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# Deed of variation

## Gloria Bayside Apartments

Body Corporate for Gloria Bayside Apartments Community Titles Scheme 40204

Vanua Holdings Pty Ltd ACN 147 647 185 as trustee for the Seaside Family Trust

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# Contents

**Details** 1

**Operative part** 1

1 Definitions and interpretation ..... 1

2 Variation ..... 2

3 Costs ..... 4

4 Further assurance ..... 4

5 Severance ..... 4

**Execution page** 5

# Details

This deed of variation is dated: 3 September 2019

## Parties

**BODY CORPORATE FOR GLORIA BAYSIDE APARTMENTS COMMUNITY TITLES SCHEME 40204** a body corporate formed under the Body Corporate and Community Management Act 1997 (**Act**) c/- Cassells Strata, PO Box 1152, Milton, Queensland (**Body Corporate**)

**VANUA HOLDINGS PTY LTD ACN 147 647 185 AS TRUSTEE FOR SEASIDE FAMILY TRUST** of Unit 12 Gloria Bayside Apartments, 6 George Street, Deception Bay, Queensland (**Manager**)

## Background

A The Manager is the caretaker and letting agent of Gloria Bayside Apartments under the Agreements.

B The Body Corporate and the Manager have agreed to amend the terms of the Agreements.

# Operative part

## 1 Definitions and interpretation

1.1 In this Deed unless the context otherwise requires:

(a) the terms defined in the Agreements have the same meanings;

(b) the following terms have the following meanings:

(i) **Agreements** means the Caretaking Agreement and the Letting Agreement including all extensions, renewals, variations to them;

(ii) **Caretaking Agreement** means the caretaking agreement dated 24 July 2009 between the Body Corporate and Edward Tugi Costello as trustee for The Seaside Trust whereby the Body Corporate appointed Edward Tugi Costello as trustee for The Seaside Trust as caretaker of Gloria Bayside Apartments for a term of 15 years commencing on 24 July 2009; and

(iii) **Letting Agreement** means the letting agreement dated 24 July 2009 between the Body Corporate and Edward Tugi Costello as trustee for The Seaside Trust whereby the Body Corporate appointed Edward Tugi Costello as trustee for The Seaside Trust as caretaker of Gloria Bayside Apartments for a term of 15 years commencing on 24 July 2009;

(c) the interpretation provisions of the Agreements apply.

## 2 Variation

2.1 The parties agree that the Caretaking Agreement is varied as follows:

(a) by adding a new clause, clause 3.5 as follows:

*"3.5 If there is not, at the time the Caretaker gives notice under this clause nor at 23 July 2039, 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 23 July 2039, extend or renew this Agreement or the term of it for the period of 5 years commencing on 24 July 2039 and ending on 23 July 2044, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause which will be deleted and except that the remuneration for the first year of this further period will be calculated in accordance with clause 4.1, and then for subsequent years of this further period to be calculated in accordance with clause 4.2 of this Agreement."*

*(b)* by adding a new clause, clause 9.14A as follows:

*"9.1A Waiver of Termination Rights*

*(i) In this clause the following terms have the following meanings unless the context otherwise requires:*

*A **Financier**: a financier as that term is defined in the Act from which the Caretaker has obtained finance on the security of the Agreement;*

*B **Receivership**: where the Financier is acting in place of the Caretaker or the Financier has appointed a Controller (as defined in the Corporations Act 2001) for the Agreement; and*

*C **Specific Termination Provisions**: clause 9.1(d) and (e) in this Agreement.*

*(ii) During any Receivership, the Body Corporate waives its rights to:*

*A terminate the Agreement under the Specific Termination Provisions;*

*B refuse the exercise of an option because of a default under the Specific Termination Provisions; and*

*C refuse to consent to an assignment because of a default under the Specific Termination Provisions."*

2.2 The parties agree that the Letting Agreement is varied as follows:

(a) by adding a new clause, clause 3.5 as follows:

*"3.5 If there is not, at the time the Letting Agent gives notice under this clause nor at 23 July 2039, an outstanding breach of this Agreement by the Letting Agent entitling the Body Corporate to terminate it, the Letting Agent may by giving written notice to the Body Corporate at any time before 23 July 2039, extend or renew this Agreement or the term of it for*

*the period of 5 years commencing on 24 July 2039 and ending on 23 July 2044, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause which will be deleted."*

(b) by adding a new clause, clause 9.1A as follows:

*"9.1A Waiver of Termination Rights*

*(i) In this clause the following terms have the following meanings unless the context otherwise requires:*

*A **Financier**: a financier as that term is defined in the Act from which the Letting Agent has obtained finance on the security of the Agreement;*

*B **Receivership**: where the Financier is acting in place of the Letting Agent or the Financier has appointed a Controller (as defined in the Corporations Act 2001) for the Agreement; and*

*C **Specific Termination Provisions**: clause 9.1(d) and (e) in the Agreement.*

*(ii) During any Receivership, the Body Corporate waives its rights to:*

*A terminate the Agreement under the Specific Termination Provisions;*

*B refuse the exercise of an option because of a default under the Specific Termination Provisions; and*

*C refuse to consent to an assignment because of a default under the Specific Termination Provisions."*

2.3 The parties:

(a) ratify and confirm all of the terms and conditions of the Agreements; and

(b) agree to be bound by the terms and conditions of the Agreements.

2.4 The Body Corporate acknowledges and agrees that:

(a) the term of the Agreements is 15 years beginning on 24 July 2009 and ending on 23 July 2024;

(b) there are two further options to renew the Agreements, set out as follows:

(i) First option: 10 years commencing 24 July 2024 and ending 23 July 2034; and

(ii) Second option: 5 years commencing 24 July 2034 and ending 23 July 2039;

(c) by virtue of the variation of the Agreements in accordance with this Deed, there is a further option to extend or renew the Agreements or the term of the Agreements for a further period of 5 years;

(d) the unexpired term of the Agreements, from the day the resolution approving the subsequent right or option is passed by the Body Corporate, is not more than 25 years; and

(e) acknowledges that the trustee of the Seaside Family Trust has changed from Edward Tugi Costello to Vanua Holdings Pty Ltd ACN 147 647 185 and consents to such change.

2.5 The Body Corporate warrants that it has at general meeting, by secret ballot, without the use of proxies and in compliance in all respects with the requirements of the Act and the applicable Regulation Module, resolved to vary the Agreements in accordance with this Deed and to enter into this Deed.

# 3 Costs

3.1 Each party will pay its own costs of the negotiation, preparation and execution of this Deed except that the Manager will pay all duty on it.

# 4 Further assurance

4.1 Each of the parties will and will procure every other person as required to sign and execute all such further documents and otherwise do all such things as may be necessary or desirable to give full force and effect to this Deed.

# 5 Severance

5.1 If any provision of this Deed 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 Deed and will be deemed never to have been part of this Deed. The remainder of the provisions of this Deed will remain in full force and effect unless the basic purposes of this Deed are defeated.

# Execution page

## Executed as a deed:

**THE COMMON SEAL of THE BODY CORPORATE FOR GLORIA BAYSIDE APARTMENTS COMMUNITY TITLES SCHEME 40204** was affixed pursuant to a resolution of the Body Corporate in the presence of two officers who certify that they are the proper officers of the Body Corporate to affix that seal )

The Common Seal of BODY CORPORATE FOR GLORIA BAYSIDE APARTMENTS CTS 40204

.....
Signature

JOHN ACKERMAN COMMITTEE MEMBER
Name and designation

.....
Signature

ANDREW BROWNE TREASURER
Name and designation

**EXECUTED by VANUA HOLDINGS PTY LTD ACN 147 647 185 AS TRUSTEE FOR SEASIDE FAMILY TRUST** in accordance with the Corporations Act by authority of its director(s) )

.....
Signature of Director

EDWARD COSTELLO
Name of Director (block letters)

.....
Signature of Director/~~Secretary/~~ ~~Sole~~ Director & Secretary*
*delete whichever is not applicable

EDWARD COSTELLO
Name of Director/Secretary/ Sole Director & Secretary*
(block letters)
*delete whichever is not applicable