



Maddocks

Date / /2007

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Letting Management Agreement

**The person specified in Item 1 of Schedule 1
and**

**The Resort Torquay (Management) Pty Ltd
ACN 112 254 216**

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Agreement

DATE / /2007

BETWEEN

The person specified in Item 1 of Schedule 1

(Owner)

AND

THE RESORT TORQUAY (MANAGEMENT) PTY LTD ACN 112 254 216
of 443 Auburn Road, Hawthorn, Vic 3122

(Manager)

RECITALS

- A. The Owner is or will be the registered proprietor of the Apartment which forms part of the Serviced Residences.
- B. The Owner wishes to receive a return on its investment by having the Apartment managed by the Manager in exchange for a fee.
- C. This Agreement sets out the terms on which the Owner appoints the Manager to manage, operate and market the Serviced Residences from the Opening Date.

THE PARTIES AGREE

1. DEFINITIONS

In this Agreement unless expressed or implied otherwise:

Accessible Suite means a one bedroom hotel suite with disability access.

Administration Fee has the same meaning given to that term in clause 9.2.

Agreement means this letting management agreement.

Apartment means the property described in item 4 of Schedule 1.

Business Day means any day which is not Saturday or Sunday or a public holiday in Melbourne, Australia.

Body Corporate means the body corporate created upon registration of plan of subdivision no. PS537642N.

Body Corporate Fees means fees payable to the Body Corporate in respect of the Owner's Apartment.

Branding Agreement means any agreement entered into by the Manager in respect of the branding of the Serviced Residences.

Commencement Date means the settlement date of the Owner's acquisition of the Apartment, which is the day of

CPI means the Consumer Price Index (All Groups) Melbourne as published by the Australian Bureau of Statistics or, in the event such publication ceases, such equivalent measure of the increase in cost of living as adopted by the business community in Australia.

Dual Key Apartment means an apartment comprising 2 bedrooms and 2 bathrooms which may be rented out as a 2 bedroom self contained apartment or divided and rented out separately as a One Bedroom Apartment and a hotel suite.

FF&E Costs means 3% of the Gross Income of Owners.

Fiscal Year means any period of 12 months commencing on 1 July and ending on 30 June except that the first Fiscal Year will commence on the Opening Date and end on the earlier of:

- (a) 30 June of the same year; and
- (b) determination of the Term

and the last Fiscal Year will end on the date of termination of the Term of this Agreement.

Force Majeure means events or occurrences such as:

- (a) war, revolution, insurrection, riot or invasion;
- (b) earthquake, aircraft damage, fire, cyclones, lightning, winds or other acts of God;
- (c) industrial relations problems and strikes affecting the Serviced Residences;
- (d) airport closure, airline strikes or airline industrial problems, tourist restrictions, or grounding of types of aircraft used to transport passengers domestically; or
- (e) any act of any Government or Government Agency that materially effects the cost and or viability of operating Serviced Residences in the Country.

Full Fiscal Year means a Fiscal Year commencing 1 July and expiring 30 June.

Furniture, Fixtures and Equipment or FF&E means all furniture, furnishings, fixtures, equipment (whether fixed or removable) located in or used in connection with the Serviced Residences and including but without limitation carpeting and wall covering, kitchens, bar and laundry equipment, material handling equipment, telephone and computer equipment, bathroom equipment, material handling equipment and other depreciable property or equipment which in the Manager's view should be regarded as Furniture Fixtures and Equipment.

Gross Income of an Owner means the sum of Rent received in respect of the Owner's Apartment and any other amount which the Manager reasonably determines to credit to the Owner's Current Account.

Management Fee has the same meaning given to that term in clause 9.1.

One Bedroom Apartment means an apartment comprising one bedroom and one bathroom with a separate living and dining area.

Operating Costs with respect to an Owner means the proportion of the following costs and expenses incurred by or on behalf of an Owner :

- (a) an allowance for doubtful accounts or bad debts, as the Manager reasonably determines in accordance with generally accepted accounting practices in the country;
- (b) audit and legal fees and the fees and associated costs and expenses of consultants appointed whether under this Agreement or otherwise;
- (c) the premiums payable in respect of all insurance policies taken out, maintained, or renewed in accordance with clause 11.1;
- (d) all expenses for the replacement of Operating Equipment;
- (e) all expenses for the replacement of Operating Supplies;
- (f) all advertising, promotion and public relations expenses;
- (g) all fees and charges payable to the Manager or a party to a Branding Agreement under this Agreement other than the Management Fee;
- (h) expenses incurred for heating, water usage (excluding connection availability taxes and charges), electricity, gas, oil, telephone and any other utilities;
- (i) commissions, fees and expenses paid to all sales agents and to credit card companies and reservations expenses;
- (j) repair and maintenance expenses incurred by the Manager under clause 12.1;
- (k) any direct or indirect taxes, duties and licenses whether in force at the present time or in the future payable on account of the operation of the Services Residences;
- (l) all costs and expenses incurred by the Manager, directly or indirectly in the management of the Serviced Residences including the cost of operating the Scheme;
- (m) housekeeping, cleaning and servicing charges which include the costs of cleaning and servicing the Apartment, laundry and changes of linen and towels;
- (n) all other expenses specified in any of the provisions of this Agreement to be an Operating Cost and any and all items of expenditure or costs which in the reasonable opinion of the Manager should be regarded as an operating expense including pursuant to clause 4.5; and
- (o) property rates, property taxes, rent, local government rates and charges and all other rates and taxes relating to the Apartment;

but regardless of anything in the foregoing to the contrary, does not include:

- (i) all depreciation costs of the Serviced Residences;
- (ii) hire purchase charges and or rental payments for financing of FF&E;
- (iii) interest charges on hire purchase or equipment financing of FF&E or any loans including loans referred to in (iv) below;
- (iv) principal repayments of loans for;

- A. the acquisition of the Serviced Residences; and
 - B. the cost of purchase and installation of FF&E; and
 - C. fees of consultants engaged for the acquisition of the Serviced Residences;
- (v) any other capital or other expenditure item which in the reasonable opinion of the Manager is not an operating expense and which is not expressly provided in sub-paragraphs (a) to (m) of this clause or under any other provision of this Agreement as an **Operating Cost**; and
 - (vi) any prior Fiscal Year operating losses.

Operating Equipment means towels, sheets, linen, crockery, cutlery, glassware, chinaware, silverware, kitchen utensils and uniforms and other equipment items or things used in the operation of the Serviced Residences other than FF&E.

Operating Supplies means all consumable supplies, materials, stock in trade used in the operation of the Serviced Residences, including food, beverages, fuel, guest amenities, cleaning materials, stationery, printed materials, soaps, shampoos, paper tissues and similar items.

Owners means all persons who own an apartment that forms part of the Serviced Residences and who have entered into an agreement similar to this Agreement with the Manager.

Owner Current Account means the account referred to in clause 7.1.

Peak Period means such period or periods which the Manager from time to time determines to be Peak Periods and advised as such to the Owners.

Pre-Opening Services means the activities to be undertaken by the Manager prior to the opening date of the Serviced Residences to the general public, including the staffing, marketing, advertising, operational planning, training and other procedural and related matters in respect of the Serviced Residences.

Prescribed Standard at any time means the quality of operation, (including the standard of the condition and presentation of the Serviced Residences, Operating Equipment, and the FF&E), management, maintenance, technology and service, in relation to the Serviced Residences subsisting at the Opening Date, and at no time during the Term is to be less than comparable international standard Serviced Residences of a three and a half star international standard, subject always to the Serviced Residences complying with the Branding Agreement and product standards related thereto.

Refurbishment means an upgrade of the Apartment to the Prescribed Standard including but not limited to recarpeting, repainting, retiling, replacement of furniture, light fittings, blinds or curtains.

Rent in respect of an Apartment means the amount received from letting the Apartment excluding amounts received from the supply of consumables, telecommunication services or other services purchased from the Manager.

Scheme means the managed investment scheme in which the Manager provides letting management services to the Owners.

Scheme Operating Account means the account referred to in clause 6.1.

Serviced Residences means the approximately 164 room keys representing the Dual Key Apartments, One Bedroom Apartments and Accessible Suites, public areas, back of house space and meeting space, including the heating system, air conditioning chillers and cooling towers and air conditioning system generally, all utility, plumbing and electrical equipment, walk-in freezers, cold rooms, air-handling units, water tanks, storage tanks, hot water boilers, steam generators, outdoor and indoor signs and glass and service elevators and or, where the context so admits, the business or businesses conducted or managed thereon by the Manager on behalf of the Owners pursuant to this Agreement and all subsequent additions and alterations thereto.

Term means the period commencing on the Commencement Date and expiring the midnight of the Termination Date, unless and until it is determined earlier or extended in accordance with the provisions of this Agreement.

Termination Date means 20 years from the Commencement Date, unless and until this Agreement is determined earlier or extended in accordance with the provisions of this Agreement.

References in this Agreement to any clause is a reference to the clause in this Agreement.

2. CONDITIONS PRECEDENT

2.1 Conditions Precedent

- 2.1.1 The obligations of the parties to this Agreement are conditional upon the Manager obtaining all consents, licenses, approvals and authorisations of any government authority required for the entering into and performance of its obligations under this Agreement.
- 2.1.2 The Owner warrants that it has the authority to enter into this Agreement and that it has obtained all consents required from any other person with an interest in the Apartment.

3. ENGAGEMENT OF THE MANAGER

3.1 Appointment

On and with effect from the Commencement Date, the Owner appoints the Manager to exclusively operate, manage and market the Apartment during the Term on behalf and for the account of the Owner, upon and subject to the terms and conditions of this Agreement.

3.2 First Extension

The Term may be extended for an additional 20 year period if, not less than 3 months prior to the expiry of the Term, the Manager has given written notice to the Owner of the Manager's election to so extend.

3.3 Second Extension

If the Manager extended the Term pursuant to clause 3.2 (**Extended Term**), the Extended Term may be extended for an additional 20 year period if, not less than 3

months prior to the expiry of the Extended Term, the Manager has given written notice to the Owner of the Manager's election to so extend.

3.4 Effect of Extensions

The Owner acknowledges and agrees that the extensions referred to in clauses 3.1 and 3.2 will be automatically effective without any amendment to this Agreement, but the Owner and the Manager must execute and deliver any supplements to this Agreement which the Manager may require to evidence any such extension.

3.5 Acceptance of Appointment

The Manager accepts the appointments in clauses 3.1, 3.2 and 3.2.

4. SERVICES AND DUTIES OF THE MANAGER

4.1 Operational and Management Duties

The Manager is solely responsible for the following:

4.1.1 Occupation of Serviced Residences

The supervision, direction and control of the leasing, letting and occupation of the Apartment;

4.1.2 Maintenance

The planning, initiation, supervision and control of maintenance and repairs to the Apartment as may be reasonably necessary for the proper maintenance and operation of the Serviced Residences in accordance with the Prescribed Standard;

4.1.3 Pricing

The establishment of all prices and rates (including discount or complementary accommodation, meals or services) and the collection and receipt of Rent and other monies owing in respect of an Apartment;

4.1.4 Persons Residing

All dealings with persons residing in respect of an Apartment;

4.1.5 Credit

The granting and limiting of the credit of guests of the Serviced Residences and the negotiation and conclusion of agreements with credit or charge card organisations in relation to the acceptance by the Serviced Residences of such cards;

4.1.6 Promotion

All matters relating to the advertising and promotion of the Serviced Residences, individually and as part of any other similar apartment complexes managed by the Manager, including appointment of advertising companies, and all matters relating to public relations with respect to the Serviced Residences;

4.1.7 **Communications**

Making decisions in relation to the design of and selection of equipment used in connection with communications and data processing systems for the Serviced Residences;

4.1.8 **Compliance with Laws**

The taking of all action which is necessary or appropriate to comply with all statutes, ordinances, laws, rules and regulations, orders, and requirements of any government or governmental authority in any matter respecting the use, maintenance or operation of the Serviced Residences, including, without limitation, assisting the Owner in obtaining and maintaining all licenses and permits which are necessary or appropriate for the operation of the Serviced Residences; and

4.1.9 **Generally**

Generally, the performance, supervision, direction and control of all acts reasonably necessary in connection with the operation of the Serviced Residences in an efficient and proper manner.

4.2 **Letting of Apartments**

4.2.1 The Manager will offer the Apartment for letting other than when the Apartment has been booked by the Owner or is being used by the Manager in accordance with clause 22.1.

4.2.2 The Apartments in the Serviced Residences are to be offered on a rotational booking system beginning initially with the lowest numbered Apartment increasing up to the highest numbered Apartment.

4.2.3 The rotational booking system will be subject to:

4.2.3.1 any specific requests by a person making the booking;

4.2.3.2 the use of the Apartment by the Owner as permitted under this Agreement; and

4.2.3.3 any rules that the Manager may implement from time to time provided such rules are first provided by written notification to the Owner.

4.2.4 The Owner may arrange the letting of their Apartment by referring a potential tenant directly to the Manager. In the event the potential tenant books the Owner's Apartment immediately following that referral, Owner's Apartment will, upon expiration of the letting term relating to that booking, return to a position in the rotational booking system being:

4.2.4.1 the position that the Apartment would have been in had the booking not been made; or

4.2.4.2 the number one place if the apartment that immediately preceded the Owner's Apartment in the rotational booking

system prior to the letting has since moved to the end of the rotational booking system.

4.3 Rates for Letting

4.3.1 The Manager will offer:

4.3.1.1 all Dual Key Apartments at the same rate;

4.3.1.2 all One Bedroom Apartments at the same rate; and

4.3.1.3 all Accessible Suites at the same rate.

4.3.2 The Manager may in its discretion amend the rates which apply to any type of Apartment.

4.4 Financial and Reporting

During the Term, the Manager must:

4.4.1 install and maintain proper and efficient accounting systems and controls, and keep proper books and records which accurately reflect the financial condition of the business of the Serviced Residences;

4.4.2 deliver to each Owner, within 60 days after the end of each fiscal year a statement showing all income and expenses attributed to the Owner's Apartment for that fiscal year;

4.4.3 install and maintain proper and efficient accounting systems and controls to ensure the proper use of the rotational booking system referred to in clause 4.2.1. A certificate given by the Manager's auditor is conclusive evidence of the proper use of the rotational booking system except in the case of a manifest error.

4.5 Unavoidable Increases in Operating Costs

If:

4.5.1 an event occurs which is beyond the control of the Manager and which even with the exercise by the Manager of reasonable diligence or foresight, it would have been unable to prevent; or

4.5.2 the Manager incurs expenditure which it reasonably believes is necessary to save life or to prevent or avoid personal injury or damage to property,

that expenditure will be treated as an Operating Cost provided that the Manager must:

4.5.3 as soon as possible following the occurrence of that event give notice thereof to the Owner; and

4.5.4 where it is practicable to do so, request the approval of the Owner before incurring the expenditure, such approval not to be unreasonably withheld or delayed.

5. RELATIONSHIP BETWEEN THE MANAGER AND OWNER

5.1 The Manager is Agent of Owner

In properly performing its obligations under and in accordance with this Agreement, acquiring and contracting for goods and services in the course of operating and managing the Apartment the Manager will be acting at all times solely as the agent of the Owner, for the Owner's account, and upon the Owner's credit.

5.2 Liability of the Manager

All debts, obligations and other liabilities properly incurred by the Manager acting in accordance with this Agreement in respect of an Apartment will be borne solely by the Owner. If the Manager discharges or is claimed to be liable for any such debt, obligation or liability the Owner must immediately indemnify and keep the Manager indemnified against that debt, obligation or liability, and if it fails to do so after written request from the Manager, the Manager may reimburse itself for, or discharge any such debt, obligation or liability from the Owner's Account.

5.3 The Manager to Contract in Name of Owner

The Manager alone will negotiate and enter into, in the name and for the account of the Owner, such agreements and arrangements for the supply of goods and services to the Apartment as the Manager considers necessary or desirable for the operation and management of the Serviced Residences.

5.4 No Partnership

Nothing in this Agreement creates or is to be construed as implying any relationship of partners or joint venturers between the Manager and the Owner.

5.5 Indemnity by Owner

The Owner must indemnify and keep the Manager indemnified from all claims and liabilities incurred by the Manager in its due and proper performance of its obligations under and in accordance with this Agreement.

5.6 Indemnity by Manager

The Manager must indemnify and keep the Owner indemnified from all claims and liabilities incurred by the Owner as a result of the Manager's negligence in performing its obligations under and in accordance with this Agreement.

6. SCHEME OPERATING ACCOUNT

6.1 Scheme Operating Account

The Manager must open in the name of the Scheme with an Australian deposit taking institution selected by the Manager an account designated **Scheme Operating Account**, into which all amounts comprising Gross Income of the Owners will be deposited together with payments received from Owners in respect of their Apartment and maintain such account at all times throughout the Term.

6.2 Payments from Scheme Operating Account

- 6.2.1 The Manager may pay from the Scheme Operating Account in respect of the Owner and only to the extent that the Owner's Current Account is in credit the Operating Costs, Management Fee, Administration Fee, Body Corporate Fees and FF&E Costs attributable to the Owner.
- 6.2.2 To the extent that the balance in the Owner's Current Account is not sufficient to meet the fees and costs referred to in clause 6.2.1 an invoice will be issued to the Owner pursuant to clause 7.2.1.2.

7. OWNER'S CURRENT ACCOUNT

7.1 Owner's Current Account

- 7.1.1 The Manager must establish in respect of the Owner an Owner Current Account in which:
- 7.1.1.1 all Gross Income attributable to the Owner's Apartment will be credited;
- 7.1.1.2 all Operating Costs, Management Fees, Administration Fees, FF&E Costs and all other fees attributable to the Owner will be debited.

7.2 Statements

- 7.2.1 The Manager must after the end of each calendar month after the crediting and deduction of any amounts referred to in clause 7.1.1 calculate the balance of the Owner's Current Account and:
- 7.2.1.1 where there is a credit balance, pay that balance to the Owner within 30 days after the end of that month; or
- 7.2.1.2 where there are insufficient funds, invoice the Owner for the amount outstanding.
- 7.2.2 The Owner agrees to pay the full amount of any invoice referred to in clause 7.2.1.2 within 14 days (**Due Date**) of the date of the invoice.

7.3 Interest

If an Owner does not pay the amount invoiced pursuant to clause 7.2.2 within 14 days of the Due Date the Manager may charge the Owner interest at the rate of the current 90 day Bank Bill rate as advertised in the National Australian newspaper known as The Financial Review plus 2% calculated from the Due Date to the date of full payment by the Owner.

7.4 Operating Costs

- 7.4.1 The Owner's liability to contribute to Operating Costs with respect to an Apartment commences from the time the Owner becomes the registered proprietor of the Apartment. Where the Owner owns the Apartment during part only of a Fiscal Year, the amount owing by the Owner in respect of Operating Costs in that Fiscal Year shall be pro-rated on a time basis.

- 7.4.2 The Manager may spread Operating Costs over a period longer than a Fiscal Year where such costs or expenses are not likely to recur from year to year, or over a period shorter than a Fiscal Year where such costs or expenses are likely to recur more frequently than year to year. The Manager's decision on any such matter, made on a reasonable basis, is to be final and conclusive.
- 7.4.3 If at any time the actual amount of any Operating Cost has not been ascertained, the Manager may estimate the likely amount of the cost and calculate the amount to be debited to the Owner's Current Account on the basis of such estimate. Such estimates shall be reviewed and may be adjusted from time to time and upon making any such adjustment the instalments to be debited to the Owner's Current Account shall be adjusted accordingly. Upon the actual amount of any estimated Operating Cost being ascertained, any difference between the actual and estimated amounts shall be determined and any credit due to or further payment due by the Owner in respect of the expense shall be credited or debited to the Current Account accordingly.
- 7.4.4 In determining an Owner's liability to Operating Costs the Manager will:
- 7.4.4.1 to the extent possible allocate costs attributable to the Owner's Apartment that Owner's Current Account; and
- 7.4.4.2 on all other cases apportion the costs between the Owners so that an Owner of a One Bedroom Apartment or an Accessible Suite will pay half the amount that an Owner of a Dual Key Apartment will pay.

8. FF&E ACCOUNT

- 8.1 The Manager must open and at all times during the Term maintain in the name of the Scheme with a bank selected by the Manager an account designated 'FF&E Account' (**FF&E Account**).
- 8.2 The Manager must pay into the FF&E Account the following:
- 8.2.1 at the end of each month an amount equal to the FF&E Costs for the relevant month; and
- 8.2.2 promptly upon receipt, the proceeds of sale of FF&E of the Serviced Residences received in the relevant month.
- 8.3 Amounts from the FF&E Account will be utilised to pay
- for all expenditures on replacement or additions to FF&E during the Refurbishment of the Apartment. The Manager will arrange for the Apartment to be refurbished periodically during the Term, such scheduled Refurbishment dates to be determined by the Manager in its absolute discretion having regard to the condition of the Apartment and the Prescribed Standard..
- 8.4 If additional funds are required for the Refurbishment of the Apartment at the time of the scheduled Refurbishment referred to in clause 8.3, the Manager will give the Owner 120 days prior notice of the amount of the FF&E Account at that time and a quotation for the Refurbishment works. To the extent that the quotation exceeds the amount held in the FF&E Account, the Owner will pay its proportion of the difference.

- 8.5 For the sake of certainty, the amounts held in the FF&E Account are not the property of the Owner and the amounts held in the FF&E Account will remain in the FF&E Account and will not be payable to the Owner if at any time the Owner disposes of or transfers the Apartment to another party in accordance with the provisions of this Agreement.

9. FEES

The fees that will apply at the commencement at this Agreement are as follows:

- 9.1 The Owner must pay 13.75% of the Gross Income of the Owner (including GST) to the Manager for managing the Apartment (**Management Fee**). The Management Fee is payable monthly in accordance with clause 7.2.
- 9.2 The Owner must pay to the Manager an amount as follows for the day to day management running costs (**Administration Fee**):
- 9.2.1 in the case of an Owner of a Dual Key Apartment, \$66 per week (GST inclusive);
- 9.2.2 in the case of an Owner of a One Bedroom Apartment or Accessible Suite, \$44 per week (GST inclusive).
- 9.3 The Administration Fee is payable monthly in accordance with clause 7.2. The Administration Fee will be increased by the greater of CPI or 4.5% from 1 January 2008 and each following year thereafter.

10. PERMITS & APPROVALS

- 10.1 The Manager must obtain and comply with all necessary consents, approvals, permits and licenses for the ownership, construction and operation of the Serviced Residences.
- 10.2 The Manager must use its best endeavours to keep current all necessary consents, approvals, permits and Licenses, and to operate the Serviced Residences in compliance with them.

11. INSURANCE

11.1 Insurances for the Manager

During the Term, the Manager must take out, renew and maintain insurances for such amounts, with such insurers and on such terms as deemed necessary by the Manager. Such insurances may include:

- 11.1.1 general public liability insurance covering all liability which may be incurred by the Owner or the Manager to third parties including tenants, guests and invitees which may be incurred or arise in any way from any act or neglect of any person or otherwise from the operation of the Serviced Residences;
- 11.1.2 property insurance covering all FF&E other than those contained in the Dual Key Apartments, One Bedroom Apartments and Accessible Suites, Operating Equipment and inventories and vehicles used in the operation of the Serviced Residences and Operating Supplies against all risks and

perils including all physical loss or damage by fire, explosion, electrical damage, water damage, glass breakage, riots, strikes, civil commotions, terrorism, windstorms, lightning, hurricanes, cyclones, earthquakes, flood, volcanic eruptions and other similar risks howsoever caused;

- 11.1.3 machinery breakdown policy covering loss or damage incurred by or arising from the breakdown of computers boilers, electrical apparatus, pressure vessels, heating and air-conditioning equipment, generators, elevators and any other equipment, and the cost of repairing the same;
- 11.1.4 burglary and theft policy covering theft of property belonging to the Serviced Residences, any guests or invitees or licensees of the Serviced Residences;
- 11.1.5 a policy covering loss of any money in the Serviced Residences, on the site and in transit to and from the bank(s);
- 11.1.6 employer's liability policy covering the liability of the Owner and the Manager including liability under the Worker's Compensation Act for loss damage death or injury sustained by any employee contractor servant or agent.

11.2 Insurances for the Owner

- 11.2.1 On and from the Commencement Date and during the Term, the Owner must take out, renew and maintain insurances for the Apartment and the FF&E relating to the Apartment against all risks and perils including all physical loss or damage by fire, explosion, electrical damage, water damage, glass breakage, riots, strikes, civil commotions, terrorism, windstorms, lightning, hurricanes, cyclones, earthquakes, flood, volcanic eruptions, theft of the Apartment's property and other similar risks howsoever caused for the full replacement value with an insurer approved by the Manager.
- 11.2.2 The Owner must pay all insurance premiums on or before the due date for payment and produce to the Manager copies of the certificate of currency on or before each anniversary of the Commencement Date.
- 11.2.3 The Owner must:
 - 11.2.3.1 not do anything which may make any insurance effected by the Manager or the Owner invalid, capable of being cancelled or rendered ineffective, or which may increase any premium for insurance effected by the Manager; and
 - 11.2.3.2 pay any increase in the insurance premium caused by the Owner's act, default or use of the Apartment.

12. REPAIRS MAINTENANCE AND REPLACEMENTS

12.1 Routine Repairs and Maintenance to Serviced Residences

The Manager must maintain the Serviced Residences in a good state of repair and condition and in conformity with applicable laws and regulations and will make or cause to be made routine maintenance, repairs and minor alterations subject to clause 4.5, the cost of the maintenance, repairs and minor alterations can be expended under generally accepted accounting principles, as from time to time the Manager deems necessary for such purposes.

12.2 Minor Alterations Additions and Improvements

The Manager may make such minor alterations, additions or improvements of a capital nature in or to the Serviced Residences which the Manager reasonably considers to be necessary to the Serviced Residences or its operation.

12.3 Repairs or Changes

Notwithstanding anything contained in this Agreement, if at any time during the Term, repairs, alterations or improvements are required to be made to the Apartment by:

- 12.3.1 any laws, ordinances, regulations, or by an order of any government or other competent authorities;
- 12.3.2 to ensure that the fabric, structure and presentation of the Apartment is maintained to the Prescribed Standard; or
- 12.3.3 to ensure compliance with the Branding Agreement,

the Owner acknowledges that the Manager will carry out those repairs, alterations or improvements, at the sole cost of the Owner and with as little hindrance to and interference with the operation of the Serviced Residences as possible.

12.4 Emergency Repairs

- 12.4.1 For the purposes of this clause 12.4, Emergency Repairs means repairs and maintenance to or replacements of any aspect of the Apartment or Serviced Residences which are necessary to be carried out immediately to permit the continued operation of the Serviced Residences, the protection of property, the prevention of personal injury or the safety of human life.
- 12.4.2 The Manager must make Emergency Repairs when necessary to do so.
- 12.4.3 If the Emergency Repairs relate to the Apartment and the costs exceed \$500, the Manager must use its reasonable endeavours to contact the Owner to explain the nature of the emergency and provide estimates of costs for the Owner's approval. If the cost of the Emergency Repairs do not exceed \$500, the Manager may in its absolute discretion carry out the Emergency Repairs without contacting the Owner.
- 12.4.4 If the Emergency Repairs relate to any other part of the Serviced Residences that is not an Apartment, the Manager is authorised to carry

out the Emergency Repairs without contacting the Owner. The cost of such Emergency Repairs will be apportioned between the Owners in accordance with their lot liability in plan of subdivision no. PS537642N.

- 12.4.5 The Manager must promptly, after the making of any such Emergency Repairs, deliver to the Owner an itemised statement thereof. The Owner must pay the full amount of this statement within 14 days of the date of this statement.

12.5 Owner not to carry out works

The Owner acknowledges and agrees that all the repairs, maintenance and other works under this clause 12 are to be carried out by the Manager only and the Owner agrees that it must not carry out any works to the Apartment or any part of the Serviced Residences.

12.6 Cost of repairs, maintenance and replacements

The Owner acknowledges and agrees that the cost of replacements and the carrying out of repairs, maintenance and other works under this clause 12 are to be borne by the Owner unless agreed to otherwise between the Owner and the Manager.

13. BRANDING AGREEMENT

13.1 Branding

- 13.1.1 The Owner acknowledges that the Manager may in its absolute discretion choose the branding of the Serviced Residences and enter into a Branding Agreement in respect of such branding.
- 13.1.2 The Owner acknowledges that the Manager may enter or terminate the Branding Agreement at any time without any notice to the Owner. The Owner must not object to any new or subsequent Branding Agreement entered into between the Manager and the other party.

14. THE MANAGER'S RIGHT OF LAST REFUSAL

14.1 Right of Last Refusal

If the Owner desires to sell the Apartment, the Manager will have a right of last refusal to purchase the Apartment as set out in this clause, being:

- 14.1.1 If at any time the Owner desires to sell the Apartment (whether or not it has received an offer to purchase) it must by notice in writing to the Manager (**Owner's Notice**) offer to sell the Apartment to the Manager upon terms and conditions not more favourable than those the Owner would offer to a third party and such notice must comply with the provisions of clause 14.1.4. This offer may not be withdrawn by the Owner and must remain open for acceptance by the Manager for a period of 21 days after the service of the Owner's Notice upon the Manager after which time it may be withdrawn.
- 14.1.2 If following receipt of the Owner's Notice the Manager desires to purchase the Apartment it must by written notice to the Owner within 21

days after service of the Owner's Notice upon the Manager, advise the Owner that it intends to purchase the Apartment and enclose a contract of sale duly executed by the Manager together with the deposit referred to in the contract of sale. Upon service by the Manager on the Owner of its notice of acceptance, executed contract of sale and deposit, the Owner and Manager must be deemed to have entered into an agreement for sale of the Apartment in the terms of the contract of sale from the date of service. The Owner must as soon as possible after receipt of the Manager's notice of acceptance and the executed contract of sale forward to the Manager a counterpart of the contract of sale duly executed by the Owner.

- 14.1.3 If the Manager does not within the 21 days referred to in clause 14.1.2 serve upon the Owner the Manager's notice of acceptance then:
- 14.1.3.1 the Owner must be at liberty to sell the Apartment to any other person upon terms and conditions not more favourable than those upon which the Apartment was offered to the Manager in the Owner's Notice; and
 - 14.1.3.2 before the sale of Apartment is concluded with the other person referred to in clause 14.1.3, the procedure set out in clauses 14.1.1 and 14.1.2 must be followed and any offer made to the other person must be made subject to the Manager's last right of refusal.
- 14.1.4 For the purpose of clause 14.1.1 the Owner's Notice must:
- 14.1.4.1 contain an offer to sell the Apartment specifying the address and title details of the Apartment or such part of it as is the subject of the offer, the price and terms of payment, and any other relevant information including any documents required by any law to be supplied to an Owner of the Apartment; and
 - 14.1.4.2 enclose with the Owner's notice a form of contract of sale of the Apartment containing the terms and conditions including consideration pursuant to which the Owner is prepared to sell the Apartment to the Manager.
- 14.1.5 If the Owner intends to sell the Apartment at a bona fide public auction, the Owner must give the Manager notice pursuant to clause 14.1.1 at least 21 days prior to the date the Apartment is placed on the market for auction. The Owner must disclose the reserve price to the Manager in the notice and the Manager must have the right to purchase the Apartment at the reserve price prior to the public auction. If the Manager desires to accept the offer contained in the Owner's notice, the Manager must serve a written notice accepting the offer upon the Owner in accordance with the provisions of clause 14.1.2.
- 14.1.6 This clause 14 does not apply to:
- 14.1.6.1 any proposed sale or transfer of the Apartment to a related body corporate of the Owner as defined by the Corporations

Law which is to be undertaken by the Owner for the purposes of internal corporate restructuring; or

- 14.1.6.2 a transfer of the Apartment to a beneficiary under the Owner's last will and testament in the event of the Owner's death provided that the transferee enters into an agreement with the Manager, the terms of which are identical to those contained in this Agreement save for any changes made or required to be made from time to time by the Manager.
- 14.1.7 This clause must have a continuing operation and the rights created by this clause 14 must continue to apply notwithstanding that any offer has at any time been made to the Manager, its nominee or any assignee and not accepted by the Manager or its nominee or any assignee and must continue to remain in force and effect as between the Manager and any nominee or assignee of the Manager and the Owner should the Owner not sell the Apartment on the occasion giving rise to the service of the Owner's notice under this clause.
- 14.1.8 The parties acknowledge and agree that it is their intention that the right of last refusal granted by this clause 14 runs with the Apartment and is to be binding on the successors in title of the Owner.

14.2 Caveatable Interest

- 14.2.1 The Owner acknowledges and agrees that the Manager's right of last refusal granted in clause 14.1 constitutes a caveatable interest in respect of the Apartment and that the Manager is entitled to lodge and maintain a caveat on title to the Apartment.
- 14.2.2 If the Manager lodges a caveat on the title to the Apartment, the Owner covenants that neither the Owner nor anyone claiming under or through the Owner must in any way either directly or indirectly seek to have a caveat removed from the title to the Apartment or otherwise declared invalid without the prior consent in writing of the Manager.

15. TERMINATION AND TRANSFER

15.1 Termination of Agreement

This Agreement may be terminated by a Manager and an Owner by way of written agreement signed by them both expressly agreeing to terminate this Agreement.

15.2 Transfer of Apartment

Before an Owner disposes of the Apartment the Owner must:

- 15.2.1 obtain the prior written approval of the Manager; and
- 15.2.2 cause the new Owner to enter into an agreement with the Manager, the terms of which are identical to those contained in this Agreement save for any changes made or required to be made from time to time by the Manager.

- 15.2.3 to the extent that the Corporations Act requires the Owner or Manager to comply with the secondary trading provisions or any other provisions of the law, the Owner and Manager agree to comply with such provisions and use their best endeavours to ensure that the other is able to comply with the law.

16. CONSEQUENCES ON TERMINATION

16.1 The Manager to Vacate

Upon termination of this Agreement for any reason the Manager must:

- 16.1.1 within 30 days after the Termination Date, remove all property belonging to the Manager from the Serviced Residences (and make good at its expense all damage caused by such removal) and leave all property of the Owner within the Serviced Residences;
- 16.1.2 leave the Serviced Residences in a clean and orderly condition;
- 16.1.3 as required by the Owner, surrender (and assign, if permitted) to the Owner or to such person as the Owner may nominate all other licenses, permits and other authorisations (other than the Manager Licence) held by the Manager or its nominees for the operation of the Serviced Residences in accordance with any applicable statute by-law or regulation;
- 16.1.4 transfer to the Owner the Owner's share of any credit balance held at the Termination Date in:
- 16.1.4.1 the Operating Account; and
- 16.1.4.2 the FF&E Account; and

16.2 Surviving Obligations

The occurrence of the Termination Date will not affect the obligations:

- 16.2.1 of the Manager to deliver a report for the Month ending on the Termination Date;
- 16.2.2 of the Owner to pay any amounts owing by the Owner to the Manager in respect of the Fees or any expenses or costs incurred by the Manager for which the Owner is liable.

which survive termination of this Agreement.

17. FORCE MAJEURE

If:

- 17.1 a party (**Affected Party**) breaches its obligations under this Agreement; and
- 17.2 the Affected Party is able to demonstrate to the reasonable satisfaction of the other Party (**Unaffected Party**) that the breach is caused by Force Majeure,

then:

- 17.3 the Affected Party will have no liability to the Unaffected Party for any loss or damage suffered or incurred as a result of that breach;
- 17.4 the Unaffected Party will not be entitled to terminate this Agreement or to exercise any other right or remedy which (but for this clause 17), the Unaffected Party would be entitled to exercise as a consequence of that breach;
- 17.5 the Affected Party must use its all reasonable endeavours to terminate the relevant Force Majeure event as soon as possible, but the Affected Party will be entitled to exercise its absolute discretion with respect to any labour dispute constituting Force Majeure, and will not be obliged to expend any money in seeking to terminate any Force Majeure event; and
- 17.6 without limiting clause 17.5, the parties will negotiate in good faith with a view to agreeing upon any action which will mitigate or remove the effect of the Force Majeure event, or enable the Affected Party to perform its obligations in an alternative manner which is not prevented by the Force Majeure event.

18. DAMAGE OR DESTRUCTION OF SERVICED RESIDENCES

18.1 Rebuilding

Unless clause 18.2 applies, if the Apartment is damaged or destroyed (completely or partially) the Manager will, at the cost of the Owner and with all reasonable diligence repair, rebuild or replace the Apartment to the same standard and condition as existed previously.

18.2 Destruction

If the Serviced Residences is destroyed or damaged to an extent which renders it impracticable for the Serviced Residences to be managed, operated and marketed as a Serviced Residences of the scale, type, class, quality and character which subsisted prior to the destruction or damage, the Manager may terminate this Agreement giving to the Owner not less than thirty (30) days' written notice.

19. DISPUTE RESOLUTION

If a dispute arises out of or relates to this agreement, or the breach, termination, validity or subject matter thereof, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, the parties to the agreement and to the dispute expressly agree to settle the dispute by Expert Determination administered by the Australian Commercial Disputes Centre (ACDC) as follows:

- 19.1 A party claiming that a dispute has arisen, must give written notice to the other parties to the dispute specifying the nature of the dispute.
- 19.2 On receipt of the notice specified in clause 19.1, the parties to the dispute must within 14 days of receipt of said notice seek to resolve the dispute.
- 19.3 If the dispute is not resolved within 14 days or within such further period as the parties agree then the dispute is to be referred to ACDC.

- 19.4 The Expert Determination will be conducted in accordance with ACDC Expert Determination Guidelines which set out the procedures to be adopted, the process of selection of the expert and the costs involved and which terms are hereby deemed incorporated.
- 19.5 This clause will not merge upon completion.

20. GENERAL

20.1 Applicable Law

This Agreement is governed by and will be construed in accordance with the laws of Victoria, Australia.

20.2 Jurisdiction

20.2.1 Each of the parties irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of Victoria with respect to any legal action or proceedings which may be brought at any time relating in any way to this Agreement.

20.2.2 Each of the parties irrevocably waives any objection it may now or in the future have to the venue of any such action or proceedings, including any objection it may have that any such action or proceeding has been brought in an inconvenient forum.

20.3 Amendment

This Agreement will be amended only:

20.3.1 by the Manager if the Manager reasonably consider the change will not adversely affect the rights of all Owners of Apartments in the Serviced Residences; or

20.3.2 by agreement in writing executed by both parties.

20.4 Invalidity

If at any time any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby. The parties agree to amend or replace any invalid, illegal or unenforceable provision of this Agreement by valid, legal and enforceable provisions which achieve, to the greatest extent possible, the economic and all other purposes of the invalid, illegal or unenforceable provision.

20.5 Headings

The headings and sub-headings of the clauses of this Agreement are to facilitate reference only and do not form a part of this Agreement, and will not in any way affect the construction or interpretation of it.

20.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument. The English language version of this Agreement will prevail over any translation of it.

20.7 Successors and Assigns

20.7.1 The Owner must not assign or transfer its rights or benefits and or obligations under the terms of this Agreement without the prior written consent of the Manager.

20.7.2 The Manager may in its sole discretion assign or transfer its rights or benefits and or obligations under the terms of this Agreement without the prior written consent of the Owner.

20.8 Confidentiality

The Parties undertake not to disclose the terms and conditions of this Agreement to any third party, other than their advisers and financiers, without the written approval of the Manager.

20.9 Entire Agreement

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting the subject matter are superseded by this Agreement and have no effect.

21. NOTICES

21.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 21.1.1 personally on the person;
- 21.1.2 by leaving it at the person's current address for service;
- 21.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 21.1.4 by facsimile to the person's current number for service.

21.2 Particulars for Service

21.2.1 The particulars for service of the Owner are:

address: Refer to Item 2 of Schedule 1

facsimile number: Refer to Item 3 of Schedule 1

21.2.2 The particulars for service of the Manager are:

address: 443 Auburn Road, Hawthorn, Vic 3122

facsimile number: 03 9824 6100

21.2.3 Any party may change the address or facsimile number for service by giving notice to the other parties.

21.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

21.3 Time of Service

A notice or other communication is deemed served:

21.3.1 if served personally or left at the person's address, upon service;

21.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 7 Business Days after posting;

21.3.3 if served by facsimile, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile; and

21.3.4 if received after 6 pm in the place of receipt or on a day which is not a Business Day, at 9 am on the next Business Day.

22. OCCUPATION OF APARTMENT

22.1 Occupation for Promotional Use

22.1.1 The Manager is entitled to use the Apartment for no fee for a period of five (5) days of each year of the Term (either on a singular or consecutive basis at the discretion of the Manager) for the purpose of the marketing, advertising, promotional, training and other procedural and related matters in respect of the Serviced Residences.

22.1.2 The Owner acknowledges and agrees that during the period/s that the Manager uses the Apartment for the purposes set out in clause 22.1.1:

22.1.2.1 the Owner will not receive any income in respect of the Apartment;

22.1.2.2 the Manager will be liable for the costs of housekeeping and other associated maintenance expenses in respect of the Apartment;

22.1.2.3 the use of the Apartment will not have priority over the Own Use Entitlement referred to in clause 22.2.1 and will not be limited to non-Peak Periods.

22.2 Occupation by Owner

- 22.2.1 Subject to clauses 22.3 and 22.4 the Owner is entitled to occupy the Apartment for a maximum period of eight (8) weeks of each Fiscal Year of the Term (**Own Use Entitlement**) provided that:
- 22.2.1.1 the Apartment is available for use by the Owner;
 - 22.2.1.2 the Owner gives the Manager at least 48 hours prior notice of the proposed dates of occupation; and
 - 22.2.1.3 less than 40% of the total number of Apartments comprising the Serviced Residences have been booked by the Owners for their Own Use Entitlement during the dates of occupation referred to in clause 22.2.1.2
- 22.2.2 An Owner's Own Use Entitlement expires at the end of each Fiscal Year and any unused entitlement lapses at the end of each Fiscal Year and is not carried forward to the next Fiscal Year.
- 22.2.3 In the event the Owner acquires an Apartment other than on the first day of a Fiscal Year and:
- 22.2.3.1 there has been no previous Owner of the Apartment, the new Owner's Own Use Entitlement for the remainder of that Fiscal Year will be 8 weeks divided by 365 multiplied by the number of remaining days in the Fiscal Year;
 - 22.2.3.2 the Owner acquired the Apartment from a previous Owner, the new Owner's Own Use Entitlement for the remainder of that Fiscal Year will be the number of unused Own use entitlement days the previous Owner was entitled to immediately prior to the settlement date.
- 22.2.4 During Own Use Entitlement and other periods when the Owner has booked the Apartment the Owner is liable for all costs incurred relating to the occupation of the Apartment including telephone, drinks and cleaning.

22.3 Standby Bookings

- 22.3.1 In addition to the 8 weeks Own Use Entitlement referred to in clause 22.2.1 the Owner may reside in the Apartment on any night the Manager has advised the Owner that at least 10% of the Apartments comprising the Serviced Residences (including the Owner's Apartment) are vacant and available only for rent for that night (**Standby Booking**).
- 22.3.2 The Owner can only make a Standby Booking no earlier than 12 pm on the day preceding the day on which the Owner wishes to stay.
- 22.3.3 If, in respect of a Peak Period, the Owner is unable to make a booking under clause 22.2.1 or clause 22.3.1, on the dates requested by the Owner (**Requested Dates**), the Owner will receive priority over the other Owners who are occupying the Apartments on the Requested Dates when making a booking to occupy the Apartment during the Peak Period

to which the Requested Dates relate for the following year, provided that the Owner makes such a booking at least 365 days in advance and subject always to the availability of the Apartment at that time.

22.4 Peak Period Priority Policy

The Manager may restrict the ability of an Owner to make an Own Use Entitlement by implementing a priority policy in relation to Peak Periods. Any such policy must be advised to Owners and apply to Owners equally.

23. RETURN ON INVESTMENT

The Owner acknowledges that:

- 23.1 there is no guaranteed rate of return including no minimum rate of return on their purchase of the Apartment;
- 23.2 the Owner has made their own enquiries and investigations in relation to the viability of its investment in respect of the purchase of the Apartment; and
- 23.3 where the Operating Costs in any one month exceed the income due to the Owner, the Owner will bear the costs of any such deficit.

24. PRE-OPENING SERVICES

- 24.1 The Manager will provide the Pre-Opening Services to the Serviced Residences during the completion of the construction and fitout of the Serviced Residences using its best endeavours to optimise the market positioning and financial performance of the Apartment and the Serviced Residences from the Commencement Date.
- 24.2 The Owner will contribute to the cost of the Pre-Opening Services by paying an amount determined by the Manager (such amount not to exceed \$1000) to the Manager prior to the Commencement Date.

Schedule 1: Reference Table

Item 1. Name of Owner:

Item 2. Owner's address for services of notices:

Item 3. Owner's facsimile number:

Item 4. Property:

Lot on Plan of Subdivision PS 537642N being part of the land described in Certificate of Title Volume 10862 folio 666 and Certificate of Title Volume 10761 folio 337 and known as Apartment , The Resort, 100 The Esplanade, Torquay.

SIGNED as an agreement.

EXECUTED by **THE RESORT**)
TORQUAY (MANAGEMENT) PTY LTD)
ACN 112 254 216 by being signed by those)
persons who are authorised to sign for the)
company:

..... Director
..... Full name
..... Usual address
..... Director (or Company Secretary)
..... Full name
..... Usual address

**Use this if the Owner is an individual:*

SIGNED SEALED AND DELIVERED by)
THE OWNER in the presence of:)

.....
Witness

SIGNED SEALED AND DELIVERED by)
THE OWNER in the presence of:)

.....
Witness

**Use this if the Owner is a company:*

EXECUTED by **THE OWNER** by being)
signed by those persons who are authorised to)
sign for the company:)
)

..... Director
..... Full name
..... Usual address
..... Director (or Company Secretary)
..... Full name
..... Usual address