

Caretaking Agreement

THIS AGREEMENT is made this 20th day of December 2005

BETWEEN: BODY CORPORATE FOR "RIVERSIDE AT RIVERWOOD" COMMUNITY TITLES SCHEME NO. 34774 a Body Corporate constituted under the Body Corporate and Community Management Act 1997 (hereinafter called "the Act") in the State of Queensland ("the Body Corporate")

AND: JEFFREY TERENCE BRIGGS AS TRUSTEE FOR THE BRIGGS FAMILY TRUST of 2 Shelley Place, Upper Coomera in the State of Queensland ("the Caretaker")

WHEREAS

- A. The Body Corporate was established on the registration of Community Titles Scheme No. 34744 ("the Plan") in respect of a residential development ("the Development") known or intended to be known as "Riverside at Riverwood".
- B. The Body Corporate wishes to provide for the caretaking of the common property comprised in the Developments ("the Common Property").
- C. It has been agreed that the Body Corporate will engage the Caretaker and the Caretaker will accept such engagement to perform duties on behalf of the Body Corporate on the terms contained in this Agreement.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. APPOINTMENT OF CARETAKER

1.1 The Body Corporate appoints the Caretaker as the caretaker of the Building and of the Common Property for a period of 5 years to commence on and from 21 December 2005 and ending on 20 December 2010 and the Caretaker accepts such appointment upon the terms and conditions of this Agreement.

1.2 If the Caretaker wishes to renew the term of this Agreement for a further term ("the First Extended Term") of 5 years from the expiration of the original term of this Agreement then the Caretaker shall give to the Body Corporate not more than 6 months and not less than 3 months previous notice in writing of such wish and provided there is currently no unremedied notice of breach issued under Clause 8.2, the Body Corporate will grant to the Caretaker a renewal of this Agreement for the Extended Term at a remuneration during the first year of the Extended Term to be agreed upon between the parties and thereafter to be determined in the manner provided in the Schedule but otherwise upon the same terms and conditions as are contained in this Agreement with the exception of this subclause PROVIDED THAT if agreement as to the remuneration for the first year of the First Extended Term shall not be reached prior to the date of commencement of such year then such remuneration shall be referred for determination as provided in Clause 13 and PROVIDED FURTHER THAT the remuneration for the first year of the First Extended Term shall not in any event be less than the remuneration being paid at the expiration of the original term of this Agreement.

1.3 If the Caretaker wishes to renew the term of this Agreement for a further term ("the Second Extended Term") of

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D.O.E entered 22/7/10

not less than last annual period.

20/6/15 → 20/9/15

20/12/15

5 years from the expiration of the First Extended Term of this Agreement then the Caretaker shall give to the Body Corporate not more than 6 months and not less than 3 months previous notice in writing of such wish and provided there is currently no unremedied notice of breach issued under Clause 8.2, the Body Corporate will grant to the Caretaker a renewal of this Agreement for the Second Extended Term at a remuneration during the first year of the Second Extended Term to be agreed upon between the parties and thereafter to be determined in the manner provided in the Schedule but otherwise upon the same terms and conditions as are contained in this Agreement with the exception of this subclause PROVIDED THAT if agreement as to the remuneration for the first year of the Second Extended Term shall not be reached prior to the date of commencement of such year then such remuneration shall be referred for determination as provided in Clause 13 and PROVIDED FURTHER THAT the remuneration for the first year of the Second Extended Term shall not in any event be less than the remuneration being paid at the expiration of the First Extended Term of this Agreement.

20/12/20

1.4 If the Caretaker wishes to renew the term of this Agreement for a further term ("the Third Extended Term") of 5 years from the expiration of the Second Extended Term of this Agreement then the Caretaker shall give to the Body Corporate not more than 6 months and not less than 3 months previous notice in writing of such wish and provided there is currently no unremedied notice of breach issued under Clause 8.2, the Body Corporate will grant to the Caretaker a renewal of this Agreement for the Third Extended Term at a remuneration during the first year of the Third Extended Term to be agreed upon between the parties and thereafter to be determined in the manner provided in the Schedule but otherwise upon the same terms and conditions as are contained in this Agreement with the exception of this subclause PROVIDED THAT if agreement as to the remuneration for the first year of the Third Extended Term shall not be reached prior to the date of commencement of such year then such remuneration shall be referred for determination as provided in Clause 13 and PROVIDED FURTHER THAT the remuneration for the first year of the Third Extended Term shall not in any event be less than the remuneration being paid at the expiration of the Second Extended Term of this Agreement.

20/12/25

1.5 If the Caretaker wishes to renew the term of this Agreement for a further term ("the Fourth Extended Term") of 5 years from the expiration of the Third Extended Term of this Agreement then the Caretaker shall give to the Body Corporate not more than 6 months and not less than 3 months previous notice in writing of such wish and provided there is currently no unremedied notice of breach issued under Clause 8.2, the Body Corporate will grant to the Caretaker a renewal of this Agreement for the Fourth Extended Term at a remuneration during the first year of the Fourth Extended Term to be agreed upon between the parties and thereafter to be determined in the manner provided in the Schedule but otherwise upon the same terms and conditions as are contained in this Agreement with the exception of this subclause PROVIDED THAT if agreement as to the remuneration for the first year of the Fourth Extended Term shall not be reached prior to the date of commencement of such year then

such remuneration shall be referred for determination as provided in Clause 13 and PROVIDED FURTHER THAT the remuneration for the first year of the Fourth Extended Term shall not in any event be less than the remuneration being paid at the expiration of the Third Extended Term of this Agreement. Expires 20/12/30

2. REMUNERATION OF CARETAKER

The Body Corporate shall pay the Caretaker a remuneration calculated and paid by instalments in accordance with the Schedule.

3. DUTIES OF CARETAKER

The Caretaker shall during the term of this Agreement:

- 3.1 *X* / *sewer per cl. 15?* / *X* Police compliance with the By-laws of the Body Corporate by the proprietors and/or the occupiers of the lots in the Plan ("the Lots") including their guests and licensees for the time being of the Lots and evict or deal with any person creating a nuisance or annoyance on the Common Property or committing any breach.
- 3.2 At the request of the Body Corporate advise the Body Corporate concerning the performance of the duties of the Caretaker and provide other advice which the Body Corporate shall request relative to the management and care of the Common Property.
- 3.3 Subject to the prior approval of the Body Corporate, arrange for the appointment and supervision of contractors in respect of maintenance services including security systems, fire alarm system, plant preventative maintenance servicing, pest control, cleaning of common areas, plumbing, electrical and general painting maintenance and other services. *- supervisory*
- 3.4 Regularly inspect fire-fighting equipment and ensure that fire department inspections are made at prescribed intervals.
- 3.5 Ensure that all drainage from the Common Property is clear and functioning.
- 3.6 Supervise the car parking arrangements on the Common Property including the visitor parking.
- 3.7 Account promptly and faithfully to the Body Corporate for any funds and/or other property of the Body Corporate coming into the Caretaker's hands or custody.
- 3.8 Report promptly on all things requiring repair and on all matters creating a hazard or danger and take remedial action where practicable.
- 3.9 Ensure that all lighting in the Common Property operates efficiently and that time switches are reset when necessary.
- 3.10 At all times ascertain and be aware of the general condition of the Common Property and all machinery and appurtenances so that at all times the Caretaker is able to keep the Body Corporate's representative informed of such condition.
- 3.11 As far as the Caretaker is reasonably able and lawfully capable of so doing keep order on the Common

Property and take such precautions as the Caretaker sees fit to safeguard the Common Property against unlawful entry, accident or damage.

3.12 Keep in the possession of the Caretaker the master key or keys for any lots under the control of the Body Corporate and the Lots so far as the individual proprietors of the Lots shall permit PROVIDED THAT possession of those keys shall be surrendered to no person other than an authorised representative appointed by the Council of the Body Corporate or the individual Lot proprietor concerned but the Caretaker shall allow a lawful authorised person in the course of his duties free access to any part of the Development of the Common Property so authorised at all reasonable times.

3.13 Maintain the carparking areas and common facilities (including the swimming pool and barbeque facilities) which form part of the Common Property in a clean and tidy condition. *inconsistent w/ 3.3?*

3.14 Regularly water, fertilise, maintain and mow the garden and lawn.

3.15 Use the Caretaker's best endeavours to see that the Common Property are kept in good order and repair.

3.16 Generally cause the Common Property and all plant and equipment to be properly cleaned at all times including but not limited to gardening, mowing, vacuuming, sweeping, polishing, mopping, hosing, and clearing as appropriate any footpath, landscaped areas, driveways, carparks and other facilities (including the swimming pool and barbeque facilities). *inconsistent w/ 3.3*

3.17 Ensure that the Common Property is kept free of rubbish including moving rubbish bins to footpath as required to enable refuse collection and removal.

3.18 Perform such other acts and things as are reasonably necessary and proper in the discharge of his duties under this Agreement.

3.19 Comply with:-

- (i) all relevant laws; and
- (ii) any standards and manufacturer's recommendations about use of chemicals and equipment and service and maintenance of equipment; and
- (iii) warranty conditions.

3.20 Use safe systems of work and comply with laws relating to safety and workers insurance.

3.21 Ensure as far as possible that work is done at times and in a manner that will minimise disturbance and have the least effect on the use of the Common Property by occupants of the Development.

3.22 Keep a daily log of all significant matters occurring in the Development.

PROVIDED THAT none of the duties set out above requires the Caretaker to perform any task that requires the skills of a qualified tradesperson or engineer or technician

*unusual.
What is
significant*

4. FURTHER DUTIES AND EXEMPTION

- 4.1 The Body Corporate shall furnish to the Caretaker a set of plans of the Development and with the aid of these documents and inspection made by competent personnel the Caretaker will study the layout construction location character plan and operation of the power lighting heating plumbing and other mechanical equipment installed in the Development and shall advise the Body Corporate generally on the condition thereof from time to time and shall recommend to the Body Corporate's representative should the Caretaker consider any changes or modifications necessary to be made in respect of any such matters
- 4.2 To the best of the Caretaker's ability the Caretaker shall manage the Development and endeavour to ensure that it is kept in first class order and repair so as to protect the interest in the Development of the proprietors of the Lots.
- 4.3 Nothing shall oblige the Caretaker to superintend clean or maintain any of the Lots.

5. REIMBURSEMENT

- 5.1 The Caretaker shall be entitled to be reimbursed by the Body Corporate for expenditure (within the limits previously approved by the Body Corporate) for the purpose of obtaining materials used in the performance of the duties of the Caretaker or those of other employees of the Body Corporate and for such other purposes as are necessary or incidental to the discharge of the obligations of the Caretaker PROVIDED THAT any major or extraordinary expenditure shall not be incurred without the prior approval of the Body Corporate or of its representative authorised pursuant to Clause 11.
- 5.2 The Caretaker will check and verify accounts for goods or services payable by the Body Corporate and which are the responsibility of the Caretaker under this Agreement and notify the representative of the Body Corporate that they are in order for payment.

6. ASSIGNMENT BY CARETAKER

- 6.1 The Caretaker will not assign the interest of the Caretaker in this Agreement except with the prior approval of the Body Corporate and the Body Corporate agrees that such approval shall not be unreasonably withheld PROVIDED THAT it shall be a condition precedent to the giving of such approval that the proposed Assignee execute in favour of the Body Corporate a deed of covenant to perform observe and fulfil the terms covenants and conditions on the part of the Caretaker herein expressed or implied to be performed observed or fulfilled and such deed of covenant shall be prepared and stamped by the Solicitors for the Body Corporate at the expense of the Caretaker.
- 6.2 Where the Caretaker is a corporation any change in the principal share holding or any change in the principal shareholding of any holding company of the Caretaker altering the effect of control of the Caretaker shall (for the purpose of this clause) be deemed to be an assignment of this Agreement and shall require the consent of

what are they?

the Body Corporate in accordance with clause 6.1.

- 6.3 The Caretaker must pay the reasonable costs of the Body Corporate incurred considering or approving an application for assignment of this Agreement. These costs include legal costs and expenses incurred by the Body Corporate for advice regarding consent, registration, preparation and execution of documents provided for in this clause 6.

7. GOODS AND SERVICES TAX

- 7.1 All payments to be made under this Agreement (including but not limited to the party's remuneration) are calculated without regard to GST. If any such payment is for a Taxable Supply then the party receiving that supply shall reimburse the other party for the amount of GST imposed in respect of the Taxable Supply. Each party will provide to the other within a reasonable time after request any documents reasonably necessary to enable the other party to claim Input Tax Credits.

- 7.2 In this clause "GST Act" means the Act entitled "A New Tax System (Goods and Services Tax) Act 1999" as amended from time to time. "GST", "Input Tax Credit" and "Taxable Supply" have the meanings given to those terms by the GST Act.

8. TERMINATION BY BODY CORPORATE

This Agreement may be terminated by the Body Corporate by notice in writing to the Caretaker in any of the following events:

- 8.1 If the Caretaker assigns or attempts to assign this Agreement without the prior consent in writing of the Body Corporate.
- 8.2 If the Caretaker shall fail or neglect to carry out the duties of the Caretaker pursuant to this Agreement and such failure or neglect shall continue for a further period of 14 days after written notice shall have been given to the Caretaker specifying the duty which the Caretaker has failed or neglected to carry out and calling upon the Caretaker to perform such duty.
- 8.3 If the Caretaker shall be guilty of gross misconduct or gross negligence in the performance of the duties of the Caretaker.
- 8.4 If the Caretaker shall be adjudicated bankrupt or convicted on indictment of any criminal charge.
- 8.5 If the Caretaker shall be a company and:
- 8.5.1 A petition is presented or a resolution is passed for the winding up of the Caretaker or notice of intention to propose such a resolution is given;
- 8.5.2 If a receiver of the Caretaker's undertaking, assets or income or any part thereof is appointed or the Caretaker causes a meeting of its creditors pursuant to the Corporations Act 2001 (Cth).
- 8.5.3 If the Caretaker proposes or makes a composition, compromise or arrangement with its creditors or any of

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CSI above
remuneration.

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them whether formally or informally or within the meaning of the Bankruptcy Act or the Corporations Act;
8.5.4 If the Caretaker ceases to carry on business.

9. TERMINATION BY THE CARETAKER

Subject to Clause 8 this Agreement may be terminated by the Caretaker at any time by giving 3 calendar months notice in writing to the Body Corporate.

10. INDEMNITY

The Body Corporate shall at all times keep the Caretaker indemnified against all actions proceedings claims demands or prosecutions whatsoever which may be brought commenced or prosecuted against the Caretaker and also against all costs damages and expenses which the Caretaker may pay or incur in defending or settling the same in consequence of the Caretaker exercising and performing the said powers authorities duties and functions.

11. INSTRUCTIONS FROM BODY CORPORATE TO CARETAKER

11.1 The Committee of the Body Corporate shall from time to time authorise one of its members to give instructions to and communicate with the Caretaker on behalf of the Body Corporate and not more than 1 member of the Body Corporate at any time shall be given such authority.

11.2 The Caretaker will confer fully and freely with the Body Corporate's representative if so requested regarding the performance of the duties of the Caretaker and shall at the request of the representative of the Council of the Body Corporate attend by the authorised representative of the Caretaker meetings of the Council or meetings of the Body Corporate.

11.3 The representative of the Caretaker shall be entitled to be heard on any relevant question or matter at any such meeting.

12. NOTICES

Any notice required to be given or served by either party to this Agreement shall be given or served in the same manner as is provided for in Section 347 of the Property Law Act 1974.

13. ARBITRATION

In the event of any dispute arising between the Caretaker and the Body Corporate touching upon any matter arising under the terms of this Agreement then the same shall be settled by an arbitrator to be mutually agreed upon between the parties and in default of agreement then by such arbitrator as may be nominated for the purpose by the President for the time being of the Queensland Law Society Incorporated and the decision of such arbitrator shall be final and binding between the parties. Such arbitration shall be carried out pursuant to the Commercial Arbitration Act 1990 or any statutory modification or re-enactment thereof for the time being in force.

14. COSTS

All stamp duty payable on this Agreement shall be paid by the Caretaker but the parties shall each otherwise bear

Contrary to s. 27 of CCMA, but no prejudice from arbitration by agreement.

their own legal costs.

15. SEVERABILITY

To the extent that any right duty or obligation in this Agreement contravenes the provisions of any statute such provision shall be severed from this Agreement which shall otherwise remain in full force and effect.

16. CARETAKER NOT TO SUPPLY MATERIALS

The Caretaker shall be under no obligation to:

who supplies it then? only entitled to reimbursement for materials, not equip.

- 16.1 Supply materials or equipment necessary for the performance of his duties under this Agreement other than equipment necessary for gardening duties and any equipment necessary to move the rubbish bins to and from the place where they are kept on the Common Property to the point where they are collected by the relevant refuse authority; or
- 16.2 Incur expenses in relation to the supply of materials necessary for the performance of his duties under this Agreement, except for such expenses in respect of which the Body Corporate agrees, or is under an obligation, to reimburse him.

17. DUTIES OF THE BODY CORPORATE

The Body Corporate agree that during the continuance of this Agreement the Body Corporate shall do all acts and attend to all matters and generally do all things as shall reasonably be required to facilitate the carrying out by the Caretaker of his duties, powers and obligations set out herein including but without limitation repealing, making, or amending By-laws and causing such repeals, by-laws or amendments to come into force pursuant to the Act, assisting the Caretaker in obtaining appropriate notices, consents or licenses from any person, company, statutory authority or other body, and giving any necessary authorisation pursuant to clause 8.1.

18. CARETAKER'S LEAVE

The Caretaker shall have the right to appoint a suitable person to carry out the Caretaker's functions pursuant to this Agreement in the event of an emergency arising or annually for a period or periods for a total of 4 weeks for the purpose of allowing the Caretaker a holiday for that period each year. On each occasion, details of the proposed replacement shall be provided to the Body Corporate (and in the event of holidays at least 1 calendar month prior to the commencement of the Caretaker's proposed holiday in each year) and the Body Corporate shall as soon as reasonably practicable indicate its assent or otherwise to the proposed person. Such assent shall not be unreasonably withheld. It shall be a matter for the Caretaker to ensure that the person or persons from time to time adequately perform the functions of the Caretaker pursuant to this agreement and any breach of this agreement on the part of such person or persons shall be deemed to be a breach by the Caretaker. Any remuneration payable to such person or persons shall be the responsibility of the Caretaker.

19. DEFINITIONS

- 19.1 In this Agreement except where inconsistent with the context words used which are defined in the Act shall have the meaning so defined therein.
- 19.2 "Caretaker" shall in the case of a natural person include his executors administrators and permitted assigns and in the case of a corporation include its successors and permitted assigns.
- 19.3 Words importing the singular shall include the plural and vice versa.
- 19.4 Any gender shall be read as also importing any other gender as the case may require.
- 19.5 Where more than one Caretaker is a party to the agreements and covenants in this deed they shall be deemed to have been entered into jointly and severally.
- 19.6 The headings are inserted for convenience only and shall not affect the construction of this Agreement.

SCHEDULE

The Body Corporate will pay to the Caretaker:

1. During the first twelve (12) calendar months of this Agreement the sum equal to \$1,000.00 per lot per annum by equal monthly payments in advance
2. Thereafter the remuneration of the Caretaker shall be reviewed annually for each twelve (12) Month period during the currency of this Agreement and any extension or renewal thereof and shall be as mutually agreed to by the parties and failing such agreement at such remuneration as shall be determined by an arbitrator appointed for that purpose by the President for the time being of the Queensland Law Society Incorporated PROVIDED THAT such remuneration for each annual period shall be not less than the sum calculated at the commencement of each such annual period in accordance with the following formula:

$$\frac{A \times C2}{C1}$$

WHERE:

A = The sum stipulated in paragraph 1 of this Schedule.

C1 = The Consumer Price Index (All Groups) for the City of Brisbane as published by the Commonwealth Statistician (which Index is hereinafter referred to as "the said Index") for the quarter ending immediately prior to the date of commencement of this Agreement.

C2 = The said Index for the quarter ending immediately preceding the commencement of the particular period for which the remuneration is to be calculated

PROVIDED THAT in the event of any change after the date of commencement of this Agreement in the reference base used to compile the said Index the figure taken to be shown in the said Index after such change shall be the figure which would have been shown in the said Index if the reference base current at the date of execution hereof had been maintained and PROVIDED FURTHER that if it becomes impossible to determine the remuneration at any time during the term hereof by reason of any change after the date hereof in any of the methods used to compute the said Index or if any dispute shall arise between the parties hereto with respect to the amount of additional remuneration or with respect to the construction or effect of this Clause the determination of the additional remuneration or other matter in dispute shall be made by the President for the time being of the Queensland Law Society Incorporated or by his nominee AND PROVIDED FURTHER THAT such remuneration shall not be less than the remuneration paid to the Caretaker for the immediately preceding annual period.

EXECUTED AS A DEED

The Common Seal of the Body Corporate
for "Riverside at Riverwood" Community Titles
Scheme No. 34744 was hereto affixed by its duly
authorised officer being a person authorised
under The Body Corporate and Community
Management Act 1997 to attest the fixing of
the Common Seal

Malcolm

Malcolm



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**EXECUTED BY JEFFREY TERENCE BRIGGS
AS TRUSTEE FOR THE BRIGGS FAMILY
TRUST in the presence of**

[Handwritten signature]



x *J Briggs*

Solicitor/Justice of the Peace