreement shall be those in current use during the Original Management Agreement. Neither Party shall make material changes to the Rental Management Agreement save as provided by this Clause, or required by law. A material change to the Rental Management Agreement proposed by the Manager shall require the prior written approval of not less than fifty (50) *per cent* of those Owners who at that time have signed a Rental Management Agreement with the Manager. A material change to the Rental Management Agreement proposed by the Owners shall be supported by of not less than fifty (50) *per cent* of those Owners who at that time have signed a Rental Management Agreement with the Manager and shall require the prior written approval of the Manager. Any material changes to the Rental Management Agreement agreed in accordance with this Clause shall be notified to all Owners.
- 13.5 The Exclusive Licence applies only to Holiday Rentals. Owners are free to rent their Units directly on terms of their choosing and without compensation to the

Manager, provided that the rental is in accordance with the By-Laws and is for private residential use only and not for Holiday Rental.

- 13.6 The Manager shall at all times during the term of this Agreement carry out and perform its duties hereunder in accordance with the high standards of conduct and efficiency which may reasonably be expected from an entity occupying its position as Manager of a resort operated to the same standard as the resort is operated currently. The Strata Corporation and the Manager hereby acknowledge and agree that the Resort as currently operated as at the date hereof, being the standard of the Property and the services provided on the common property at the Property which are owned or paid for by the Strata Corporation, shall constitute the resort standard (the “**Resort Standard**”).
- 13.7 If at any time the Strata Corporation determines in its sole and absolute discretion to revise the Resort Standard for the Property in any manner, the Corporation shall provide the Manager with written notice in the manner set forth in Clause 14 for the delivery of notices of the Strata Corporation’s decision to revise the Resort Standard for the Property together with a description of the revised Resort Standard. The Manager then shall commence operating and managing the Property in accordance with such revised Resort Standard for the Property, subject always to adjustment in respect of the Budget in respect of any increased or decreased costs to the Manager associated with the revised Resort Standard. The Manager may request a delay in implementing such changes for the purposes of any consequential changes in marketing materials and strategy, and any such request shall not be denied unreasonably. Any additional costs to the Manager associated with a revised Resort Standard implemented in accordance with this Clause shall be borne by the Strata Corporation.
- 13.8 The Manager hereby acknowledges the integral nature of the Resort property and assets owned by it and its affiliates or related entities to the Property and the Strata Lots, and agrees to maintain its (and its affiliates or related entities, including but not limited to the Manager) resort properties and assets in a good state of repair and condition in an appropriate manner consistent with the current Resort Standard.
- 13.9 In return for the Exclusive Licence, the Manager agrees to pay to the Strata Corporation on the anniversary of the date of this Agreement the Exclusive Licence Fee, save that the Exclusive Licence Fee shall only be payable where:
- (a) the Strata Corporation enacts and maintains a requirement of all Owners contained in the By-Laws that Holiday Rental is only permitted through a single designated rental manager appointed by the Strata Corporation; and
 - (b) the Manager, or its affiliates or assignee, is the single designated rental manager as appointed by the Strata Corporation pursuant to the By-Laws and the existence of a single designated rental manager is maintained as a binding and enforceable By-Law restriction.

13.10 During the operation of an Exclusive Licence in favour of the Manager including the conditions of Clause 13.9 being satisfied, the Manager shall additionally contribute towards the following during such period as the Strata Corporation maintains towel and non-motorised water sports equipment services free of charge for use by rental guests and Owners at a level equivalent to that provided during the operation of the Original Management Agreement, namely:

(a) up to \$100,000 (One Hundred Thousand Dollars) per Fiscal Year towards the costs of providing poolside towels; and

(b) up to \$30,000 (Thirty Thousand Dollars) per Fiscal Year towards the costs of water sports facilities.

(the “**Services Contribution**”).

13.11 The Services Contribution shall increase each Fiscal Year by two and one half *per cent* (2.5%) annually. For the avoidance of doubt, the Manager shall cease to have any liability in respect of the Services Contribution if either the Exclusive Licence is terminated or suspended, or any of the conditions of Clause 13.9 ceases to be operative, or the Manager ceases to provide services to any Owners pursuant to any Rental Management Agreement. Where a Services Contribution is due, it shall be reduced in respect of any period (being not less than six months) during which the proportion of Holiday Rental occupancy of the Strata Lots is less than seventy-five *per cent* (75%) of the total occupancy for the same period (disregarding the Manager’s Strata Lots). Where the Services Contribution is reduced in accordance with this Clause, it shall be reduced by that proportion below seventy-five *per cent* (75%) of the total occupancy.

13.12 The requirements of Owners relating to Holiday Rentals pursuant to Clause 13 shall not apply to the Manager’s Strata Lots.

14. NOTICES

All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving notice) hand delivered by messenger or courier service to the address below or telecopied to the facsimile number below, or to any other address or facsimile number as the Party may designate by notice complying with the terms of this Section. Notice shall be deemed to have been received by the addressee on the next business day following service by hand against receipt or affidavit of service, or following apparent successful transaction proved by transmitted transaction report. Wherever possible, the Parties shall provide notice in advance by email communication to the current email commonly utilized by the Parties: to the Executive Committee in respect of the Strata Corporation and the Managing Director or other person with whom the Executive Committee has dealings from

time to time in respect of this Agreement on behalf of the Manager, with formal notice by telefax and/or hand delivery following as soon as practicable thereafter. Notice shall only be deemed served upon compliance with the formal service requirements as set forth in the first sentence hereof.

If to the Strata Corporation:

The Proprietors of Strata Plan No. 25

[*insert address details*]

For the Attention of the Executive Committee

With a copy to:

[*insert details*]

If to the Manager:

Oceanside Marketing Corporation Ltd,

[*insert address details*]

For the Attention of Mr Stanley Hartling

With a copy to:

[*insert details*]

15. MISCELLANEOUS PROVISIONS

- 15.1 The Manager and the Strata Corporation hereby covenant and agree to abide by the Ordinance (or any legislation passed in substitution or replacement thereof) and the By-Laws, and Manager agrees that it will perform its duties herein in a manner consistent with the Ordinance and the By-Laws.
- 15.2 Each of the Parties shall make, do and execute, or cause to be done and executed, all such further and other things, acts, deeds, documents, covenants and assurances as may be reasonably required to carry out the intent and purpose of this Agreement.
- 15.3 In the event of an inability or failure by either Party to fulfill its obligations as herein described by reason of any fire, explosion, war, riot, strike, walk-out, labour controversy, flood, pandemic, shortage of water, power, labour, transportation facilities or necessary materials or supplies, default of failure of carriers, breakdown in or the loss of production or anticipated production from plant or equipment, act of God or public enemy, any law, act or order of any court, board, government or other authority of competent jurisdiction, or any other direct cause (whether or not

the same in character as the forgoing) beyond the reasonable control of said Party, that Party shall not be liable to the other during the period and to the extent of such inability or failure.

- 15.4 Subject to the provisions of this subsection 15.4, this Agreement may be assigned by the Manager upon notice in writing to the Strata Corporation when the proposed assignee (the “Proposed Assignee”) is either an affiliate of, or related corporation to the Manager (and is under the same management and control as the Manager at the time of the proposed assignment), or a person or corporation of experience, reputation and resources sufficient to operate the Property to Resort Standard and maintain the Property to the Resort Standard and, by way of example, an assignment to an internationally branded hotel or resort management company or a real estate investment fund that has retained the services of an experienced and well reputed hotel/resort operator licensed to carry out business in the Turks and Caicos Islands would satisfy such requirement absolutely. Upon the service of the notice referred to above, the Manager shall also provide the Strata Corporation with all reasonably required information to enable the Strata Corporation to enquire into and satisfy itself as to the experience, reputation and capability of the Proposed Assignee to provide the services under this Agreement to Resort Standard. The Strata Corporation explicitly acknowledges that approval for assignment shall not be unreasonably withheld. The Corporation shall always have the right to object to such assignment to a Proposed Assignee, such objection to be provided by written notice of such objection to the Manager within fourteen (14) days of the Strata Corporation’s receipt of the notice from the Manager of such proposed assignment together with supporting documentation, as provided for herein. The Strata Corporation’s objection must be substantive and not arbitrary. The Strata Corporation’s objection, if any, must be reasonable and the reasons for the objection must be detailed in the objection when delivered to the Manager. In the event that the Strata Corporation timely delivers its reasonable objection to the proposed assignment as provided for herein, and such cannot be resolved by the Parties directly within a further three (3) days, the matter shall be referred by the Parties to a suitably qualified expert (“the Expert”), who shall be requested by the Parties to assess whether the objection of the Strata Corporation is reasonable and whether the Proposed Assignee has the requisite experience and capability to act as Manager. The findings of the Expert in this regard shall be final and binding on the Parties, save where a Party maintains that the decision of the Expert is manifestly contrary to the terms of this Agreement and in such instance the matter shall be referred to the dispute resolution provisions set forth at Clause 10. In the event the Parties cannot, within the three (3) days of receipt of the Strata Corporation’s objection to the Proposed Assignee, agree on the Expert, the Manager shall be entitled to appoint an internationally branded firm of accountants (such as, for example, PriceWaterhouseCoopers, KPMG or BDO) or internationally branded specialist hotel industry consultants, provided always the Expert being appointed has no relationship with the Manager or the Proposed Assignee and is independent in all respects. In the event the Strata Corporation fails to ~~timely~~ deliver in a timely manner any such objection, any assignment made by the

Manager to the Proposed Assignee shall be valid and of force and effect without the necessity of any consent of the Strata Corporation or determination of the Expert. In the event of there being a dispute in respect of the operation of this Clause, the matter shall be dealt with in accordance with Clause 10.

- 15.5 “*The Sands*” and “*The Sands at Grace Bay*” are trademarks and trade names of the Manager and its Affiliates and the Strata Corporation acquires no right, title or interest in same as a result of the Agreement or the performance by the Manager of its obligations pursuant to this Agreement and immediately upon termination of the Agreement the Strata Corporation will change the name of the Resort to remove the word “*Sands*”. The Parties share a common intention to retain the name “*The Sands at Grace Bay*” in relation to the Property during the term of this Agreement.
- 15.6 This Agreement shall be construed in accordance with the laws of the Turks and Caicos Islands and the Parties hereby submit to the exclusive jurisdiction of the courts of the Turks and Caicos Islands in respect of any dispute arising from this Agreement or the operation not resolved by the mediation process set forth in Clause 10.
- 15.7 This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all other negotiations, understandings and representations, if any, made by and between the Parties. No representations, inducements, promises or agreements, oral or otherwise, if any, not embodied in this Agreement, shall be of any force and effect.
- 15.8 All of the terms and provisions of this Agreement, regardless of whether so expressed, are binding upon, inure to the benefit of, and are enforceable by the Parties and their respective successors and permitted assigns as provided for at Clauses 15.4.
- 15.9 Each Party acknowledges that it has been or has had the opportunity to be represented by its own legal counsel throughout the negotiations and at execution of this Agreement and all of the other documents executed incidental to this Agreement and, therefore, neither Party shall, while this Agreement is effective or after its termination, claim or assert that any provision of this Agreement or any other documents should be construed against the drafter of this Agreement or any other documents.
- 15.10 Neither the failure nor any delay on the part of any Party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other

occurrence. No waiver shall be effective unless it is in writing and signed by the Party asserted to have granted such waiver.

- 15.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument.
- 15.12 Upon the execution hereof, this Agreement shall replace forthwith the Original Management Agreement save in relation to (a) the Strata Corporation's obligations to Resort Personnel arising from their period of continuous employment and (b) confidentiality, which are specifically preserved.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the day and year from above written.

Signed by the Manager

}

**OCEANSIDE MARKETING
CORPORATION LTD**

in the presence of:

}

}

}

}

Witness

By its Director:

Present when the Common Seal
of **The Proprietors of Strata Plan No. 25**
was affixed hereto in the presence of:

}

The Proprietors of Strata Plan No. 25

}

}

}

}

}

Member of the Executive Committee

Member of the Executive Committee

**SCHEDULE “A”
TO
STRATA MANAGEMENT AGREEMENT**

PAYMENTS TO MANAGER

In consideration of the Manager providing all of the services required to be provided by it under the terms of this Agreement, the Strata Corporation shall pay to the Manager the following:

(a) an amount equal to the Strata Corporation's budgeted costs and expenses for which Manager is responsible to disburse pursuant to this Agreement as set forth in the annual Budget approved by the Executive Committee, from the Corporation's operating account on a monthly basis; plus

(b) an amount equal to all expenses actually and necessarily incurred by the Manager in respect of the operations and maintenance of the Property, which are properly approved as provided for in this Agreement, and including reasonable purchases of maintenance backup inventories and supplies, as detailed by the Manager and to be settled monthly subject always to the Manager highlighting in the accounts any variance in any expense item in excess of five *per cent* (5%) of the budget amount in respect of that expense; plus

(c) an annual management fee equal to Three Hundred and Fifty Thousand Dollars (\$350,000.00) (the “**Management Fee**”). The Strata Corporation shall pay such annual Management Fee to Manager on a monthly basis consistent with the Strata Corporation's Fiscal Year. On the first day of the second year of the term of the Strata Management Agreement and every succeeding year of the term or any renewal term thereof, the Management Fee shall be adjusted upwardly by an annual increase of two and one half *per cent* (2.5%) each Fiscal Year.

In the event of a substantial decrease in the activities of the Manager in the discharge of its duties and obligations arising directly from an exceptional and prolonged shutdown of the Property, the Management Fee shall be temporarily reduced (a “**Temporary Management Fee Reduction**”). A Temporary Management Fee Reduction shall not apply where: (a) the exceptional and prolonged shutdown of the Property was due to a tropical storm, hurricane or other natural event; or (b) where the period of disruption is covered by any business interruption insurance relating to the Property or the Strata Corporation. The amount of a Temporary Management Fee Reduction shall be calculated on a *pro-rata* basis by a proportion equal to the proportion of reduced Strata Corporation overall operations expenditure for the same. For the purposes of this provision, the Strata Corporation's insurance premium costs for the period of the Temporary Management Fee Reduction shall be included in the calculation of the Strata Corporation's overall operations expenditure.

Discretionary Incentive Bonus. In addition to the amounts set forth above, the Strata Corporation may, in its sole and absolute discretion, pay to the Manager an annual discretionary incentive bonus at the end of each calendar year in an amount equal to up to fifty *percent* (50%) of the difference between the budgeted costs and the actual costs for any particular year incurred by the Corporation, such calculation being made in accordance with GAAP as it relates to expenses and capitalization policies of the Strata Corporation, which by way of example, would exclude any unbudgeted reserves that may be assessed during the year of the calculation.

END

BETWEEN:

**THE PROPRIETORS,
STRATA PLAN NO. 25**

- and -

**OCEANSIDE MARKETING
CORPORATION LTD**

**STRATA MANAGEMENT
AGREEMENT**
