



## DEED OF TRUST

**THIS TRUST DEED** is made between Leisure Dimensions Ltd whose registered office is at 12 Merrion Square, Dublin 2, Ireland (the "Developer") of the first part, and Hutchinson & Co Trust Company Ltd of Priory Court, Tuscam Way, Camberley, Surrey, England (the "Trustee"), of the second part.

### WHEREAS:

- A. The Developer has established the Club to secure for its Members Occupancy Rights in Accommodation at the Resorts, which Occupancy Rights are or will be owned by charged or leased to registered or vested in the name of RMI (F & P) Title Limited, a limited company, incorporated in England & Wales, (the "Owning Company"), the sole members of which are the Trustee and/or nominees of the Trustee or Custodians.
- B. The Rules of the Club provide that the Trustee shall use its best endeavours to keep the respective Accommodation free from any mortgage, lien or encumbrance and to ensure that nothing is done which might prejudice the Occupancy Rights of the Accommodation.
- C. The Trustee has agreed to accept and hold on the trust terms and provisions set out below jointly with a Custodian and/or the nominee of the Trustee: -
  - (i) control of the Owning Company and its assets by becoming a member thereof and
  - (ii) any other property or Ceded Accommodation which may from time to time be transferred to it or otherwise be held by it for the benefit of the Developer and the Members from time to time

all of which items specified in C(i) and C(ii) shall be referred to jointly in this Deed as the "Trust Property".

The Trustee has been granted Professional Indemnity insurance cover in support of its undertaking to act in accordance with its responsibilities, as outlined herein.

**NOW THEREFORE IT IS HEREBY AGREED** as follows:

### 1. DEFINITIONS

In this Deed except where the context otherwise requires:

- "Club"** means The Club Infiniti Points Club.
- "Rules"** means the Club Rules , a copy of which is attached, as amended from time to time
- "Management Charge"** means the Management Charge provided for under the Rules.

- “Custodian”** means a legal entity other than the Trustee who is a shareholder or director of the Owing Company and who cannot act for or commit the Owing Company in any way except with the written permission of the Trustee.
- “Purchaser”** means any person who has entered into a Purchase Agreement with the Developer.
- “Client Account”** means a bank account held in the name of the Trustee or its nominee (for which there exists a Declaration of Trust by the Trustee in favour of the Developer and Members) to be used for funds received from Purchasers. Except where required in the exercise of the Trustee’s obligations outlined herein, this account will remain free from charge, lien, mortgage or encumbrance and will be used only for holding monies for third parties in trust and will not be used for any other purpose by the Trustee or any affiliated or subsidiary company of the Trustee (save for the subsequent disbursement of such funds under the terms of the Deed of Trust).
- “Escrow Account”** means a bank account held in the name of the Trustee or its nominee (for which there exists a Declaration of Trust by the Trustee in favour of the Developer and Members) to be used for the retention of funds distributed from a Client Account in respect of Accommodation which remain to be fully constructed and furnished, or the Occupancy Rights of which are not owned by, charged or leased to, registered or vested in the name of the Owing Company or are encumbered in any way or in the event that any other provision of the Release Criterion has not been fulfilled. Except where required in the exercise of the Trustee’s obligations or as outlined herein, this account will remain free from charge, lien, mortgage or encumbrance and will be used only for holding monies for third parties in trust and will not be used for any other purpose by the Trustee or any affiliated or subsidiary company of the Trustee (save for the subsequent disbursement of such funds under the terms of the Deed of Trust).
- “Escrow Holder”** means the signatory to any bank account containing funds held in escrow pending the issue of Points Certificates.
- “Purchase Price”** means the price payable by a Purchaser under the relevant Purchase Agreement.
- “Net Purchase Price”** means the Purchase Price excluding the proportion of the Administration Fee and contract fee payable to the Trustee, any amount releasable from the first year’s annual Management Fee and the Exchange Organisation Fee, whether or not these are itemised on the Purchase Agreement.

Except as defined herein and where the context otherwise requires, the meaning and interpretation of all words and phrases to be applied in this document shall be as defined and interpreted in the Rules attached hereto.

## **2. INTERPRETATION**

Covenants or warranties given and or liabilities otherwise assumed under the provisions of this Deed by two or more persons shall be deemed to be so given and assumed by such persons jointly and severally.

## **3. APPOINTMENT OF TRUSTEE**

The Developer appoints the Trustee and the Trustee accepts appointment as Trustee and agrees to become exclusively entitled with its nominees and/or a Custodian, to the entire issued share capital in and to become Director of the Owing Company and acting as trustee on behalf of the Developer and the Members on the terms set out in this Deed and to hold the Trust Property in trust for the Developer and the Members for the time being in accordance with the Rules, Provided that:

- (a) The Trustee shall not be bound to concur in or perform any act or acts which in its opinion shall be illegal or inconsistent with the trust provisions declared in this Deed or shall constitute a breach of trust or might involve it in any personal liability or in any action which may be improper or disreputable or which may in its opinion constitute a breach of any conditions or covenants affecting the Trust Property or other contractual obligation of the Trustee in its capacity as trustee; and
- (b) The Trustee shall be under no obligation to enter into any contract under which it would or could incur liability on its own account; and
- (c) The Trustee shall in no circumstances be liable to the Developer, the Members or any third party individually or collectively for any amount in excess of the value of the assets held by the Trustee from time to time.

## **4. RELEASE OF FUNDS**

- 4.1. Where at the date of a Purchase Agreement being entered into the aggregate number of Points available in all the Accommodation and Ceded Accommodation (hereinafter jointly referred to as the "Accommodation" unless the context otherwise requires) exceeds the number of Points issued under all Purchase Agreements which remain uncanceled at that date (the "Release Criterion"), the Trustee shall receive and hold in a Client Account any part of the Net Purchase Price paid by the Purchaser to the Trustee. Such funds shall be released to the order of the Developer by the Trustee on the date of the first distribution of funds made by the Trustee following receipt of such funds.
- 4.2 Where at the date of a Purchase Agreement being entered into the Release Criterion has not been satisfied the Trustee shall receive and hold in a Client Account any part of the Net Purchase Price paid by a Purchaser to the Trustee. Such funds shall be released by the Trustee into an Escrow Account controlled by the Trustee on the date of first distribution of funds made by the Trustee following receipt of such funds and (subject to the issue of a Points Certificate as outlined in Clause 4.3 hereof) shall be released from escrow to the order of the Developer when the Release Criterion has been fulfilled in its entirety.
- 4.3 Upon the Release Criterion being satisfied, the Trustee shall release from escrow to the order of the Developer such part of the Net Purchase Price that is held by the Trustee, and where the Purchase Price has been paid in full, shall arrange for the issue of the Points Certificate.
- 4.4 If the Release Criterion has not been fulfilled within 6 months of the date on which the Net Purchase Price is paid in full by the Purchaser (otherwise than by reason of

the default of the Purchaser) the Trustee shall upon the written demand of the Purchaser repay to the Purchaser the part of the Net Purchase Price received from such Purchaser by the Trustee and held by it in escrow as stakeholder together with interest thereon, calculated on a daily basis.

- 4.5. Interest arising on the Escrow Account less interest payable to Purchasers under clause 4.4 hereof shall enure to the Developer and interest arising on the Client Account shall enure to the Trustee.

## **5. LIMITATIONS ON TRUSTEES RESPONSIBILITIES**

- 5.1. The Trustee shall have no responsibility for either the administration or management of the Accommodation, the Club or the Resorts, nor shall the Trustee be liable for any losses or depreciation which may result in any way to the Accommodation, and the Trustee relies on the warranty and/or guarantee in regard to the validity or otherwise of the title to the Accommodation, given by the Developer, the lawyer acting for the Developer, and the Lawyer appointed to act for the Trustee with the agreement of the Developer, in this order, and the Trustee gives no other warranty or guarantee in regard to the validity or otherwise of the title to the Accommodation.
- 5.2. The Trustee shall not be required to take any legal or other action in relation to any matter whatsoever unless fully and effectually secured or indemnified by the Member or the Developer to the reasonable satisfaction of the Trustee in respect of all costs and liabilities which may be incurred or suffered by the Trustee.
- 5.3. The Trustee shall not be responsible for any loss suffered by the Club, the Developer or any Member or arising out of or in respect of any act or omission on the part of the Trustee, its officers, employees or agents in respect of the Trust Property unless the same shall have been caused by or have arisen from bad faith or negligence on the part of the Trustee or its said officers, employees or agents.
- 5.4. In addition to the above limitations to the Trustee's responsibilities, the Trustee is not responsible for any loss suffered by the Club the Developer or any Member arising as a result of matters beyond its control nor for any such loss arising in respect of any funds paid to any other parties.
- 5.5. The Trustee shall not be responsible for the insurance of the Accommodation
- 5.6. Notwithstanding Clause 7 of this Deed the Trustees responsibility in respect of the duration of occupancy rights is limited to the expiry of the termination date conferred upon the Accommodation. Therefore, any Accommodation that is held in trust that is not in perpetuity must, if required at the Trustee's sole discretion, be replaced by the Developer with sufficient Accommodation so as to ensure that the aggregate number of Points conferred on all current valid Points Certificates does not exceed the aggregate number of Points attached to the Accommodation.

## **6. TRUSTEES POWERS AND DUTIES**

- 6.1. (a) The Trustee warrants and undertakes that the Client Account(s) and Escrow Account(s), except as otherwise required in the exercise of the Trustee's powers and obligations herein will remain free from charge, lien, mortgage or encumbrance and will be used only for holding monies for third parties in trust and will not be used for any other purpose by the Trustee or any affiliated or subsidiary company of the Trustee (save for the subsequent disbursement of funds under the terms of the Deed of Trust).

(b) The Trustee shall be entitled to obtain legal advice from its solicitors for the time being and/or the opinion of counsel on any matter relating to the Trust Property or in relation to the trust hereby constituted or the exercise of the Trustee's power or duties hereunder and this shall be at the expense of the Members and the Developer proportionately.

6.2. The Trustee shall have the following additional powers:

(a) No form of Purchase Agreement or other form of private contract whereby the Developer sells or offers to sell Occupancy Rights may be used other than in the form annexed without the express written approval of the Trustee which will not be unreasonably refused.

(b) The Trustee or its nominee shall act as Escrow Holder in respect of all monies payable under any contracts whereby any person or firm applies to become a Member of the Club, in accordance with the terms of Clause 4 above, which shall not be altered or amended to the prejudice of any prospective Member without the express written approval of the Trustee.

(c) The Trustee shall maintain an up-to-date schedule of the Accommodation together with the value of Points attributable to the Accommodation

(d) All Points Certificates shall be issued or reissued by the Trustee. The Certificates shall be authenticated in such manner as the Trustee shall from time to time consider appropriate.

(e) Notwithstanding the provisions of this Deed the Trustee or any subsidiary or associated company of the Trustee shall not be precluded from acting as Banker to the Developer, the Management Company or the Club nor from making any advances to the Developer, the Management Company or the Club on such terms as may be agreed or from making any contract or entering into any financial or other transaction in the ordinary course of business with the Developer, the Management Company or the Club and shall be entitled to charge interest on overdrawn accounts and to make the usual Banker's charges and shall not be liable to account to the Developer, the Management Company or the Club for any profit made in connection with so acting. In respect of any sums so advanced, the Trustee shall be entitled to have recourse to and be indemnified out of such part of the Trust Property as is held to the order of the Developer, the Management Company or the Club, or the proceeds of sale thereof, and for such purposes shall have all the powers of an absolute owner to sell, let, mortgage or otherwise dispose of same, or any part thereof, unrestricted by clause 3 herein or the Rules.

(f) The Trustee shall be entitled to have recourse to, and be indemnified out of, the Trust Property or the proceeds of the sale thereof for all sums expended by the Trustee in or about or in any way in connection with the Trusts of this Deed for all sums (including remuneration) payable to the Trustee herein and to meet and discharge the cost of any indemnity to which it is entitled herein and for such purposes shall have all the powers of an absolute owner to sell, let, mortgage or otherwise dispose of the Trust Property or any part thereof unrestricted by Clause 3 hereof or the Rules.

(g) If the Management Company fail to maintain adequate insurance cover for the Accommodation and Trust Property, where applicable, the Trustee shall have the power to arrange such cover on behalf of the Members.

6.3 In the event of failure on the part of the Developer to act as the Management Company, or to appoint a Management Company, or to replace a Management

Company if the appointed one has ceased to operate, the Trustee shall have the power, but not the obligation, to appoint a temporary management company to ensure the uninterrupted use of the Accommodation by the Members. In the event that a replacement for the former Management Company has not been appointed within three months of the initial Management Company ceasing to operate, the Trustee shall have sole discretion either to appoint the temporary management company as the Management Company, or to appoint a suitable alternative company to act as the Management Company; and the Trustee shall be entitled to remuneration accordingly, at the expense of the Developer and/or the Members, as the case may be, in respect of all its fees and costs incurred in the exercise of these powers.

## **7. DURATION OF TRUSTEES APPOINTMENT**

- 7.1 The perpetuity period for the purposes of this Deed shall be for 80 years from the date hereof (the Perpetuity Period) at the end of which, the Trustee's obligations outlined herein shall cease.
- 7.2 The Deed may be terminated by the Trustee giving to the Developer, or his successor in title no less than six months' notice in writing of its desire to retire. No such notice shall in any event take effect before the expiry of one year from the date hereof.
- 7.3 Upon the termination of the appointment of the Trustee the Developer or Management Company shall pay to the Trustee all remuneration then owing to the Trustee together with any outstanding reasonable out-of-pocket expenses and all fees, costs and expenses incurred by or on behalf of the Trustee in transferring its interests in the Trust Property in the manner hereinafter provided. The Trustee shall upon the termination of its appointment transfer the Trust Property at the expense of the Developer or Management Company to a suitable successor trustee, but failing which the trusteeship shall not fail for want of a trustee and the Trustee shall make and pursue at the expense of the Trust Property an appropriate application to have a suitable successor trustee appointed.
- 7.4 Pursuant to the foregoing provisions of this Clause the Trustee shall as soon as reasonably practical following the termination of the appointment as Trustee:
- a) transfer the Trust Property to a suitable alternative trustee of this or any new trust constituted in accordance with the Rules; or
  - b) retain the Trust Property upon the terms of any new trust constituted in accordance with the Rules
- 7.5 In the event the Club is terminated, and all Points Certificates pertaining to Occupancy Rights have been cancelled, the Trustee shall at the expense of the Developer *or the Management Company*:
- a) transfer the Accommodation at Prime Resorts in accordance with instructions from the Developer
  - b) transfer the Accommodation at Associate Resorts in accordance with instructions from the Developer
  - c) cede the Occupancy Rights in Ceded Accommodation back to the Ceded Points Member who in accordance with the Rules assigned such Occupancy Rights to the Developer on becoming a Member

## **8. DEVELOPERS POWERS AND DUTIES**

- 8.1 Notwithstanding that the Trust Property shall be held in trust by the Trustee the Developer shall nevertheless initially be entitled to occupy the Accommodation as provided in the Rules, to grant rights of occupation of parts thereof in accordance with the terms of the Rules, and to countersign all such grants.
- 8.2 Prior to the transfer or ceding of any Accommodation into trust, in accordance with the provisions of this Deed and the Rules, the Developer shall notify the Trustee, in writing, the determination of the number of Points attributable to such Accommodation.
- 8.3 The Developer for itself and on behalf of each Member covenants with the Trustee:
- (a) To pay on demand all payments whatsoever (including rent, rates, mortgages or any other encumbrances, service or maintenance charges, interest, costs, expenses and damages) covenanted or agreed to be paid (whether contingently or otherwise) under the terms of any instrument by which the Trust Property or any part, was transferred to the Owing Company or for which the Club or the Trustee may otherwise be liable.
  - (b) At all times during the continuance of the Trust to observe and perform all the covenants, terms and conditions contained in the instrument by which the Trust Property was vested in the Owing Company and which on the part of the Owing Company are to be observed and performed.
  - (c) To indemnify and keep fully and effectually indemnified the Trustee from and against all actions, claims, demands, losses, damages, costs and expenses made against or suffered or incurred by the Trustee arising directly or indirectly from any breach, non-observance or non-performance of any of the covenants contained in paragraphs (a) and (b) of this Clause.
- 8.4 The Developer warrants that save as otherwise ordered by a Court of competent jurisdiction or as provided in this Deed the Trustee shall not by entering into and acting in pursuance of the terms and conditions of this Deed owe any duty, obligation or liability to any person or persons (whether corporate or individual) other than the Developer and the Members and no such person or persons is entitled to charge, pledge or demand or require to oblige the Trustee to transfer any property held by the Trustee in pursuance of this Deed.
- 8.5 The Developer hereby undertakes for itself and on behalf of the Members and Management Company that neither the Trustee's name nor any reference to its appointment or duties as trustee for the Trust Property shall appear on any literature or document or any advertisement issued by or on behalf of it or the Resorts without the prior approval in writing of the Trustee.
- 8.6 The Developer shall pay or shall procure that the Members and/or Management Company as the case may be shall pay to the Trustee as remuneration for the performance of its duties herein such fees as may from time to time be separately agreed upon between it and the Trustee (or failing which between the Management Company and the Trustee) and all out of pocket expenses incurred by the Trustee in complying with the terms of this Deed.
- 8.7 The Developer for itself and on behalf of the Members hereby undertakes to indemnify and hold harmless the Trustee from and against all costs, liabilities and expenses which may result from the proper performance by the Trustee of their duties herein and the Trustee shall be kept fully indemnified by the Members and Management Company and the Developer against all losses, claims, demands,

expenses and other liabilities made or incurred in connection with the Trust Property or in any other way in connection with the holding by the Trustee of the office of custodian trustee herein. The Trustee shall have the right if at any time it considers it desirable so to do to require that the Developer or the Management Company shall deposit with the Trustee as a reserve fund such sum as shall be reasonably necessary in support of the indemnity contained in this clause.

8.8 The Developer hereby undertakes to comply with all applicable timeshare legislation and to procure that all documentation which is required by law to be given to Purchasers is provided to them, including any disclosure documents, cancellation notices and a certified copy of the Project Documentation, duly translated, where applicable, into the Purchaser's language.

8.9 In accordance with the Rules, the Developer undertakes, at the end of the Perpetuity Period referred to in clause 7.1, to constitute a new trust upon similar terms to those set out in this Deed.

## 9. VARIATION OF THE TRUST DEED

The Developer and the Trustee may by supplemental deed modify or add to the provisions of this Deed in such manner and to such extent as they may consider necessary or expedient provided that unless the Trustee shall certify in writing that in its opinion such modification, alteration or addition does not materially prejudice the interests of the then existing Members and does not operate to release any of the parties hereto from any responsibility to the then existing Members no such modification or addition shall be made without the sanction of an ordinary resolution of Members in general meeting.

## 10. ADMINISTRATIVE

10.1 Any notice which is required to be given in pursuance of any provision of this Deed shall be given or served by sending the same by prepaid first class post addressed to the appropriate party as the case may be at its respective registered office referred to in this Deed or such other registered office as may be notified in writing to all the other parties hereto or to Club Infiniti at the address of the Club as shall from time to time be notified to the Trustee for such purpose and any notice if sent by first class prepaid mail and recorded delivery shall be deemed to have been given or served forty-eight hours after dispatch, excluding Sundays and public holidays.

10.2 This Deed shall be governed and construed in accordance with the Laws of England the rights of all persons and the construction and the effect and every of the provisions hereof shall be subject to and construed in accordance with English Law.

10.3 The English language shall be the original language of this documentation. Where this document is translated into any other language, in the case of conflict the English original shall prevail.

Executed as a Deed by  
HUTCHINSON & CO TRUST COMPANY LIMITED  
acting by:

Executed as a Deed by  
LEISURE DIMENSIONS LTD  
acting by:

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Director

Director

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Director/Secretary

Director/Secretary

Dated this

day of

2001