

COMMONWEALTH OF THE BAHAMAS

New Providence

AN AGREEMENT made the *26th* day of *June* A.D., 2004 **BETWEEN THE MINISTER RESPONSIBLE FOR HOTELS ENCOURAGEMENT** acting for and on behalf of the Government of the Commonwealth of The Bahamas (who and whose successors in office for the time being are hereinafter included in the term "the Government") of the one part **AND VALENTINES ISLAND DEVELOPMENT LTD.** a Company incorporated under the laws of the Commonwealth aforesaid and carrying on business therein (hereinafter called "Valentines") **HARBOUR ISLAND VILLAS LTD.** another Company also incorporated under the laws of the Commonwealth aforesaid and carrying on business therein (hereinafter called "Harbour Island") and **VALENTINES RESORT AND MARINA LTD.** (hereinafter called "Marina") another Company also incorporated under the laws of the Commonwealth aforesaid and carrying on business therein (hereinafter collectively referred to as "the Promoters" which expression shall where the context so admits include their successors and assigns) of the other part.

W H E R E A S:

(A) Valentines is the beneficial owner of all the issued shares of Harbour Island and Marina;

(B) Harbour Island is seised for an estate in fee simple in possession of the hereditaments hereinafter described in Part 1 of the First Schedule hereto (hereinafter referred to as "the first hereditaments");

(C) Marina is seised for an estate in fee simple in possession of the hereditaments hereinafter described in Part 2 of

the first Schedule hereto (hereinafter referred to as "the second hereditaments"); and

(D) The first hereditaments and the second hereditaments are hereinafter collectively referred to as "the said Hotel".

(E) The said Hotel is a new Hotel within the meaning of Section 2 of the Hotels Encouragement Act Chapter 289 (hereinafter referred to as "the Act");

(F) The Promoter is desirous of constructing, erecting, furnishing and equipping the said Hotel and related amenities and the materials furniture and equipment required therefore are more particularly set out in the Second Schedule hereto (hereinafter referred to as "the said materials");

(G) In pursuance of the provisions of Section 4(1) of The Hotels Encouragement Act the Promoter has applied to the Government for the exemptions therein set forth and as set out in clauses 4, 5 and 6 hereof; and

(H) The Government has on the 2nd day of October A.D. 2003 approved in principle the proposal of the Promoter as being in the best interest of the said Commonwealth and has agreed to enter into the following agreement with the Promoter for the construction, erection, equipping, furnishing and opening of the said Hotel.

NOW IT IS HEREBY AGREED as follows:-

1. (a) In this Agreement the following expressions shall have the following meanings:-

"bedrooms" means bedroom as defined in the Act;

"Customs duties" means custom duties as defined in the Act;

“materials” means material as defined in the Act

“the Comptroller” means the Comptroller of Customs of the Commonwealth of The Bahamas;

“construction plant” means machinery, equipment, tools and trucks of all kinds used in the building trades as defined in the Act;

“force majeure” means fire, lightning, windstorms, flood, earthquake, explosion, war, war-like activities, insurrection, riots, civil commotion, Act of God, strikes, lockouts, freight embargoes, or any unforeseen or extraordinary circumstances which may be reasonably considered to be beyond the control of the Promoters (including the inability of the Promoters to obtain or employ the necessary labour or to obtain or secure the necessary materials) and any failure due to any of the above matters by a contractor employed by the Promoters to carry out the provisions of any contract with the Promoters.

- (b) In the interpretation of these presents words importing persons shall include corporations and vice versa; words importing the singular number only shall include the plural number and vice versa; words importing the masculine gender only shall include the feminine gender; the word “day” shall mean a period of Twenty-four (24) hours commencing at midnight and ending at midnight of the following day, any

period of days so admits shall mean a calendar month and the word "year" shall mean a period of Three hundred and Sixty-five (365) days.

2. That the Promoters hereby jointly and severally covenant with the Government to have the said materials erected and installed not later than the 2nd day of October A.D. 2005 unless prevented from so doing by force majeure including any failure of the Import Control or the Exchange Control Department of the Central Bank of the said Commonwealth to grant import Licences for the purchase of the necessary equipment, materials, supplies and things in the United States of America or other hard currency areas.

3. That the Promoters hereby further jointly and severally covenant with the Government that they will:-

- (a) within One (1) month after the arrival of the said materials commence to erect and install the same;
- (b) hire locally based contractors and/or subcontractors wherever possible;
- (c) make available the facilities of the said Hotel to members of the general public;

4. The Government hereby covenants with the Promoters as follows:-

That subject to and in accordance with the Act and this Agreement the Government has exempted the Promoters from the payment of all customs duties which would otherwise be payable on the said materials which shall have been imported into the said Commonwealth, purchased or taken out of bond in the said Commonwealth by the Promoters at any time between the 2nd day of October A.D., 2003 and the 2nd day of October A.D., 2005.

5. The terms and conditions upon which custom duties will be exempted to the Promoters are as follows:-

- (a) That within Thirty (30) days after the coming into force of this Agreement an Inspector (hereinafter called "the Inspector") shall be appointed by the Minister of Finance for the purpose of inspecting the said materials and that the Government will notify the Promoters in writing of the name of such person as soon as is reasonably possible after the date of his appointment.
- (b) That as soon as possible after the appointment of the Inspector, the Promoters shall deliver to the Inspector a list (hereinafter called "the initial list") stating what materials (being part of the said materials) imported into, taken out of bond or purchased in the Commonwealth by the Promoters up to the date of such list under the provisions of this Agreement, have been erected or installed in the said Hotel and within Thirty (30) days after the receipt of such list by the Inspector, the Inspector shall deliver to the Promoters a certificate stating that the said materials (or so much thereof as such certificate shall specify) have in his opinion been used or could be reasonably presumed to have been used for the said Hotel up to the date of such list.
- (c) That thereafter as soon as possible after the end of each month up to the 2nd day of October A.D. 2005 the Promoters shall deliver to the Inspector a list (hereinafter called "the monthly list") stating what materials (being part of the said materials) imported into, taken out of bond or purchased in the said Commonwealth by the Promoters under the provisions of this Agreement have been erected or

installed in the said Hotel during the previous month and within Thirty (30) days after the receipt of each such monthly list by the Inspector, the Inspector shall deliver to the Promoters a certificate stating that the said materials (or so much thereof as such certificate shall specify) have in his opinion been used or could be reasonably presumed to have been used for the purposes aforesaid during the month to which such monthly list refers. Provided that this paragraph shall not apply if the Promoters shall not have imported, taken out of bond or purchased in the said Commonwealth any materials under the provision of this Agreement during any month.

- (d) That upon production by the Promoters to the Comptroller of the initial list and of each monthly list and the certificates referred to in sub-paragraphs (b) and (c) of this Clause and upon production by the Promoters of a Declaration or Affidavit made by the Promoters or by a responsible agent or employee of the Promoters before a Notary Public or Justice of the Peace (hereinafter referred to as "a Declaration") to the effect that the materials referred to in such initial list and each such monthly list and in such certificates have in the opinion of the Promoters or such responsible employee of the Promoters been used for the purposes aforesaid, the Comptroller will thereupon exempt the Promoters from the payment of all customs duties which would otherwise be payable in respect of the said materials covered by the said certificate of the Inspector accompanying such initial list and each such monthly list.

- (e) That within Ninety (90) days after the erection or installation of the said materials the Promoters or a responsible agent or employee of the Promoters shall deliver to the Inspector a list (hereinafter called "the final list") stating what materials (being part of the said materials) imported into, taken out of bond or purchased in The Bahamas by the Promoters under the provisions of this Agreement have been used for the aforesaid purposes in addition to the materials already covered by the said initial list and the said monthly lists and within Sixty (60) days after the receipt of the final list the Inspector shall deliver to the Promoters a certificate stating that the said materials (or so much thereof as such certificate shall specify) set out in the final list have not been included in and covered by the initial list and the monthly lists and have in his opinion been used or could reasonably be presumed to have been used for the purposes aforesaid.
- (f) That upon production by the Promoters to the Comptroller of the final list and the certificate referred to in sub-paragraph (e) hereof and upon production by the Promoters of a Declaration to the effect that the materials referred to in the final list and the certificate have in the opinion of the Promoters or such responsible employee of the Promoters as aforesaid been used for the said Hotel the Comptroller will thereupon exempt the Promoters from the payment of all customs duties in respect of materials covered by the certificate of the Inspector accompanying the final list.

- (g) That the Inspector and any other person or persons authorized by the Government shall have free access at all reasonable times to the said Hotel and to the site of any erection, construction and installation being carried on in connection with the said materials and may enter and stay and remain upon the said Hotel and have free access thereto during normal business hours for the purposes of ascertaining whether the materials imported into the Commonwealth, purchased or taken out of bond therein by the Promoters under this Agreement have been used or are in the course of being duly used for the purposes aforesaid.

6. The Government further covenants with the Promoters as follows:

- i) That for a period of Ten (10) years from the date on which the said Hotel opens for business the said Hotel (and the buildings comprising the same and all additions thereto and the land upon which the same shall be situate) shall be exempt from real property taxes and any other taxes now or hereafter imposed on real property.
- ii) That for a period of Ten (10) years commencing on the First Day of the Eleventh year after the date on which the said Hotel opens for business the said Hotel (and all buildings comprising the same and all additions thereto and the land upon which the same shall be situate) shall be exempt from real property taxes and any other taxes now or hereafter

imposed on real property in excess of Twenty dollars (\$20.00) per annum for every bedroom therein.

- iii) Exemption from direct taxation upon or against the earnings of or from the said Hotel and its amenities, and all additions thereto, and upon or against any rentals paid in respect of the letting or sub-letting thereof for a period of twenty (20) years from the date on which the said hotel opens for business, and if the promoter or owner or operator of the said Hotel is a company, then also for the exemption from direct taxation upon or against any dividends declared in respect of the shares of such company or any interest paid by such company in respect of its indebtedness for the said period of twenty (20) years.
- iv) That there will be no Government restrictions, regulations or conditions made affecting the operations of the said Hotel which do not similarly affect all similar hotels and that no legislation will be enacted affecting the operation of the said Hotel which does not similarly affect all other similar hotels.

7. It is hereby mutually agreed and declared by the parties hereto and each of them as follows:-

- i) The concessions granted by Clauses 4, 5 and 6 of these presents shall remain in full force and effect so long only as the said Hotel shall continue to be used and operated as a hotel facility.

- ii) Except in the circumstances specifically provided for in Section 11 of The Hotels Encouragement Act nothing herein contained shall be deemed to make the Promoters liable to pay the Government any payment in respect of any matter or thing done executed or happening prior to the date on which this Agreement shall cease to have effect in respect of which matter or thing payment is waived by this Agreement or to repay customs duties which have been exempted to the Promoters under the concessions granted by this Agreement.
- iii) All questions or differences whatsoever which may at any time hereafter arise between the parties hereto touching these presents or the subject matter thereof or arising out of or in relation thereto respectively and whether as to construction or otherwise shall be referred to arbitration pursuant to the provisions of the Arbitration Act Chapter 180 of The Revised Laws of The Bahamas of the Commonwealth of The Bahamas and any statutory modification or re-enactment thereof for the time being in force.
- iv) This Agreement shall be governed by and construed according to the laws of the Commonwealth of The Bahamas.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO

ALL THAT piece parcel or lot of land situate at Dunmore Town in the Island of Harbour Island one of the Islands of the

Commonwealth aforesaid which said piece or parcel of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan marked "B and C" attached to an Indenture of Conveyance dated the 19th day of December, A.D. 1986 and now of record in the Registry of Records in the City of Nassau in the Island of New Providence one of the Islands of the commonwealth aforesaid in Volume 4729 at pages 229 to 236 and is thereon coloured Pink.

ALSO ALL THAT piece or parcel of land situate at Dunmore Town in the Island of Harbour Island aforesaid which said piece or parcel of land is bounded **NORTHWARDLY** by land now or formerly the property of Frank and Susie Albury and running thereon Eighty-three (83) feet more or less **EASTWARDLY** by Bay Street and running thereon Ninety-seven and Ninety-two hundredths (97.92) feet **SOUTHWARDLY** by Crown Land and running thereon Fifty-eight and Forty-two hundredths (58.42) feet and **WESTWARDLY** by the Sea at High Water Mark which said piece or parcel of land has such position boundaries shape marks and dimensions as are shown on the diagram or plan marked "Plan A" attached to an Indenture of Conveyance dated the 19th day of December, A.D. 1986 made between Jonval Limited of the one part and the Vendor of the other part and now of record in the Registry of Records in the City of Nassau aforesaid in Volume 4729 at pages 229 to 236 and is thereon coloured Pink.

THE SECOND SCHEDULE HEREINBEFORE REFERRED TO

REQUEST FOR DUTY EXEMPTION

PART 1

See Exhibit attached marked "Part 1"

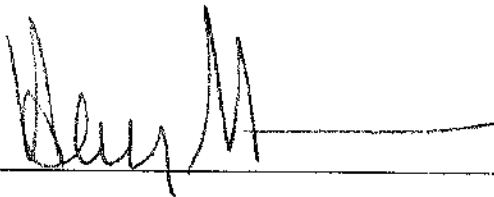
PART 2

See Exhibit attached marked "Part 2"

PART 3

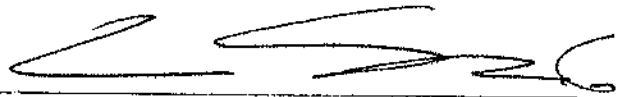
See Exhibit attached marked "Part 3"

IN WITNESS WHEREOF THE MINISTER RESPONSIBLE FOR HOTELS ENCOURAGEMENT has hereunto set her hand and caused the Public Seal of the Commonwealth of The Bahamas to be hereunto affixed the day and year first above-written.



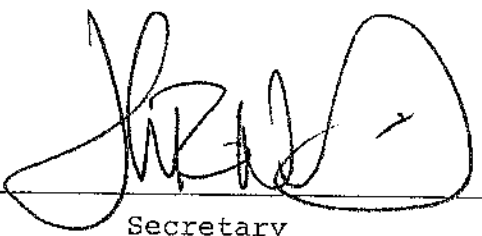
Minister Responsible for
Hotels Encouragement

IN WITNESS WHEREOF Valentines Island Development Ltd. has caused its Common Seal to be hereunto affixed the day and year first hereinbefore written.



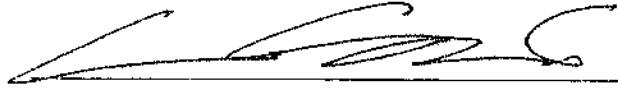
President

The Common Seal of **VALENTINES ISLAND DEVELOPMENT LTD.** was affixed hereto by Harper Sibley the President of the said Company and the said Harper Sibley affixed his signature hereto in the presence of:-



Secretary

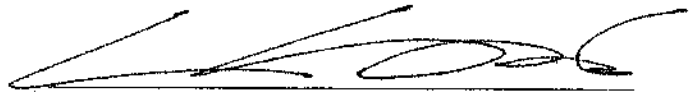
IN WITNESS WHEREOF Harbour Island Villas Ltd. has caused its Common Seal to be hereunto affixed the day and year first hereinbefore written.



The Common Seal of **HARBOUR ISLAND VILLAS LTD.** was affixed hereto by John R. Nichols the President of the said Company and the said John R. Nichols affixed his signature hereto in the presence of:-



IN WITNESS WHEREOF Valentines Resort and Marina Ltd. has caused its Common Seal to be hereunto affixed the day and year first hereinbefore written.



The Common Seal of **VALENTINES RESORT AND MARINA LTD.** was affixed hereto by John R. Nichols the President of the said Company and the said John R. Nichols affixed his signature hereto in the presence of:-

