

AGREEMENT FOR LEASE
FOR TOURISM PURPOSE

Regulation 12, Native Land Trust (Leases and Licences)

Regulations 1984

THIS AGREEMENT is made **BETWEEN THE NATIVE LAND TRUST BOARD** of 431 Victoria Parade, Suva (hereinafter called “**the lessor**”) of the one part and (hereinafter called “**the lessee**”) of the other part **WHEREBY** -

A The lessor agrees to grant and the lessee agrees to take a lease THE PROVISIONS OF WHICH SHALL BE AS FOLLOWS:

1. IN CONSIDERATION of the rent and covenants on the part of the lessee hereinafter reserved and contained and in consideration of the sum of paid by the lessee to the lessor on or before the execution hereof (the receipt whereof the lessor hereby acknowledges) the lessor hereby demises unto the lessee **ALL THAT PIECE OR PARCEL OF LAND** described as follows:

| NAME OF LAND | TIKINA | PROVINCE | AREA |
|---------------------|---------------|-----------------|----------------------------|
| | | | (SUBJECT TO SURVEY) |

owned by **Mataqali**(hereinafter called “**the Land Owning Unit**”) be the area a little more or less and contained within the boundaries more particularly delineated and marked on the plan hereto annexed and edged yellow (hereinafter called “**the LAND**”) **EXCEPTING AND RESERVING** all the matters contained in the First Schedule hereto **TO HOLD** the same unto the lessee from the 1st day of July, 2005 for the term of Ninety Nine (99) years **YIELDING AND PAYING** therefore by half yearly payments in advance on the first day of January and July of every year:-

- (a)** The annual sum of \$..... (word) for the first five (5) years of the said term; and
- (b)** as from the **first day of, 2010** such rent as is calculated in accordance with Second Schedule hereto

2. THE LESSEE HEREBY COVENANTS WITH THE LESSOR as follows:

- (a) To pay the rent herein before reserved at the times and in the manner aforesaid without any deduction whether formally demanded or not.
- (b) Not to use the land for any purpose other than for tourism purposes.
- (c) The tenant shall pay a yearly Lease Administration fee of \$562.50 (Five hundred and sixty two dollars fifty cents) or such amount as may be assessed by the Board thereafter. Such fee shall be paid half-yearly in advance on the first days of January and July in every year.
- (d) To prepare and lodge with the lessor for the lessors approval on or before the **1st day of July, 2006** detailed design plans, elevations and specifications (hereinafter called "**the plans**") of a tourist resort to be constructed of substantial materials on the land comprising of tourism, hospitality, entering, offices, shops and accommodation unit together with central facilities, staff quarters and other building ancillary to the Resort.
- (e) To commence construction on or before the end of the second (2nd) year, that is **1st day of July 2006** of the Tourist Resort in accordance with the plans as approved in writing by the lessor and to complete construction of the tourist resort on or before the **1st day of July, 2008**.
- (f) Not to take any substantial alterations to the plans approved by the Lessor or to buildings, improvements or structures on the land or erect any further buildings, improvements or structures on the land without the prior written consent of the Lessor.
- (g) At all times after the commencement of the Tourist Resort to keep the said Resort open for Business and manage and conduct it in an efficient, orderly and lawful manner.
- (h) To obtain all statutory permissions consents approvals and licences from any relevant Government Department or Local Authority for any use or development which the Lessee proposes to carry out on the land and to duly and punctually comply with each and every term or condition of all such statutory permissions, consents, approvals and licences so obtained and to produce copies of such statutory permissions, consents, approvals and licences to the Lessor if required to do so at any time.
- (i) Duly and punctually to comply with all Acts Regulations and By-Laws and all such lawful requirements of the Health, Local and other Authorities relating to the land and/or the improvements thereon.

- (j) To bear and discharge all existing and future rates, taxes or assessments, duties, impositions and outgoing whatsoever imposed or charged upon the land premises or upon the owner or occupier thereof.
- (k) Not to do or permit in connection with the land anything in contravention of any written Law.
- (l) To indemnify the lessor against all claims, demands, expenses and liabilities in connection with the LAND and arising directly or indirectly from the LESSEES OPERATORS thereon and to PAY the COSTS CHARGES and expenses incurred by the lessor in abating a nuisance or for remedying any other matter in connection with the LAND in compliance with any requirements imposed by or under any written LAW.
- (m) To permit the lessor or its employees or agents at all reasonable times to enter upon the land and into any buildings hereon in order to view the state thereof.
- (n) To keep in good tenantable repair all buildings together with all fixtures and fittings and all drains, sewers, gullies, cess-pits, septic tanks, soak-aways, water supply piping, swimming pools, wells, tanks, reservoirs, ponds pumps, fences, walls, hedges, gates, posts, bridges, culverts, water courses, improvements existing or erected in on under or over the land and to maintain in good order all boundary markers.
- (o) Not to alienate or deal with the land or any part thereof whether by sale, transfer or sub-lease or in any other manner whatsoever without the consent in writing of the lessor first had and obtained.
- (p) To keep the furniture, fittings, fixtures, plant, equipment, utensils and articles used in the Tourist Resort in good repair and condition.
- (q) To keep the land clean and tidy and free from noxious weeds, vermin and pests.
- (r) To give first preference to the members of the land-owning unit for all staff posts or other types of employment both skilled and unskilled in connection with the tourist facility provided that such persons shall satisfy the normal requirements of the posts offered and that they shall be subject to all normal rules of employment prevailing in the tourist resort
- (s) To use its best endeavours to promote the training of members of the land-owning unit who are employed by the lessee in all aspects of tourist resort management and administration and other types of skilled or professional work in connection with the tourist facility and its ancillary operations as the lessee shall consider them suitable or qualified to undertake.
 - i) In this regard a member of the land owning unit shall be trained to hold at least one management or executive management position five (5) years from the completion of construction of the resort and a succession training plan to ensure such position is filled by a member of the land owning unit until the expiry of the lease.
 - i) Within three (3) months of the date of this lease to appoint one member of the land-

owning unit, who shall be approved by the lessor as a landowner representative on the Board of the lessee and shall be entitled to attend and participate in Annual General Meeting and any extra ordinary General Meeting.

- ii) On the retirement, removal or otherwise withdrawal of the landowners representative appointed under this clause he shall be replaced by another member of the land-owning unit who shall be approved by the lessor so that at all times throughout the duration of this lease one member of the land-owning unit shall be a landowners representative of the lessee.
- (t) To keep all buildings, improvements, fixtures, fittings, plant, equipment and furniture on the land insured to their full cost of reinstatement against fire, tempest, earthquake, flood, lightning and storm provided that such insurance cover is available at reasonable cost and to produce to the lessor when required the policy for insurance and receipt for the last premium due and in the event of such buildings, improvements, fixtures, fittings, plant equipment and furniture being dismantled, demolished destroyed or damaged from any cause to rebuild or repair the building within two (2) years from such dismantling, demolition, destruction or damage in accordance with plans approved in writing by the lessor and in accordance with the provisions of the Public Health Regulations, the Town Planning Regulations and any other relevant legislation for the time being in force.
 - (u) To make accessible to the public at all reasonable times the adjoining foreshore and beaches as shown on the plan hereto annexed.
 - (v) Not to permit any act matter or thing whatsoever to be done in or upon the land or buildings or any part thereof which shall be or may be or grow to be to the annoyance of any occupier lessee or owner of adjoining or neighbouring land and property.
3. **THE LESSOR HEREBY COVENANTS WITH THE LESSEE** that the Lessee, paying the rent hereby reserved and performing and observing the covenants on the Lessee's part herein contained, may peaceably hold and enjoy the land during the said term without any interruption by the Lessor or any person or persons lawfully claiming through under or in trust for the Lessor except as otherwise provided herein.
4. **PROVIDED ALWAYS** and it is hereby agreed and declared as follows that:
- (a) If and whenever during the term of this lease -
 - (i) any rent hereby reserved or made payable or any part thereof shall be in arrears and unpaid for one month next after becoming payable (whether formally demanded or not);

- (ii) there shall be any breach, non - performance or non-observance of any of the covenants on the part of the lessee herein contained or implied by virtue of the Native Land Trust (Leases and Licences) Regulations 1984;
 - (iii) The Lessee, being an individual, shall become bankrupt or, being a company, enters into compulsory or voluntary liquidation (save for the purpose of amalgamation or reconstruction of a solvent company);
 - (iv) a receiver of the Lessee shall be appointed or the Lessee enters into any composition or arrangement with the Lessee's creditors; or
 - (v) The Lessee shall suffer any distress or execution to be levied on his goods;
then , and in any such case, it shall be lawful for the lessor at any time thereafter, and notwithstanding the waiver by the lessor of any previous right of re-entry, to re-enter into and upon the land or any part thereof in the name of the whole and thereupon this demise shall absolutely cease and determine but without prejudice to any rights or remedies which may have accrued to the Lessor against the Lessee or to the lessee against the Lessor in respect of any antecedent breach of any of the covenants herein contained.
- (b) This lease is subject to the provisions of Regulation 15 of the Native Land Trust (Leases and Licences) Regulation 1984 as contained in the Third Schedule hereto.
 - (c) In the event that the rent hereby reserved is in arrears, the lessor may levy the same by way of distress, PROVIDED THAT written notice has been served on the lessee in advance seeking payment of such rental arrears in accordance with the Native Land Trust (Leases and Licences) Regulations.
 - (d) In the event that the rent hereby reserved is in arrears, the lessor may levy interest thereon at such rate which shall be determined by standard Bank interest rates.
 - (e) The Lessor shall levy an Arrears Collection Fee if and when an action for recovery of unpaid arrears as at (a) (i) above is undertaken.
 - (f) In the event that the Lessee by virtue of an Act of God is prevented from adhering to any time limit contained herein and provided that the Lessee has served notice in writing on the Lessor specifying the cause of the prevention within three (3) months of the occurrence of such causes and provided further that the Lessee has complied with all covenants and agreements herein contained the Lessor will grant the Lessee a reasonable extension on of such time limit.
 - (g) If at any time hereafter any dispute, doubt or question shall arise between the Lessor on the one part and the Lessee on the other part touching the construction, meaning or effect of any clause, condition or thing herein contained or implied or the rights or liabilities arising hereunder or the performance or non-performance of any act or obligation hereunder by the lessee or by the

Lessor then every such dispute, doubt or question shall be referred to the arbitration of a single arbitrator, or if the parties are unable to agree upon a single arbitrator two arbitrators and their umpire, in case of disagreement one of such arbitrators to be appointed by each party and otherwise in accordance with the provisions of the Arbitration Act Chapter 38 or any statutory of other modification or re-enactment thereof for the time being in force.

- (h) All payments due to the Lessor hereunder shall be made at the office of the Native Land Trust Board, 431 Victoria Parade, Suva, or at its regional offices at Lautoka, Nadi and Labasa which shall be the address for the service of Notices on the Lessor.
- (i) The address for service of notices on the Lessee shall be at its Registered Office.
- (j) All costs and fees including stamp duty, registration fees and Lessors Solicitors costs reasonably and properly incurred in connection with the preparation of this Lease shall be paid by the Lessee.
- (k) This lease shall be governed, construed and interpreted in accordance with the Laws of Fiji from time to time in force.
- (l) The lessee shall issue its capital shares on the condition that if the lessee intends to issue further shares beyond its initial allotment which shall be determined within eighteen (18) months from the date of the commencement of this lease then the lessee shall notify the lessor in writing of the price at which such shares are to be issued and the lessor shall have thirty (30) days from receipt of such notice in which to advise the lessee in writing of its intention to purchase such shares at the said price which shall be payable within thirty (30) days after electing to purchase such shares and, if the lessor does not so elect within the notice period such shares might then be issued at the offered price free of the lessor's rights hereunder **PROVIDED** that even though the lessor does not elect to purchase such shares they may not thereafter be issued at a price lower than that offered to the lessor without first re-offering them to the lessor at the lower price, **PROVIDED FURTHER** that the lessor shall have no such right, entitlement or option under this Clause or in the manner set forth above to acquire those shares which are the subject of the initial allotment referred to above.
- (m) The Lessor may by six (6) months notice in writing resume, without compensation, possession of any part of the land which the Lessor deems necessary for the making of a road or way to enable the development of any other land by so that the land so resumed shall not exceed one-twentieth part of the whole of the erected or which is used as and integral part of the Tourist Resort complex.
- (n) **Regulation 13 of the Native Land Trust (Leases and Licenses) Regulations 1984** shall not apply in relation to this lease.

- (o) In this lease, except where a contrary intention appears, words and expressions in the plural include the singular.
- (p) The Lessee shall give first preference to the members of the land-owning unit for the supply of all local food items including seafood, vegetables, root crops and fruits at reasonable prices PROVIDED that such food items are of a quality satisfactory to the Lessee.
- (q) The Lessee shall ensure that local culture and tradition shall be observed and respected by its staff in the manner of dress traditional entertainment and ceremonies.
- (r) The lessee shall at the commencement of the lease pay compensation to the owners of all fruit trees and other crops standing on the land as at the date of the commencement of the lease, the amount of which shall be assessed by the lessor in accordance with the current Crop Compensation Schedule provided by the Ministry of Primary Industries and to be indexed from its effective date by the Consumer Price Index (CPI) average annual rate.

FIRST SCHEDULE

A) Matters Excepted and Reserved

- (a) Unto the Lessor all timber and timber like trees, sand gravel, common stone, limestone, coral and clay on or under the land together with full power for the persons entitled to such things to work and get the same either by entry on the surface or by underground workings and unto the Crown the minerals as defined in them Mining Act (Cap. 146) and mineral oil.
- (b) Unto the lessor the right and, unto all other persons granted by the lessor of a similar right as well as before as after the commencement of this lease in common with the lessee his servants and licensees, full right and liberty from time to time and at all times and for all purposes to pass and re-pass with or without vehicles or animals over and long the road or way coloured brown on the plan hereto annexed.
- (c) Unto the Lessor its employees or agents or any other persons so authorised, full right and liberty from time to time and at all times to enter with or without vehicles upon any electricity reserve affecting the land for the purposes of inspecting, repairing, renewing or erecting any pole, tower, pylon, cable or other appliance attached thereto.

B) Special Conditions – Other benefits

- a) If the Lessee decides to alienate the said lease whether by sale or transfer during the term of the lease then the lessee shall pay to the lessor a sum equivalent to 10% of the total consideration or sale price.

C) Environmental Impact Assessment (EIA)

The EIA aspects is actual to ensure the protection of the environment of the subject land in retaining its natural state at the commencement of the lease and to comply and observe universally accepted environmental practices and standards as specified below:

- i) Ensure the protection of marine lives, flora and fauna directly or indirectly from the development.

SECOND SCHEDULE

Assessment of Rent & Consideration on Sale

1. From the **1st day of July, 2010** the rent for each calendar year shall be calculated as the percentage specified hereunder of all gross receipts from all operations of the lessee on the land during the preceding calendar year:-
 - (a) **3.0%** of gross receipts turnover from 1st day of July, 2010 provided that this rent shall not be less than the minimum or the open market rent whichever is greater
 - (b) **4.0%** of gross receipts turnover from 1st day of July, 2015 provided that this rent shall not be less than the minimum rent or the open market rent whichever is greater.
 - (c) **5.0%** of gross receipt turnover from the 1st day of July,2025 provided that this rent shall not be less than the minimum rent or the open market rent whichever is greater.
 - (d) **6.0%** of gross receipts turnover from the 1st day of July, 2045 provided that this rent shall not be less than the minimum rent or the open market rent whichever is greater.
 - (e) **7.0** of gross receipts from the 1st day of July 2065 provided that this rent shall not be less than the minimum rent or the open market rent whichever is greater.
 - (f) **7.5** of gross receipts from the 1st day of July 2075 provided that this rent shall not be less than the minimum rent or the open market rent whichever is greater.
 - (g) **20% (Twenty per cent)** of gross receipts from any sub lease, time share, licence or concession.
2. The lessee shall inform the lessor on or before the 30th day of June, and thereafter on or before the 31st day of December in every year of the term of the lease of its estimate of rent payable under Clause 1 above and this estimate of rent shall be agreed by the Lessor and paid by the Lessee in equal half yearly instalments on the first day of January and on the first day of July in each year and the lessee shall have prepared annual audited accounts and any adjustments to the agreed estimated of rent shall be subsequently made in July of each year in accordance with the annual audited accounts to arrive at the rent properly due and payable under Clause 1 above.

3. The amount of gross receipts shall be calculated in accordance with Clause 4 below and shall be certified each year by the Lessees auditor and the Lessors auditor shall have the right to check the Lessees books of accounts and records for that purpose.
4. Gross receipts shall include the gross receipts from the sale on the land during the preceding calendar year of all liquor, food, beverages, accommodation, sundry items and other guest services whether paid in money or monies worth and whether paid within Fiji or elsewhere and, all other sums received by the Lessee from any sub-lessee, time share licensee or concessionaire on the land; **PROVIDED THAT** in the case of a sublease, or concession which is not an arms length transaction at a fair market consideration, the amount to be included in the Lessee's gross receipts in respect of such sublease, time share, licence or concession shall be the gross receipts or such sublease, time share, licensee or concessionaire.
5. The open market rent shall be that which the land might reasonably be expected to be let in the open market by a willing Lessor to a willing Lessee if the full term of the lease and yet to run having regard to the terms, conditions and covenants contained in the lease, (other than those relating to rent), and assuming that the environment of the land is in all respects as it is or may reasonably be expected to be as at the date of assessment of the open market rent but disregarding:-
 - (a) any effect on rent of the fact that the Lessee is in occupation of the land; and
 - (b) the current value of an unexhausted improvements on the land other than those which have a value in relation to the purpose for which the land is leased and which were in existence at the commencement of this lease.

THIRD SCHEDULE

(Regulation 15, Native Land Trust (Leases and Licences) Regulations 1984)

1. It shall be implied in every lease of native land commencing on or after the commencement of these Regulations that where the land demised is required by the Board for development (whether by the Board or otherwise) involving any use of the land, in whole or in part which is materially different from the purpose for which the land was demised and in respect of which permission has been granted under the Town Planning Act, the Board may terminate the lease and resume possession of the land on the 30th day of June or the 31st day of December in any year during the term of the lease by notice in writing served on the lessee not later than one year before the date on which the Board desires to resume possession of the land, without prejudice to the rights and remedies of either party the other in respect of any antecedent claim or breach of covenant.
2. If, on the termination of a lease of native land in pursuance of paragraph (1) the Lessee shall have paid the rent thereby reserved and payable and shall have reasonably performed and observed the terms, conditions and covenants therein contained, the Lessee shall be entitled to be paid by the Board by way of compensation -

- (a) such sum as might reasonably be expected to be obtained in the open market by a willing seller from a willing purchaser in consideration for the transfer of the lease as at the date of resumption of possession by the Board and as if the notice referred to in paragraph (1) had not been served (any improvements to the land executed after the date of such notice being disregarded); and
- (b) such sum as represents the total amount of the unavoidable other loss incurred by the lessee in consequence of the exercise by the Board of its powers under this regulation, including, in particular, but without prejudice to the generality of the foregoing -
 - (i) loss or expenses incurred by the Lessee in respect of the removal or sale of his household goods, chattels or livestock on, used in connection with, the demised land in respect of his re-establishment in a comparable property in Fiji.
 - (ii) the loss of the good will suffered by any business carried on by the Lessee from or on the land demised by reason of the transfer or closure of that business resulting from the Lessee's quitting of the demised land; and
 - (iii) expenses incurred in respect of legal and other professional services in connection with the preparation of the Lessee's claim or compensation hereunder (not being costs of any arbitration to determine any question arising under this regulation); and,
- (c) the full amount of any compensation payable by the lessee to any sub-lessee of the demised land or any part thereof in pursuance of paragraph (3).

Where a lease of native land has been terminated in pursuance of paragraph (1) and the demised land or any part thereof was at the date on which the lease was so terminated in the possession of a sub-lease with the written consent of the Board, the lessee shall be liable to pay to the sub-lessee such sum as the Board would have been liable to pay to the sub-lessee under subparagraph (a) and (b) of paragraph (2) had the sub-lessee been the lessee of that land or that part thereof.

3. The right of the Board to terminate a lease by virtue of the condition implied therein by paragraph (1) shall also be exercisable in respect of part only of the demised land as if any reference in the foregoing provisions of this regulations to the demised land included a reference to a part thereof; and in the event such right being exercised in relation to part only of the demised land the lessee shall be entitled:-
 - (a) to a reduction of the rent in such amount as shall be agreed by the parties or, should they fail to agree, by such amount as shall be settled by arbitration in pursuance of regulation 21; or

- (b) subject to the provisions of paragraph (5), to surrender the remainder of the demised land, in which case the provisions of paragraphs (2) and (3) shall have effect as if such right as aforesaid had been exercised in relation to the whole of the demised land.
4. Sub-paragraph (b) of paragraph (4) shall not apply where the Board has served notice to resume possession of part of any demised land in pursuance of that paragraph and that part of that land is less than one-quarter ($\frac{1}{4}$) of the size of the whole of the land unless, by reason of the severance of that part, the remainder of the demised land is no longer suitable for the purpose for which it was demised to the Lessee.

B) The lessee hereby also agrees with the lessor as a condition of this agreement that:

- a) This agreement shall cease to have effect if the lessee fails within six (6) months from the date hereof to engage the services of a surveyor registered under the Surveyors Act to carry out a survey of the land agreed to be leased and to prepare a survey produce to the lessor satisfactory evidence that the services of such a surveyor have been so engaged by him.
- b) If within three (3) months of being required to do so by notice in writing served on him by the lessor he fails or refuses to execute the lease which he has hereby agreed to take then, this agreement shall cease to have effect and that in the event that this agreement shall so cease to have effect then the provisions of Regulation 12(4) of the Native Land Trust (Leases and Licences) Regulation, 1984 shall apply.
- c) In the event of its being shown by survey that the land agreed to be leased forms part of an area of land the subject of an existing freehold or leasehold title, this agreement to lease shall be deemed to exclude such area.

SIGNED by the parties hereto this day of , 2005.

SIGNED on behalf of the lessor in the presence of :

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(Designation)

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(Witness)

SIGNED by or on behalf of the lessee in the presence of :

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Witness

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(LESSEE)