BODY CORPORATE FOR NORTHSHORE RESIDENCES COMMUNITY TITLES SCHEME

("BODY CORPORATE")

######

("CARETAKER")

CARETAKER'S AGREEMENT

david k lawyers
lvl 12 300 queen st
brisbane qld 4000
australia
Tel: 07 3102 2583 Fax: 07 3839 3006

CARETAKER'S AGREEMENT
NORTHSHORE RESIDENCES COMMUNITY TITLES SCHEME

This Agreement is made the day of 20 .

BETWEEN: The Body Corporate for Northshore Residences Community Titles Scheme c/- QBS Strata Management, Level 3, 3 Southward, Upper Coomera in the State of Queensland

("Body Corporate")

AND: _____ of _____

("Caretaker")

INTRODUCTION:

A The Body Corporate wishes to provide for the better administration, control and management of the Complex and the better maintenance, caretaking and repair of the Common Property.

B The Caretaker is appointed to perform the Caretaking Duties.

C The Parties wish to record the terms of their agreement on the following terms.

IT IS AGREED:

1. DEFINITIONS

1.1 Unless the context otherwise requires:

"Act" means the *Body Corporate and Community Management Act 1997 (Qld)*.

"Agreement" means this agreement and all its schedules.

"Associated Party" means:

(a) in the case of a corporation, a director, secretary or shareholder of that corporation;

(b) in the case of an individual, a corporation in which the individual is a director, secretary, or shareholder; and

(c) in the case of a partnership, the partners and management staff of the partnership.

"Body Corporate" means the Body Corporate for the Scheme.

"Body Corporate Assets" means the Body Corporate assets for the Scheme.

"Building" means any of the buildings located on the Scheme Land.

"Caretaker's Lot" means the Lot (if any) in the Scheme of which the Caretaker or an Associated Party is the registered owner.

"Caretaking Duties" means those duties that the Caretaker must perform under this Agreement.

"Commencement Date" means the *[insert fixed date which will be settlement]*

"The Committee" means the Committee of the Body Corporate.

"Common Property" means the Common Property of the Scheme.

"Complex" means the Lots and Common Property comprised in the Scheme.

"CPI" means the Consumer Price Index All Groups for Brisbane published by the Australian Bureau of Statistics, or if that is suspended or discontinued, then a similar figure reasonably determined by the Body Corporate.

"Further Term" means fifteen (15) years commencing on the day immediately after the end of the Term.

"Letting Agent" means the Letting Agent appointed by the Body Corporate for the Scheme (if any).

"Letting Agreement" means a letting agreement entered into by the Body Corporate with the Letting Agent.

"Lots" means lots in the Scheme.

"Maximum Expenditure" means $1,000.00 or such greater amount as approved by the Committee from time to time.

"Nominee" means the person nominated by the Body Corporate.

"Occupation Authority Plan" means the plan attached as Annexure "A" (if any).

"Owners" means the owners of Lots included in the Scheme and includes mortgagees in possession.

"Plan" means the Survey Plan registered for the Scheme.

"Property" means all land comprised in the Scheme and all improvements erected on the land. Where the context permits the definition extends to all adjoining land over which the Body Corporate has easement rights.

"Related Agreement" means any agreement entered into by the Letting Agent with the Body Corporate for the provision of letting or other services.

"Related Person" means a person or persons who are the directors or shareholders of the Caretaker who in the reasonable opinion of the Body Corporate hold effective control of the Letting Agent.

"Remuneration" means, in the first year of this Agreement, the sum of $1,000.00 plus GST for each Lot in the Scheme for which a title has been created for the first year of the Term and subject thereafter to any adjustments made in accordance with Clause 4.1 of this Agreement.

"Scheme" means Northshore Residences Community Titles

Scheme.

"Scheme Land" means the Scheme land identified on the Plan.

"Term" means a period of ten (10) years from the Commencement Date.

INTERPRETATION

2.1 Reference to:

(a) One gender includes the other genders.

(b) Singular includes the plural and the plural includes the singular.

(c) A person includes a body corporate.

(d) A party includes the parties' executors, administrators, successors and permitted assigns.

(e) A statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:

(i) That Statutory Provision as amended or re-enacted from time to time; and

(ii) A statute, regulation or provision enacted in replacement of the Statutory Provision.

(f) All monetary amounts are in Australian dollars, unless otherwise stated.

(g) If a party consists of more than one person then this Agreement binds them jointly and each of them separately.

(h) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.

(i) A party that is a trustee is bound both personally and in its capacity as a trustee.

(j) "Including" and similar expressions are not words of limitation.

(k) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(l) If an act must be done, or the last day upon which it may be done, falls on a specified day that is not a Business Day, the act must be done instead on the next Business Day.

3. APPOINTMENT AND TERM

3.1 The Body Corporate appoints the Caretaker for the Term to look after the Common Property from the Commencement Date.

3.2 The Caretaker

(a) accepts the appointment;

(b) will look after the Common Property as required by this Agreement;

(c) will ensure that the Common Property is able to be used by the persons entitled and is properly maintained and kept in good repair;

(d) will perform the Caretaking Duties; and

(e) is an independent contractor of the Body Corporate.

4. REMUNERATION

4.1 The Remuneration will be increased for the second and subsequent years of the Term and the Further Term by the lesser of:

(a) the same percentage as the last percentage increase in the CPI for one year as last recorded by the Australian Bureau of Statistics immediately before the year in which the Remuneration is to be reviewed; and

(b) 3%.

4.2 Despite the previous clause the Remuneration for any year will never be less than the Remuneration for the previous year.

4.3 The Body Corporate must pay the Remuneration to the Caretaker by equal monthly instalments in arrears, the first payment one calendar month from the Commencement Date and monthly after that.

4.4 If the Caretaking Duties under this Agreement are a supply under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, the Body Corporate must pay to the Caretaker in addition to the Remuneration a further amount equal to the GST.

4.5 The Remuneration is paid only for the Caretaking Duties and not for any letting or ancillary services which the Caretaker or any other entity provides.

4.6 The Caretaker is entitled to a pro rata of the annual remuneration for any Lot/s which are registered part way through any year.

5. CARETAKER'S DUTIES

5.1 In addition to any specific duties set out in any schedule to this Agreement, the Caretaker must as reasonably required:

(a) hose all walkways, access areas and other parts of the Common Property that require hosing;

(b) keep clean, tidy and maintained all parts of the Common Property;

(c) maintain and clean the swimming pool and recreation areas (if applicable);

(d) at the commencement of each day, set out any pool and recreation furniture and equipment;

(e) clean any drains and gutters on Common Property;

(f) keep clean, tidy and maintained all barbeques as and when required (if applicable);

(g) maintain exclusive use areas 800A and 801A and any other areas to which exclusive use is granted to more than one Lot;

(h) maintain the gardens and shrubs to a well presented standard, which duty includes watering, fertilising, weeding, mulching and top dressing;

(i) keep clean, tidy and maintained the bins for the Scheme and the surrounding Common Property where the bins for the Scheme are located as and when required;

(j) effect minor repairs and maintenance to the Common Property where the services of a skilled tradesman are not required.

5.2 The Caretaker must arrange and supervise contracts between the Body Corporate and

independent contractors for all work of a specialist nature required for any of those things referred to in the previous clause or for any services to, or work to be carried out to, the Common Property including without limitation:

(a) specialist repairs and maintenance of the Common Property;

(b) cleaning of external windows or parts of the Complex not easily accessible by the Caretaker; and

(c) the provision of water, electricity, gas, fuel, telephone and other necessary services as required by the Body Corporate.

Such contracts with independent contractors will only be entered into with the prior consent of the Body Corporate, but the Body Corporate must not unreasonably withhold such consent.

5.3 The Caretaker must:

(a) regularly ensure the correct operation and, if necessary, arrange for expert specialist maintenance of:

(i) any waste disposal system;

(ii) all Common Property electrical apparatus (if applicable);

(iii) any pumps and auxiliary motors (if applicable);

(iv) any lifts and security systems; and

(v) all other parts of the Common Property where inspection and/or maintenance is required;

(b) arrange all appliances, equipment, materials and supplies necessary to carry out the Caretaking Duties and to generally maintain the Common Property;

(c) promptly report and account to the Body Corporate for:

(i) matters requiring repair or creating a hazard or danger that involves expenditure of money in excess of the Maximum Expenditure;

(ii) use by the Caretaker of any Body Corporate funds; and

(iii) use by the Caretaker of any other property of the Body Corporate in carrying out the Caretaking Duties;

(d) monitor compliance with the by-laws of the Body Corporate and advise the Body Corporate of any serious or persistent breaches of them;

(e) monitor and administer the use of any recreational areas including without limitation any swimming pool, sauna, spa, home heater, gymnasium and workshop;

(f) keep order and safeguard the Complex against unlawful entry and arrange security contracts at the expense of the relevant Body Corporate as required by the Body Corporate;

(g) regularly inspect the fire fighting equipment, arrange any requisite inspections by the relevant officer when required and, at the expense of the Body Corporate as relevant, arrange for maintenance necessary to maintain the fire fighting equipment in an efficient working condition;

(h) maintain and keep open an office as a reception for the caretaking business during the following minimum hours:

Monday – Friday 9.00am -5.00pm; and
Saturday – 9.00am – 12noon

For the avoidance of doubt, if the Caretaker is absent from the office during the above hours while performing its obligations under this Agreement then it will be sufficient compliance with this clause for the Caretaker to be contactable via telephone during that time.

The Caretaker must also be contactable by telephone or mobile phone 24/7 hours in the event of an emergency;

(i) respond to the Body Corporate and occupants promptly;

(j) maintain and supervise car parking arrangements on the appropriate areas on the Common Property;

(k) keep possession of all keys for any Common Property and keys of any owners who provide them to the Caretaker;

(l) keep the lighting of Common Property operating efficiently;

(m) issue key cards and pins for access to the building to owners and occupiers and keep a register of key cards and pins as issued for which the Caretaker may charge a reasonable fee for these services;

(n) to the extent the Caretaker is notified of it, and that occupants are willing to work within the Caretaker's directions, co-ordinate the moving of occupants in and from the Scheme and ensure that when moving occurs the Caretaker shall dedicate the use of a lift (if any) to the occupant and install curtains and other protective measures in the lift (if any) to avoid damage to the lift;

(o) maintain all Body Corporate Assets;

(p) keep clean and maintained all footpaths and frontages for the Scheme;

(q) carry out such other reasonable and appropriate tasks requested by the Body Corporate relevant to the caretaking of the Common Property; and

(r) if the Caretaker owns the Caretaker's Lot, reside in the Caretaker's Lot or where the Caretaker is a Corporation ensure that the person carrying out the Caretaking Duties resides in the Caretaker's Lot.

5.4 The Caretaking Duties may be carried out by the Caretaker, its delegates or its employees.

5.5 The Caretaking Duties that require work of a specialist nature are limited to the arranging and supervision of all external contracts or agreements.

5.6 Despite any other term of this Agreement or any Community Management Statement, the Caretaker is not required to undertake any duties in relation to the exclusive use areas of any Lot and each Lot owner is responsible for maintaining their exclusive use areas, save that any car parking areas shall be kept clean by the Caretaker where not kept clean by the Lot Owner or occupier.

6. CARETAKER'S CONDUCT

6.1 The Caretaker must:

(a) have a good working knowledge and understanding of the Act, relevant to the Caretaking Duties;

(b) act honestly, fairly and professionally in performing the Caretaking Duties;

(c) exercise reasonable skill, care and diligence in performing the Caretaking Duties;

(d) act in the best interests of the Body Corporate unless it is unlawful to do so;

(e) keep the Body Corporate informed of any significant development or issue about an activity performed for the Body Corporate;

(f) take reasonable steps to ensure an employee of the Caretaker complies with the Act, in performing the Caretaking Duties;

(g) not engage in fraudulent or misleading conduct in performing the Caretaking Duties;

(h) not engage in unconscionable conduct in performing the person's functions under the person's engagement;

(i) intentionally deleted;

(j) take reasonable steps to ensure goods and services the person obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.

6.2 If a Body Corporate or its committee requests, in writing, the Caretaker to show that the Caretaker has kept the Body Corporate records as required under this Agreement in relation to the Caretaking Duties, the Caretaker must comply with the request within the reasonable period stated in the request.

7. EXPENSES

7.1 All of the Caretaking Duties must be carried out at the cost and expense of the Caretaker unless this Agreement provides that they are to be carried out at the expense of the Body Corporate.

7.2 The Body Corporate must pay all costs and expenses for:

(a) all work of a specialist nature;

(b) all other contracts or agreements with independent contractors;

(c) all materials and consumables (such as garden fertilisers, pool chemicals, detergents etc) necessary to enable to Caretaker to perform the Caretaking Duties;

(d) all out-of-pocket costs for repair and maintenance of the Common Property.

7.3 The Caretaker can spend up to the Maximum Expenditure for each individual item of expenditure from monies of the Body Corporate in carrying out the Caretaking Duties.

7.4 The Body Corporate must reimburse the Caretaker for any of the Caretaker's monies spent under the previous clause within 14 days of the Caretaker providing written evidence of the expenditure.

7.5 The Caretaker must pay for all costs and expenses associated with the operation of their office, reception areas and any areas under occupation authority.

8. INSTRUCTIONS

8.1 The Body Corporate must:

(a) nominate one person to communicate with the Caretaker on its behalf; and

(b) notify the Caretaker in writing of the appointment of that Nominee or its replacement.

8.2 The Caretaker must:

(a) confer with the Nominee concerning the Caretaking Duties; and

(b) attend any general meeting or Committee meeting of the Body Corporate if requested and given reasonable notice by the Nominee.

9. ASSIGNMENT

9.1 The Caretaker must not assign its interest in this Agreement unless it obtains the Body Corporate's consent.

9.2 The Body Corporate must:

(a) not unreasonably, arbitrarily or capriciously refuse or delay giving its consent to any proposed assignment; and

(b) give its consent or refusal to any proposed assignment within 30 days of the Caretaker giving to it the information reasonably necessary for the Body Corporate to properly consider the proposed assignment.

9.3 Before giving its consent to any proposed assignment, the Body Corporate will be entitled to require:

(a) satisfactory evidence that the proposed assignee and any Associates are financially sound and reputable, responsible, respectable and capable of satisfactorily performing the Caretaking Duties; and

(b) two business references, two personal references and a bank reference of the proposed assignee and any Associates.

9.4 As a condition of giving its consent to any assignment, the Body Corporate will be entitled to require:

(a) that the proposed assignee execute in favour of the Body Corporate an Agreement of Covenant to comply with the terms of this Agreement;

(b) that the Caretaker pay to the Body Corporate all legal costs incurred by it in giving its consent;

(c) if the proposed assignee is a company, other than a public company, personal guarantees from the working directors and principal shareholders; and

(d) that the assignee, or if it is a company, it or its Controller becomes the registered owner of the Caretaker's Lots and is also the assignee of rights to act as Letting Agent in respect of the Scheme.

9.5 The Body Corporate must not require or receive any premium, payment or benefit for any request to consent or consent given under this clause, except as provided in this clause.

10. TERMINATION

10.1 Each of the following events constitutes a default by the Caretaker:

(a) the Caretaker breaches an obligation under this Agreement and in the Body Corporate's reasonable opinion:

(i) the non-observance can be remedied but the Caretaker does not remedy it within 14 days after receiving written notice from the Body Corporate requiring rectification;

(ii) the non-observance is substantial and can not be remedied or compensated for; or

(iii) the non-observance cannot be remedied but the Body Corporate can be compensated and the Caretaker does not pay the Body Corporate compensation for the breach within 30 days after the Body Corporate gives it a notice to pay;

(b) it becomes insolvent or is subject to a form of external administration under the Corporations Law or is subject to a sequestration order provided that if a Financier (as defined by the Body Corporate and Community Management Act 1997) or a Controller (as defined in the Corporations Act 2001) is appointed by a Financier to the Caretaker in respect of this Caretaking Agreement, the rights of the Body Corporate to terminate this Caretaking Agreement under this clause do not apply;

(c) it persistently and repeatedly breaches this Agreement materially or substantially (which shall mean at least 5 times in any one year of the Term) despite the fact that individual breaches may from time to time be remedied;

(d) it engages in misconduct or is grossly negligent in carrying out or failing to carry out obligations under this agreement;

(e) if the Caretaker is an individual and it is convicted upon indictment of any criminal charge;

(f) if the Caretaker sells or transfers its interest in the Manager's Unit without at the same time selling or assigning its interest in this Agreement as required by this Agreement;

(g) a Related Agreement is terminated;

10.2 If the Caretaker makes default at any time the Body Corporate may at its election by notice in writing at any time terminate this Agreement. Termination of this Agreement is without prejudice of the rights of the Body Corporate in respect of the default by the Caretaker.

10.3 If the Body Corporate fails to perform or observe any of its obligations and duties under this Agreement within 60 days after written notice from the Caretaker

specifying the failure and requiring its rectification, the Caretaker may by written notice terminate this Agreement.

11. AUTOMATIC TERMINATION OF CARETAKING AGREEMENT FOR SUBSIDARY SCHEME

Intentionally deleted.

12. CARETAKER'S LOT

12.1 The Caretaker may, or if it is a company it or its Controller may own or otherwise have the right to occupy the Caretaker's Lot.

12.2 If, under Clause 12.1, the registered owner of the Caretaker's Lots is some person or persons other than the Caretaker, the Caretaker must if requested by the Body Corporate procure such person or persons to enter into a Deed of Covenant with the Body Corporate (to be prepared by the Body Corporate at the expense of the Caretaker) to be bound by the terms of this Agreement as far as they relate to the Caretaker's Lot.

12.3 If the Body Corporate gives its consent under this Agreement to an assignment of the Caretaker's interest in this Agreement, the Caretaker or the owner of the Caretaker's Lot will be required to sell the Caretaker's Lot so that upon such assignment and sale, there will be compliance with this clause.

12.4 Upon the expiry or sooner termination of this Agreement, the Caretaker will cause the sale of the Caretaker's Lot to the party to whom the Body Corporate enters into an agreement on terms similar to those contained in this Agreement.

12.5 The purchase price of the Caretaker's Lot under this clause will be as agreed, or failing agreement as determined by a registered valuer nominated by the President of the Australian Institute of Valuers and Land Economists (Queensland Chapter). The valuer's costs will be paid by the Body Corporate except in the case of termination of this Agreement as a result of a breach by the Caretaker, in which case the valuer's costs will be paid by the Caretaker.

12.6 The terms and conditions of a sale referred to under this clause will be those contained in the standard REIQ Contract applicable to the sale of community title lots current at the time of such sale, and will provide for a 5% deposit and completion 30 days after the date of the Contract.

13. LETTING BUSINESS

13.1 If the Caretaker or an Associated Party has entered into a Letting Agreement with the Body Corporate contemporaneously with entering into this Agreement, the parties acknowledge and agree that:

(a) a default under the Letting Agreement will constitute a default under this Agreement, and vice versa;

(b) upon the expiration or termination of the Letting Agreement, this Agreement will expire or terminate on the same date; and

(c) the Body Corporate need not give its consent to an assignment of this Agreement unless the Caretaker assigns to the proposed assignee at the same time its interest in the Letting Agreement.

14. FURTHER TERM

14.1 If there is not, at the time the Caretaker gives notice under this clause nor at the end of the Term, an outstanding breach of this Agreement by the Caretaker entitling the Body Corporate to terminate it, the Caretaker may by giving written notice to the Body Corporate not later than three calendar months nor earlier than six calendar months prior to the expiration of the Term, extend or renew this Agreement for the Further Term, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause 14 which will be deleted.

14.2 No option may be exercised unless the option in a Related Agreement is exercised.

15. OCCUPATION AUTHORITY

15.1 The Body Corporate grants the Caretaker the exclusive right to use and occupy the area identified on the Occupation Authority Plan to assist the Caretaker in performing its duties under this Agreement.

15.2 The Caretaker must keep the Occupation Authority areas in a clean and tidy condition.

16. COMPLIANCE

16.1 The Parties agree to comply with the provisions of all statutes regulating or related to this Agreement.

17. FURTHER ASSURANCES

17.1 Each party must promptly or at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

18. SEVERABILITY

181 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

19. ENTIRE UNDERSTANDING

19.1 This Agreement:

(a) contains the entire Agreement and understanding between the Parties on everything connected with the subject matter of this Agreement;

(b) supersedes any prior agreement or understanding or anything connected with that subject matter.

19.2 Each Party has entered into this Agreement without relying on any representation by any other Party or any person purporting to represent that Party.

20. VARIATION

20.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

21. WAIVER

21.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

21.2 The exercise of a power or right does not preclude either its exercise in the further or the exercise of any other power or rights.

21.3 A waiver is not effective unless it is in writing.

21.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

22. COSTS AND DISBURSEMENTS

22.1 Each party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.

22.2 The Caretaker shall pay all duties associated with this Agreement.

23. NOTICES

23.1 A notice or other communication ("Notice") connected with this Agreement has no legal effect unless it is in writing and:

(a) delivered by hand at the address of the addressee set out in this Agreement or subsequently notified;

(b) sent by post, postage pre-paid, to that address; or

(c) sent by facsimile to the facsimile number of the addressee.

23.2 A Notice is deemed given and received:

(a) if delivered, upon delivery;

(b) if sent by post on the third Business Day (to the address to which it is posted) after posting; or

(c) if sent by facsimile before 5.00pm on a Business Day at the place of receipt on the day it is sent or otherwise on the next Business Day at the place of receipt.

23.3 Despite the previous clause, a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that relevant facsimile has been sent.

24. GOVERNING LAW AND JURISDICTION

24.1 The law of Queensland governs this Agreement.

24.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and consent to all claims and disputes in relation to this Agreement being instituted in the central Brisbane jurisdiction.

SCHEDULES OF CARETAKERS SPECIFIC DUTIES

1. Cleaning Duties – Specific

To maintain in a clean and tidy condition, using normal commercial practices, those areas of Common Property and elsewhere as nominated, defined at the frequency indicated.

TASK	ITEM	DETAILS	FREQUENCY
1.	Carpark Areas	Sweep or hose dirt and rubbish.	Weekly
		Replace blown light bulbs	Weekly
2.	Pool Areas (including any wading and plunge pool/s) (if any)	Clean pool surrounds and keep orderly. Test and record ph levels and treat pools as required. Maintain consumable supplies.	Daily
4.	Communal recreation (BBQ, sauna and store/plant room) (if any)	Clean and remove rubbish and maintain consumable supplies.	Daily
5.	Toilets (if any)	Clean, remove rubbish and maintain consumable supplies	Twice Daily
6.	Footpaths	Sweep and clean, remove rubbish	Daily as required.
7.	Driveways	Sweep and clean, remove rubbish	Daily as required.

2. Gardening Duties – specific

To maintain all common area gardens and facilities to a satisfactory commercial standard at the frequency indicated.

TASK	ITEMS	DETAILS	FREQUENCY
1.	Gardens – common property	Ensure any watering system maintained in good working order and make necessary adjustments to timer to comply with rostered watering days.	Weekly
		Remove all weeds	Weekly
		Trim or prune plants, replace as necessary	As required
		Fertilise	Quarterly
2.	Lawns- common property	Mow and edge	Weekly or when reasonably required in cooler months

Executed as an Agreement the day of 20 .

The Common Seal of Northshore Residences Community Titles Scheme was affixed this day of 20]
]
in the presence of:]

A witness

Full name of witness

Chairman

Secretary

Signed Sealed and delivered by]
the Caretaker]
the day of 20]
in the presence of]

A witness

Full name of witness