

SHORT TERM RENTAL MANAGEMENT AGREEMENT

Otematata Apartments, Otematata

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PARTIES

And

The Owner appoints the Manager as its exclusive agent to let the Property (inclusive of all furniture, fittings and equipment) for the Term, on the terms and conditions set out in the schedules attached to this Agreement.

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Director

SCHEDULE 1 – REFERENCE SCHEDULE

1. TERM:

From the date of this Agreement until terminated in accordance with clause 3.1

2. COMMENCEMENT DATE:

[2017]

3. PAYMENT TO OWNER

The amount payable in accordance with clause 4 of this Agreement.

4. PERMITTED USE:

Rental accommodation for Short Term Letting/visitor occupation.

5. PROPERTY:

Principal Unit [] on Unit Plan [] together with Accessory Units [] (Car Park) being all the estate and interest comprised and described in Certificate of Title [] Otago Registry, Otematata, New Zealand

6. LONG TERM LETTING

Any Long Term Letting through the Manager shall be on such basis as may be mutually agreed from time to time. And is outside the scope of this Agreement.

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SCHEDULE 2 – PROVISIONS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

"Agreement" means this Agreement between the Manager and the Owner of the Property together with its schedules and other attached schedules and any amendments made from time to time.

"Body Corporate Charges" means amounts payable to the Body Corporate in respect of the Property.

"Commencement Date" means the Commencement Date specified in Schedule 1.

"Long Term Letting" means a letting for a term of three months or more.

"Manager's Business" means the use by the Manager of the Property by exercise of this Agreement.

"Manager's Covenants" means the obligations and agreements contained or implied in this Agreement to be observed by the Manager.

"Manager" means Get It Now Limited (t/a Otematata Eastery Bar and Lodging) and includes the Manager's successors and assigns and, where not repugnant to the context, includes the employees, agents, contractors and authorised representatives of the Manager.

"Manager's Fee" means 15% of the Owner's Share (including GST) which shall be deducted from the Owner's Share in accordance with clause 4.5.

"Off Peak Season" means the period commencing 1 May to 30 November in each year.

"Operating Month" means each monthly period commencing on the 1st day of each calendar month during the Term.

"Owner" means the original Owner named as a party to this Agreement, and the Owner's executors, administrators, successors and assigns.

"Owner's Share" means the Owner's share of the Rack Rent as determined in accordance with Clause 4.

"Peak Season" means the period commencing 1 December to 30 April in each year.

"Permitted Use" means the use specified in Schedule 1.

"Property" means Unit [] on Unit Plan [] together with Accessory Units [] (Car Parks) and being all the estate and interest comprised and described in Certificate of Title [] Otago Registry, Otematata, New Zealand

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Comment [LH1]: Check GST with Brent

"Property and Running Costs" include but are not limited to the following costs in respect of the Property.

- (a) local authority rates and Body Corporate Charges
- (b) water and sewerage rates and charges
- (c) full replacement and reinstatement cost building insurance
- (d) furniture, fittings and equipment insurance
- (e) all interior and exterior maintenance costs including ground maintenance
- (f) all Body Corporate Charges including but not limited to all contributions to a long term maintenance fund
- (g) Power charges
- (h) Gas charges
- (i) Phone telecommunication line and associated charges
- (j) Broadband, internet, data usage and service charges
- (k) Pay television charges

"Rack Rent" means the overnight leasing or rental rate for the Property as established from time to time by the Manager.

"Relevant Authority" means any local body or government or other authority having jurisdiction or authority over the Property.

"Short Term Letting" means a letting for a term or terms of three months or less in duration.

"Term" means the Term of this Agreement specified in Schedule 1.

"Termination Date" means the date of termination in accordance with clause 3.1.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) one gender shall include the other genders;
- (c) words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- (d) any covenant or Agreement on the part of two or more persons shall bind those persons jointly and severally;
- (e) reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of, the general statement, unless the particular context requires such derogation or limitation;
- (f) any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly; references to sections, clauses and schedules are references to sections, clauses and schedules in this Agreement.
- (g) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same;
- (h) where the Owner's consent or approval is required pursuant to any provisions of this Agreement, such consent or approval shall not be unreasonably or arbitrarily delayed or withheld;

- 1.3 If a provision of this Agreement is invalid or unenforceable for any reason including illegality the validity or enforceability of the remaining provisions shall not be affected.

2. **APPOINTMENT**

- 2.1 The Manager shall have the exclusive right to let the Property for Short Term Letting purposes for the Term. Any Long Term Letting of the Property shall be on such basis as may be mutually agreed between the parties from time to time.

3. **TERM**

- 3.1 The Term of this Agreement shall commence on the Commencement Date and shall continue until it is terminated by either party by giving not less than 60 days notice to the other.
- 3.2 If this Agreement is terminated by the Owner pursuant to clause 3.1 the Manager will immediately take all reasonable steps to migrate any bookings held for the Property in respect of a period following expiry of the 60 days notice period to other accommodation managed by the Manager to seek to ensure that vacant possession of the Property can be delivered to the Owner provided that if there is not suitable alternative accommodation the Owner shall either allow the Manager to honour the existing booking by renting the Property to such third party (with fees payable as per this Agreement) or indemnify the Manager against any costs, claims, expenses suffered by the Manager in cancelling such third party booking(s).

4. **PAYMENTS TO OWNER**

- 4.1 The Manager shall pay to the Owner the Owner's Share calculated in accordance with the following formula:

Lettings of the Property during the Peak Season:

Room Type	Owners Share of Rack Rent
Single Rooms (or double roomed apartments where only one room is required by guest	\$100.00 including GST
Double Rooms	\$120.00 including GST

Lettings of the Property during the Off Peak Season:

Room Type	Owners Share of Rack Rent
Single Rooms (or double roomed apartments where only one room is required by guest	\$90.00 including GST
Double Rooms	\$110.00 including GST

- 4.2 The Owner agrees and acknowledges that the Manager has discretion to set the Rack Rent for the Property as the Manager deems appropriate based upon matters such as whether the Property in the Manager's discretion is standard or deluxe, demand, capacity and such other matters as the Manager considers appropriate.
- 4.3 Subject to clause 4.4 below, the Owner acknowledges and agrees that the Manager may utilise the difference (if any) between the actual Rack Rental paid by guests of the Property and the Owner's Share to pay for the Property to be cleaned at the end of each Short Term letting, all laundering costs and to re-stock all consumables utilised by guests of the Property. If the total costs of such cleaning, laundering and consumable costs shall be less than the difference between the total Rack Rent received for the Property and the Owner's Share, the Manager may

in addition to the Manager's Fee and the amount (if any) retained pursuant to clause 4.5, retain such difference without the need to further account to the Owner.

- 4.4 If the Rack Rent paid by guests of the Property shall be greater than \$180.00 per night then the Manager shall pay to the Owner (in addition to the Owner's Share) 50% of the Rack Rent paid by guests of the Property that is greater than \$180.00 per night and the Manager shall (in addition to the Manager's Fee and the amount (if any) retained pursuant to clause 4.3) be entitled to retain the other 50% of the nightly Rack Rent paid by guests of the Property that is greater than \$180.00 per night.
- 4.5 Within seven (7) days of the end of each Operating Month the Management shall pay to the Owner the Owner's Share for all lettings of the Property for the preceding Operating Month less the Manager's Fee and any other sums that the Manager may deduct pursuant to clauses 5.3, 6.2 and 7.7.
- 4.6 The Manager in no way warrants or represents that the Property shall be hired or let in each Operating Month and the Owner acknowledges and agrees that there may be Operating Months during the Term in which no Owner's Share is payable.
- 4.7 The Owner shall be responsible for all taxes payable in respect of the Owner's Share including but not limited to all GST and all income tax payable in respect of the Owner's Share.

5. PAYMENTS TO MANAGER

- 5.1 The Manager shall be entitled to deduct the Manager's Fee from the Owner's Share in consideration of the Manager performing and observing its obligations under this Agreement.
- 5.2 The Manager shall be responsible for all taxes payable in respect of the Manager's Fee including but not limited to all GST and all income tax payable in respect of the Manager's Fee.
- 5.3 If the Property shall be booked or let through a third party booking agent or system (including but not limited to Booking.com, Wotif.com, that charges a commission fee or charge for procuring/arranging such booking, then in addition to the deduction of the Manager's Fee, the Manager shall also be entitled to deduct the relevant fee, commission, charge payable to such third party agent or system from the Owner's Share. The Manager shall then pay such fees, commission or charge to the relevant third party agent.

6. COSTS

- 6.1 All Property and Running Costs are the responsibility of the Owner and shall be paid directly by the Owner to the relevant authority, levier, goods or service provider, company or the Body Corporate.
- 6.2 The Manager may undertake such marketing advertising and promotion activities as the Manager in its discretion considers are desirable to optimise rental and occupancy rates for the Property. [If the Manager shall incur any expenses/costs in relation to such market advertising and promotional activities (not exceeding \$400 + GST) the Manager shall be entitled to deduct such expenses, costs from the Owner's Share. Any marketing, advertising, promotional activities that cost or are likely to cost in excess of \$400 + GST must first be approved by the Owner.
- 6.3 Subject to clause 13.1(d) the Manager shall arrange for the Property to be cleaned to a standard appropriate for short term leasing upon the departure of every guest to whom the Manager lets the Property. The Owner agrees and acknowledges that the Manager shall pay for such cleaning by utilising the difference between the Rack Rental less the Owner's Share as further described in clause 4.

7. MAINTENANCE AND CARE OF PROPERTY, FURNITURE, FITTINGS AND EQUIPMENT

- 7.1 The Owner shall provide all furniture, fittings and equipment in the Building to a standard appropriate for a short term leasing.
- 7.2 The Manager may at its discretion classify the Property as standard or deluxe taking into account the state of repair of the Property and the furniture, fittings and equipment from time to time at the Property.
- 7.3 The Manager may use all furniture, fittings and equipment in the Building at no additional cost to the Manager.
- 7.4 The Owner shall maintain in good working order and if necessary repair or (at the Owners or the Owner's insurer's cost) where necessary replace furniture, fittings and equipment in the Building.

The Owner shall maintain and care for the Property in a proper and workmanlike manner. In particular, the Owner will keep and maintain the interior of the Property in clean order repair and condition and will maintain the grounds, gardens and plantings in a tidy condition.

- 7.5 The Owners authorises the Manager to effect any repairs and maintenance that may, from time to time, become necessary to maintain the Property (and including any fixtures, fittings and equipment) in good repair, working order and condition, without the need to obtain consent of the Owner where the cost of the repairs:
 - (a) does not exceed \$400.00; or
 - (b) or where the repairs are urgent and necessary; or
 - (c) where the failure to complete repairs might endanger any guests or occupants of the Property.
- 7.6 If the Manager carries out any such repairs and maintenance, the Manager may deduct the cost of carrying out such repairs and maintenance from the Owner's Share.
- 7.7 The Owner acknowledges and agrees notwithstanding that the Manager may carry out such repairs and maintenance, the Manager is not obliged to do so and the Manager will not assume any liability of any kind for the failure by the Manager to carry out any such maintenance or repairs. The Manager, will where possible but without assuming any liability to the Owner for failure to do advise the Owner of the Manager's recommendation to carry out any works which the Manager considers are or may be necessary.

8. USE OF PROPERTY

- 8.1 The Manager may use the Property for the Permitted Use.
- 8.2 The Manager shall comply with all laws relating to the use of the Property for the Permitted Use including (without limitation) any requirements, notices and orders of any Relevant Authority which do not require structural repairs or alterations provided however that the Manager shall not be bound to apply for and maintain any necessary licences or permits to make the Property available for let or hire.

9. MANAGER'S OBLIGATIONS

- 9.1 The Manager will offer the apartment for Short Term Letting to such persons, for such duration, and on such terms and conditions of occupancy as the Manager in its sole discretion shall determine.
- 9.2 The Manager shall use its best efforts to be fair and act in good faith in the offering of available Property to guests, consistent with the preferences of the Guest for different qualities and Rack Rentals.
- 9.3 Subject to the Owner observing and performing its obligations under this Agreement, particularly but not by way of limitation in respect of maintaining the Property and all furniture, fittings and equipment, the Manager will manage all properties within the Otematata Apartments impartially and fairly without favoured treatment to any property Owner involved.

- 9.4 Subject to the Owner observing and performing its obligations under this Agreement, particularly but not by way of limitation in respect of maintaining the Property and all furniture, fittings and equipment, the Manager will optimise occupancy rates in a manner which in the Manager's discretion is appropriate.

10. **INSURANCE**

- 10.1 The Owner shall effect and maintain public liability insurance in a sum, for any single event, not less than NZ\$1,000,000.
- 10.2 The Owner shall procure that the Body Corporate effects and maintains insurance at all times during the Term for all Buildings on the Property. The Owner shall insure all furniture, fittings and equipment under full replacement and reinstatement cost insurance policies. Such insurance shall extend to loss damage or destruction of windows and other glass on or about the Property.
- 10.3 In the event of an insurance claim the Owner shall be responsible for all excesses under any of its insurance policies.

11. **TRANSFER BY MANAGER**

- 11.1 The Manager may assign or transfer this Agreement or otherwise part with possession of the Property without the prior consent of the Owner where the proposed assignee or transferee is suitably qualified and has appropriate financial standing. The decision of the Manager in respect of these matters shall be final and binding but shall be made in good faith.
- 11.2 Immediately after assignment or transfer of this Agreement by the Manager the transferor shall advise the Owner of the name and address for service of the assignee or transferee.

12. **OWNER'S COVENANTS**

- 12.1 The Owner shall:
- (a) Apply for and maintain any necessary licences or permits to make the Property available for let or hire.
 - (b) not enter into any agreement which would in any way detrimentally affect the exercise by the Manager of the Manager's rights under this Agreement;
 - (c) comply with the provisions of this Agreement; and
 - (d) comply with the provisions of all laws relating to the Property including without limitation any requirements, notices and orders or any Relevant Authority.

13. **OWNER'S RIGHT TO STAY**

- 13.1 The Owner (together with the Owner's immediate family and the Owner's non-paying guests at the invitation of the Owner only) shall have the unlimited right during the Term of this Agreement, for themselves or their nominee, to stay in the Property (or part of the Property) upon the following conditions:
- (a) That the Owner books through the Manager.
 - (b) That the Owner shall provide not less than eight (8) weeks' notice of the Owner's intended stay. If there is an existing third party booking for the period requested the Manager will use its best efforts to secure the Owner's requested booking for the Property by, where practicable moving such existing third party bookings to another Unit which the Manager manages and that is vacant for the requested period but always subject to the overarching proviso that if there is no other suitable Property which the Manager manages that is vacant for the requested period, the Manager may decline the Owner's requested booking.
 - (c) If the Owner shall provide less than eight (8) weeks' notice of its intended stay, the Manager may decline the Owner's request if there are any existing third party

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bookings of the Property for the requested period without the Manager being obliged to use its best efforts to arrange alternative accommodation for the third party booking.

- (d) That at the end of the Owner's stay, the Owner pays to the Manager the Manager's then prevailing cleaning fee for the time of visit, such cleaning fee to be the cost to the Manager in arranging for the Property to be cleaned to the standard appropriate for short term rentals. For the avoidance of doubt the Owner shall not be obliged to pay to the Manager a service fee or nightly rate for the Owner's own stays at the Property.
- (e) No Owner's Share shall be payable to the Owner for any period of occupancy by the Owner of the Property.

14. GENERAL

- 14.1 Each party shall pay their own expenses reasonably and properly incurred in respect of this Agreement.
- 14.2 Any notice in writing or other document to be given by either party to the other under this Agreement shall be given to their residence or place of business or such other address as may be notified in writing by either to the other from time to time. Any such notice may be left or forwarded by prepaid registered mail service to such address and any notice forwarded by post shall be deemed to have been received at the time when it would in the ordinary course of post then prevailing have been delivered. Notices may be given by fax and such notices shall be deemed given at the time of confirmation of transmission reported by the fax machine of the party giving the notice.

15. DEFAULT

- 15.1 The Owner may terminate this Agreement by giving notice to the Manager if:
 - (a) Payment due to Owner are in arrears and unpaid for 28 days after any payment date;
 - (b) the Manager is in breach of any of the Manager's Covenants and such breach continues for a period of 28 days after notice in writing has been given to the Building Manager specifying the breach;
 - (c) the Manager shall make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors, or if the Manager shall become insolvent or be liquidated;
 and the Term shall terminate on such notice but without prejudice to the rights of either party against the other.

16. SALE OF PROPERTY BY OWNER

- 16.1 If the Owner wishes to sell the Property it shall give sixty (60) days notice of such sale to the Manager in order to allow the Manager to manage any forward bookings.

17. JURISDICTION

- 17.1 This Agreement and all matters arising shall be determined in accordance with the laws of New Zealand.

18. DISPUTE RESOLUTION

- 18.1 In the event of a dispute arising between the parties about interpreting or implementing this Agreement's provisions the parties shall:
 - 18.2 Negotiate: the parties will use their best endeavours to resolve the dispute by negotiation in good faith. The parties will attend at least one meeting to discuss an attempt to resolve the dispute as a condition precedent to taking any other steps concerning the dispute (including

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but not limited to commencing any legal proceedings other than an application for injunctive relief); and

- 18.3 Mediation: if the dispute cannot be resolved in accordance with clause 22.1, then the parties will refer the dispute to mediation by a mediator jointly appointed by them and failing Agreement, a mediator appointed by the chairperson for the time being of LEADR (New Zealand); and
- 18.4 Arbitration: if the dispute is not resolved within 20 Business Days of its reference to mediation in accordance with clause 22.3, then the parties will refer the dispute to arbitration by a single arbitrator agreed on by both parties or, failing Agreement, to a panel comprised of three arbitrators, one appointed by the Vendor, one appointed by the Purchaser and one appointed by the two other arbitrators, or, should they be unable to agree on the third arbitrator, the appointment of the third arbitrator will be made by the President (or equivalent officer) for the time being of the New Zealand Law Society. The dispute referred to arbitration will be resolved according to the rules and principles of arbitration established by LEADR as amended from time to time. Where a panel of arbitrators is appointed, a majority decision of that panel will determine the matter under dispute. The determination of the arbitrator will be final and binding on the parties. Arbitration costs will be apportioned between the parties in the manner determined by the arbitrator.

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EXECUTION

Signed by as Owner in the presence of

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Witness signature

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Full name (please print)

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Occupation (please print)

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Address (please print)

Signed for and on behalf of GET IT NOW LIMITED
as Manager by:

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Director

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Director

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PLEASE PRINT NAME

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