

Between

THE BODY CORPORATE FOR LITTLE COVE  
COMMUNITY TITLES SCHEME 15358

and

RM & CG HEMPHILL PTY LTD  
ACN 083 289 269

COPY

22/5/2000

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CARETAKING AGREEMENT

CARETAKING AGREEMENT

Commissioner of Stamp Duties  
Queensland  
for  
K. Roper  
NO DUTY PAYABLE

THIS AGREEMENT is made this 22<sup>nd</sup> day of May 2000

**BETWEEN:** BODY CORPORATE FOR LITTLE COVE COMMUNITY TITLES SCHEME 15358 a body corporate formed under the Body Corporate and Community Management Act 1997 ("the Act") C/- BCA Community Management, 74 Smith Street, Southport, Queensland ("the Body Corporate")

**AND:** RM & CG HEMPHILL PTY LTD ACN 083 289 269 of Unit 26 Little Cove, 32-36 Durling Street, Currumbin Beach, Queensland ("the 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 Body Corporate will appoint the Caretaker which will accept such appointment to so assist the Body Corporate and to perform the Caretaking Duties.

**IT IS AGREED:-**

**1. DEFINITIONS**

1.1 In this Agreement except where inconsistent with the context words used which are defined in the Act will have the meaning so defined and the following terms will have the following meanings -

- (a) "Associate" - If the Caretaker is a company, its directors, substantial shareholders and its management staff, or If the Caretaker is a partnership, the partners and management staff of the partnership;
- (b) "Caretaker's Unit" - Lot 26 in the Scheme;
- (c) "Caretaking Duties" - those duties which the Caretaker must perform under this Agreement;
- (d) "Commencement Date" - June 1 2000;
- (e) "Complex" - the Lots and Common Property comprised in the Scheme and being the complex known as Little Cove situated at Little Cove, 32-36 Durling Street, Currumbin Beach, Queensland;

- (f) "Common Property" - the common property as defined by the Act and includes all property of the Body Corporate located on the common property, but does not include any Exclusive Area;
- (g) "Committee" - the committee of the Body Corporate elected or appointed under the Act;
- (h) "Controller" - the natural person or persons who in the reasonable opinion of the Body Corporate hold effective control of the relevant company;
- (i) "Exclusive Area" - any part of the Common Property in respect of which any person, Owner or Lot, has a lease or exclusive use other than an area which is used for carparking, is not enclosed and is accessible to the Caretaker;
- (j) "Further Term" - 10 years commencing June 1 2010 and ending May 31 2020;
- (k) "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;
- (l) "Lots" - lots in the Scheme;
- (m) "Maximum Expenditure" - \$500.00;
- (n) "Nominee" - the person nominated by the Body Corporate under Clause 7.J;
- (o) "Owners" - registered owners of Lots and includes mortgagees in possession;
- (p) "Remuneration" - \$41,355.36 for the first year of the Term and after that as calculated under this Agreement;
- (q) "Scheme" - the Community Titles Scheme for the Complex and under which the Body Corporate was created; and
- (r) "Term" - 10 years from the Commencement Date, terminating on the Termination Date.
- (s) "Termination Date" - May 31, 2010.

## 2. INTERPRETATION

In the interpretation of this Agreement unless the context otherwise requires:-

- (a) Words denoting any gender include all other genders.
- (b) Words denoting persons include all bodies, associations, trusts, partnerships, instrumentalities and entities corporate or unincorporate, and vice versa.
- (c) References to any of the parties include in the case of a person, their personal representatives and permitted assigns, and in other cases their successors and permitted assigns.

- (d) Any obligation on the part of two or more persons is deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally.
- (e) Words expressing the singular include the plural and vice versa.
- (f) Headings are included for convenience only and do not affect the interpretation of this Agreement.
- (g) References to Sections, Clauses, Recitals, Schedules and Annexures are to Sections and Clauses of and Recitals, Schedules and Annexures to this Agreement.
- (h) References to this Agreement are to this Agreement as amended supplemented or varied from time to time.
- (i) References to any document or agreement includes all references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time.
- (j) Expressions cognate with expressions defined in clause 1 are to be construed accordingly.
- (k) References to dates and times are to Brisbane time.
- (l) References to "\$" and "dollars" are to Australian dollars.
- (m) Recitals to this Agreement are to be read as and form part of this Agreement.
- (n) References to writing include typing, telex, facsimile and all other means of reproducing words in a permanent and visible form.
- (o) References to any legislation includes any legislative provision which amends, extends, consolidates or replaces it and any orders, regulations, instruments, proclamations or other subordinate legislation made under it.
- (p) References to institutes, associations, bodies and authorities whether statutory or otherwise will, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to refer to the institute, association, body or authority established or constituted in its place or which substantially succeeds to its powers or functions.
- (q) No rule of construction will apply to the disadvantage of a party because that party was responsible for the drafting of this Agreement or any part of it.
- (r) Unless application is mandatory by law, any legislation present or future will not apply to this Agreement so as to abrogate, extinguish, impair, delay or otherwise prejudicially affect the exercise or enjoyment of any rights given or accruing to any party.

### 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 If there is not, at the time the Caretaker gives notice under this Clause nor at the Termination Date, 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 at any time before the Termination Date, extend or renew this Agreement or the term of it for the Further Term commencing on the day after the Termination Date, otherwise upon the same conditions as are contained in this Agreement with the exception of this Clause 3.2 which will be deleted and except that the remuneration for the first year of the Further Term will be calculated in accordance with Clause 4.1.
- 3.3 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 Owners 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 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 4.2.
- 4.2 Despite Clause 4.1, 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 Where GST (as defined in the Commonwealth Goods and Services Tax ("GST") legislation) is applicable to any supply (as defined by that legislation) under or in connection with this Agreement and the Caretaker is required to pay GST in respect of that supply then the Body Corporate will pay to the Caretaker in addition to the remuneration a further amount equal to the value of the remuneration multiplied by the statutory rate of GST prevailing at the time of payment.
- 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.

## 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 any swimming pool, spa and/or sauna;
- (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) mow and trim the edges of the lawns;
- (g) maintain the lawns, gardens and shrubs, which duty includes watering, fertilising, weeding, mulching and top dressing; and
- (h) 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 Clause 5.1 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 accessed; 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;
  - (iii) any pumps and auxiliary motors;

- (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, material 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 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 or tennis court;
- (f) advise the Body Corporate of compliance or non-compliance with any relevant laws concerning the maintenance and operation of the Common Property;
- (g) notify the Body Corporate of any alteration of the fire safety requirements;
- (h) keep order and safeguard the Complex against unlawful entry and arrange security contracts at the expense of the Body Corporate as required by the Body Corporate;
- (i) regularly inspect the fire fighting equipment, arrange any requisite inspections by the relevant officer when required and, at the expense of the Body Corporate, arrange for maintenance necessary to maintain the fire fighting equipment in an efficient working condition;
- (j) maintain and keep open an office as a reception for the caretaking business during such hours as the Caretaker reasonably considers necessary;
- (k) maintain and supervise carparking arrangements on the appropriate areas of the Common Property;
- (l) keep possession of all keys for any Common Property areas and keys of any owners who provide them to the Caretaker;
- (m) keep the lighting of Common Property operating efficiently; and
- (n) carry out such other reasonable and appropriate tasks requested by the Body Corporate relevant to the caretaking of the Common Property.

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.

## 6. EXPENSES

6.1 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.

6.2 The Body Corporate must pay all costs and expenses of -

- (a) all work of a specialist nature;
- (b) all external maintenance agreements and other contracts or agreements with independent contractors;
- (c) all fuels, appliances, materials, equipment and supplies necessary to enable the Caretaker to perform the Caretaking Duties; and
- (d) all out-of-pocket costs for repair and maintenance of the Common Property.

6.3 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.

6.4 The Body Corporate must reimburse the Caretaker for any of the Caretaker's monies spent under Clause 6.3 within 14 days of the Caretaker providing written evidence of the expenditure.

## 7. INSTRUCTIONS

7.1 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.

7.2 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.

## 8. ASSIGNMENT AND DEALING

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



8.2 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.

8.3 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.

8.4 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 a Deed 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 be a company it or its Controller becomes the registered owner of the Caretaker's Unit.

8.5 If the Caretaker wishes to mortgage, charge or encumber its interest in this Agreement, the Body Corporate -

- (a) will, prior to giving its consent, be entitled to require all documents and information that are reasonable, usual, appropriate and relevant to the Body Corporate granting its consent; and
- (b) will, if it gives its consent, execute any deed or agreement required by the lender to the Caretaker unless that deed or agreement unreasonably and substantially alters or interferes with the rights, duties and obligations of the Body Corporate under this Agreement or under the Act.

8.6 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 Clause 8.4(b).

## 9. TERMINATION

9.1 The Body Corporate may terminate this Agreement if the Caretaker -

- (a) is convicted of an indictable offence involving fraud or dishonesty;
- (b) is guilty of gross misconduct or gross negligence in performing or failing to perform the Caretaking Duties;
- (c) is in breach of this Agreement, and that breach continues at the end of 21 days after notice in writing delivered by the Body Corporate to the Caretaker requiring that breach to be remedied;
- (d) if a company, becomes subject to any form of external administration referred to in the Corporations Law;
- (e) if an individual, is bankrupt or makes any assignment for the benefit of creditors or enters into any composition or scheme of arrangement.

9.2 This Agreement may be terminated by the Caretaker at any time upon the Caretaker giving the Body Corporate three months written notice of the termination.

## 10. NOTICES

10.1 All notices and other communications between the parties may be sent by certified post with postage prepaid or by hand delivery to the party at the address shown in this Agreement or by facsimile transmission to the facsimile number of the party or to such other address or person as either party may specify by notice in writing to the other,

10.2 All such notices or communications will be deemed to have been duly given or made

- (a) if by mail 2 business days after being deposited in the mail with postage prepaid;
- (b) if delivered by hand at the time of delivery; and
- (c) if sent by facsimile transmission, when the sender's transmission record indicates that the same was received without error.

## 11. CARETAKER'S UNIT

11.1 The Caretaker or if it is a company, it or its Controller must be and remain the registered owner of the Caretaker's Unit.

11.2 If, under Clause 11.1, the registered owner of the Caretaker's Unit is some person or persons other than the Caretaker, the Caretaker must 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 Unit.

11.3 If the Body Corporate gives its consent under Clause 8 to an assignment of the Caretaker's interest in this Agreement, the Caretaker will be permitted to sell the Caretaker's Unit so that upon such assignment and sale, the ownership of the Caretaker's Unit will be as required by Clause 11.1.

**12. COSTS**

**12.1 The Caretaker must pay -**

- (a) the legal costs and expenses of the Body Corporate incurred in the preparation and execution of this Agreement; and
- (b) any stamp duty on this Agreement.

**13. SEVERANCE**

- 13.1 If any provision of this Agreement is, for any reason, considered or found by a Court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of this Agreement and will be deemed never to have been part of this Agreement. The remainder of the provisions of this Agreement will remain in full force and effect unless the basic purposes of this Agreement are defeated.

**14. FURTHER ASSURANCE**

- 14.1 The parties agree and agree to procure every other person as required to sign all documents and otherwise do all such acts, matters and things as may be necessary or desirable to give full force and effect to this Agreement.

**15. GOVERNING LAW**

- 15.1 This Agreement will be construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Queensland Courts notwithstanding the domicile or residence of any party or the occurrence of any act, matter or thing outside of Queensland.

**16. WARRANTY OF AUTHORITY**

**16.1 Each person signing this Agreement -**

- (a) as attorney for any party, warrants to the other parties that at the date of execution by him or her, he or she has not received any notice or information of the revocation of the power of attorney appointing him or her; and
- (b) as an authorised officer, agent or trustee of any party, warrants to the other parties that at the date of execution by him or her, he or she has full authority to execute this Agreement in that capacity.

17. LETTING BUSINESS

17.1 The Caretaker 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.

18. PREVIOUS AGREEMENT

As and from the Commencement Date, the parties agree that the existing Management Caretaking Agreement dated March 3 1997 under which the Caretaker is the Manager will be terminated.

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5. Caretakers Duties

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

5.1 Dally

- (a) A daily walk around inspection of garden, stairwell and garage lights;
- (b) Maintain pool, spa and sauna areas. Also shower and toilet;
- (c) Hose these areas if necessary and allowed by water restrictions;
- (d) Check waterfall function;
- (e) Check and clean BBQ area if required;
- (f) Ensure outdoor furniture placed correctly..

Weekly

- (h) Clean and maintain drains, gutters and exterior areas of common property;
- (i) Effect minor repairs and maintenance to the Common Property where the services of a professional tradesman is not required;
- (j) Garbage bins to be emptied and disinfected on two scheduled days;
- (k) :Hose mailbox entry area and stairwell entrances;
- (l) : Clean stairwell entrance doors and pool furniture;
- (m) Vacuum stairwells and spot clean marks on stairwell walls;
- (n) Check garages – sweep or hose depending on restrictions;

General Duties as required

- (o) Check waterfall and pool filters;
- (p) Maintain the lawns and trim edges as specified by the Committee— includes nature strip and areas adjacent to blocks B and C;
- (q) Maintain sprinkler system when usage permitted;
- (r) Maintain area adjacent to council drain at rear;
- (s) Shrubs to a height of 4 feet to be maintained by Caretaker;
- (t) Fertilise main lawn area and spray for clover twice yearly;
- (u) Regular spraying of garden beds to remove weeds.

5.2 The Caretaker must arrange and supervise Contracts between the Body Corporate and Independent Contractors for all work of a specialist nature, for any of the items referred to in Clause 5.1, or for any services to, or work to be carried out to the Common Property without limitation – as Body Corporate maintenance:

- (a) Major pruning and removal of taller shrubs or those designated for removal by the Committee;

- (b) Mulching of garden beds and top dressing of lawns;
- (c) Cleaning of Common Property— twice yearly;
- (d) Specialised repairs for electricals, pool, tiling, painting, pest control, telephone, water and security gates.
- (e) Major rubbish removal as required;

Such Contracts with independent Contractors will only be accepted with prior consent of the Body Corporate but must not be unreasonably withheld.

- (f) Obtain quotes for works as directed by Body Corporate

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;
  - (iii) any pumps and auxiliary motors.
  - (iv) 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 or 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 and advise the Body Corporate of any serious or persistent breaches of them;
- (e) Monitor use of pool area by Owners or Tenants and Holiday rental guests;
- (f) Monitor compliance of Body Corporate By-Laws by Holiday Rentals;
- (g) Notify the Body Corporate of any alteration of the fire safety requirements;
- (h) Keep order and safeguard the Complex against lawful entry and arrange security contracts at the expense of the Body Corporate as required by the Body Corporate;

- (j) Regularly inspect the fire fighting equipment, arrange any requisite inspections by the relevant officer when required and, at the expense of the Body Corporate, arrange for maintenance necessary to maintain the fire fighting equipment in an efficient working condition;
  - (i) Maintain and keep open an office as a reception for the Caretaking business during such hours as the Caretaker reasonably considers necessary, a mobile phone contact to be available at all times;
  - (k) Maintain and supervise carparking arrangements on the appropriate areas of the Common Property;
  - (l) Keep possession of all keys for any Common Property areas and keys of any owners who provide them to the Caretaker;
  - (m) Keep the lighting of Common Property operating efficiently; and
  - (n) Carry out such reasonable and appropriate tasks as requested by the Body Corporate relevant to the caretaking of the Common Property, and provide a typed report for every Body Corporate Committee meeting.
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EXECUTED AS AN AGREEMENT

THE COMMON SEAL of THE BODY CORPORATE FOR LITTLE COVE COMMUNITY TITLES SCHEME

15358 was affixed pursuant to a resolution of the Body Corporate in the presence of two members who certify that they are the proper officers of the Body Corporate to affix that seal



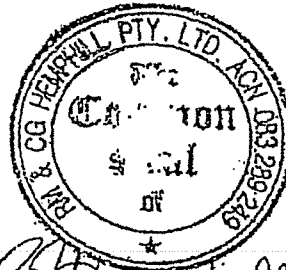
Jamie McCarthy

Name: (printed)

Ken Collier

Name: (printed)

THE COMMON SEAL of RM & CG HEMPHILL PTY LTD ACN 083 289 269 was affixed in accordance with its Constitution in the presence of:-



[Signature]

Sole Director / Secretary / Director

[Signature]

Director/Secretary

RM Hemphill

Name: (printed)

C.C. Hemphill

Name: (printed)

