

HEADS OF AGREEMENT

COMMONWEALTH OF THE BAHAMAS

NEW PROVIDENCE

THESE HEADS OF AGREEMENT are made the 1st day of March, 2005
BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF THE
BAHAMAS represented herein by Wendell Major CMG, the Secretary to the
National Economic Council acting by and under the authority of the National
Economic Council (hereinafter called "the Government"), of the one part **AND**
PASSERINE AT ABACO HOLDINGS LTD., PASSERINE AT ABACO
LIMITED, BAKER'S BAY CLUB LIMITED, BAKER'S BAY HOA
LIMITED, BAKER'S BAY FOUNDATION LIMITED and BAKER'S BAY
MARINA LIMITED, each a Company incorporated under the laws of the said
Commonwealth and having its registered office in the City of Nassau in the Island
of New Providence, one of the Islands in the said Commonwealth (hereinafter,
sometimes collectively referred to as "the Developers" and sometimes
individually referred to as "Holdings", "Passerine", "the Club", "the HOA", "the

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Foundation” and **“the Marina”** as the case may be which expressions shall include their successors in title and assigns) , of the other part.

WHEREAS

(A) **BAKER'S BAY ASSOCIATES, LLC** is a Limited Liability Company organized/incorporated and existing under the laws of the State of Delaware, one of the United States of America (hereinafter called “the Holding Company”), and is the beneficial owner of one hundred percent of the issued and outstanding shares in each of Holdings and Passerine;

(B) (i) Passerine is the beneficial owner of one hundred percent of the issued and outstanding shares of each of the HOA and the Marina companies and is the current holder of all the memberships issued in the Club; (ii) The members of the Foundation will include The Bahamas National Trust, The University of Miami and The Institute for Marine Science at the College of The Bahamas. The mission of the Foundation will be established through cooperation between the Developer and the Government and will be an educational and research group that will document the ecological impacts of development on small islands, make recommendations for compatible

developments, and carry out environmental outreach activities to build a stronger community support for island stewardship.

- (C) By an agreement in writing dated the 26th day of May, 2003 and made between Sago Investment Limited of the one part and BAKER'S BAY AT GREAT GUANA, LLC, a Company organized/incorporated and existing under the laws of the State of Georgia, one of the United States of America (hereinafter called "the Original Purchaser"), of the other part, and a First Addendum thereto dated the 30th day of May, 2003, a Second Addendum thereto dated the 30th day of January, 2004, and a Third Addendum dated the 30th day of April, 2004 (herein collectively called "the said Agreement"), the Original Purchaser agreed to purchase the hereditaments hereinafter described in the First Schedule hereto (hereinafter called "the Private Land") for an estate in fee simple in possession, and subject to and conditional upon the terms of the said Agreement. The date of completion for such transaction shall be contemporaneous with the signing of these Heads of Agreement;

- (D) Original Purchaser has agreed to assign the Purchase Agreement to Holdings, as trustee for Passerine, the Club and the HOA, and such parties are desirous of acquiring ownership in fee simple in possession of the Private Land;
- (E) The Government (Crown) is the owner of the hereditaments hereinafter described in the Second Schedule hereto and consisting of approximately one hundred five acres (105) acres (hereinafter called "the Crown Land");
- (F) The Government (Treasurer of The Bahamas) is the owner of the hereditaments hereinafter described in the Third Schedule hereto and consisting of approximately forty-three (43) acres (hereinafter called "the Treasury Land");
- (G) The Developers are desirous of developing the Private Land, portions of the Crown Land and portions of the Treasury Land as a high end residential resort and club membership community as hereinafter more specifically described (hereinafter called "the Development");

(H) With respect to the Crown Land:

(i) Passerine is desirous of entering into a Conditional Purchase Lease with the Government upon mutually acceptable terms and conditions (hereinafter called "**the Conditional Purchase Lease**") with respect to approximately Fifteen (15) acres for construction of residential lots ("**the Acquired Crown Land**") and marked on "Plan G" and are thereon coloured Orange and Pink;

(ii) The Marina is desirous of entering into a long term lease with the Government with respect to approximately Twenty-five (25) acres for construction and use of the marina and waterways, and marked on "Plan G" and are thereon coloured Blue, upon mutually acceptable terms and conditions ("**the Marina Lease**") and providing for a lease term of Forty (40) years with the right to renewal for an additional Forty (40) years (the "**Initial Marina Extension Period**"), with the understanding that prior to the expiration of the Initial Marina Extension Period, the Marina and the Government will negotiate on mutually acceptable terms the further extension of the Marina Lease; and

(iii) The Foundation is desirous of entering into a lease with the Government upon mutually acceptable terms and conditions ("**the Preserve Lease**") with respect to approximately sixty-six (66) acres more or less as more particularly described on the diagram or plan annexed thereto and marked "Plan E" and "Plan F" and are thereon coloured Orange.

(I) With respect to the Treasury Land, Passerine is desirous of:

(i) entering into a long term lease with the Government upon mutually acceptable terms and conditions ("**the Treasury Land Lease**") for a period of Forty (40) years with the right to renewal for an additional Forty (40) years (the "**Initial Treasury Land Extension Period**") for approximately Twelve (12) acres, as marked on "Plan H" and indicated by the cross-hatched sections thereon ("**the Leased Treasury Land**") on which Passerine intends to construct:

- the employee housing on land comprising approximately Four (4) acres;
- the desalination, Sewerage Facility and electricity substation on land comprising approximately Two (2) acres); and

- the Solid Waste Disposal Facility (as defined below) on land comprising approximately Four (4) acres), and
 - dry dockage facilities (approximately Two (2) acres) for members only,
- with the understanding that prior to the expiration of the Initial Treasury Land Extension Period, Passerine and the Government will negotiate on mutually acceptable terms the further extension of the Treasury Land Lease;

entering into a lease for a term of Six (6) years with the Government upon mutually acceptable terms and conditions ("the Staging Area Lease") on land comprising approximately Eight (8) acres to use as construction staging area in connection with the Development, as marked on "Plan H" and indicated by the hatched section thereon; and

(J) The Government, being satisfied that the Development will impact positively and significantly upon the economy of the said Commonwealth and the Island of Abaco in particular, has approved in

principle the development upon the terms and conditions hereinafter appearing and the entering into of the Conditional Purchase Lease, the Marina Lease, the Preserve Lease, the Treasury Land Lease and the Staging Area Lease (collectively referred to herein as "the Lease Agreements").

NOW THESE HEADS OF AGREEMENT WITNESSETH in consideration of the premises as follows:

1. **THE DEVELOPMENT**

- 1.1 Subject to the Developers and each of them, as the case may be obtaining all of the necessary approvals, concessions, agreements, licenses and permits required for the Developers and each of them to commence and diligently pursue the completion of the Development in accordance with the General Development Plan the Developers hereby agree within Three (3) months of the execution by the Government of the Lease Agreements to commence and to diligently pursue the completion of the Development in accordance with the General Development plan.

1.2 The Development shall be a high end, private residential resort and club membership community with security provided at a gated station comprising of:

- (a) Not less than Seventy-five (75) beds in hotel / inn / villa style rooms operated with premium class services such as room service, housekeeping / laundry services and concierge services;
- (b) approximately Three hundred fifty (350) ocean front, marina and inland lots;
- (c) approximately Eighty (80) units for employee housing in connection with the Development, including accommodations for police officers stationed at the community center described below;
- (d) approximately Sixty (60) marina and marina village settlement lots; and
- (e) approximately Seventy-five (75) overlook lots.

(As generally shown on the conceptual "General Development Plan" attached hereto as Exhibit "A").

1.3 In addition to the residential components described in Section 1.2 above, the Development shall also include the construction and establishment of the following components and shall proceed in accordance with the phases described below:

- (i) **Phase 1 Development Projects** – work on the components in this phase shall begin on the later of June 1, 2005 or within Three (3) months of the execution by the Government of the Lease Agreements and shall be completed by June 1, 2008
- (a) A marina, as approved by the BEST Commission and all relevant government agencies, consisting (*inter alia*) of a basin large enough to accommodate up to Two hundred forty (240) slips (excluding dry dock storage to be provided in the Development site, if any), a dredged channel thereto and related facilities (hereinafter called “**the Marina**”); as well as Four (4) moorings (“**the Moorings**”) in the turn around basin in the vicinity of the entrance channel to the marina to accommodate Four (4) mega yachts at a projected cost of \$25,000,000.00;
- (b) A service dock, as approved by the Ministry of Transport, for loading and unloading at a designated logistics area at a projected cost of \$400,000.00;
- (c) A reverse osmosis desalination plant, as approved by Ministry of Works and Utilities and the Water and Sewerage

Corporation, to be located on the Leased Treasury Land at a projected cost of \$2,850,000.00, ;

- (d) A fully-automated sewage treatment facility ("**the Sewage Facility**"), as approved by the Department of Environmental Health Service, at a projected cost of \$850,000.00 which will treat all sewage effluent to a irrigation water re-use standard to be located on the Leased Treasury Land suitable to accommodate the sewage requirements of the Development in accordance with environmentally sound practices and the specifications of the Water and Sewerage Corporation and other appropriate/relevant Government departments and agencies. The treated effluent water will be used on the golf course and other landscaping areas of the project, thereby reducing the requirement for fresh water. Upon the expiration of the Treasury Land Lease, the Water and Sewerage Corporation, and all relevant government agencies, will provide for continued provision of such services to the residents of the Development and Developer shall continue to operate the Sewage Facility at Developer's cost and expense;

- (e) A solid waste disposal facility ("**the Solid Waste Disposal Facility**"), at a projected cost of \$1,000,000.00 to be located on the Leased Treasury Land suitable to accommodate the solid waste requirements of the Development and for the benefit of residents of Guana Cay in accordance with the specifications of the appropriate/relevant Government departments and agencies and using such practices for solid waste disposal as Passerine and the Minister of Health and Environmental Services may mutually agree, with Passerine having reasonable approval rights over the rules of operation of the Solid Waste Disposal Facility. Upon the expiration of the Treasury Land Lease, the Government will provide for continued provision of such services to the residents of the Development and of the Guana Cay settlement and the Developer will continue to operate the Solid Waste Disposal Facility at Developer's cost and expense;
- (f) A retail commercial center as part of the Marina consisting of Marina Bar and Grille, General store and other retail stores, at a projected cost of \$1,500,000.00 provided that the said General store and all other retail stores and facilities,

scuba diving, fishing as well as any water sports and related recreational and entertainment facilities shall be operated exclusively by Bahamians on a concessionary basis;

- (g) A community center of not less than Three thousand five hundred (3,500) square feet, at a projected cost of \$600,000.00 to be located on the Remaining Treasury Land for the benefit of the residents of the Guana Cay settlement, with such community center to include space for police, fire (including the housing of the fire truck to be donated by Passerine), educational purposes, medical clinic, customs and immigration, (including residential accommodation for such customs and immigration officers) and a room and patio for public or private meetings, the particulars of which are to be mutually agreed upon prior to the construction of such center and coordinated by the Office of the Prime Minister in collaboration with the relevant government agencies and the Developers. The Government shall grant a temporary construction easement to Passerine in order to complete such construction;

- (h) A park of no less than Five (5) to Eight (8) acres located on a portion of the Private Land and Crown Land adjacent to the Preserve (as defined below), at a projected cost of \$250,000, which park shall have unfettered access to Five hundred (500) feet of frontage on the Sea of Abaco to be open to the public and shall include a gazebo / discovery / observation center golf cart parking, restrooms and dock, with the size and location of such park to be as shown on the General Development Plan and the terms of operation to be mutually agreed upon;
- (i) Not less than Seventy-five (75) beds in hotel / inn / villa style rooms operated with premium class services such as room service, housekeeping / laundry services and concierge services at a projected cost of \$20,000,000.00;
- (j) A portion of the roads to service the hotel / inn / villas, Club house, lots and the Development as approved by the Ministry of Works and Utilities at a projected cost of \$12,000,000.00;
- (k) As approved by BEC, BTC, and Ministry of Works and Utilities, a portion of the underground utility cables, wires,

pipes and conduits for the supply of electricity, water, cable TV and telephone throughout the Development site in accordance with the specifications and approval of the relevant public utility corporations and Government departments and agencies at a projected cost of \$4,000,000.00;

- (l) A sales, marketing and administrative center a projected cost of \$1,000,000.00; and
- (m) A stand-by generator(s) and building(s) to accommodate same at a projected cost of \$2,000.000.

(ii) **Phase 2 Development Projects** – work on the components in this phase shall begin June 1, 2008 and shall be completed by June 1, 2010

- (a) One (1) clubhouse;
- (b) Two (2) restaurants and bars;
- (c) One (1) swimming pools;
- (d) Two (2) tennis courts;
- (e) A spa together with recreation and sports facilities.

Projected costs of items (a) – (e) above will be \$12,000,000.00;

- (f) A portion of the roads, as approved by the Ministry of Works and Utilities, to service the Club house and residential lots at a projected cost of \$4,000,000.00,;
- (g) As approved by BEC, BTC and the Ministry of Works and Utilities, a portion of the underground utility cables, wires, pipes and conduits for the supply of electricity, water, cable TV and telephone throughout the Development site in accordance with the specifications and approval of the relevant public utility corporations and Government departments and agencies at a projected cost of \$2,000,000.00;
- (h) As approved by the BEST Commission and the Water and Sewerage Corporation, a private Eighteen (18) hole championship golf course at a projected cost of \$12,000,000.00.

1.4. Within twelve (12) months of the signing of this agreement and the receipt of requisite approvals, the Developers and each of them endeavor to have made substantial progress in the clearing of the site, made substantial progress in the initial construction of both the marina and the golf course, and begun construction of the villa hotel. It is

anticipated that the Developers will expend in excess of Ten million dollars (\$10,000,000.00) in the development and marketing of the project during its first year. Within Thirty-six (36) months of the signing of this agreement and the receipt of requisite approvals the Developer endeavors to have completed construction of the marina, the commercial services center, and a portion of the employee housing, and to have opened the villa hotel. It is anticipated that the Developers will expend in excess of Twenty million dollars (\$20,000,000.00) in the development and marketing of the project during its first Three (3) years. It is projected that (a) at the completion of the infrastructure (including the marina and the golf course), the total investment by Developer will be in excess of One Hundred Seventy-Five Million Dollars (\$175,000,000.00), and (b) after construction of the residences by the lot owners, the total investment for the entire Development will be in excess of Five Hundred Million Dollars (\$500,000,000.00).

2. ENVIRONMENTAL PROTECTION

- 2.1 The Developers have submitted at their own expense an Environmental Impact Assessment ("EIA") of the Development in accordance with the

requirements of the **BEST COMMISSION**. The Developers will also pay, if required, for an expert nominated by the BEST COMMISSION and/or the Government to assist with the evaluation of the EIA and the Developer will also pay for monitoring of the Development by all relevant government agencies during construction, commissioning and decommissioning.

2.2 The Developers undertake to maintain and preserve the environmental and ecological integrity of the Development in accordance with the conditions and obligations stipulated by the BEST COMMISSION and/or the Minister responsible for environmental services; and in the event of any failure of such undertaking, the Developers, and each of them, shall be responsible and liable for remedying, correcting and mitigating the consequences rising from out of the failure of such undertaking. The Developer will develop the Development subject to the favorable review of the EIA in compliance with the highest environmental standards and all conditions attached to approvals granted for the Development. The EIA and Environmental Management Plan ("EMP") should be completed prior to commencement of construction. Any work undertaken by the Developer in violation of the EIA and the EMP without the approval of BEST shall be stopped.

2.3 The Foundation and the Government shall agree, pursuant to the Preserve Lease, that all of the Crown Land under the Preserve Lease, together with a portion of the Private Land, shall be designated as a preserve ("the Preserve") and the Government will enter into a long term lease with the Foundation on nominal terms in respect of approximately Sixty-six (66) total acres as more particularly described on Plan E and Plan F to be restricted for preservation, research and educational purposes it being understood that the Preserve is not to be developed in the future, other than to include walking trails and boat observation sites throughout the Preserve, which trails shall be approved by the Ministry of Health, in consultation with The Bahamas National Trust, The University of Miami and The Institute for Marine Science at The College of The Bahamas and built by the Developers/Foundation at their own expense and be open to the public and members of the community. The nature and functions of the Foundation are to be mutually agreed and financed by the Developer.

3. EMPLOYMENT OF BAHAMIANS AND NON-BAHAMIANS
aAND RELATED MATTERS NON-BAHAMIAN PERSONNEL

3.1 It is acknowledged by the Government that the Developers, either directly or through a designated wholly-owned subsidiary or affiliate, may act as

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Project Manager for the supervision and execution of the Development. Further, it is acknowledged by the Developers that contracting with Bahamians in connection with the construction of the Development and in the operation of the Resort is of paramount importance to the Government. The Developers accordingly undertake that during the peak of the construction of the Development they shall require and employ up to approximately Two hundred (200) Bahamian citizens in various classifications. The Developers further undertake that, post-completion, they will require and employ up to approximately Two hundred (200) Bahamian citizens in the management, operation and maintenance of the Development.

- 3.2 The Developers shall make every effort to fill all jobs with Bahamian citizens. The Government recognizes however that some of the jobs may require special skills and expertise not readily available in The Bahamas and, in such cases, which cannot be specifically identified this time, the Developers will seek the Government's grant of work permits to qualified persons on a short term basis or on a longer term depending on the job classification and the ability of the Developers to find and or train suitable candidates for such jobs. The Government agrees to facilitate on an expedited basis the grant of work permits for jobs requiring special skills and expertise as shall be required by the

Development, including, but not necessarily limited to, managers in connection with the provision of services in connection with the Development (the golf club, the hotel / inn / villas, the marina, human resources, food and beverage, sales and marketing and development), an investor representative, PGA golf professionals and a golf course superintendent **PROVIDED ALWAYS** that the grant of such work permits shall be subject to the regulations and procedures prescribed by the Immigration Act and shall be predicated on the unavailability in the Bahamian workforce from time to time of persons qualified and available for the relevant jobs, positions or assignments. The Developers and each of them undertake to ensure that employment and entrepreneurial opportunities for Bahamians are adequately publicized within The Bahamas in accordance with customary methods and practices.

- 3.3 The Developers further undertake to put in place and sustain during the course of the Development multi-disciplinary on-the-job technical skills-training and apprenticeship programs designed to equip its Bahamian employees with the level of technical proficiency necessary to ensure that its employees will meet the very high standards that the Developers have always maintained in all of its other facilities. In this regard the Developers also undertake to (a) liaise with The Bahamas Technical and Vocational Institute with respect to skills training, (b) provide training for its Bahamian employees at such other projects and developments of the Developers or affiliated companies of the Developers, (c) liaise with the

Bahamian National Youth Program and engaging youth from that Program and (d) liaise with the School of Hospitality at The College of the Bahamas.

4. **MATERIALS SUPPLIES AND SERVICES**

- 4.1. The Developers and each of them agree to purchase locally materials and supplies required in connection with the construction and completion of the Development and subsequent operation and maintenance thereof, provided the same are readily available when required and at reasonable/competitive prices.
- 4.2 The Developers and each of them agree to enter into negotiations with the Ministry of Works and Utilities, The Bahamas Telecommunications Company Limited ("BTC"), and The Bahamas Electricity Corporation ("BEC") to achieve mutually acceptable arrangements for the provision of efficient telecommunications and electricity services in a timely manner.
- 4.3. The Developers and each of them will use Bahamian art in the décor of the hotel / inn / villas, Club and Restaurant constructed on the Development site.

4.4. The Developers and each of them will use and encourage the use and purchase of local handicraft and other local goods and services wherever possible.

4.5. The Developers and each of them will make physical provisions/facilities in a designated area of the Development Site for Bahamian craft vendors to market their goods.

4.5. In order to provide more adequately for the security of the Development and the local community as a result of the Development, the Developers and each of them will liaise with the Government through the Ministry of National Security and the Commissioner of Police and to co-operate in the training and structuring of the security services at the Development.

5. THE GOVERNMENT

5.1 The Government hereby agrees in principle with the Development described herein and set out in the General Development Plan attached hereto subject to the requisite approvals of the relevant government agencies and as herein provided.

5.2. The Government agrees not to permit the Remaining Treasury Land to be used for any purpose that may have a negative effect on the Development.

6. **DEVELOPMENT PERMISSIONS AND CONCESSIONS**

6.1 The Government, in consideration of the benefit that will accrue from the Development to The Bahamas generally and hereby agrees to grant to the Developers in respect of the Development:

- (i) The Lease Agreements;
- (ii) All concessions and exemptions available under the Hotels Encouragement Act ("HEA") for new hotels constructed in the Family Islands including but not limited to the exemption from Customs duties and Stamp Tax on a pre-approved basis as provided for in the HEA; the items subject to such relief shall specifically include construction materials, furniture, fixtures and equipment required for construction, operation and equipping of all aspects of the Development related to the hotel / inn / villas, marina and the infrastructure necessary for such

components of the Development, to the extent such development qualifies under the HEA; exemption from Real Property Tax as provided for in the HEA.

6.2 As it relates to the portions of the Development which qualifies for benefits under the HEA, the Developers and each of them shall be permitted to import and export from the said Commonwealth all plant machinery vehicles and equipment required for and in connection with the construction, operation and completion of the Development subject to a bond being given by the Developers to ensure the export of such plant machinery vehicles and equipment on the completion of the Development.

6.3 The Government agrees to the Developers entering into negotiations with the Ministry of Works and Utilities and the Water and Sewerage Corporation for mutually acceptable arrangements for the production of and supply of fresh water to the Development including the grant of a franchise agreement ("the Franchise Agreement") from the Minister of Works and Utilities and the Water and Sewerage Corporation to produce water by means of desalination (reverse osmosis) and to sell

the same under terms and conditions contained in the Franchise Agreement to property owners in the Development. The Developers wish to be granted permission to extract and collect within the Development site fresh, brackish or sea water to be used (after appropriate blending with the desalinated water produced by the Developers) in maintaining (*inter alia*) the Development **PROVIDED** that nothing shall be done by the Developers in respect of the extraction of such water which might lead to the permanent destruction or depletion of such underground water reserves. Upon the expiration of the Franchise Agreement, the Minister of Works and Utilities and the Water and Sewerage Corporation will use its best endeavors to provide for continued provision of such services to the Development upon mutually agreeable terms that are consistent with the rates and terms for other residents of the Family Islands. The Government shall provide Developers with separate written confirmation of such obligation so that Developers may comply with any disclosure requirements required of it in connection with the Development.

6.4 Where approval is required under the provisions of the International Persons Landholding Act or any replacement/modification thereof, the Government will expedite the approval and permitting of purchasers in connection with the sale of lots in the Development to non-Bahamian purchasers who comply with the International Persons Landholding Act.

6.5 The Government will provide for the supply to and connection at the Southeastern boundary of the Development site of electricity and fibre optic telephone supply/service in keeping with the size and needs of the Development at full build-out with timeframes and terms to be mutually agreed with the Ministry of Works and Utilities, BTC and The Bahamas Electricity Corporation. Such supply and connection to be completed within a mutually agreeable time period after notice is given by the Developers to the Government and the relevant public utility corporations. In the event that the Government does not complete such supply and connection within such mutually agreed upon time , Developers shall have the right to perform and complete such work, at its own expense, such work to be approved by the BEC and any other relevant government agencies;