

BETWEEN

A N D

WANAKA ACCOMMODATION 2008 LIMITED

MANAGEMENT AGREEMENT

gallaway cook allan
LAWYERS
incorporating blake horder gowing

DATE

2008

PARTIES

- 1 (Proprietor)
- 2 **WANAKA ACCOMMODATION 2008 LIMITED** ("Manager")

BACKGROUND

- A The Proprietor is the registered Proprietor of Apartment No. (Certificate of Title) ("the Villa") in that complex at Hyland Street, Wanaka and known as Meadowstone Villas ("the Villas").
- B The business of the Manager is the managed letting of Apartments in Meadowstone Villas and Secretary/Manager of the Body Corporate established to administer Meadowstone Villas.
- C The Proprietor has agreed to engage the Manager to manage the letting of the Villa on the terms and conditions set out below for the purposes of visitor accommodation which means the use of the Villa for short term fee paying living accommodation where the length of stay for any visitor is not greater than 3 months at any time.
- D The Manager has the sole right to conduct a letting agency for the Villas.
- E The Proprietor has also agreed as a member of the Body Corporate established to administer Meadowstone Villas that the Manager is appointed to the position of Secretary/Manager of the Body Corporate for a period of five (5) years from the Commencement Date and thereafter according to the Body Corporate Rules.
- F The parties have agreed to the amendments attached hereto, to the rules set forth in the Second and Third Schedules to the Unit Titles Act 1972 in relation to the operation of Meadowstone Villas.

THE PARTIES AGREE:

1. **Appointment of Manager**
- 1.1 The Proprietor hereby appoints the Manager as its exclusive agent during the term of this agreement to let and manage the Villa, and the Manager accepts that appointment.
- 1.2 Nothing in this agreement shall be deemed or construed to constitute either party a partner, agent or representative of the other party or to create any trust and neither party shall have any authority to act for or incur any obligation on behalf of the other party except as is expressly provided herein.

- 1.3 The Manager shall supply the Management Agreement document at its cost. Each party shall pay their own legal costs of checking and engrossing the agreement.

2. Duties and responsibilities of Manager

- 2.1 The Manager shall offer the Villas for rental to such persons and for such duration and on such terms and conditions of occupancy as the Manager in its sole discretion shall determine. The Manager shall use its best efforts to be fair and act in good faith in the offering of an available Villa to customers, consistent with the preferences of the customer for different types, sizes, qualities, locations and rental rates. The Manager shall manage the Villa impartially without favoured treatment to the Proprietor or to any other proprietor in Meadowstone Villas.
- 2.2 Following annual consultation with the Proprietor, the Manager shall set rental rates for the Villas, which in the Manager's judgement shall maximise the rental income from the Villa.
- 2.3 The Manager shall provide the following services:
- (a) A reservation service on a year round basis.
 - (b) The maintenance of a complete set of accounting books for the rental programme, kept according to standard accounting practice. The Manager shall prepare and forward to the Proprietor monthly statements detailing income earned and expenses incurred in respect of the Villa.
 - (c) The Manager shall keep and preserve for at least four (4) years all records and occupancy statistics of the Proprietors Villa.
 - (d) The Manager shall use its best efforts to cause the Villa to be occupied by rental or fee paying customers and shall faithfully and diligently pursue the collection of all rents or charges.
 - (e) The Manager shall advertise, market and promote jointly all Villas in Meadowstone Villas, which it manages and acts for as rental Manager including over the internet through a website. The manager will spend the advertising levy referred to in clause 4.2 on promotion of Meadowstone Villas by way (but not limited to) newspaper and press publications, tourist accommodation guides and website marketing.
 - (f) The establishment of a separate bank account relating to the letting of the Villa in Meadowstone Villas and the payment into that bank account of all rental income received in respect of all Villas in Meadowstone Villas managed by the Manager which sum shall be held by the Manager on trust for the Proprietor, notwithstanding clause 1.2.
 - (g) The Manager will arrange and pay for a public liability cover to the extent of One million dollars (\$1,000,000.00) on the Managers policy indemnifying the Proprietors against any claims arising from loss or damage in the property that are related to the operation of the Management business. This policy will cover the total complex.

- (h) To deduct from rent proper charges and reimbursements/disbursements for moneys expended on behalf of the Proprietor.
 - (i) To conduct a review of the level of market rent regularly.
- 2.4 The Manager shall provide the following services at the cost of the Proprietor:
- (a) The maintenance and repair of the Villa including gardens in order to keep same suitable for occupancy. Such maintenance and repair shall include the replacement of any lost, stolen or damaged chattels, worn carpet or furniture, equipment or other items provided that the Manager shall obtain the prior approval of the Proprietor for any one item of expenditure which exceeds \$400 plus GST unless such expenditure is immediately necessary on an emergency basis to protect the Villa or other Villas in the complex or to maintain essential services to customers.
 - (b) The Manager will provide all services as Body Corporate Secretary/Manager under the Unit Titles Act 1972 and the amendments noted in the purchase agreement for the Meadowstone Villas Apartments. for a fee determined in accordance with the Body Corporate Rules.
 - (c) The provision of rubbish bags, tea, coffee, milk, toilet paper, cleaning services, laundering of linen, wood and other sundry items as are required during occupancy and at the termination of any occupancy by customers.
- 2.5 The Proprietor agrees to give the Manager uninterrupted control and operation of the letting and managing of the Villa and agrees not to interfere or be involved in any way with the day to day operation of the letting and managing of the Villa except as expressly permitted by this Agreement.
- 2.6 The Manager shall have the duty to carry out the responsibilities set out in this agreement and shall carry out those duties to the standard of care of a reasonable property manager.
- 2.7 The Manager shall take due care in the performance of their contractual obligations but does not warrant and is not liable for any default by the guest/s in the payment of rent or any other charges, causing damage to the property or the observance of other terms of the letting agreement.

3. Duties, rights and responsibilities of the Proprietor

- 3.1 The Proprietor acknowledges that the Manager is also the Manager for other registered Proprietors of units in Meadowstone Villas that are comparable to and competitive with the Villa.
- 3.2 Except to the extent that the Manager has accepted liability pursuant to this agreement, the Proprietor shall be liable for all costs of ownership and maintenance of the Villa, including but without limitation to, local authority rates, body corporate levies, commission payable to the Manager pursuant to clause 4, rental for any telephone system and/or intercom/monitoring system, internet, electricity charges, building and contents insurance for replacement

value, television lease/licence costs, Sky/Pay TV operating costs, income tax, any non resident tax and any shortfall between Proprietors share of all such expenses and the income obtained from the letting of the Villa.

- 3.3 To the extent that the Manager is responsible for actual payment of any of the expenses referred to in clauses 2 and 3 the Manager shall be entitled to make such payment direct from income earned in respect of letting the Villa and to debit the Proprietor's nominated bank account in the event of any shortfall.
- 3.4 The Proprietor agrees and acknowledges that the Manager may use the unit for promotional purposes and provide complementary accommodation to influencers at the Manager's discretion. The maximum use of the unit for this purpose would be five (5) days per annum.
- 3.5 Duly authorised representatives of the Proprietor shall have the right with prior notification and with as little disturbance to the business as possible to enter the Villa at all reasonable times for the purpose of inspecting the Villa.

4. **Commission**

- 4.1 For the purposes of this Agreement the following definitions apply:
 - (a) "Gross operating receipts" means the gross letting income excluding GST actually received by the Manager in respect of the Villa provided however that it is expressly acknowledged by the Proprietor that:
 - (i) the gross operating receipts may vary according to the Manager's discretion and according to the source of the business and by way of illustration only (without restricting the generality of this clause) as to whether that be by way of ordinary rack rate, corporate rate, wholesale rate, or howsoever; and
 - (ii) the income actually received by the Manager shall be that received after deductions associated with the manner of payment, again by way of illustration only (and with restricting the generality of this clause) by commissions against travel agents payments, credit card use or similar charges and power and gas expenses. Payment shall not be deemed to be "received" for the purposes of this clause until the Manager has received actual payment in cash (ie receivables collected, cheques cleared etc).
 - (b) "Rental profit" means gross operating receipts less commission payable (as defined in clause 4.2 of this Agreement) and expenses payable (as defined in clause 2.4 of this Agreement).
- 4.2 The Proprietor shall pay the Manager as a fee for its services pursuant to this Agreement a commission of fifteen percent (15%) of the gross operating receipts received by the Manager plus GST in respect of the Villa AND authorise the manager to deduct a further four percent (4%) of gross operating receipts to market the Villa for letting pursuant to clause 2.3(e) above.

5. Distribution of rental profit

5.1 The Manager shall pay to the Proprietor the Rental Profit earned in respect of the Villa on a monthly basis, as soon as possible but no later than 20 days following the end of the monthly accounting period, to the Proprietor's nominated bank account by way of direct credit.

6. Use of Villa by Proprietor

6.1 The Proprietor shall be entitled to use the Villa for the personal use of the Proprietor or the Proprietor's family and friends without consideration provided that the Proprietor recognises that the Villa is available for rental to customers and shall give the Manager reasonable notice of the Proprietor's wish to have the Villa made available for personal use.

6.2 To maintain the Villas at a standard in keeping with the quality of the complex it is agreed that whilst the Proprietor is in occupancy servicing charges either daily/weekly or on departure will be charged to the Proprietor's monthly statement. The Proprietor will advise the management company of the servicing option they require at the commencement of each occupancy.

7. Term – termination

7.1 This Agreement shall subject to the prior right to terminate set out in clause 7.2 expire on 30 September 2013.

7.2 Notwithstanding clause 7.1 the Proprietor may terminate this agreement upon giving three (3) months prior written notice to the Manager if:

- (a) The Manager shall be declared bankrupt or shall be placed in liquidation or have a receiver of its assets appointed; or
- (b) The Manager breaches any term of this Agreement that in the reasonable opinion of the Proprietor is not capable of remedy within 30 days;
- (c) The Manager, in the reasonable opinion of the Proprietor, is grossly incompetent in relation to the management of the Villa.

7.3 In the event of termination the Proprietor shall indemnify the Manager in respect of any claims or expenses incurred in respect of any confirmed rental reservations for the Villa which cannot be transferred to a similar Villa.

7.4 If the Proprietor sells the Villa during the term of this Agreement becoming effective a condition of sale will be that any purchaser agrees to continue with this Management Agreement until expiry of the term initially agreed to in clauses 7.1 and 7.2.

8. Permitted assignment by Manager

8.1 The Manager may assign its interest (in part or in whole) in this Agreement after two (2) years from the Commencement Date to any of the following parties:

- (a) The Manager may only assign any interest in this Agreement with and subject to the written consent of a majority in number of the Proprietors at Meadowstone Villas who have entered into a Management Agreement with the Manager ("the Proprietors") which consent will not be unreasonably withheld. For the purposes of this clause each unit shall carry one vote.
- (b) Any change in the legal and/or beneficial ownership of any of the shares in the capital of the Manager or any issue of new capital resulting in a change in the effective management or control of the Manager, or the Manager entering into an amalgamation or agreement to enter into an amalgamation proposal is deemed to be assignment of the Manager's interest in this Agreement.

8.2 Any proposed Assignee will execute in favour of the Proprietors a Deed of Covenant binding the proposed Assignee to observe the terms of this Agreement as if named herein as Manager. Such Deed of Covenant shall be settled, prepared by the solicitors for the Body Corporate, at the expense of the Manager.

9. **Indemnity Provisions**

- 9.1 The Proprietor indemnifies and keeps the Manager and any contractors employed by the Manager protected from all costs, claims, demands, suits, legal proceedings, or loss howsoever arising in the property management of the premises and to reimburse the Manager upon demand for any expenses incurred in the management of the premises.
- 9.2 If in the Manager's sole discretion it may be necessary or proper to reserve or withhold owners funds to meet obligations which are or may become due (including the Manager's compensation) then the Manager may do so.

10. **Arbitration**

- 10.1 If any dispute or question or difference whatsoever shall arise between the parties and the matter cannot be mutually resolved then the matter shall be referred to arbitration of a single arbitrator appointed by each of the parties and an umpire appointed by such arbitrators before they enter into arbitration. Such arbitration will be conducted according to the Arbitration Act 1996, the decision of the arbitrators or their umpire shall be final and binding on both the parties to the dispute.

11. **Notices**

- 11.1 All notices must be in writing and must be served by one of the following means; by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.
- 11.2 In respect of the means of service specified in clause 10.1, a notice is deemed to have been served:
 - (a) In the case of personal delivery, when received by the addressee;

- (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
- (c) In the case of facsimile transmission, when sent to the addressee's facsimile number; or
- (d) In the case of email, when acknowledged by the addressee by return email or otherwise in writing.

11.3 In the case of a notice to be served on the Manager, if the Proprietor is unaware of the Manager's last known address in New Zealand or the Manager's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Manager on the day on which it is affixed.

11.4 A notice shall be valid if given by any director, general manager, solicitor or other authorised representative of the party giving the notice.

SIGNED by **[NAME]**

as Proprietor in the presence of:

} _____

Witness Signature:

Witness Full Name:

Witness Occupation:

Witness Address:

EXECUTED by **WANAKA ACCOMMODATION 2008 LIMITED**

By:

_____ **Director**

_____ **Director**

INSTRUCTIONS TO MANAGER

Electricity account to be paid by:	Owner/Manager
Gas account to be paid by:	Owner/Manager
Council rates to be paid by:	Owner/Manager
Body Corporate levy to be paid by:	Owner/Manager
Contents insurance to be paid by:	Owner/Manager

Monthly income to be banked to the credit of:

Account Number:

Bank: