

# SUNRISE HILL RESORTS

## STANDARD MAINTENANCE AGREEMENT

This Agreement is made this                      day of    2005 between **T. D. C. REAL ESTATE AND CONSTRUCTION LIMITED** a limited liability company duly incorporated under the laws of St. Christopher and Nevis and having its registered office situate at Princes Street, Basseterre, St. Kitts (hereinafter called "the Manager" which expression shall where the context so requires or admits include its successors in title and assigns) of the first part, the Person described in the First Schedule hereto (hereinafter called "the Owner" which expression shall where the context so requires or admits include his personal representatives, heirs and assigns) of the second part and **SUNRISE HILL RESORTS HOMEOWNERS' ASSOCIATION LIMITED** a limited liability duly incorporated under the laws of St. Kitts and Nevis and having its registered office situate at Fort Street, Basseterre St. Kitts (hereinafter called "the Association" which expression shall where the context so requires or admits include its successors in title and assigns) of the third part.

WHEREAS:-

- a. Pursuant to this agreement the Manager will manage and maintain the Facilities of the Project (as hereinafter defined) the cost of which the Owner and other owners of the Project have agreed to meet in accordance with the terms of this Agreement
- b. The Owner is the owner of the Villa of the Project set out in the First Schedule
- c. The Owner has agreed to maintain the Villa and contribute to the maintenance of the Facilities at all times so as to ensure the continued integrity and value of the Project and in default thereof has agreed to permit the Manager to effect such maintenance in accordance with this agreement

NOW THEREFORE it is hereby agreed as follows:-

1. In this Agreement the following expressions shall have the indicated meanings:-

"Facilities" means the areas, facilities, utilities, improvements, equipment and installations located in the Project or serving, or intended to serve, the Project and all improvements constructed therein (save and except for the Villas) including without limitation, all roads and walkways, sidewalks and paths, all boundary fences, street lighting, security gatehouses, parking areas and landscaped common areas, sewage treatment plants and all sanitary and storm sewer conduits, mains, pipes and pumping facilities, all common water tanks, water mains, pipes,

pumping facilities, all electrical transmission lines and facilities, telephone feeder cables and cable television transmission conduits, the swimming pool and tennis court.

“Assessment” means the amount determined by the Manager in accordance with this Agreement which shall be payable by the Owner in respect of the repair and maintenance of the Facilities for any Fiscal Year

"Facilities Charges" means the aggregate total of the costs, expenses, fees, rentals disbursements and outlays (in this definition referred to collectively as "cost or costs") of every kind, paid, payable or incurred by or on behalf of the Manager on an accrual basis (or on a cash basis to the extent that the Manager determines is reasonable) in the maintenance, repair, operation, improvement, administration and management of the Facilities or allocated thereto in whole or in part by the Manager acting reasonably. Without limiting the generality of the foregoing, Facilities Charges shall include:

- (i) all costs of maintenance, construction, repair, replacement and restoration of any part of the Facilities to the extent not depreciated by the Manager pursuant to subparagraph (viii) below;
- (ii) the cost of providing electrical light and power, fuel, water, sewage disposal, and other utilities to the Facilities;
- (iii) the cost of all insurance which the Manager is obligated or permitted to obtain under this Agreement in respect of the Facilities;
- (iv) cost of providing security, supervision, traffic control, janitorial service, landscaping, waste collection, waste disposal and waste recycling;
- (v) the cost of plant, machinery, tools, equipment, supplies, parts and materials used in connection with the Facilities;
- (vi) all salaries, wages, fringe benefits, severance pay and termination payments paid to or for all personnel, including supervisory personnel and managers and all costs of obtaining such personnel to the extent they are employed by the Manager and are directly involved with the maintenance, repair, operation, administration or management of the Facilities or any part thereof and amounts paid to independent contractors, including any

management companies for any services provided in connection with the maintenance, repair, operation, administration or management of the Facilities or any part thereof;

- (vii) depreciation of the cost of the machinery, equipment, facilities and systems constituting the Facilities or used in the maintenance, repair, operation, administration and management of the Facilities calculated on a sinking fund basis over the useful life of such machinery, equipment, facilities and systems;
- (viii) auditing, accounting, legal and other professional and consulting fees and disbursements paid to third parties in respect of the Facilities or determination of the Facilities Charges;
- (ix) the administrative costs of operating the Homeowners' Association;
- (x) an administrative charge equal to [REDACTED] of the amounts referred to herein.

“Fiscal Year” means from January 1 to December 31 in each calendar year or such other twelve month period as shall from time to time be set by the Manager

“Project” means the villa residential development situate at Frigate Bay, St. Kitts known as Sunrise Hill Resorts as shown on the Plan thereof exhibited hereto and marked “A” which plan is attached for illustrative purposes only and may be varied at any time by the Manager as Developer of the project.

“Villa” means each separate parcel of land with a building and any other improvements thereon constructed for residential purposes of which there are intended to be \_\_\_\_\_ as shown on exhibit “A”.

2. The Owner acknowledges that it is a condition precedent to his enjoyment and continued enjoyment of the easements noted on his Certificate of Title relating to the Property that he contribute to the cost of managing and maintaining the Facilities as herein provided and also that he apply to become and remains a member of the Association.
3. (i) The Owner hereby covenants that he shall apply at Closing of the purchase of his Villa to become a member of the Association and will at all times during the currency of this Agreement maintain his membership in the Association.

- (ii) The Association hereby covenants and agrees that it will accept the application by the Owner to become one of its members.
  - (iii) The Association shall have such powers to represent the interests of the Owner as are herein set out.
- 4.
- (i) The Manager on behalf of itself, its successors and assigns, hereby covenants and agrees to and with the Owner, the Owner's heirs, personal representatives, successors in title and assigns, to repair, maintain, replace and reconstruct after damage or otherwise, the Facilities from time to time. Provided the Manager has complied with its obligation under Section 4(ii) hereof, its obligations hereunder in the event of damage or destruction to the Facilities shall be conditional upon the availability to the Manager of insurance proceeds in respect of such damage or destruction.
  - (ii) The Manager shall take out and maintain all such policies of insurance including for property damage as shall be necessary and appropriate and maintained by a prudent owner of a property similar to that of the Facilities such insurance to be taken out in respect of the Facilities as the Manager shall in its sole discretion determine.
  - (iii) The Manager shall perform its obligations hereunder in accordance with the standard of a prudent owner and shall take all actions in connection with the fulfillment of its obligations as would a prudent owner.
  - (iv) In the event of damage or destruction to any or all of the Facilities the Manager shall repair, replace and restore such damage or destruction as soon as reasonably practicable, having regard to the nature and extent of such damage or destruction, the availability of insurance proceeds and construction conditions. In carrying out such repair, replacement and restoration the Manager may make such reasonable modifications to the design of the Facilities so damaged or destroyed as it shall consider appropriate, acting reasonably and shall not be required to repair, replace and restore such damage or destruction to the exact design of such damaged or destroyed Facilities as existed prior to such damage or destruction.
- 5.
- (i) The Manager shall prepare a Draft Budget detailing the anticipated Facilities Charges for each year.
  - (ii) The Owner and the Association shall be provided a copy of the Draft Budget at least 60 days before the end of the year preceding the year to which the Budget relates.
  - (iii) If the Owner disputes the propriety of any item on the Budget or the amount budgeted therefor, then he must lodge a written notice of such objection to the Association within 14 days of the receipt of the Draft Budget.

- (iv) Upon receipt of all objections from the Owner and all other owners in accordance with Clause 5(iii), a representative or representatives of the Association (but not exceeding three) shall meet with a representative or representatives of the Manager to resolve all the disputes or queries raised by the Owners. Such meeting shall take place within 28 days from the delivery of the Draft Budget to the Association. If the Association fails to meet with a representative of the Manager within the stipulated time due to no fault of the Manager, then the Draft Budget shall be deemed to have been accepted by the Association in all respects.
- (v) In the event that any matter is not resolved between the Association and the Manager within 21 days from the date of the first meeting to discuss the same, the dispute shall be referred to the accounting firm of Pannell Kerr Forster (or such other accountant or accounting firm agreed to by the parties) whose ruling on the same shall be final and binding as between the parties. The cost of such a referral shall be included in the Budget for the relevant year.
- (vi) Upon resolution of all queries relating to the Draft Budget the Budget shall become the Final Budget for the relevant year.
- (vii) All decisions and concessions of the Association with respect to the budget or any supplemental budget shall be binding on the Owner.
- (viii) The Owner shall have no right to raise any objection with respect to the Draft Budget directly with the Manager but must refer the same to the Association which alone shall raise the said matters with the Manager.
- (ix) If at any time during the Fiscal Year it appears that the budget or any part thereof is inaccurate for any reason (including but not limited to the occurrence of an event or conditions for which no provision was made or some estimate proved inaccurate) then the Manager shall prepare a Supplemental Budget to deal with the inaccuracy.
- (x) A Draft of the Supplemental Budget shall be delivered to the Owner and the Association as soon as is practicable in the circumstances. The Owner shall within 7 days of receipt of such Supplemental Budget lodge a written notice of any objection to the Association.
- (xi) Upon receipt of all objections with respect to the Supplemental Budget from the Owner and all other owners in accordance with Clause 5(x), a representative or representatives of the Association (but not exceeding three) shall meet with a representative or representatives of the Manager to resolve all the disputes or queries raised by the Owner and other owners. Such meeting shall take place within 14 days from the delivery of the Draft Supplemental Budget to the Association. If the Association fails to meet with a representative of the Manager within the stipulated time due to no fault of the Manager, then the Draft Supplemental Budget shall be deemed to have been accepted by the Association in all respects.

- (xii) In the event that any matter is not resolved between the Association and the Manager within 7 days from the date of the first meeting to discuss the Draft Supplemental Budget, the dispute shall be referred to the accounting firm of Pannell Kerr Forster (or such other accountant or accounting firm agreed to by the parties) whose ruling on the same shall be final and binding as between the parties. The cost of such a referral shall be included in the Supplemental Budget for the relevant year.
  - (xiii) Upon resolution of all queries relating to the Draft Supplemental Budget the Budget for that Fiscal Year shall be amended accordingly.
  - (xiv) The presentation by the Manager of a Supplemental Draft Budget in any one Fiscal Year shall not be a bar to the presentation of one or more Draft Supplemental Budgets for the same Fiscal Year.
6. The Manager shall make an allocation of the Budget Amount in accordance with the following guidelines:-
- (a) The Budget Amount shall be allocated between the Villas comprising the Project as set out in the Second Schedule.
  - (b) The allocations referred to in sub-clause (a) are intended to apply upon the completion of all the Villas comprising the Project as designated on the Development Plan, a copy of which is annexed hereto and marked "B".
  - (c) Prior to the said completion of the Project the allocations shall be determined as set out in the Second Schedule.
7. (i) The Assessment shall be paid quarterly in advance.
- (ii) The Owner covenants that he will pay the assessment as and when the same shall become due.
- (iii) Interest shall be payable on any arrears in the assessments or any part thereof at the rate of 1.5% per month.
8. (i) The Owner hereby covenants and agrees with the Developer and the Manager that the Owner will effect and at all times maintain a policy or policies of insurance in respect of all insurable structures and improvements in or on the Villa in the Owner's name at the replacement cost thereof with such insurers as may be approved in writing from time to time by the Manager against damage or loss caused by fire, lightning, earthquake, volcanic eruption, hurricane, cyclone, tornado, windstorm and fire and flood caused by any of such perils of nature and riot and strike, civil commotion, malicious damage, impact by sea vessels, aircraft damage, explosion, burst pipes, overflow of drains and fire however caused.

- (ii) On demand the Owner shall deliver to the Manager the policy or policies of such insurance respectively and produce the receipts for the payment of each and every premium in respect thereof.
  - (iii) If the Owner shall make default in effecting or maintaining such insurance as stipulated in sub-clause (i) the Manager may in its sole discretion so insure and keep insured all or any of the said structures and improvements in the joint names of the Owner and the Manager to the amount aforesaid. All sums paid by the Manager in exercise of the power conferred by this sub-clause shall be repayable by the Owner to the Manager on demand.
  - (iv) The Owner hereby agrees that all monies received by virtue of any such insurance (whether effected by the Owner or the Manager) shall be held by the Owner in accordance with the terms of the Trust Deed annexed hereto and marked "B". The Owner hereby covenants that he will execute the said Trust Deed upon execution of this Agreement.
  - (v) The Owner hereby appoints the Manager as his agent with authority to carry out and/or arrange for the carrying out of any repairs in respect of which proceeds of insurance have been received. In this regard, the Manager may undertake such of the repairs as it in its sole discretion shall determine and/or contract third parties to carry such repairs as it shall in its sole discretion determine. The Manager shall be entitled to reasonable remuneration in respect of any repairs carried out by it pursuant hereto.
9. The Owner covenants that he will at all times keep the exterior of Property in good and sufficient repair. If for any reason the exterior of the Property is or becomes in a state of disrepair the Manager shall serve written notice on the Owner specifying the said disrepair and the Owner shall within 60 days of such notice rectify such disrepair.
10. If the Owner fails to rectify the said disrepair as required by Clause 9, the Manager shall be entitled, but not obliged, to enter the premises and effect the said repairs and the Owner hereby authorises the Manager accordingly and confers on it all necessary permissions, licences and authorities to act accordingly.
11. All monies expended by the manager in effecting such repairs as referred to in Clause 10 shall be repayable by the Owner to the Manager on demand.
12. All monies due under this Agreement from the Owner to the Manager shall be a charge on the Property sufficient to support the notation of a Caveat on the Title of the Owner.
13. The Manager hereby agrees that the Association may at any time request a meeting with the Manager to discuss issues relating to the management and maintenance of the Facilities and that a representative or representatives of the

Manager shall meet with a representative or representatives of the Association (but not exceeding three) within 14 days thereafter.

14. The Owner hereby agrees and covenants that all issues relating to the maintenance and management of the Project shall be referred to the Association which alone shall represent the interests and concerns of the Owner and all other owners of the Project in dealings with the Manager.
15. The Manager shall indemnify the Owner in respect of any and all claims, liabilities, charges, costs and expenses made against or incurred by the Owner caused by or directly related to the Facilities where such loss or damage is caused or contributed to by the negligence of the Manager, its servants and/or agents.
16. This Agreement represents the entire agreement between the Parties.
17. This Agreement shall be governed by the laws of St. Christopher and Nevis.
18. This Agreement may be assigned by the Manager to the Association in which event the provisions of Clause 5 establishing procedures for representation of the Owner by the Association in relation to the budgets to be established and the provisions of Clauses 14 and 15 shall be replaced by provisions to be determined by the Association in general meeting. The Owner acknowledges that in the event of such assignment all obligations of the Manager to him (save for liabilities of the Manager incurred pursuant to Clause 15 prior to the assignment) shall cease.

IN WITNESS WHEREOF the parties have hereunto affixed their respective hands and seals on the dates below mentioned.

**FIRST SCHEDULE**

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**SECOND SCHEDULE**




Dated the            day of            2005

**T.D.C. REAL ESTATE AND  
CONSTRUCTION LIMITED**

AND

**SUNRISE HILL RESORTS  
HOMEOWNERS ASSOCIATION LIMITED**

AND

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**STANDARD MAINTENANCE  
AGREEMENT**

KELSICK, WILKIN & FERDINAND  
SOLICITORS