

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO. 13 OF 2019



IN THE MATTER of an Application by Cayman Shores Development Ltd. and Palm Sunshine Ltd. under section 140(1) of the Registered Land Law (Revised) (the Law), or alternatively, under section 96 of the Law

AND

IN THE MATTER of an Application by Cayman Shores Development Ltd. and Palm Sunshine Ltd, pursuant to section 96 of the Law, that certain rights under certain restrictive agreements registered against Block 12D Parcel 108 and Block 12C Parcel 27 be wholly or partially extinguished or modified

BETWEEN:

- (1) CAYMAN SHORES DEVELOPMENT LTD.
- (2) PALM SUNSHINE LTD.

PLAINTIFFS

AND:

- (1) THE REGISTRAR OF LANDS
- (2) THE PROPRIETORS, STRATA PLAN NO. 79  
(known as LIONS COURT)
- (3) THE PROPRIETORS, STRATA PLAN NO. 147  
(known as REGENTS COURT)
- (4) THE PROPRIETORS, STRATA PLAN NO. 215  
(known as KINGS COURT)
- (5) THE BRITANNIA PROPRIETORS  
(being the persons whose names and addresses are set out in Section B of Schedule 1 to the Originating Summons)

DEFENDANTS



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AMENDED ORIGINATING SUMMONS

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To: The Registrar of Lands  
Lands & Survey Department  
Government Administration Building  
133 Elgin Road  
George Town  
Grand Cayman  
Cayman Islands

**LET THE DEFENDANTS** within fourteen (14) days after service of this Summons upon each of them, counting the day of service, or such other period as prescribed by the Court, return the accompanying Acknowledgement of Service to the Courts Office, P.O. Box 495 GT, George Town, Grand Cayman.

By this Originating Summons, which is issued on the application of Cayman Shores Development Ltd., (CSDL), and Palm Sunshine Ltd., (PSL), both of P.O. Box 31363, Suite 8203, 89 Nexus Way, Camana Bay, Grand Cayman KY1- 1206, Cayman Islands, (together the **Plaintiffs**), seek:

1. Pursuant to section 140(1) of the Law, the following Orders:

- (1) That the land register for the land registered as Block 12D Parcel 108 be rectified, by cancelling and deleting from the Incumbrances Section, the registration of the Restrictive Agreements, the particulars of which are set out in **Schedule 2** to the Originating Summons.
- (2) That the land register for the land registered as Block 12C Parcel 27 be rectified, by cancelling and deleting from the Incumbrances Section, the registration of the Restrictive Agreements, the particulars of which are set out in **Schedule 2** to the Originating Summons.
- (3) That the Appurtenances Section of each of the land registers listed in Schedule 2 to the Originating Summons as benefiting from the Restrictive Agreements be rectified to cancel or delete the registration of, or reference to, any rights noted as arising from or by virtue of the registration of the Restrictive Agreements.

2. Alternatively, pursuant to section 96 of the Law, an order that the Tennis Court Rights purportedly granted under the Restrictive Agreements, be wholly or partially extinguished or modified on the grounds that:
- (a) the Tennis Court Rights are obsolete by virtue of changes in the character of the lands registered as Block 12D Parcel 108 and Block 12C Parcel 27 (together the Properties), or of the neighborhood;
  - (b) the continued existence of the Tennis Court Rights impedes the reasonable user of the Properties without securing any practical benefits to other persons; or
  - (c) the extinguishment or modification of the Tennis Court Rights will not injure the persons entitled to benefit of the Restrictive Agreements.
23. That this Honourable Court make such further or consequential orders or give such directions as to this Honourable Court appear appropriate.

**AND TAKE NOTICE** that the grounds of this Application are as follows:

1. CSDL is the registered proprietor of the land registered as Block 12D Parcel 108. PSL is the registered proprietor of the land registered as Block 12C Parcel 27. (Block 12 D Parcel 108 and Block 12C 27 are together referred to as the **Properties**.)
2. The Properties are each subject to a restrictive agreement (the **Restriction**) registered on the aforementioned title in favor of the Defendants.
3. The legal source of the Restriction is, in each case, an instrument dated 19 February 1997 (the **Instrument**) under the Registered Land Law made between Cayman Hotel & Golf Inc., a previous owner of the Properties and Ellesmere Britannia Ltd, the original developer of both the Properties and the lands owned by the Defendants.
4. Under the Instrument there is granted for a peppercorn, various rights known therein as the Beach Club Rights, the Golf Playing Rights and the Tennis Court Rights (together, the **Rights**).

5. The Rights are defined as follows:
- 5.1. *Beach Club Rights: .... the non-exclusive right together with Cayman Hotel its agents, servants, licensees, invitees, the guests of the Hyatt Hotel and other Britannia condominium owners to enter upon the ... [Property] ... and enjoy the restaurant, beach and watersports facilities situated thereon upon payment of any fees, charges, or costs in force from time to time in respect thereof including but not limited to any fees payable by virtue of any restrictive agreement.*
- 5.2. *Golf Playing Rights: .... the right on a non-exclusive pre-reservation basis to play golf on the Britannia golf course ... without payment of green fees, or other dues save for cart fees established from time to time subject to such rules as Cayman Hotel shall stipulate from time to time as to priorities in booking tee times, availability of the course for play or otherwise in their absolute discretion ...*
- 5.3. *Tennis Court Rights ... the non-exclusive right to play tennis on the Hyatt Hotel tennis courts situated on Parcel 24 upon payment of the current established fee. Hyatt Hotel guests shall have priority over the lot owner in respect of court reservations but the lot owner shall have priority in reservation of court time over non-proprietors of strata lots and freehold lots save for such hotel guests aforesaid.*
6. The Plaintiffs are the successors of the original covenantor. The Defendants are or are successors to, the original covenantees.
7. The legal rule applicable to covenants registered under the Registered Land Law prior to 1 June 2017<sup>1</sup>, is that the burden of a covenant - the obligation in this case, on the part of the Plaintiffs, as successor to then original covenantor, to observe such covenant - does not bind successors in title of freehold land where a covenant is positive in nature: it will only do so where the covenant is negative in nature.
8. The first basis of this application is the Plaintiffs' contention that the Rights are positive in nature. They therefore do not bind the Plaintiffs.

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<sup>1</sup> The effective date of The Registered Land (Amendment) Law, 2017, by virtue of The Registered Land (Amendment) Law, 2017 (Commencement) Order, 2017

9. Accordingly, the Rights ought never to have been registered as encumbrances. The Plaintiffs therefore makes this application also under section 140 of the Registered Land Law for Rectification of the register.
10. Alternatively, for the reasons set out below, the Plaintiffs seek an order pursuant to section 96 of the Law, that the Tennis Court Rights as defined in the Restrictive Agreements be wholly or partially discharged or modified.
11. The facilities which are the subject of the Rights were severely damaged by Hurricane Ivan in 2004, prior CSDL's acquisition of the Properties. Although the Beach Suites, located on Block 12C Parcel 27, was restored and resumed operation, the Main Hotel, situated on Block 12D Parcel 108, on which the tennis courts, the subject of the Tennis Rights, were situated, were never restored and since 2004 have remained in a derelict state.
12. Between 2005 and 2007 the Cayman Islands government constructed a four-lane extension of the Esterley Tibbetts Highway directly through the tennis courts on the Main Resort, severing one portion of the Main Resort from the remainder of the Main Resort, and severing the Main Resort from the Beach Suites. The tennis courts were never repaired nor restored, have never been used since the Main Hotel was damaged by Hurricane Ivan, and have not existed since they were demolished for the construction of the Esterley Tibbetts Highway extension between 2005 and 2007.
13. Accordingly, by virtue of the changes to the Properties and the neighbourhood as a result of the damage caused by Hurricane Ivan and the destruction of the tennis courts by the Esterley Tibbetts Highway extension the Tennis Rights have become obsolete.
14. Further, or alternatively, the continued existence of the Tennis Court Rights impedes the reasonable user of the Properties without securing any practical benefits to other persons.
15. And further, or alternatively, the extinguishment or modification of the Tennis Court Rights will not injure the persons entitled to benefit of the Restrictive Agreements.

AND the Plaintiffs Claim:

1. A declaration that as a matter of law the Rights have the status of rights under a contractual license within the meaning of the Registered Land Law section 98; and/or
2. A declaration that as a result and/or in any event, the Rights do not bind the Plaintiffs;
3. A declaration that the Rights ought never to have been registered as encumbrances and Rectification of the register under section 140 of the Registered Land Law.
4. Alternatively, order that the Tennis Court Rights, be wholly or partially extinguished or modified.
5. Such further or consequential orders as to this court seem just.

Jonathan Seitler QC  
Wilberforce Chambers  
Lincoln's Inn  
London

Hector Robinson QC  
Mourant Ozannes

If any of the Defendants does not acknowledge service, such judgment may be given or order made against or in relation to them as the Court may think just and expedient.

Dated the 25<sup>th</sup> day of January 2019

Amended the 12<sup>th</sup> day of February 2019



**MOURANT OZANNES**  
Attorneys-at-Law for the Plaintiffs

THIS ORIGINATING SUMMONS was filed by Mourant Ozannes, Attorneys-at-Law for the Plaintiff herein whose address for service and correspondence is that of its said Attorneys-at-Law, 4<sup>th</sup> Floor, 94 Solaris Avenue, Camana Bay, P.O. Box 1348 Grand Cayman KY1-1108.

## NOTES

- (1) This Originating Summons may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months ) beginning with the above date unless renewed by order of the Court.
  
- (2) If any of the Defendants do not attend personally or by their attorney at the time and place of the hearing of the Originating Summons, such order will be made as the Court may think just and expedient.

## IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS

The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman

*Notes for Guidance*

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Originating Summons*)".
4. Where the Defendant is a **FIRM** and an attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
7. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

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AND

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BETWEEN: (1) CAYMAN SHORES DEVELOPMENT LTD.  
(2) PALM SUNSHINE LTD.

PLAINTIFFS

AND: (1) THE REGISTRAR OF LANDS  
(2) THE PROPRIETORS, STRATA PLAN NO. 79  
(known as LION'S COURT)  
(3) THE PROPRIETORS, STRATA PLAN NO. 147  
(known as REGENT'S COURT)  
(4) THE PROPRIETORS, STRATA PLAN NO. 215  
(known as KING'S COURT)  
(5) THE BRITANNIA PROPRIETORS  
(being the persons whose names and addresses are set out in  
Schedule 1 to the Originating Summons)

DEFENDANTS

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ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS

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If you intend to instruct an Attorney to act for you, give them this form IMMEDIATELY.

IMPORTANT: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
 yes  no

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Service of the Originating Summons is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

Address for service:

**Notes on address for service:**

*Attorneys: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.*

*Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.*

*Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.*

Messrs. Mourant Ozannes  
Attorneys-at-Law  
94 Solaris Avenue  
Camana Bay  
P.O. Box 1348  
Grand Cayman KY1-1108

*Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.*

[Empty box for Defendant's Attorney Indorsement]

# **SCHEDULE 1**

**SCHEDULE 1**

**A: STRATA CORPORATIONS**

Item	Block and Parcel No.	Owner of the benefiting land	Legal Representation	Address as per Land Register
1.	12D 25	Strata Plan No 79: Lions Court	Bodden & Bodden Caribbean Plaza 2 <sup>nd</sup> floor North Building 878 West Bay Road PO Box 10235 KY1-1003	PO Box 44 Hell Grand Cayman
2.	12D 40	Strata Plan No 147: Regentis Court	Bodden & Bodden (address as above)	PO Box 1689 George Town Grand Cayman
3.	12D 80	Strata Plan No 215: Kings Court	Bodden & Bodden (address as above)	PO Box 871 KY1-1103 Grand Cayman

**B: PROPRIETORS NOT WITHIN THE STRATA CORPORATIONS (the "BRITANNIA PROPRIETORS")**

Item	Block and Parcel No.	Owner of the benefiting land	Member of BEHOAL	Legal Representation (if any)	Address as per Land Register	Alternative address provided
4.	12D 42	WHITE DOVE INTERNATIONAL LTD c/o	No	Nelson and Co Solicitors 31 The Strand, Canal Point Drive P.O. Box 2075 KY1-1105	P.O. Box 10636, Grand Cayman KY1-1006	
5.	12D 43	CORNERSTONE DEVELOPMENT LTD.	Yes		P.O. Box 61 Grand Cayman KY1-1102	
6.	12D 44	CORNERSTONE DEVELOPMENT LTD.	Yes		P.O. Box 61 Grand Cayman KY1-1102	
7.	12D 45	ELIZABETH DELANEY	Yes		c/o Scotia Bank P.O. Box 89, Grand Cayman KY1-1107, Cayman Islands	Le Manoir La Villette St. Martins Guernsey GY4 6QQ
8.	12D 46	JOHN DELANEY (DECD)	Yes		Le Manoir La Villette St. Martins Guernsey GY4 6QQ	
9.	12D 50	SHEILA MARIE ARONFIELD	Yes		47 Fortun Lane, The Terraces, Apt. S312 Camauna Bay, P.O. Box 222 Grand Cayman KY1-9006	
10.	12D 55	WHITE DOVE INTERNATIONAL LTD	Yes	Nelson and Co Solicitors (address as above)	P.O. Box 10636 Grand Cayman KY1-1006,	
11.	12D 56	FILBERT HOLDINGS III LTD.	Yes		P.O. BOX 309, George Town Grand Cayman	

# SCHEDULE 1

Item	Block and Parcel No.	Owner of the benefiting land	Member of BHOAL	Legal Representation (if any)	Address as per Land Register	Alternative address provided
12.	12D 57	GARRY M. SOUTHWAY & KAREN A. SOUTHWAY	Yes		PO Box 10585 Grand Cayman KY1-1005	
13.	12D 58	KATHERINE DILBERT, TIMOTHY DILBERT	Yes		PO Box 2056 Grand Cayman KY1-1105	4621 Bellevue Dr., Vancouver, British Columbia, Canada, V6R 1E7
14.	12D 59	GERALD CARLSON SMITH AND CRAIG RICHARD SMITH	Yes		P.O. Box 1075 Grand Cayman, KY1-1102	
15.	12D 60	ABIGAIL CECELIA FELICITY GODDARD	Yes		Suite 716, 10 Market Street, Cannana Bay, Grand Cayman KY1-9006, Grand Cayman	
16.	12D 61	JONATHAN GREEN	Yes		P.O. Box 309, KY1-1104 George Town, Grand Cayman	
17.	12D 62	MICHAEL LAUKENSON	Yes		P.O. Box 11438 Grand Cayman, KY1-1009	
18.	12D 63	DEREK DE SILVA AND MARGARET DE SILVA	No		13 Stratford Court Windsurf Road East Westmorings, Port of Spain Trinidad, West Indies	P.O. Box 32348 Grand Cayman KY1-1209 Cayman Islands
19.	12D 64	SUSAN DE SILVA, MARGARET MARY DE SILVA & DEREK MICHAEL DE SILVA	Yes		P.O. Box 1775, KY1-1109 George Town, Grand Cayman	
20.	12D 65	BRITANNIA ESTATES HOME OWNERS ASSOCIATION LTD		Bodden & Bodden (address as above)	c/o PO Box 1698 George Town	
21.	12D 70	HDS HOLDINGS LTD.	Yes		P.O. Box 335, Grand Cayman, KY1-1301	
22.	12D 74 REM 1	BRITANNIA ESTATES HOME OWNERS ASSOCIATION LTD		Bodden & Bodden (address as above)	c/o PO Box 1698 George Town	
23.	12D 77	BRITANNIA ESTATES HOME OWNERS ASSOCIATION LTD		Bodden & Bodden (address as above)		
24.	12D 92	ELIZABETH DELANEY, JOHN DELANEY	Yes		c/o Scotia Bank P.O. Box 309 Grand Cayman, KY1-1104	Le Manoir La Vilette St. Martin's Guernsey GY4 6QQ
25.	12D 99	MARTYN BURKE AND NORA BURKE	No	Clarton Solicitors Elizabeth House 13-19 Queen Street Leeds LS1 2TW	P.O. Box 30497, Grand Cayman, KY1-1202	

**SCHEDULE 1**

Item	Block and Parcel No.	Owner of the benefiting land	Member of BEEHOAL	Legal Representation (if any)	Address as per Land Register	Alternative address provided
26.	12D 100	MARTYN BURKE AND NORA BURKE	No	Clarion Solicitors (address as above)	P.O. Box 30497 Grand Cayman, KY1-1202	
27.	12D 105	KIRSTEN L. LOMAS, IAN LOMAS	No		P.O. Box 510, Grand Cayman KY1-1106, Cayman Islands	Hickleton House Manor Farm Hickleton Road Barnburgh, Doncaster
28.	12D 106	BRYAN MURPHY AND KATHLEEN MURPHY	No		P.O. Box 30537 SMB Grand Cayman	

# **SCHEDULE 2**

**SCHEDULE 2**

8025896/7467457/1

**Particulars of Restrictive Agreements**

BLOCK & PARCEL NUMBER	Parties to the Restrictive Agreement	At the burden of (Block & parcel)	Instrument No.	Date Restrictive Agreement entered into	Date Restrictive Agreement was registered	Recitals	Who can exercise the rights?	Operative Provisions	Comments
1.	Strata Plan No. 79 Block 12D Parcel 25	12D Parcel 23 12 D Parcel 24 12C Parcel 27	3061/92 3062/92 3063/92	28 May 1992 (re all three parcels)	2 June 1992 (re all three parcels)	Recital 6: "Ellesmere and Cayman Hotel now wish to register covenants protecting such rights in favour of all present and future owners as incumbrances against the lands on which the Hyatt Tennis Courts, the Beach Club facility and the Golf Course are situated with the intent that such Rights shall become a registered appurtenance in the title to the common property held by The Proprietors."	Beach Club Rights - Cayman Hotel its agents, servants, licensees, invitees, the guests of the Hyatt Hotel and other Britannia condominium owners have non-exclusive rights. (Para 1 - definitions)  Golf Playing Rights - the owner personally or by an occupant of a strata lot upon written notice to Cayman Hotel; and - the owner / occupier's spouse, and no more than two of the owner/occupier's children under the age of 18 years. - where the owner/occupier is a company or partnership, no more than two individuals nominated by the owner/occupier in writing. (para. 1 - definitions)  Tennis Court Rights - strata lot proprietors. Same as row 1 above	Para. 2 of the Agreement - Consideration - Cayman Hotel, in consideration of US\$1.00 paid to it by Ellesmere...to the intent and so as to bind...parcels 23, 24 and 27 for the benefit of the Proprietors hereby grants Beach Club Rights, Golf Playing Rights and Tennis Court Rights to all such proprietors upon the terms and conditions herein.	Instrument No. 3061/92 and 3062/92 refer to Block 12D Parcel 39 but no restrictive agreement.  No terms and conditions are contained in the agreement attached to the instrument.
2.	Strata Plan no. 147 Block 12D Parcel 40	12D Parcel 23 12 D Parcel 24 12C Parcel 27	3061/92 3062/92	Same as row 1 above	Same as row 1 above	Same as row 1 above	Same as row 1 above	As above	
3.	Block 12D Parcel 42	12D Parcel 24 12D Parcel 41 12C Parcel 27	4152 and 4154/96 4153/96	Undated but circa 1996 (all three agreements)	21 June 1996	Recital 6 - Ellesmere and Cayman Hotel now wish to register covenants protecting such rights in favour of all present and future owner of the Phase III parcels as incumbrances against the lands on which the Hyatt Tennis Courts, the Beach Club facility and the Golf Course are situated with the intent that such rights shall become a registered appurtenance in the title to all such parcels held by the proprietors in that Phase.	The Beach Club Rights are same as row 1 above except that Golf Playing Rights may be exercised by the owner personally or by an occupant of Parcel 42, and the Tennis Court Rights belong to the lot owner.	Para. 2: "Cayman Hotel, in consideration of a deposit... Paid to it by Ellesmere...to the intent and so as to bind...parcels 27, 41 and 24 for the benefit of Ellesmere and its successors in title and assigns hereby grants Beach Club Rights, Golf Playing Rights and Tennis Court Rights	

**SCHEDULE 2**

8025896/7467457/1

BLOCK & PARCEL NUMBER	Parties to the Restrictive Agreement	At the burden of (Block & parcel)	Instrument No.	Date Restrictive Agreement was entered into	Date Restrictive Agreement was registered	Recitals	Who can exercise the rights?	Operative Provisions	Comments
4.	Block 12D Parcel 43 Same as row 4 above	12D Parcel 24 12D Parcel 79 12C Parcel 27	1868/97 1874/97 1871/97	19 February 1997	7 March 1997	Same as row 4 above	Same as row 1 above, except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 43, and the Tennis Court Rights belong to the lot owner.	Respectively to Ellesmere, upon the terms and conditions herein contained." Same as row 4	
5.	Block 12D Parcel 44 Same as row 4 above	12D Parcel 24 12D Parcel 79 12C Parcel 27	8667/97 8668/97 8666/97	13 November 1997	19 November 1997	Same as row 4 above	Same as row 1 above, except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 46, and the Tennis Court Rights belong to the lot owner.	Same as row 4	
6.	Block 12D Parcel 45 Same as row 4 above	12D Parcel 24 12D Parcel 79 12C Parcel 27	7316/97 7317/97 7315/97	30 July 1997	30 September 1997	Same as row 4 above	Same as row 1 above, except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 45, and the Tennis Court Rights belong to the lot owner.	Same as row 4	
7.	Block 12D Parcel 46 Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	5118/95 5116/95 5117/95	16 August 1995	7 September 1995	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 46, and the Tennis Court Rights belong to the lot owner.	Same as row 4	
8.	Block 12D Parcel 47 Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	7415/94 7418/94 7421/94	8 December 1994	15 December 1994	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 47, and the Tennis Court Rights belong to the lot owner.	Same as row 4	No terms and conditions are contained in the agreement.
9.	Block 12D Parcel 48 Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	7416/94 7420/94 7422/94	8 December 1994	8 December 1994	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 48, and the Tennis Court Rights belong to the lot owner.	Same as row 4	
10.	Block 12D Parcel 49 Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	7417/94 7419/94 7423/94	8 December 1994	8 December 1994	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 49, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	
11.	Block 12D Parcel 50 Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	669/95 670/96 671/96	26 January 1996	1 February 1996	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 50, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	
12.	Block 12D Parcel 51 Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	306/95 310/95 308/95	30 November 1994 (the agreement for parcel 27 is undated)	18 January 1995	Same as row 4 above	The Beach Club Rights are same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 51, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	Block 12D parcel 51, is now a closed parcel.

**SCHEDULE 2**

8025896/74577457/1

BLOCK & PARCEL NUMBER	Parties to the Restrictive Agreement	At the burden of (Block & parcel)	Instrument No.	Date Restrictive Agreement was entered into	Date Restrictive Agreement was registered	Recitals	Who can exercise the rights?	Operative Provisions	Comments
13. Block 12D Parcel 52	Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	307/95 314/95 309/95	30 November 1994	18 January 1995	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 52, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	Parcel 52 is now a closed parcel
14. Block 12D Parcel 53	Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	4859/96 4860/96 4862/96	Undated	17 July 1996	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 53, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	Parcel 53 is now a closed parcel
15. Block 12D Parcel 55	Same as row 4 above	12D Parcel 24 12D Parcel 79 12C Parcel 27	1869/97 1876/97 1873/97	19 February 1997	7 March 1997	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 55, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	Restrictive agreement refers to parcel 43
16. Block 12D Parcel 56	Same as row 4 above	12D Parcel 24 12D Parcel 79 79REMI 12C Parcel 27	4722/00 4723/00 4724/00	25 April 2000	12 June 2009	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 55, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	12D 79REM 1 is closed
17. Block 12D Parcel 57	Same as row 4 above	12D Parcel 24 12D Parcel 79	1682/97 1684/97 1683/97	17 February 1997	3 March 1997	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 57, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	Does not appear to have Beach Club Rights (no restrictive agreement relating to 12C Parcel 27)
18. Block 12D Parcel 58	Same as row 4 above	12D Parcel 24 12D Parcel 79 12C Parcel 27	1816/97 1818/97 1817/97	27 February 1997	6 March 1997	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 58, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	
19. Block 12D Parcel 59	Same as row 4 above	12D Parcel 24 12D Parcel 79 12C Parcel 27	1821/97 1823/97 1822/97	27 February 1997	6 March 1997	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 59, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	
20. Block 12D Parcel 60	Same as row 4 above	12D Parcel 24 12D Parcel 79 12C Parcel 27	2686/97 2687/97 2685/97	Undated (both restrictive agreements) (but circa March 1997)	Undated	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 78, and the Tennis Court Rights belong to the lot owner.		
21. Block 12D Parcel 61	Same as row 4 above	12D Parcel 24 12D Parcel 41 12C Parcel 27	6267/95 6275/95 6266/95	14 September 1995 16 August 1995 (12C Parcel 27)	3 November 1995	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 61, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	

**SCHEDULE 2**

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BLOCK & PARCEL NUMBER	Parties to the Restrictive Agreement	At the burden of (Block & parcel)	Instrument No.	Date Restrictive Agreement was entered into	Date Restrictive Agreement was registered	Recitals	Who can exercise the rights?	Operative Provisions	Comments
22. Block 12D Parcel 62	Same as row 4 above	12D Parcel 24 12d Parcel 79 12C Parcel 27	5877/97 5878/97 5876/97	17 July 1997 (agreement for Parcel 27 is undated)	5 August 1997	Same as row 4 above	The Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 62, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	
23. Block 12D Parcel 63	Same as row 4 above	12D Parcel 24 12 Parcel 79 12C Parcel 27	1870/97 1875/97 1872/97	19 February 1997	7 March 1997	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 63, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	
24. Block 12D Parcel 64	Same as row 4 above	Block 12D Parcel 79REM1 12C Parcel 27	9280/01 9279/01	Undated (circa 2001)	27 December 2001	Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 64, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	
25. Strata Plan 215 Block 12D Parcel 80	Same as row 4 above	12D Parcel 24 12D Parcel 79	2007/97 2008/97 2009/97	7 March 1997	13 March 1997	Recital 6 - Same as row 4 above  Recital 8: <i>"Phase IV is being developed on parcel 80 in Block 12D of the West Bay Beach South Registration Section of Grand Cayman in various stages and in respect of which Ellesmere has caused to be registered a Strata Plan under the Strata Titles Registration Law (1996 Revision) such plan being numbered 215. Upon completion of the final stage parcel 80 will become registered in the name of the Proprietors as their Common Property and as successors in title to Ellesmere."</i>  <i>"The Proprietors" means the Proprietors of Strata Plan No. 215 from time to time collectively and/or individually including their successors in title." (See the definition section of the restrictive agreement)</i>	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or the owner personally or by an occupant nominated by an owner of a strata lot; and the Tennis Court Rights belong to the lot owner.	Block 12 D Parcel 80 was previously Parcel 73.  This is now Strata Plan 215 which includes H1 to H46).  No instrument relating to a restriction on 12C Parcel 27	
26. Block 12 D Parcel 99	Ellesmere Britannia Ltd., and Cayman Hotel & Golf Inc.	12D Parcel 23 12 D Parcel 24	3061/92 3062/92	28 May 1992	2 June 1992	Recital 6: Ellesmere and Cayman Hotel now wish to register covenants protecting such rights in favour of	Same as row 1 above	As above	Block 12D Parcel 99 previously Parcel 39

**SCHEDULE 2**

8025896/7467457/1

BLOCK & PARCEL NUMBER	Parties to the Restrictive Agreement	At the burden of (Block & parcel)	Instrument No.	Date Restrictive Agreement was entered into	Date Restrictive Agreement was registered	Recitals	Who can exercise the rights?	Operative Provisions	Comments
Block 12D Parcel 100	Same as row 4 above	12C Parcel 27	4858/96 4861/96 4863/96	Undated	17 July 1996	all present and future owners as incumbances against the lands on which the Hyatt Tennis Courts, the Beach Club facility and the Golf Course are situated with the intent that such Rights shall become a registered appurtenance in the title to the common property held by The Proprietors and the absolute titles of freehold lot owners. Same as row 4 above	Same as row 1 above except that Golf Playing Rights may be exercised the owner personally or by an occupant of Parcel 78, and the Tennis Court Rights belong to the lot owner.	Same as row 4 above	There are two identical copies of the agreement relating to Block 12D Parcel 39.  Previously Block 12D Parcel 78 is now closed