

Sample license agreement governing the use of the common property

THIS LICENCE is made BETWEEN Sandyport HOMEOWNERS ASSOCIATION LIMITED a company incorporated under the laws of the Commonwealth of The Bahamas and carrying on business within the said Commonwealth (hereinafter called "the Licensor" which expression where the context so admits shall include its assigns) of the one part AND OWNER of the Western District of the said Island of New Providence (hereinafter together called "the Licensee" which expression where the context so admits shall include his permitted assigns) of the other part.

WHEREAS:-

(A) The Licensee is seised for an estate in fee simple in possession of a piece parcel or lot of land situate in the Western District of the Island of New Providence (being part of a larger property known as "the Sandyport Property") designated as ADDRESS (the said piece parcel or lot of land being hereinafter referred to as "the Property");

(B) The Licensor is seised for an estate in fee simple in possession of certain parts of the Sandyport Property (hereinafter referred to as "the Amenity Areas") that is to say the tennis courts swimming pools beach areas common garden areas courtyards parking areas roads paths canals waterways and walkways of the Sandyport Property the Amenity Areas being more particularly those pieces parcels or lots of land having such position boundaries shape marks and dimensions as are shown on the diagram or plan attached hereto (hereinafter called "the said Plan") and are delineated on those parts which are coloured Brown, Blue, Orange, Yellow, Pink and Green on the said Plan; and

(C) The Licensor has agreed to grant to the Licensee a Licence for the term of Ninety-nine (99) years (determinable nevertheless as herein provided) to use and enjoy the Amenity Areas (or parts thereof) on such terms and subject to such conditions as hereinafter appear and the Licensee and the Licensor have agreed to enter into such agreements with respect to such licence and otherwise as are hereinafter contained.

NOW THIS LICENCE WITNESSETH as follows:

1. In pursuance of the said agreement and in consideration of the Maintenance Charge hereinafter mentioned and the covenants and stipulations hereinafter contained and on the part of the Licensee to be paid performed and observed the Licensor hereby grants unto the Licensee FIRSTLY FULL licence right and liberty for the Licensee his heirs and assigns being from time to time the owner or owners for an estate in fee simple of the Property and their tenants servants visitors and licensees at all times hereafter by day or by night except as hereinafter provided and for all purposes of domestic use and convenience incidental to the occupation of the Property but not further or otherwise and in common with the Licensor and owners and occupiers of other dwelling houses erected on the Sandyport Property and all others who have or hereafter may have the like right to go pass and repass ascend or

descend over upon and along and to use the following Amenity Areas shown on the said Plan subject to the rules and regulations as to the use thereof hereinafter mentioned;

- (i) In the case of the roads coloured Brown with or without animals motor cars and other vehicles;
- (ii) The pedestrian footpath and right of way coloured Pink giving access to the beach area;
- (iii) In the case of the canals or waterways coloured Blue with or without motor or sailing vessels and other boats;
- (iv) The Tennis Courts coloured Orange;
- (v) The beach area coloured Yellow;
- (vi) The swimming pools coloured Green.

SUBJECT NEVERTHELESS to the right of the Licensor at any time and from time to time during the continuance hereof upon giving Ten (10) days' notice in writing to the Licensee to substitute for the Amenity Areas or any part thereof such other properties as will afford the same facilities to the Licensee and/or to relocate or reposition the roadways footpaths beach area or any other part of the Amenity Areas and if it becomes necessary during construction of other buildings in the Sandyport Property to close a part or parts of the Amenity Areas (not unreasonably and not in any manner preventing access to the Property by land or sea) and in respect of the beach area to close permanently such part or parts thereof as the Licensor shall in its discretion determine SECONDLY FULL and FREE running and passage of water soil and electricity through and along such parts of the sewerage system and the main water and other pipes drains tubes and wires leading to or from or serving the Property as pass through over or under any part of the Amenity Areas.

2. The licence hereby granted shall remain in effect (unless terminated by the Licensor as herein provided) until the Licensor shall deliver to the Licensee a lease of the Amenity Areas (or substituted Amenity Areas) (save and except the beach area which shall continue to be used and enjoyed by the Licensee as a licensee subject as hereinbefore provided) for a term of Ninety-nine (99) years and a licence of the beach area (subject as aforesaid) for a like term whereupon the Licensee shall deliver to the Licensor a surrender of the licence hereby granted.

3. The Licensee shall pay to the Licensor during the term of the licence a Maintenance Charge being the aggregate sums actually expended or properly budgeted or reserved by the Licensor in its discretion but at all times acting reasonably in the management maintenance and improvement of the Amenity Areas and every part thereof for the general enjoyment benefit and convenience of the owners and occupiers from time to time of the Property and all other dwelling houses and condominium units erected on the Sandyport Property. The Maintenance Charge shall comprise two parts:

(i) FIRSTLY the annual "Indenture Charge" in the amount of One thousand Five hundred Bahamian dollars (\$1,500.00) per annum (subject to upwards revision) to be paid on the first day of January every year by the Licensee to the Licensor under the provisions of an Indenture of Conveyance of even date herewith made between the Licensor of the first part PARTY ONE of the second part PARTY TWO and PARTY THREE of the third part and the Licensee of the fourth part as therein provided.

(ii) SECONDLY a Licence Charge which shall be the balance after deducting the said Indenture Charge from the Maintenance Charge.

4. (i) From time to time or monthly during each year of the said term the Licensor may serve one or more written notices on the Licensee of the amount or amounts or additional amount or additional amounts of the Maintenance Charge which the Licensor bona fide estimates to be due from the Licensee with respect to that year of the said term and thereupon the Licensee shall forthwith pay to the Licensor the amount so mentioned in any such notice PROVIDED NEVERTHELESS that while having latitude and exercising its discretion in the management maintenance and improvement of the Amenity Area and as aforesaid the Licensor shall give effect to the following general guidelines:

(a) The Licensor in carrying out its management business reasonably shall exercise due diligence at all times and in every manner possible towards attaining proper and cost effective methods of carrying out its undertakings in respect to such matters and shall endeavour to obtain the best available service contractors and staff for the work to be done and in all matters to act in good faith to minimize expenses which are to become part of the Service Charge.

(b) The objection to or arbitration of the imposition of any rates land charges property taxes utility charges assessments levies (including such matters as sewerage or garbage disposal or otherwise) and the like by any Governmental or private agencies having power to impose such or occasioned in the supply of utilities and services which become part of the Service Charge shall be dealt with by the Licensor acting in the interest of the owners in good faith.

(c) Capital expenditures for new or extended facilities as part of the Amenity Areas shall not be reserved or undertaken by the Licensor without prior notification and with reasonable details provided to all owners and the agreement in writing of at least Sixty-five percent (65%) of the Licensees who are owners of Houses townhouses condominium units or lots including the Licensor who shall have one vote for each built but unsold House, Townhouse or Unit.

(ii) In the event that the Licensee shall be required to pay any amount which exceeds the amount he would ordinarily have been required to pay by way of Maintenance Charge resulting from any house townhouse lot or condominium unit owner failing to pay his Maintenance Charge then in such event the Licensor shall use its best endeavours to collect such Maintenance Charge in arrears and upon collection of same repay to the Licensee the amount by which his Service Charge was increased together with interest thereon at the rate of ten percent (10%) per annum.

(iii) The Licensors shall at all times be responsible for the fair share of the Maintenance Charge for built but unsold units.

5. (i) As soon as reasonably practicable after the end of each year of the said term the Licensors shall send to the Licensee a copy of the unaudited accounts for the management of the said Amenity Areas with respect to such year and if such accounts shall show that the income (including all other Maintenance Charges received and interest (if any) earned on budgeted charges invoiced in advance or other payments rebates or monetary benefits however derived in relation to the Amenity Areas and after allowing for reasonable reserves as the Licensors shall reasonably think fit) exceeds the amount that the Licensee has in proportion been charged and has paid in Maintenance Charges for that period then a like percentage of any such excess of income over expenditures shall forthwith be refunded by the Licensors to the Licensee or in the discretion of the Licensors applied towards the Maintenance Charge payable by the Licensee for the next year.

(ii) The Licensors shall not in the ordinary course be required to provide Audited accounts in respect of the verification of the Maintenance Charge but shall at least once each year provide to the Licensee an unaudited financial statement of affairs showing how the past income and expenditure for the period in question is derived and proved and any licensee or committee of the licensees wishing to do so may have access at reasonable times upon reasonable notice to the records and vouchers and books of account in relation to the service charges for the purpose of satisfying themselves that the Licensors service charges are reasonable and valid. Such licensee or licensees may at their option and expense have the said accounts audited but not more than once in respect of any accounting period and the Licensors undertake to prepare keep and maintain for a reasonable period of time (not less than three (3) years) the said books vouchers and accounts for such purposes and the Licensors undertake to make keep and maintain such books records and accounts as shall be sufficient for giving effect to these provisions. If on any occasion of the auditing of accounts at the instance of a Licensee there is found to be a discrepancy with the result that the licensee or licensees have been incorrectly charged with Maintenance Charges in excess of ten percent (10%) of the amount so certified by the audit then the Licensors shall bear the cost of the audit which shall be considered a common expense and shall make and effect such credit adjustment as is appropriate to the Maintenance charges which were billed or are thereafter to be billed to the owners from time to time as their interest may appear.

6. The percentage of the Maintenance Charge payable by the Licensee shall be the same percentage as the net square footage of the dwelling house on the property bears to the aggregate square footage of all completed houses townhouses and condominium units from time to time situate in the Sandport Property. For the purpose of calculating the square footage of any dwelling house Townhouse or condominium unit guest quarters and enclosed porches covered by a fixed roof shall be included and the net square footage shall be calculated by measuring from the outside of external walls and from the middle of party walls (if any) PROVIDED HOWEVER that in the event that there is no dwelling house on the Property the Maintenance Charge payable by the Licensee hereunder shall be fifty percent (50%) of the Maintenance Charge payable from time to time by the owner of an

Angler Townhouse in the Sandyport Property PROVIDED NEVERTHELESS and notwithstanding anything to the contrary herein contained unless and until a dwelling house shall be built on the Property the Licensee shall have the option (which shall be exercised by notice in writing to the Licensor) of declining the use of the Amenity Areas and in such event the Licensee shall only be liable for the payment of the said Indenture Charge.

7. The Licensee hereby covenants with the Licensor as follows:

(i) To pay the Maintenance Charge hereby reserved during the said term and in the manner aforesaid without any deductions.

(ii) To observe the rules governing the use of the Amenity Areas as such rules may be made and amended from time to time by the Licensor in accordance with its obligations under sub-clause (viii) of Clause 9 hereof

(iii) To keep the exterior wall roofs fences and structures of any kind whatsoever built or situate on the Property in good repair and condition.

(iv) Within One (1) calendar month after any such document or instrument as is hereinafter mentioned shall be executed or shall operate to take effect or purport to operate and take effect to produce to the Licensor or its Attorney every assignment transfer or Mortgage or Charge of this Licence and also every probate letters of administration order of the Court or other instrument effecting or evidencing a devolution of title as regards the licence hereby granted for the purpose of registration and for such registration to pay to the Licensor or its Attorney a fee of \$10.00 in respect of each such document or instrument so produced.

(v) To pay all costs and expenses (including Attorney's fees) incurred by the Licensor for the purpose of or incidental to the preparation and service of a notice requiring the Licensee to remedy a breach of any covenants or conditions on the part of the Licensee herein contained.

8. If the said Indenture Charge or Licence Charge (herein collectively called "the Maintenance Charge") hereby reserved or either of them or any part thereof respectively shall be in arrear for Thirty (30) days after the same shall have become due (provided that the Licensor shall have first served Seven (7) days notice upon the Licensee specifying his failure to make any payment due) or if the Licensee shall fail or neglect to perform or observe the rules mentioned in clause 9 (ix) hereof or any of the covenants and agreements on his part to be observed and performed and hereinbefore contained having been given Thirty (30) days written notice thereof then and in any such case the Licensor may determine the licence hereby granted and exclude the Licensee from exercise or enjoyment hereunder of the licence hereby granted and may thenceforth hold and enjoy the Amenity Areas as if the licence had not been made and without prejudice to any right of action of the Licensor in respect of such unpaid licence fees or any other antecedent breach of the Licensee's covenants and agreements herein contained.

9. The Licensor hereby covenants with the Licensee: -

(i) That the Licensors will at all times during the said term insure:

(a) all buildings and structures from time to time on the Amenity Areas against loss or damage by fire hurricane storm seawave and such other risks as the Licensors shall think to be in the best interests of the Licensee and the other owners in an insurance office of repute in the full replacement value thereof in the name of the Licensors and at the request of the Licensee to produce to the Licensee or his agent the policy or policies of insurance and the receipt or receipts for the current year's premium and will cause any money received under any such policy to be laid out in rebuilding and reinstating and the Licensors shall rebuild and reinstate as and when such rebuilding or reinstating may be necessary;

(b) against injury to third party persons lawfully on the Amenity Areas and other risks to third party persons property and up to such specified monetary limits as the Licensors shall in its discretion think fit for the general benefit of the owners and occupiers of any part of the Sandyport Property;

PROVIDED ALWAYS that if the Licensors shall determine that the effecting or continuing of any such insurance or insurances shall not be economical or expedient it shall notify the House Townhouse and Condominium unit owners in writing providing reasonable details of the premiums payable and other information in respect of such insurance or insurances and upon the agreement in writing of at least Sixty-five percent (65%) of the said owners cease to insure the same giving twenty-one (21) days notice to such effect to the Licensees.

(ii) That the Licensors will at all times during the said term repair and maintain in good repair and tidy condition (except if prevented from so doing during construction) the Amenity Areas and the tennis courts swimming pool courtyards parking areas roads paths and walkways and other structures including satellite dishes and Systems erected thereon.

(iii) That the Licensors will at all times during the said term repair and maintain in good repair and condition the main water and other pipes sewers drains tubes and wires leading to and from or serving the House as pass through over or under any part of the Amenity Areas.

(iv) That the Licensors will at all times during the said term cultivate maintain and keep in proper and tidy condition (except if prevented from so doing during construction) the gardens of the Amenity Areas and the garden areas of the Houses (following the construction of a house and its landscaping by the Licensee) situate in the Sandyport Development and repair and maintain in good condition the boundary walls and fences of the Amenity Areas belonging to the Licensors.

(v) That the Licensors will at all times during the said term paint the exterior of the House (following construction and first painting by the Licensee) including the walls window frames and doors thereof as often as necessary to preserve the appearance and integrity of the Sandyport Property.

(vi) That the Licensors will at all times during the said term bear pay and discharge all rates taxes duties assessments impositions and outgoings which may exist be charged or

imposed upon the Amenity Areas or the owner or occupier in respect thereof including Real Property Taxes or any taxes imposed in addition thereto or in substitution therefor.

(vii) That the Licensors will at all times during the said term pay such rates and charges as may be or become payable in respect of the supply of water to the Amenity Areas.

(viii) That the Licensors will at all times during the said term maintain in good repair and proper working order all wiring meters switches lights and other apparatus used for the purpose of lighting the Amenity Areas and pay all charges payable in respect of the electricity consumed and apparatus used and expended in the purpose aforesaid.

(ix) That without prejudice to the covenants of the Licensors hereinbefore contained the Licensors will use its best endeavours to maintain and improve the Amenity Areas for the general enjoyment and convenience of the Licensee and other persons from time to time entitled to use the same and the Licensors shall from time to time make and vary rules regulating the use and enjoyment of the Amenity Areas which rules shall in the discretion of the Licensors be reasonable and for the general benefit and convenience of the Licensee and all other persons from time to time entitled to use the Amenity Areas and not discriminatory against the Licensee.

10. The Licensors hereby further covenants with the Licensee that the Licensee paying the Maintenance Charge and performing and observing the covenants and agreements on the part of the Licensee to be observed and performed hereinbefore contained shall during the said term and on a non-exclusive basis enjoy the Amenity Areas without any unlawful interruption or disturbance by the Licensors or any person or persons claiming through or under or in trust for the Licensors.

11. It is hereby agreed that the Licensors shall be at liberty to employ and pay as a common expense accountants bookkeepers managers attorneys or other agents to manage or transact any business or to do any act required to be transacted or done by the Licensors under these presents (including the receipt and payment of money and keeping of books of account expenditure with regard to the maintenance of the Amenity Areas and the preparation from time to time of the accounts relating thereto).

12. If any dispute or question shall arise between the parties hereto or should there be a question relating to the terms or effect of this Agreement or any clause or thing herein contained or the rights duties or liabilities of either party under this Agreement the matter in difference shall be determined by a single arbitrator in case the parties can agree upon one otherwise by two arbitrators one to be appointed by each party to the difference and in either case in accordance with the provisions of The Arbitration Act of the said Commonwealth of The Bahamas or any statute modification or reenactment for the time being in force.

13. The parties hereby acknowledge and agree that this Agreement may be substituted by a lease of the common areas (excluding the beach area which shall continue to be used and enjoyed by the Licensee as a licensee) containing provisions covenants and conditions similar to and having the same effect and intent as these presents.

14. The Licenser hereby undertakes that it will:

(a) At the request and expense of the Licensee produce to the Licensee all documents of title in its possession relating to the Property;

(b) At the request and expense of the Licensee deliver copies of such documents of title to the Licensee; and

(c) Maintain the safe custody of such documents of title damage by fire hurricane storm tempest or inevitable accident excepted.

15. Any notice to be served hereunder on the Licensee shall be served by delivering the same to the Licensee personally (or the Licensee being a corporation by delivering the same at the Registered Office of the Licensee in the Commonwealth) or by sending the same to the Licensee by prepaid registered mail to the last known address of the Licensee in the Commonwealth (or the Licensee being a corporation to its Registered Office as aforesaid) or to such other address or addresses as may be from time to time notified by the Licensee to the Licenser in writing and in the case of the Licenser shall be sufficiently served on the Licenser by delivering the same at the Registered Office of the Licenser in the City of Nassau or to such other address or addresses as may from time to time notified by the Licenser to the Licensee in writing. Any notice posted in the Commonwealth of The Bahamas to an address outside the Commonwealth of The Bahamas or any notice posted outside the Commonwealth of The Bahamas to an address in the Commonwealth of The Bahamas shall be sent by Air Mail. Any notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

16. In the interpretation of these presents words importing persons shall include corporations and vice versa the masculine gender shall include the feminine gender and vice versa words importing the singular number shall include the plural number and vice versa.