

APARTMENT MANAGEMENT AGREEMENT



DOMINION APARTMENTS

285 CITY ROAD, SOUTH BANK, VICTORIA, 3006

THE OWNER:

DESCRIBED IN ITEM 2 IN SCHEDULE 1

THE GUARANTOR:

SALREST NO 2 PTY LIMITED AS TRUSTEE FOR THE T2 TRUST

THE MANAGER:

AGSB PTY LTD

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THIS AGREEMENT is entered into on the date specified in Item 1 of Schedule 1

BETWEEN

THE OWNER more particularly described in Item 2 of Schedule 1 (**Owner**)

AGSB PTY LTD ACN 169 285 974, whose registered office is, 285, City Road, Southbank, Victoria, 3006 (**Manager**)

SALREST NO 2 PTY LIMITED ACN 112 995 178 AS TRUSTEE FOR THE T2 TRUST ABN 53 804 432 361, whose registered office is, 245 City Road, Southbank, Victoria, 3006 (**Guarantor**)

RECITALS

- A The Owner is or is entitled to be the registered proprietor of the Apartment.
- B The Owner wishes the Manager to manage the Apartment and the Manager wishes to manage the Apartment in accordance with this Agreement.
- C The Guarantor guarantees the payment of the Guaranteed Income from the Manager to the Owner during the Guarantee Period.

Operative provisions

1. Definitions and Interpretation

1.1 In this Agreement unless the context requires another meaning:

Apartment means the property specified in Item 3 of Schedule 1;

Assets means all furniture, furnishings and equipment that are not the property of the Owner;

Associate means any related body corporate within the meaning of the Corporations Law.

Australian Accounting Standards means:

- (a) the accounting standards from time to time having effect under the Corporations Law;
- (b) the requirements of the Corporations Law in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those inconsistent with the standards or requirements referred to above;

Base Income means the amount specified in Item 6(a) of Schedule 1;

Body Corporate means the Owners Corporation of Plan of Subdivision No. 514192X and known as Dominion Apartments;

Building means the building comprised in Plan of Subdivision No. 514192X and known as Dominion Apartments;

Business means the business of operating and managing the short-term hotel letting of the Apartment;

Business day means a day, that is not a Saturday, Sunday or a public holiday or bank holiday in the whole of the State of Victoria.

Commencement Date means the date specified in Item 1 of Schedule 1;

Compensation means, in relation to any Employee:

- (a) such employee's remuneration together with the employer's contribution required by law, training levies or costs, any taxes or charges such as fringe benefits tax or payroll tax with respect to such Employee, any redundancy payments and accruals for long service leave, sick leave and annual holidays; and
- (b) any liability for unfair dismissal unless such liability is a result of the Manager's negligence or capricious conduct;

Completion means the date the purchase and sale of the Apartment to the Owner from the Vendor is completed;

Contract for Sale means the contract for the sale and purchase of the Apartment made between the Vendor and the Owner.

Corporations Law means the *Corporations Act 2001* (Cth) and any associated regulation.

CPI means the All Groups Consumer Price Index for the capital city of the State of Victoria, published by the Australian Bureau of Statistics. If that index no longer exists it means the index officially substituted for it;

CPI Rate means the change in the CPI measured from the CPI for the quarter ending immediately before the last date on which the Guaranteed Income was reviewed (or the Commencement Date if there has been no intervening rent review) to the CPI for the quarter ending immediately before the relevant review date, expressed as a percentage;

Employee means persons employed by the Manager or an associated corporate entity, within the meaning of the Corporations Law, of the Manager with respect to the Business;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

GST Amount means the amount calculated by multiplying the monetary consideration payable by the recipient (excluding the amount payable as GST) for the relevant taxable supply by the prevailing GST rate;

Guaranteed Income means the amount payable to the Owner specified in Item 5 of Schedule 1;

Guarantee Period means the Guarantee Period specified in Item 7 of Schedule 1;

Operating Account means any bank account operated by the Manager in connection with the Business;

Operating Supplies means:

- (a) all consumable items used in, or held in storage for use in (or if the context requires/ required in connection with) the operation of the Business, including food and beverages, fuel, soap, cleaning materials, matches, stationery and other similar items;
- (b) cleaning and room service expenses;

- (c) any employment expenses associated with the Business, including direct salaries and wages paid to, or accrued for the benefit of, any Employee, including incentive compensation and bonuses, together with all Compensation, group life and accident and health insurance premiums and termination payments; and
- (d) replacement of china, glassware, linen, silverware, uniforms and similar items;

Owner means the person specified in Item 2 of Schedule 1 and its permitted assigns;

Owner's Income means the income calculated in the manner described in clause 6.

Ownership Expenses means;

- (a) council rates and taxes;
- (b) water and sewerage rates, taxes and charges;
- (c) Body Corporate levies;
- (d) any insurance premiums paid by the Manager on behalf of the Owner;
- (e) any costs of repairs and maintenance to the Apartment assessed by the Manager on the Owner's behalf;

Revenue means gross room revenue and income in relation to the short-term hotel letting of the Apartment derived from the operation of the Business but excludes revenue earned by the Manager that is not directly connected to short-term hotel letting of the Apartment including but not limited to mini-bar, laundry and other facilities.

Term means the term of this Agreement as described in clause 3.1;

Vendor means the Guarantor.

1.2 In this Agreement, unless the context requires another meaning:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words implying the singular include the plural and vice versa;
- (c) words implying a gender include any gender;
- (d) a month means a calendar month;
- (e) an expression implying a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (f) an agreement on the part of two or more persons binds them jointly and severally.

1.3 If a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day.

1.4 If a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

2. Appointment of Manager

- 2.1 The Vendor and the Owner have entered into a conditional contract of sale for this Apartment. The contract of sale is conditional on the Vendor and the Owner entering into this Agreement on or before Completion.
- 2.2 In satisfaction of clause 2.1, the Owner appoints the Manager as its agent to manage the Apartment and the Manager accepts that appointment and agrees to manage the Apartment in accordance with this Agreement as and from the Commencement Date.

3. Term

- 3.1 This Agreement becomes operative on the Commencement Date and expires on the first to occur of the following:
- (a) the Manager provides three (3) months written notice to the Owner and Guarantor of its intention to terminate this Agreement, which may be given at the Manager's election, but only after the number of years specified in Item 4 in Schedule 1 has lapsed;
 - (b) the Owner elects to terminate this Agreement upon subsequent sale of the Apartment pursuant to the terms in clause 15.1;
 - (c) the Owner ceases to be the registered proprietor of the Apartment and the Manager or Guarantor provides three (3) months written notice to the Owner of its intention to terminate this Agreement; or
 - (d) by either party terminating this Agreement pursuant to clause 13.

4. Owner's Obligations

- 4.1 In relation to any Body Corporate meetings:
- (a) the Owner appoints the Manager or its nominee as its sole proxy provided that in exercising its vote, the Manager must act reasonably and have regard to the interests of the Owner; and
 - (b) the Owner will execute such further or other forms as the Manager may from time to time require to perfect or confirm the proxy given by this clause.
- 4.2 The Owner must pay on time all Ownership Expenses from their own funds and must provide the Manager with any evidence that the Manager may reasonably require that this obligation has been complied with.
- 4.3 During the Term the Owner provides to the Manager exclusive authority to operate and manage the short-term hotel letting of the Apartment.

5. Owner's Title

- 5.1 The Owner is or is entitled to be the registered proprietor of the Apartment and is or intends to become the legal and beneficial owner of the Apartment on Completion and has full power and authority to enter into this Agreement.

6. Owner's Income

Guaranteed Income

- 6.1 During the Term the Manager must pay by equal monthly instalments on or before the first day of each month from the Commencement Date the Guaranteed Income calculated in the manner specified in Item 5 of Schedule 1.
- 6.2 Each monthly instalment is to be one twelfth of the Guaranteed Income but if an instalment period is less than one (1) month, the instalment for the period is apportioned on a daily rate for the relevant month.
- 6.3 The Guarantor guarantees the payment of the Guaranteed Income from the Manager to the Owner during the Guarantee Period.

Guaranteed Income review process

- 6.4 The Guaranteed Income is increased by the CPI Rate on the first day of each year of the Term.

Surplus Income

- 6.5 In the event that the total Revenue earned by the Manager is greater than the Base Income (specified in Item 6(a) of Schedule 1) then the Manager must pay to the Owner a percentage of Revenue earned in excess of that Base Income as specified in Item 6(b) of Schedule 1.

Payment

- 6.6 Payments in respect of the Owner's income will be made by electronic funds transfer to the Owner's nominated account or by cheque made payable to the Owner at the Manager's option.

7. Manager's Rights

- 7.1 The Manager has full, free and unfettered access to and control of the Apartment.
- 7.2 Everything done by the Manager under this Agreement is done as the Owner's agent and all obligations and expenses incurred are to the Owner's account.
- 7.3 The Manager may pay any Ownership Expenses which do not on each occasion exceed the sum specified in Item 8 of Schedule 1 on behalf of the Owner out of the Owner's Income.
- 7.4 The Manager owns the Assets in the Apartment and may at its absolute discretion sell or otherwise deal with the Assets in a manner required to fulfil its duties in clause 8.

8. Manager's Duties

- 8.1 In consideration of and subject to payment of the Management Fees the Manager will at its own expense during the Term:
- (a) advertise and promote the Apartment for usage as and when necessary;
 - (b) use its best endeavours to rent out on a short term basis the Apartment and to enter into contracts on behalf of the Owner for the proper operation of the Business;
 - (c) attend to the day to day management of the Business;

- (d) arrange for the purchase of Operating Supplies which in the normal course of business are necessary for the proper operation of the Business;
 - (e) maintain the Assets in the Apartment to a good standard of repair and condition at the Manager's expense in accordance with clause 9; and
 - (f) provide reasonable assistance where required by the Owner in any proposed sale of the Apartment.
- 8.2 The Manager must throughout the Term insure and keep insured the Assets of the Apartment and any insurance required in the day-to-day operation of the Business. For the avoidance of doubt, all other insurances are to be maintained by the Owner.
- 8.3 The Manager is responsible for all expenses associated with the day-to-day operation of the Business, including the provision of services to the Apartment including, gas, electricity, telephone, heating, ventilation and water usage charged on consumption, but excluding the Ownership Expenses which are the Owner's responsibility.

9. Repair and Maintenance

- 9.1 Except for fair wear and tear, excluding wilful, reckless or accidental damage to the Apartment, the Manager must keep the Apartment in the same condition as at the start of this Agreement and properly cleaned, repaired and maintained.
- 9.2 In addition to its obligations under clause 9.1, the Manager must:
- (a) maintain all painted and other finished surfaces within the Apartment in as good a condition as at the start of this Agreement, fair wear and tear excepted;
 - (b) keep the Apartment free from rubbish, keep waste in proper containers and have it removed regularly;
 - (c) clean and maintain and repair all items within the Apartment;
 - (d) immediately replace glass within the Apartment which becomes cracked or broken with glass of the same thickness and quality;
 - (e) immediately repair defective windows, lights, doors, locks and fastenings and replace missing light-globes and fluorescent tubes and keys within the Apartment;
 - (f) make good any damage to plumbing, drainage, gas, electric, solar and sewerage installations and fire protection apparatus within the Apartment.
 - (g) promptly give written notice to the Owner, the Body Corporate or the Owner's agent of-
 - (i) damage to the Apartment or of any defect in the structure of or any of the services to the Apartment;
 - (ii) service by any authority of a notice or order affecting the Apartment;
 - (iii) any hazards threatening or affecting the Apartment;
 - (iv) any hazards arising from the Apartment for which the Owner might be liable.
 - (h) permit the Owner, its agents or workmen to enter the Apartment during normal business hours, after having been given at least 48 hours notice (or by mutual consent), except in cases of emergency:

- (i) to inspect the Apartment,
 - (ii) to carry out repairs or agreed alterations; and
 - (iii) to do anything necessary to comply with notices or orders of any authority, bringing any necessary equipment.
- (i) only use suitably qualified personnel to repair and maintain the Apartment and the Owner's fixtures and fittings. All work must be undertaken to industry standards in a professional manner and comply with any manufacturer's recommendations as to workmanship and frequency of maintenance;
 - (j) take all precautions required by law against fire, but not if this requires structural alterations or installation of equipment; and
 - (k) take reasonable precautions to secure the Apartment and their contents from theft, keep all doors and windows locked when the Apartment is not in use.

9.3 The Manager is not obliged:

- (a) to repair damage which may be covered by the Owner's insurance of the Apartment;
- (b) to carry out structural repairs or undertake capital replacements unless the need for them results from:
 - (i) negligence by the Manager or the Manager's employees, agents, contractors, customers or visitors, or
 - (ii) failure by the Manager to perform its obligations under this Agreement, or
 - (iii) the Manager's use of the Apartment,
 and subject to the Manager's obligations under this Agreement the Owner shall be responsible for the major capital works to the Apartment to maintain the Premises to the standard required for the Business; and
- (c) to pay for items covered under builders' warranties or manufacturers' guarantees.

10. Management Fees

- 10.1 The Manager is entitled to the Revenue less the Owner's Income and all other monies due and payable by the Owner to the Manager under this Agreement.

11. Operating Account

- 11.1 All Revenue and working capital provided by the Manager must be deposited in the Operating Account, which will be opened in the Manager's name.
- 11.2 The Manager may invest any funds in the Operating Account for such period, as the Manager reasonably considers appropriate in:
- (a) interest-bearing deposit with any bank, building society, merchant bank or cash management trust; and
 - (b) any authorised trustee investment.

- 11.3 The Manager may withdraw from the Operating Account, in priority to the Owner's Income, amounts up to the total of working capital contributions from time to time together with interest at 2 %.
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12. Books of Account

- 12.1 The Manager must establish proper books of account for the Business and must ensure that entries are made regularly of all money received and paid and such books must be kept either at the Building or at the Manager's office.
- 12.2 The Manager must keep all books and records in all material respects in accordance with Australian Accounting Standards.
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13. Termination

- 13.1 If any one of the following events occurs:
- (a) a party materially breaches any provision of this Agreement and such breach continues for a period of thirty (30) days after written notice is given to each of the other parties specifying the duty or duties which the party has failed or neglected to carry out and requesting the other party to carry out such duty or duties; or
 - (b) the Manager or Owner, being a corporation, becomes insolvent within the meaning of the Corporations Law;
 - (c) the Owner, being an individual, becomes bankrupt or commits an act of bankruptcy or brings his/her estate within the operation of any law relating to bankruptcy; or
 - (d) the Owner's mortgagee takes possession of the Apartment,
- a party may terminate this Agreement without cause (and without the right to make any claim for compensation as a result of such termination except for any prior breach of this Agreement) by giving three (3) months written notice addressed to the other parties.
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14. Assignment

Assignment by the Manager

- 14.1 Subject to clause 16.1, the Manager may assign or novate its interest in this Agreement at any time to:
- (a) any related body corporate within the meaning of the Corporations Law; or
 - (b) any person or operator who is reputable and who is capable of complying with the Manager's obligations under this Agreement.
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15. Subsequent sale of the Apartment

- 15.1 If the Owner has entered into an unconditional contract of sale of this Apartment then the Owner may elect to either:
- (a) terminate this Agreement on date of sale; or

- (b) assign or novate its rights and obligations under this Agreement to the new owner of the Apartment; and

in either event the Owner must give the Manager and Guarantor as much notice as possible but at least one (1) month's written notice of the election, which the Owner has made.

- 15.2 If the Owner elects to assign or novate this Agreement to the new owner of the Apartment it is a condition of such assignment or novation that before such assignment or novation becomes effective:
- (a) the Owner must obtain consent from the Manager, and Guarantor if the Agreement is assigned or novated during the Guarantee Period, to such assignment or novation; and
 - (b) the Owner must pay to the Manager an assignment fee being such amount as the Manager determines from time to time acting reasonably.

16. Releases

Assignment or novation by the Manager

- 16.1 In the case of an assignment or novation by the Manager pursuant to clause 14.1 the Manager must ensure that the non-assigning parties:
- (a) consent to the release of the Manager from all its liabilities and obligations under this Agreement arising subsequent to the date that such assignment or novation takes place; and
 - (b) enter into an agreement with the assignee or novatee on substantially the same terms as this agreement whereby the assignee or novatee assume all of the obligations and liabilities of the Manager under this Agreement as and from the date of such assignment or novation.
- 16.2 The Manager must provide the non-assigning parties with at least one (1) month's written notice of its election in the form set out in Schedule 2.

Assignment or novation by subsequent sale of the Apartment

- 16.3 In the case of an assignment or novation by the Owner pursuant to clause 15.1 the Owner must ensure that the non-assigning parties:
- (a) consent to the release of the Owner from all its liabilities and obligations under this Agreement arising subsequent to the date that such assignment or novation takes place; and
 - (b) enter into an agreement with the assignee or novatee on substantially the same terms as this agreement whereby the assignee or novatee assume all of the obligations and liabilities of the Owner under this Agreement as and from the date of such assignment or novation.
- 16.4 The Owner must provide the non-assigning parties with at least one (1) month's written notice of its election in the form set out in Schedule 2.

End of Guarantee Period

- 16.5 On and from the expiry of the Guarantee Period the Manager and Owner consent to the Guarantor being released from all its liabilities and obligations under this Agreement.

17. Relationship between the parties

17.1 The parties do not intend to be partners.

18. GST

- 18.1 Terms defined in the GST Act have the same meaning when used in this clause, or in the definition of "GST Amount" unless expressly stated otherwise.
- 18.2 Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under this Agreement has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
- 18.3 If any GST is payable on any taxable supply made under this Agreement to the recipient by the supplier ("Supplier"), the recipient must pay the GST Amount to the Supplier on the earlier of:
- (a) the time of making payment of any monetary consideration on which the GST is calculated; and
 - (b) the issue of an invoice relating to the taxable supply.
- 18.4 The recipient must pay the GST Amount in the same manner as making payment of any monetary consideration on which the GST is calculated. The Supplier must provide as a precondition for payment by the recipient of the GST Amount, a tax invoice or a document that the Commissioner will treat as a tax invoice.
- 18.5 The amount recoverable on account of GST under this clause by the Supplier will include any fines, penalties, interest and other charges incurred as a consequence of late payment or other default by the recipient under this clause.
- 18.6 If either party is required to pay, reimburse or indemnify the other for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this Agreement, the amount must be reduced by the amount for which the other party (or representative member if this is not the other party) can claim an input tax credit, partial input tax credit, or other like offset.
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19. General Provisions

Notices

- 19.1 Notices are to be given in any of the following ways:
- (a) pre-paid post (airmail if outside Australia) to the addresses specified in Item 9 of Schedule 1;
 - (b) personal delivery to the addresses specified in Item 9 of Schedule 1; or
 - (c) facsimile transmission to the number specified in Item 9 of Schedule 1.
- 19.2 The Owner must notify the Manager and Guarantor promptly of any change of address for notices.

Counterparts

19.3 This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

Governing Law and jurisdiction

19.4 This Deed is governed by the laws of Victoria.

19.5 Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Amendments

19.6 This Agreement must not be changed or amended in any way after its execution, except in writing and executed or initialled by all relevant parties.

No merger

19.7 The warranties, other representations and promises by the parties in this Agreement are continuing and will not merge or be extinguished on completion of this Agreement.

Severability

19.8 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

Waiver

19.9 A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.

Entire Agreement

19.10 This Agreement constitutes the entire agreement between the parties.

Execution

Executed for and on behalf of:
AGSB PTY LTD (ACN 169 285 974)
by a director and secretary/director:

.....
Signature Director

.....
Signature Director

.....
Print full name of signatory

.....
Print full name of signatory

Executed for and on behalf of:
SALREST NO 2 PTY LIMITED (ACN 112 995 178)
AS TRUSTEE FOR THE T2 TRUST (ABN 53 804 432 361)
by a duly appointed attorney in the presence of:

.....
Signature of witness

.....
Signature of Attorney (I have no notice of revocation
of the power of attorney dated 22 May 2015 under
which I sign this document)

.....
Print full name of witness

.....
Print full name of signatory

Signed by the **OWNER**:

In the presence of:

.....
Signature Owner

.....
Signature of witness

.....
Print full name of Owner

.....
Print full name of witness

Schedule 1

Item	Description	Details
1	Commencement Date (clause 3.1)	
2	Owner (a) Name (b) ABN/ ACN (c) Address	
3	Apartment (a) Unit Number: (b) Apartment Lot:	
4	Minimum Term	7 years
5	Guaranteed Income	Year 1: \$ _____ per annum (plus GST if applicable)
6	(a) Base Income (b) Surplus Income	2.75 multiplied by the Guaranteed Income 50% (plus GST if applicable) of the Revenue in surplus to the Base Income
7	Guarantee Period	7 years from the Commencement Date, subject to this Agreement and Contract for Sale.
8	Owner's Expenses	\$0.00 (plus GST)
9	(a) Owner's address for service of notices (b) Manager's address for service of notices	Address: Attention: Facsimile: Address: 285 City Road, Southbank VIC Attention: General Manager Facsimile:

Schedule 2

Notice of Assignment/Novation

TO:

{Insert name of Non-assigning Party No. 1}

{Insert name of Non-assigning Party No. 2}

I/We hereby give you notice that on {insert date of assignment/novation}

I/We assigned/novated the Apartment Management Agreement dated {insert date} with you to {insert name and address of assignee/novatee}.

I/We request that you sign and return this letter where indicated below to indicate your agreement to the terms set out above.

.....

Signature of Assigning/Novating Party

.....

Date

By signing this letter, the parties indicate their agreement to the matter indicated above.

Signed, sealed and delivered by each party as a deed poll.

.....

Signature of Non-assigning Party No.1

.....

Signature of Non-assigning Party No.2

.....

Date

.....

Date