

Dated 7th OCTOBER. 2002

PARTIES

**BODY CORPORATE FOR SURFERS CHALET  
COMMUNITY TITLES SCHEME 11561**

AND

**STEPHEN RODERICK MARTIN and SUSAN JAYNE MARTIN**

**MANAGEMENT & LETTING AGREEMENT  
"SURFERS CHALET"**

MANLEY & ASSOCIATES  
Solicitors  
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100 Bundall Road  
BUNDALL QLD 4217  
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**MANAGEMENT AND LETTING AGREEMENT**

Queensland Duty Paid	\$N/A
On the Amount of \$Nil	Duty Code
<i>Associated Instrument to Business Acquisition Duplicate</i>	
13A:CONV:665	Transaction Number <u>144/02</u>
Signed: _____	<u>09/10/02</u>

THIS AGREEMENT is made this 7<sup>th</sup> day of October 2002.

**BETWEEN:** **BODY CORPORATE FOR "SURFERS CHALET" CTS 11561** of C/- Active Body Corporate Management Pty Ltd, 2434 Gold Coast Highway, Mermaid Beach in the State of Queensland of the first part

**AND:** **STEPHEN RODERICK MARTIN and SUSAN JAYNE MARTIN** of Unit 1, 6 Aubrey Street, Surfers Paradise in the State of Queensland of the other part

**INTERPRETATION**

Except where the context expressly or impliedly requires an interpretation to the contrary, the following words and expressions shall have the meanings set out opposite them as follows:-

"Owner" Body Corporate for "Surfers Chalet" Community Management Statement Number 11561, a body corporate constituted pursuant to the provisions of The Body Corporate Community Management Act (Queensland) (as amended).

"Manager" **Stephen Roderick Martin and Susan Jayne Martin** of Unit 1, 6 Aubrey Street, Surfers Paradise in the State of Queensland.

"Act" The Body Corporate and Community Management and Group Titles Act 1997 (as amended) (Queensland) together with the regulations made thereunder, or any replacement thereof.

"The Complex" That unit building known as "Surfers Chalet" together with grounds and gardens, facilities and the like.

"The Common Property" That part of the property which is common property as opposed to lots in the relevant Community Management Scheme pursuant to the provisions of the Act.

"C.P.I." The Consumer Price Index (all Groups) for Brisbane published by the Australian Bureau of Statistics, or if that is suspended or discontinued, then the Queensland male basic wage applicable in Brisbane.

"Further Term" Means the ten years commencing on the day after expiry of the Term.

Words and expressions importing the singular shall, where necessary include the plural and vice versa and any reference to one gender shall, where necessary, include similar words and expressions of any other gender.

**WHEREAS:**

- A. The Owner is the Body Corporate.
- B. The Owner is desirous for the better management, administration and control of the property and for the better exercise and performance of its powers and duties pursuant to the provisions of the Act of appointing a manager for and on behalf of the Owner to carry out the duties set out below.
- C. The Manager for the consideration set out below has agreed with the Owner as follows:-

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

**1. SCOPE OF THE MANAGER'S DUTIES**

The Manager will be responsible to the Owner to at all times ensure that the common property is properly maintained and administered and kept in good repair and will be responsible to the Owner for the care, maintenance and administration of the common property in terms of this agreement. The Manager's duties may be performed by the Manager, its delegates or its employees.

**2. SPECIFIC DUTIES TO BE PERFORMED BY THE MANAGER**

Without limiting the generality of the Manager's duties as described in Clause 1 hereof some of the Manager's specific duties and functions will be as follows:

**A. MEETINGS**

The Manager will attend all meetings of the Owner and its Committee as required by the Owner.

**B. EXTERNAL MAINTENANCE AGREEMENT**

The Manager shall ensure that all necessary external maintenance agreements have been negotiated and are properly in effect. In this context "external maintenance agreements" means all necessary agreements with contractors as may be required for the proper care and maintenance of the Complex. The Manager will also ensure that at all times all external maintenance agreements are being properly performed and carried out at the scheduled intervals by the contractors so employed (where applicable) in a good and workmanlike manner. In addition it is the responsibility of the Manager to carry out minor repairs and maintenance to the common property, such maintenance to be of nature that does not require the services of a skilled tradesman.

**C. CARE AND CLEANING OF CERTAIN AREAS**

- (i) All public foyers, and stairways and utility rooms;
- (ii) All paved areas, grounds, lawns, gardens and nature strips and where applicable, any sporting greens of any type whatsoever and all other areas of the common property, excluding where applicable, private courtyard gardens and roof top gardens.

D. CARE OF GARDEN AREAS AND OTHER SUCH FACILITIES

The Manager shall regularly water, fertilise, weed and maintain all garden areas and maintain and mow lawns of the common property excluding private courtyard gardens.

E. KEYS

The Manager shall keep under strict control all master keys and other necessary keys as will be required to enable him to perform his functions pursuant to this Agreement.

F. SECURITY AND ORDER

As far as is reasonable and lawful the Manager shall keep order on the Complex and safeguard against accident or unlawful entry and shall, where possible, maintain security and monitor the observance of the By-laws in force from time to time pursuant to the provisions of the said Act.

G. REPAIRS

The Manager must report promptly to the Owner on all matters requiring repair and attention and all other matters on the Complex creating a hazard or danger and shall, where possible and practical, take immediate remedial action.

H. PUBLIC LIGHTING

The Manager will ensure so far as reasonable that all public lighting operates efficiently and that all time switches are reset when necessary and operating efficiently.

I. VENTILATING FANS

The Manager must ensure that so far as reasonable that all ventilating fans are operating efficiently and as designed are serviced regularly.

J. PRESSURIZED WATER SYSTEMS

The Manager will take all steps available to him to ensure that all pressurised water systems function correctly at all times.

K. POOL

The Manager will at all times be responsible to check pumps and filters connected to the swimming pool, test the chlorine level of the pool and where necessary, add chemicals and at all times ensure that the pool and its surrounds are clean and hygienic. The Manager will also maintain and clean the swimming pool and each day will set out the pool furniture and each evening store it in a safe place.

L. FIRE FIGHTING EQUIPMENT

The Manager must regularly inspect all fire fighting equipment and ensure so far as reasonable that it

is at all times in good and working condition and shall also endeavour to ensure that fire department inspections are carried out at prescribed intervals and will at all times be responsible to ensure that adequate maintenance of the fire protection system.

M. DRAINAGE

The Manager will ensure that so far as reasonable all drainage from the building is clear and functioning at all times.

N. FIRE HAZARDS

The Manager will use their best endeavours to ensure that at all times there are no potential fire hazards in and about the property.

O. HOSING OF WALKWAYS & OTHER SUCH AREAS

The Manager will when necessary, hose all walkways and access areas at appropriate times.

P. CAR PARKING

The Manager will supervise the car parking arrangements for the Complex.

Q. MATERIALS & EQUIPMENT FOR CLEANING AND THE LIKE

It will not be the responsibility of the Manager to supply materials and equipment necessary for the performance of their functions pursuant to the agreement but it will be their responsibility to ensure that at all times all necessary equipment and stocks of materials are available to enable them to properly perform their functions.

3. **LETTING AGENCY**

In consideration of the Body Corporate granting to the Manager the right to conduct a letting business and the Manager receiving payment of commission from those who use the service, the Manager may conduct, from their unit and common property, a letting agency for the letting of units in the Complex for such Owners of units in the Complex as require that service, or with prior written approval of the Owner arrange with a licensed real estate agent or agents to provide a letting agency for the letting of units in the Complex for such Owners that require that service. The Manager will ensure that at all times they are properly licensed to perform these functions having regard to the provisions of the Property Agents and Motor Dealers Act 2000 as amended and any other relevant legislation or requirement or requirements of other governmental or semi-governmental authorities from time to time.

4. **EXPENSES INCURRED BY MANAGER**

Notwithstanding any other provisions of this Agreement the Manager will not incur any expense which exceeds THREE HUNDRED DOLLARS (\$300.00) except with the written authority of the Owner and any such expense duly authorised will be paid by the Owner.

5. **DIRECTIONS OF THE OWNER**

The Manager will comply with and carry out all reasonable directions from time to time given by the Owner to the Manager in and about the administration and the management of the Complex and the performance by the Owner of its lawful obligations and duties. Such directions must be given by a duly authorised person from time to time of the Committee of the Owner.

6. **ASSIGNMENT**

The Manager will be at liberty to assign their interest in this agreement to any person, firm or corporation PROVIDED that the person firm or corporation is responsible, respectable and financially sound and capable of conducting the obligations of the Manager under this Agreement. It is agreed that in the event of a proposed assignment by the Manager, notice in writing will be given to the Committee of the Owner of such proposal, which notice will include all pertinent details of the proposed assignee or assignees and shall provide at least two character references and a bank opinion in respect of such assignee or assignees. It is further agreed that the Owner will be given a period of ONE (1) month at the least to consider such proposed assignee or assignees and the Owner's decision so proposed must be communicated in writing by the Committee of the Owner to the Manager within the period of ONE (1) month.

7. **REMUNERATION**

- (a) The remuneration of the Manager in the first year of the Term will be the sum of \$32,000.00 and the remuneration will be increased for the second and subsequent years of the Term and any option for renewal by the same percentage of the previous year's remuneration as the last percentage increase in the C.P.I. for one year as last recorded by the Commonwealth Statistician immediately before the year in which the remuneration is to be reviewed, subject to Clause 7(b);
- (b) Despite Clause 7(a) the remuneration for any year will never be less than the remuneration for the previous year;
- (c) The Body Corporate must pay the remuneration to the Manager by equal monthly instalments in arrears, the first payment one calendar month from the Commencement date and monthly after that;
- (d) The Body Corporate must pay to the Manager in addition to the remuneration, a further amount equal to the remuneration multiplied by the statutory rate of GST (as defined in the A New Tax System (Goods and Services Tax) Act 1999) prevailing at the time of payment;
- (e) The remuneration is paid only for the Manager's duties and not for any letting or ancillary services which the Manager or any other entity provides.

8. **SALE AND LETTING OF UNITS**

The Owner consents to the Manager operating the business of real estate agent solely for the sale and letting of units in the building and the provision of services ancillary to letting.

The Owner to the extent of its powers under the Body Corporate & Community Management Act and its By-laws covenants that with respect to the letting of any units in building it will not consent to any person or corporation other than the Manager acting as Agent with respect to any such lettings or assist any person or corporation with respect to any such lettings.

9. **TERM OF THIS AGREEMENT**

The term of this Agreement is for a period of fifteen (15) years, commencing on the 1st day of December, 2002 and ending on the 30th day of November, 2017.

10. **OPTION FOR RENEWAL**

If the Manager -

- (a) wants to extend this Agreement for the Further Term;
- (b) gives to the Body Corporate notice not more than six (6) months and not less than three (3) months before the Term expires; and
- (c) this Agreement has not been terminated and, before the date of commencement of the Further Term, no breach by the Manager of any of the provisions of this Agreement has occurred entitling the Body Corporate to terminate this Agreement (unless they have been remedied by the Manager or excused by the Body Corporate);

the Body Corporate will grant to the Manager a further Agreement upon the same terms as are contained in this Agreement except that -

- (d) the term of the further Agreement will be the Further Term;
- (e) the definition of Further Term will not apply;
- (f) the date of commencement of the further Agreement will be the day immediately following the expiration of the Term;
- (g) the remuneration payable to the Manager for the first year of the Further Term will be determined on the basis of an adjustment of such remuneration in accordance with Clause 7(a);
- (h) this Clause 10 will be deleted.

11. **TERMINATION**

This Agreement may be determined by the Owner forthwith by notice in writing to the Manager in any of the following events:

- (i) If the Manager neglects to carry out their duties pursuant to this Agreement in a manner which is to the reasonable satisfaction of the Owner and such neglect continues for a period of FOURTEEN (14) days after notice in writing is given to the Manager by the Owner specifying

the duties which the Manager has neglected and called upon the Manager to perform such duties.

- (ii) If the Manager is guilty of gross misconduct or gross negligence in the performance of their functions, duties or obligations under this Agreement.
- (iii) If the Manager is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty.
- (iv) If the Manager carries on a business involving the supply of services to the Body Corporate or to owners or occupiers of lots, and the carrying on of the business is contrary to law.
- (v) If the Manager transfers an interest in the engagement or authorisation without the Body Corporate's approval.

## 12. **ARBITRATION**

All questions or differences whatsoever which at any time arise between the parties or their respective representatives or successors, or any of them, touching or concerning this Agreement or the construction, meaning, operation or effect of it or of any clause contained in it or as to the rights, duties or liabilities of the parties or their respective representatives or successors under this Agreement, or ensuring the subject matter hereof, must be referred to a single arbitrator to be agreed upon by the parties hereto or in the absence of agreement, to be nominated by the President for the time being of the Queensland Law Society Incorporated and such arbitration will be pursuant to the provisions of the Commercial Arbitration Act 1990 (as amended).

## 13. **MANAGEMENT UNIT**

Lot 1 is to be used by the Manager for the purpose of management and letting pursuant to this Agreement and to the extent that it is lawful, while there be no breach by the Manager of the terms and conditions of this Agreement, that unit will be the only unit in the Complex from which management of the Complex and letting of units in the Complex take place.

## 14. **EMPLOYMENT OF INDEPENDENT CONTRACTORS**

Notwithstanding the Manager's previously mentioned obligations and duties under this Agreement, it is acknowledged that in respect of certain of those obligations and duties the function of the Manager is of necessity by virtue of the nature of the work involved is limited to supervision and ensuring that certain work is in fact carried out from time to time. In respect of these matters, that is, where the Manager's functions is limited to supervision, it is the intention of the Owner to engage an independent contractor of contractors.

## 15. **JOINT AND SEVERAL LIABILITY**

Where any party to this Agreement consists of more than one person or corporation or any combination of person, persons and corporation or corporations being at least two, then the liability pursuant to this Agreement of such person, persons corporation or corporations, as the case may be, will be joint and several.

16. **SEVERABILITY**

In the event that any part of this Agreement becomes or is declared invalid, unenforceable or unlawful, the remaining portions of this Agreement will not thereby be affected and will remain in full force and effect and be construed accordingly.

17. **OCCUPATION AUTHORITY**

The Manager is granted the exclusive right to occupy those parts of the common property hatched on the plan marked "A" ("the Area") attached during the term of this Agreement for the purpose of allowing the Manager to carry out their duties and obligations under this Agreement.

18. **SURRENDER OF PREVIOUS AGREEMENT**

The parties acknowledge and agree that as and from the 13<sup>th</sup> day of December, 2002 the Management Agreement dated 13<sup>th</sup> day of March, 1980 between the Body Corporate and Longstaff Hotels Pty Ltd, to which the Manager is now a party, is surrendered and terminated.

19. **NOTICES**

Any notice in writing or document required or desired to be given by either party to the other pursuant to this Agreement may be given by that party or his solicitor and may be given to the other party or his solicitor. Any such notice in writing or document shall be sufficiently given -

- (a) by hand: if it is delivered to the address of the intended recipient;
- (b) by prepaid post or document exchange: to the address of the intended recipient and will be deemed to have been received one (1) day after posting or deposit at the exchange aforesaid;
- (c) by facsimile: when the facsimile is sent to the recipient and will be deemed to have been received when the sender's machine provides a printout stating the receiver's facsimile number, the number of pages transmitted and that the transmission has been successful.

In addition, any such notice in writing may be given or document delivered in the manner prescribed by Section 257 of the Property Law Act 1974 as amended. Any notice or other communication made by a solicitor for one party shall be deemed to have been made with the authority of that party.

IN WITNESS WHEREOF the parties hereto have on the day and year first hereinbefore appearing set their hands and seals.

THE COMMON SEAL of SURFERS CHALET )  
COMMUNITY TITLE SCHEME )  
NO. 11561 was hereunto affixed under the )  
hands of )  
and )  
in the presence of: )



*E. J. Gilbert*  
E.T. GILBERT  
Committee Mem.

*C. Bunker*  
C. BUNKER  
Committee member

*H. M. Gilbert*  
.....  
Witness:

H.M. GILBERT

SIGNED SEALED AND DELIVERED by )  
STEPHEN RODERICK MARTIN )  
and SUSAN JAYNE MARTIN in the )  
presence of: )

*S. Martin*  
.....

*S. Martin*  
.....

*H. M. Gilbert*  
.....  
Witness

H. M. GILBERT

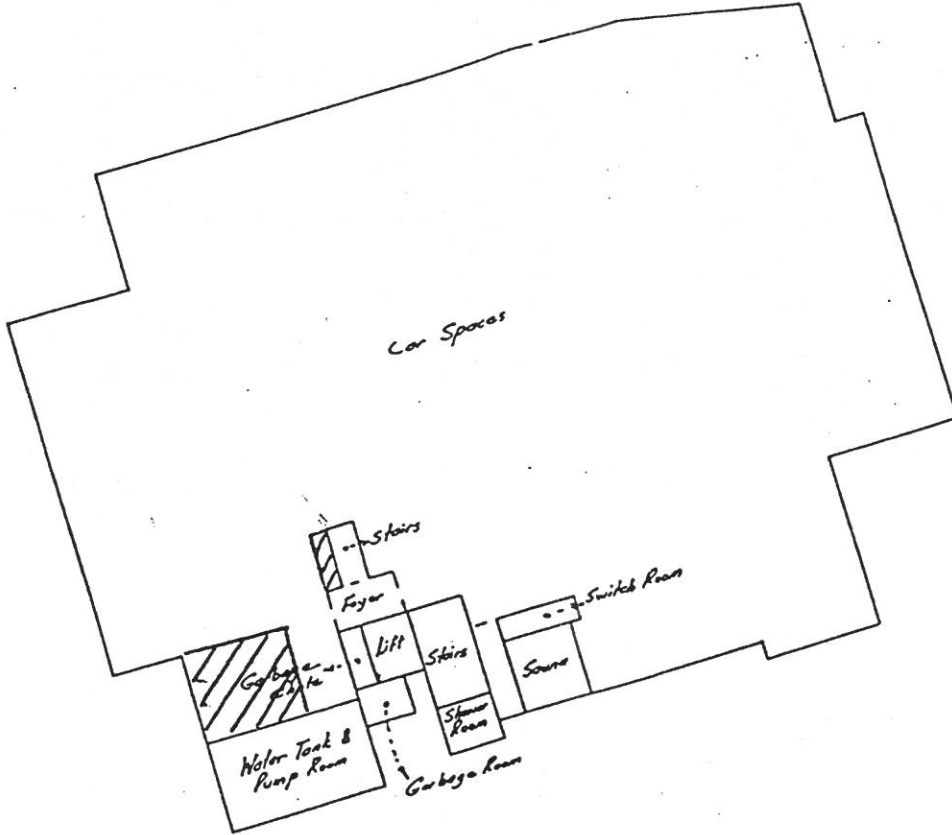
STORAGE AREAS

FORM 5  
REGULATION 15

SHEET No. 6 of 14 SHEETS

BUILDING UNITS PLAN NO. 3604

LEVEL A


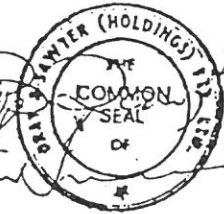


Car-parking, Sauna, and Building Service Purposes Only.

Scale 1:250

Floor Areas are approximate only.

SIGNATURE OF REGISTERED PROPRIETOR:

  
  
 J. J. Selver

Shire Clerk  
 Margaret Town  
 Gold Coast City Council

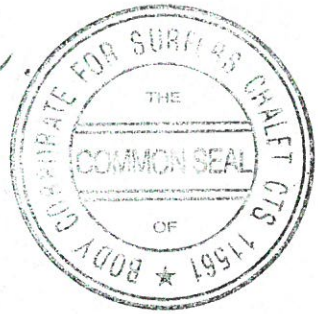
*E. S. Gilbert*  
E. S. GILBERT

Committee Member

*C. Bunker*

C. BUNKER

Committee Member



DATED 7th OCTOBER 2002

BETWEEN:

BODY CORPORATE FOR "SURFERS CHALET" CTS  
11561

STEPHEN RODERICK MARTIN and  
SUSAN JAYNE MARTIN

*[Handwritten signature]*  
*S. Martin*

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**MANAGEMENT AND LETTING  
AGREEMENTS**  
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**Messrs Manley & Associates**  
Solicitors  
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