

**MANAGEMENT AGREEMENT  
(INCORPORATING THE CARETAKING AGREEMENT AND LETTING AGREEMENT)**

DATED THIS 26<sup>th</sup> DAY OF June 2008

**PARTIES**

**THE BODY CORPORATE FOR WESTMINSTER HOUSE MORNINGSIDE CTS 27854  
(‘the Body Corporate’)**

**[REDACTED]  
(‘the Manager’)**

**INTRODUCTION**

- A The Body Corporate wishes to engage the Manager to provide caretaking services in respect of the Complex and to authorise the Manager to offer letting services to those proprietors within the Complex who wish to avail themselves of the service.
- B The Manager has agreed to provide the caretaking services and accept authorisation as a letting agent within the Complex under the terms and conditions of this agreement.

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement except where inconsistent with the context, words used which are defined in the Act shall have the defined meaning and the following terms shall have the following meanings unless the context otherwise requires:
- 1.1.1 ‘the Act’ means the *Body Corporate and Community Management Act 1997*;
- 1.1.2 ‘Agency Agreement’ means the Agreement between the Manager and a Proprietor of a Lot in the Complex which engages the Manager as the Proprietor’s Letting Agent;
- 1.1.3 ‘Agreement’ includes the schedules to this Agreement, if any;
- 1.1.4 ‘Assignment’ means for the purposes of this Agreement any or all of the following:
- (i) any sale, transfer or relinquishment by the Manager of the rights, or any part of them conferred on the Manager under this Agreement whether legal or beneficial, whether conditionally or otherwise;
  - (ii) the passing by operation of law to any other party or parties of the Manager’s interest in this Agreement or any part thereof;

- (iii) if the Manager is a corporation, any allotment or transfer of shares representing 50% of the paid up capital;
- (iv) a declaration of trust by the Manager in respect of the Manager's interest in this Agreement;
- (v) any other act or omission by the Manager whereby control of this licence is directly or indirectly altered or transferred to any other person;

the expression 'Assign' has a corresponding meaning;

- 1.1.5 **'Caretaking Fee'** means \$40.00 per occupied unit per week, or \$10.00 per unoccupied unit per week, and adjusted in accordance with clauses 6 and 7 of this Agreement;
- 1.1.6 **'Commencement Date'** means 17 June 2008;
- 1.1.7 **'Complex'** shall mean the Scheme Development and the Common Property comprised in and being part of the Community Titles Scheme known as Westminster House Morningside (or such other name as may apply), situated at 84 Junction Road, Morningside in the State of Queensland;
- 1.1.8 **'Goods and Services Tax'** means the tax payable upon supplies pursuant to all those laws of the Parliament of the Commonwealth of Australia the subject of the "*A New Tax System (Goods and Services Tax) Act*", all related Acts of the Parliament;
- 1.1.9 **'Independent Person'** means a Queensland Law Society approved mediator to be agreed between the parties and failing agreement to be appointed by the President for the time of the Queensland Law Society;
- 1.1.10 **'Letting Services'** means a service by which the Manager offers to let the premises of the proprietors in the Complex;
- 1.1.11 **'Manager's Premises'** means the lot number 11 located in the Complex;
- 1.1.12 **'Proprietor'** means any person or corporation for the time being entitled to be registered as an owner of an estate in fee simple of a Lot in the Scheme;
- 1.1.13 **'Rentals'** means rentals and other amounts payable by a tenant of a unit within the Complex;
- 1.1.14 **'Scheme'** means the Westminster House Morningside Community Titles Scheme;
- 1.1.15 **'Services'** means the services to be undertaken by the Manager listed in the Duties Schedule.
- 1.1.16 **'Term'** means 25 years from the Commencement Date, ending on the Termination Date.

1.1.17 'Termination Date' means 16 June 2033.

1.1.18 'Unit' means each separately habitable unit within a lot.

*For example, 1 lot may comprise of 2 separately habitable Units.*

## **2. LICENSING REQUIREMENTS**

- 2.1 The Manager warrants that the Manager holds and will continue to hold any licenses required by law to be held by the Manager in order for the Manager to undertake any of the Services.
- 2.2 If the Manager does not hold or ceases to hold any licenses required by law to be held by the Manager in order for the Manager to undertake any of the Services, the Body Corporate may in its absolute discretion terminate this Agreement immediately by giving written notice to the Manager.
- 2.3 The Body Corporate will provide all assistance reasonably required by the Manager to obtain any licences required by law to be held by the Manager in order for the Manager to undertake any of the Services and the Body Corporate will promptly execute any forms, documents or consents reasonable required by the Manager to obtain any licences required by law to be held by the Manager in order for the Manager to undertake any of the Services.

## **3. ENGAGEMENT AS CARETAKER AND TERM**

- 3.1 The Body Corporate engages the Manager as the caretaker of the Complex to provide the Services for the period of twenty-five (25) years from the Commencement Date.

## **4. MANAGER TO PROVIDE THE SERVICES**

- 4.1 The Manager shall provide the Services in respect of the Complex, in the manner specified in the Duties Schedule. The Manager shall provide all materials and equipment necessary to provide the Services. The Manager shall repair, maintain and replace as necessary all equipment used in the provision of the Services. The Manager will pay for all fuel, water, gas and electricity used in the provision of the Services.

## **5. PAYMENT**

- 5.1 The Body Corporate shall pay the Manager the Caretaking Fee for the provisions for the Services in the manner prescribed by this clause.
- 5.2 If authorised by the Owner of a Unit, the Manager shall deduct from the Rentals payable to the Owner of the Unit the Caretaking Fee attributable to the Unit.
- 5.3 In the event that the Caretaking Fee attributable to a Unit is deducted from the Rentals payable to the Owner of the Unit, the Manager shall treat the Caretaking Fee attributable to that Unit as having been paid and the Manager will have no claim against the Body Corporate for the Caretaking Fee attributable to that Unit.
- 5.4 In the event that the Caretaking Fee attributable to a Unit is not deducted from the Rentals payable to the Owner of the Unit, the Manager shall use its best endeavours to

recover an amount equal to the Caretaking Fee attributable to that Unit directly from the Owner of the Unit. In the event that the Caretaking Fee attributable to a Unit is paid to the Manager by the Owner of the Unit, the Manager shall treat the Caretaking Fee attributable to that Unit as having been paid and the Manager will have no claim against the Body Corporate for the Caretaking Fee attributable to that Unit.

- 5.4 In the event that the Caretaking Fee attributable to a Unit is not deducted from the Rentals payable to the Owner of the Unit or paid to the Manager directly by the Owner of the Unit, the Manager shall provide a written notice to the Body Corporate detailing the Caretaking Fee payable for each Unit in the Complex, the Caretaking Fee attributable to each Unit in the Complex that has been paid and the Caretaking Fee attributable to each Unit in the Complex that has not been paid. Upon receipt of this written notice from the Manager, the Body Corporate shall strike a special contribution levy against the Owners of the Units for which the Caretaking Fee has not been paid to enable the outstanding Caretaking Fees to be paid. The Body Corporate shall use its best endeavours to recover the special contribution levy from the relevant Lot Owners as soon as possible. After the special contribution levy is received by the Body Corporate, the Body Corporate shall arrange for the outstanding Caretaking Fee to be paid to the Manager. The Body Corporate shall not be required to pay the outstanding Caretaking Fee to the Manager until such time as the Body Corporate has received the special contribution levy from the Lot Owners to enable the Caretaking Fee to be paid.
- 5.5 The parties agree that all payments under this agreement have been set or determined without regard to the impact of the Goods and Services Tax. In the event that at any time the Manager shall be liable to pay Goods and Services Tax in respect of its services provided under this Agreement or any part thereof then the Body Corporate agrees that it shall pay the Manager all such Goods and Services Tax as the Manager shall have paid or be liable to pay to the Australian Taxation Office as an additional amount, either concurrently with any payment under this agreement or as otherwise agreed in writing.

## 6. ADJUSTMENT OF CARETAKING FEE

### 6.1 For the purposes of this clause -

6.1.1 "Consumer Price Index" means the "All Groups" Consumer Price Index published from time to time by the Commonwealth Statistician in relation to the City of Brisbane; and

6.1.2 "year" means yearly periods commencing on the Commencement Date.

### 6.2 For the first year of this Agreement the Caretaking Fee will be calculated in accordance with the figures provided in the definition of "Caretaking Fee" in clause 1.1.5.

### 6.3 For the second and subsequent years of this Agreement, each component of the Caretaking Fee will be calculated in accordance with the following formula:-

$$R \times \frac{B}{A}$$

WHERE

- R means each component of the Caretaking Fee payable in the year ending immediately preceding that for which the amount is to be calculated.
- B means the Consumer Price Index number for the quarter immediately prior to the commencement of the year for which the amount is to be calculated.
- A means the Consumer Price Index number for the quarter ending immediately prior to the commencement of the year immediately preceding the year for which the amount is to be calculated and determined.

PROVIDED THAT in no event shall each component of the Caretaking Fee for a second year and subsequent years be an amount less than each component of the Caretaking Fee payable in the year immediately preceding that year.

- 6.4 No part of each component of the Caretaking Fee or any other fee paid to the Manager from time to time shall be construed as commission in respect of letting services authorised pursuant to this Agreement.

## **7. REVIEW OF THE CARETAKING FEE**

- 7.1 Upon the expiration of five years from the Commencement Date and thereafter every five years, the Manager may request a review of the Caretaking Fee, and the Body Corporate upon receipt of such request, will be required to review the Caretaking Fee. For the purposes of this clause only, the amount of the Caretaking Fee, being the amount of each component of the Caretaking Fee, as reviewed will be referred to as the reviewed Caretaking Fee.
- 7.2 The Manager, if it elects to request a review of the Caretaking Fee, must deliver the request in writing to the Body Corporate, at least one month prior to the expiration of the five year period.
- 7.3 Within 14 days of receipt of the request from the Manager, the Body Corporate must deliver to the Manager the proposed reviewed Caretaking Fee.
- 7.4 The Manager must advise the Body Corporate within 14 days of the receipt of the proposed reviewed Caretaking Fee whether the Manager accepts the reviewed Caretaking Fee.
- 7.5 If the Manager and the Body Corporate fail to agree on the amount of the reviewed Caretaking Fee, then:-
  - 7.5.1 within fourteen days of the delivery of the Body Corporate's reviewed Caretaking Fee figure, the Manager must give written notice to the Body Corporate that it disputes the proposed reviewed Caretaking Fee;
  - 7.5.2 following notice given in accordance with the preceding sub-clause, the reviewed Caretaking Fee will be determined by an accountant to be appointed by the President for the time being of the Australian Institute of Chartered Accountants on the application of either party;

- 7.5.3 the accountant to be appointed must have been a member of the Institute referred to for at least five (5) years;
- 7.5.4 the determination of the reviewed Caretaking Fee will be completed and notified by the accountant to the Body Corporate and the Manager within thirty (30) days of submission of the question to the accountant;
- 7.5.5 in determining the reviewed Caretaking Fee, the accountant will:
- (i) be deemed to be acting as an expert and not as an arbitrator;
  - (ii) have regard to the terms and conditions of this Agreement;
  - (iii) assume that all obligations on the part of the Manager contained in this Agreement have been fully performed and observed;
  - (iv) have regard to the costs of materials and employed labour used by the Manager to carry out its obligations under this Agreement.
- 7.6 The costs of the accountant in reaching a decision under this clause will be borne equally by the Body Corporate and the Manager.
- 7.7 Any variation in Caretaking Fee resulting from the determination takes effect on and from the commencement of the subsequent five year period.
- 7.8 Pending determination of the reviewed Caretaking Fee, the Caretaking Fee will be paid at the rate payable during the year last concluded and will be adjusted retrospectively in accordance with this clause.
- 7.9 The reviewed Caretaking Fee as varied will be subject to variations in the Consumer Price Index, in accordance with the preceding clause.
- 7.10 Notwithstanding anything provided in the preceding sub-paragraphs, the reviewed Caretaking Fee shall not be less than the Caretaking Fee for the previous year.

## **8. DUTIES OF THE BODY CORPORATE**

- 8.1 The Body Corporate must:
- 8.1.1 furnish to the Manager a set of all plans of the Complex in its possession or control;
  - 8.1.2 from time to time authorise one named Committee member to give instructions in writing and to and communicate with the Manager on behalf of the Body Corporate and not more than one (1) member of the committee at any time shall be given such authority;
  - 8.1.3 confer fully and freely with the Manager concerning the performance of the duties by the Manager and the control, management and administration of the Common Property and shall provide proper and reasonable instructions to the Manager in relation thereto;

- 8.1.4 not do anything to cause undue inconvenience to the conduct of the Manager's caretaking and letting business.

**9. EXPENDITURE FOR REPAIRS AND MAINTENANCE OF THE ASSETS OF THE BODY CORPORATE**

- 9.1 The Manager shall, at the direction of the Committee, be entitled to pledge the credit of the Body Corporate and incur expense on behalf of the Body Corporate in respect of any single transaction to any amount not exceeding the limitation expenditure of the Committee under the Act for the purpose of repairing, maintaining and replacing as necessary the assets of the Body Corporate.

- 9.2 Any such expense paid by the Manager shall be reimbursed by the Body Corporate to the Manager within 14 days of a written demand for reimbursement accompanied by copies of invoices and/or receipts evidencing the expenditure.

**10. MANAGER'S COVENANTS**

- 10.1 The Manager must:

- 10.1.1 provide the Services and observe and maintain all of the standards of business conduct, and the condition of the Complex, strictly as prescribed by this Agreement and the Body Corporate from time to time;
- 10.1.2 ensure that its directors, employees and licensees conduct themselves in such a way so as not to impair the reputation associated with the Body Corporate or Complex;
- 10.1.3 follow reasonable recommendations and directives which the Body Corporate may make as to the conduct of the Complex to prevent or remedy any damage to the reputation of the Complex;
- 10.1.4 not make any representations, statements or warranties about the Complex, other than those allowed by this Agreement, required by law or which the Body Corporate has first approved in writing;
- 10.1.5 efficiently and properly conduct the Business;
- 10.1.6 keep and provide to the Body Corporate on request a register of the names and addresses of all employees of the Manager trained in undertaking the Services;
- 10.1.7 ensure that it and its employees or licensees maintain good relations with tenants and the highest standards of hygiene at all times;
- 10.1.8 remedy immediately any breaches or defaults of this Agreement notified by the Body Corporate to the Manager;

- 10.1.9 comply at its own expense with any relevant statutes, regulations, by-laws, notices, directions, orders, requirements or demands of any government, municipal or other proper authority affecting the provision of the Services or Letting Services;
- 10.1.10 only use fixtures, names, signs and other equipment (if any) which are in accordance with any Duties Schedule;
- 10.1.11 keep the Common Property at the Complex and furnishings in a good state of repair and decoration and replace equipment at the Complex as required by the Duties Schedule or as may otherwise be required by the Body Corporate PROVIDED THAT the expense in maintaining, repairing and replacing common property, furniture and equipment owned by the Body Corporate shall be borne by the Body Corporate.

## **11. AUTHORISATION OF MANAGER AS LETTING AGENT FOR THE COMPLEX**

- 11.1 The Manager is authorised to conduct a letting agency for the Complex and provide the Letting Services for a term coinciding with the term of the Manager's engagement as caretaker of the Complex in accordance with this agreement.

## **12. DUTIES AND OBLIGATIONS OF THE MANAGER AS LETTING AGENT**

If the Manager elects to provide the Letting Services, it must:-

- 12.1 offer from within the Complex a letting agency for those proprietors of lots in the Complex who wish to avail themselves of the service.
- 12.2 conduct the letting agency in a competent manner and to the standard reasonably expected of a Complex of this kind.
- 12.3 maintain and staff an office/reception area within the Complex at such times as are reasonably necessary for the proper conduct of the letting agency.
- 12.4 supervise the standards of tenants of the proprietors of lots in the Complex and use his or her best endeavours to ensure that no nuisance is created by those tenants or by their guests or invitees.
- 12.5 use his or her best endeavours to improve and expand the letting agency and for this purpose if properly permitted by the By-Laws of the Complex the Manager may (but is not obliged to) without the consent of the Committee erect signs advertising the letting agency on or about the Complex (of a number, size, type and design and in locations which are in all respects consistent with the general aesthetics and amenity of the Complex).
- 12.6 not discriminate between proprietors in the Complex in the placement of tenants.
- 12.7 use his or her best endeavours to treat all the proprietors' tenants and invitees fairly.
- 12.8 not give or take any secret commissions.



- 12.9 keep proper records of all lettings and shall make details of all such lettings for any particular lot available to the proprietor of the lot upon written request.
- 12.10 be licensed as required by law.
- 12.11 comply with all statutes and regulations, the By-Laws and or the Town Plan and the ordinances of the relevant local authority.
- 12.12 conduct the letting agency in such a manner so as not to interfere with the quiet enjoyment and occupation of any other lots in the Complex.
- 12.13 comply with the By-Laws of the Body Corporate.
- 12.14 In relation to lot over which the Manager has been appointed as the letting agent for the proprietor, the Manager shall:
  - 12.14.1 use the Manager's best endeavours to ensure that units are occupied at the highest possible frequency;
  - 12.14.2 collect rent payable by the tenants;
  - 12.14.3 pay to the proprietors on a monthly basis the net rental income after the deduction of the Outgoings and the Body Corporate Levies for the Caretaking Fee payable to the Manager pursuant to the Agency Agreement, such payment to be made within 14 days of the end of each month;
  - 12.14.4 on or before the 14<sup>th</sup> day of each month give the proprietors a statement showing relevant details of all occupancies, Rental collected, deductions for Outgoings and Body Corporate Levies for the Caretaking Fee and net rental income paid to the proprietors;
  - 12.14.5 immediately notify the proprietor of any default over seven (7) days or any material damage to the unit or its consents;
  - 12.14.6 inspect the unit regularly (at least once every three (3) months) to determine the condition of the unit and to ascertain if the unit or its consents have been materially damaged;
  - 12.14.7 immediately notify the proprietor if the proprietor's unit becomes vacant;
  - 12.14.8 ensure that the unit is maintained in a clean and tidy condition at all times; and
  - 12.14.9 shall ensure that the Manager complies with the Manager's obligations pursuant to the Agency Agreement with each proprietor.
- 12.15 The Manager must place advertisements in the White Pages and the Yellow Pages each year advertising the units in the complex for let, such advertisements to be placed at the Manager's expense.
- 12.16 The Manager shall pay for all costs and expenses associated with providing the Letting Services, including the cost of telephone calls.

### **13. DUTIES OF THE BODY CORPORATE IN RESPECT OF THE LETTING AGENCY**

- 13.1 The Body Corporate shall not unreasonably or unlawfully interfere with the letting agency.
- 13.2 The Body Corporate shall cause the Common Property to be properly kept and maintained in a manner consistent with the fact that many of the lots are let to members of the public.
- 13.3 The Body Corporate shall provide and maintain sufficient furniture and associated facilities for the proper use and enjoyment of the Common Property including without limitation the reception and recreational areas of the Common Property.
- 13.4 To the extent permitted by law, the Body Corporate shall not:
  - 13.4.1 grant to any other person or corporation the right to conduct a letting service in respect of the lots from within the Complex nor shall the Body Corporate or any of its members individually directly or indirectly conduct or attempt to conduct a letting service in respect of the lots from within the Complex.
  - 13.4.2 make any part of the Common Property available to any person or corporation for the purposes of conducting such a letting service.

### **14. RIGHT TO USE NAME**

- 14.1 The Body Corporate grants to the Manager a right to use the name "Westminster House Morningside" in connection with the letting agency during the term of this agreement.

### **15. PROHIBITED PAYMENTS**

- 15.1 Except as specifically permitted by law the Body Corporate shall not be entitled to any premium payment or benefit in connection with the granting, renewal, extension, variation or assignment of the letting agency authorisation component of this Agreement.

### **16. DEFAULT AND TERMINATION**

- 16.1 The Body Corporate may in its absolute discretion either accept the payment of reasonable compensation from the Manager in the event that any of the breaches described in clauses 16.1.1 to 16.1.7 cannot be remedied or terminate this Agreement immediately by giving written notice to the Manager on the occurrence of any one or more of the following:
  - 16.1.1 the Manager fails to comply with any of its obligations or covenants under any term or provision of this Agreement and, where the failure is capable of being remedied, the Manager does not remedy the failure within fourteen (14) days of written notice specifying the failure and the remedial action that the Manager must take being delivered to the Manager;

- 16.1.2 the Manager does or attempts or purports to do any act or thing, where the consent of the Body Corporate is required without first obtaining such consent;
- 16.1.3 the Manager undertakes the Services in a manner that represents a health or safety hazard to tenants, employees or the public and the Manager fails to take reasonable steps within a reasonable time to correct such manner of operation after notice from the Body Corporate or any authorised governmental authority within the time limit specified in such notices or if no time is specified, within a reasonable time;
- 16.1.4 the Manager has a liquidator, provisional liquidator, receiver or receiver and manager, official manager, scheme manager or other custodian (either temporary or permanent) appointed to the Manager or over its assets or any of them;
- 16.1.5 a creditor enforces any security over any of the assets of the Manager or the Manager makes any assignment for the benefit of its creditors or makes any composition or arrangement with such creditors or the Manager has any of its property seized under any distress or execution;
- 16.1.6 the Manager is unable to pay its debts as and when they fall due, stops, suspends or threatens to stop or suspend payment of all or any of its debts;
- 16.1.7 the Manager ceases to be the proprietor of the Manager's Premises.

## **17. RIGHTS WHERE AGREEMENT TERMINATED**

- 17.1 Irrespective of which party terminates this Agreement, the provisions of this clause shall survive such termination and shall apply in addition to any other rights of a party.
- 17.2 Following the termination of this Agreement, if the Manager owns the Manager's Premises:
  - 17.2.1 The Body Corporate must locate a new manager for the Complex as soon as practically possible;
  - 17.2.2 The Body Corporate must enter into a Management Agreement with the new manager for the Complex conditional upon that person or its nominee purchasing the Manager's Premises from the Manager;
  - 17.2.3 the Manager must forthwith sell the Manager's Premises to the new manager for the Complex appointed by the Body Corporate at the market value for the Manager's Premises. The market value shall be a price as agreed between the parties to this Agreement and failing agreement the price determined as the fair market value by a valuer nominated by the President of the Australian Valuers Association (at the Manager's cost).

## **18. INSURANCE**

The Manager must:

- 18.1 observe the conditions of the public liability policy of insurance taken out by the Body Corporate; and
- 18.2 not do or allow or permit to be done any act or thing which may prejudice or invalidate any insurance or render any policy of insurance affected pursuant to this clause void, voidable or otherwise liable to cancellation.

## 19. ASSIGNMENT

- 19.1 The Manager must not without the consent of the Body Corporate assign or purport to Assign this Agreement. Any Assignment made without the prior written approval of the Body Corporate shall be void as against the Body Corporate.
- 19.2 The Body Corporate shall not unreasonably withhold its consent to an Assignment.
- 19.3 All costs, including the legal expenses of the Body Corporate and stamp duty (if any) associated with the Assignment shall be borne by the Manager.
- 19.4 In the event of an Assignment of this Agreement by the Manager to a third party, the Manager must sell the Manager's Premises to the Assignee.

## 20. GENERAL PROVISIONS

### 20.1 Notices

A notice to be given by a party to another party under this Agreement shall:

- 20.1.1 be in writing;
- 20.1.2 give the address of the recipient as set out in this Agreement or as varied by written notice;
- 20.1.3 be sent by security post to that address or facsimile; and
- 20.1.4 be deemed to be served on the day of delivery or two (2) days after the date of posting by prepaid security post as the case may be or upon confirmation of receipt of the facsimile transmission by the sender.

### 20.2 Waiver

Waiver by the Body Corporate of any particular default by the Manager shall not affect or prejudice the Body Corporate's rights in respect of any other default nor any subsequent default of the same or of different kind nor shall any delay or omission of the Body Corporate to exercise any right arising from any default affect or prejudice the Body Corporate's rights as to the same or any future default.

### 20.3 Severability

- 20.3.1 Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction shall be ineffective only to the extent of that prohibition.

20.3.2 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or unenforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

20.3.3 If any clause or part of this Agreement is void, illegal or unenforceable, it may be severed without affecting enforceability of the other provisions of this Agreement.

#### 20.4 Entire Agreement

This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges all prior discussions between them and none of the parties shall be bound by any covenants, agreements, conditions, definitions, restrictions, provisions warranties or representations with respect to the subject matter of this Agreement other than as expressly provided in this Agreement or as expressly agreed by the parties in writing.

#### 20.5 Governing Law

20.5.1 This Agreement is deemed to be made at Brisbane in the State of Queensland and its construction, interpretation and enforcement is governed by the laws in force in the State of Queensland.

20.5.2 The parties unconditionally and irrevocably submit to the jurisdiction of the Courts of the State of Queensland and all Courts of Appeal therefrom or the Federal Court of Australia, Brisbane Registry.

20.5.3 Each party waives any rights it has to object to any action being brought in those Courts to claim that the action has been brought in an inconvenient forum or to claim that those Courts do not have jurisdiction.

#### 20.6 Costs and Stamp Duty.

The Manager shall bear and pay all stamp duty on this Agreement and any renewal of this Agreement and any of those monies payable by the Manager shall be payable on demand.

#### 20.7 Further Assurances

The Manager covenants with the Body Corporate that it will enter into all such Agreements and sign all documents and do all such acts and things as may be required including to give full effect to this Agreement and the transactions contemplated by the Agreement.

#### 20.8 Counterparts

20.8.1 This Agreement may be executed in any number of counterparts.

20.8.2 All counterparts, taken together, constitute one document.

20.8.3 A party may execute this Agreement by signing any counterpart.

## 20.9 Force Majeure

Except for the payment of money, neither the Body Corporate nor the Manager shall be liable to the other for any loss caused by the failure to observe and perform the terms and conditions of this Agreement on its part to be observed and performed, including the failure to supply or provide any service or goods where such failure is occasioned by any cause beyond the reasonable control of the party in breach including without limiting the generality of the foregoing war, insurrection, fire, floods, strikes, lockouts, restrictions or prohibitions or any other action by any government or semi-government authorities or embargoes established thereby.

## 20.10 Dispute Resolution

20.10.1 The parties agree to comply with the dispute resolution procedure contained in this clause.

20.10.2 The parties agree to communicate with one another verbally or in writing regarding any disputes, problems or matters of concern arising out this Agreement from time to time and shall endeavour through communication to resolve and settle amicably any such disputes problems or matters of concern or differences which may occur.

20.10.3 The parties agree that neither party may commence any Court proceedings or arbitration in relation to any dispute arising out of the negotiations for this Agreement, the entering into of this Agreement or this Agreement itself except where:

- (i) the proceedings are for injunctive relief or other interlocutory relief with respect to damage/s to the party concerned or to the Trade Marks and/or the Business;
- (ii) the dispute relates to or arises out of the termination of this Agreement or events giving rise to the termination of this Agreement as set out in this Agreement where such events are clearly specified in this Agreement and the disclosure document provided to the Manager and there is no legitimate dispute as to the interpretation of their meaning or factors giving rise to such events; or
- (iii) the dispute has not been resolved in accordance with the provisions of this clause.

20.10.4 Any party claiming that a dispute has arisen under this Agreement shall give written notice to the other party setting out the nature of the dispute ('Dispute Notice').

20.10.5 Upon either party giving a Dispute Notice, the parties will endeavour to resolve the dispute by negotiation and in the event the dispute has not been resolved by the parties within 10 days of receipt of the Dispute Notice (or such other period as is agreed by the parties in writing) the Dispute may be resolved by conciliation upon either party giving written notice to the other

party stating that it seeks to have the Dispute resolved by conciliation and setting out the name of the proposed conciliator ('Conciliation Notice').

- 20.10.6 The Conciliation Notice may be incorporated in the Dispute Notice by providing in the Dispute Notice that if the Dispute is not resolved within a specified time period, the party giving the notice seeks that the Dispute be resolved by conciliation, and setting out in the name of the proposed conciliator, in which case the Conciliation Notice will come into effect upon the Dispute not being resolved within the time period specified.
- 20.10.7 The Dispute may be referred to a mutually agreed Conciliator by either party. In the event that the parties have not mutually agreed upon a conciliator within 10 days of the Conciliation Notice, either party may refer the Dispute to a conciliator nominated (at the request of either party) by the President of the Queensland Law Society as a person or organisation capable of dealing with the dispute.
- 20.10.8 The parties agree to cooperate promptly with the conciliator and further agree that the conciliation will be conducted in accordance with the procedures nominated by the conciliator.
- 20.10.9 In the event:
- (i) the conciliator has not dealt with a dispute within 14 days of a dispute being referred to the conciliator; or
  - (ii) either party has not complied with the provisions of the conciliator;
- then:
- (iii) in relation to subclause (i), either party may terminate the dispute resolution process and commence proceedings with respect to the Dispute; and
  - (iv) in relation to subclause (ii), the party who has complied with the provisions of the conciliation may commence proceedings with respect to the Dispute.
- 20.10.10 Upon a dispute being resolved either by the parties direct or through conciliation the resolution shall be produced in writing and shall be acknowledged by each party and shall thereafter be acted on and complied with by each party.
- 20.10.11 The costs with respect to any conciliation will be shared equally between the parties and the parties shall promptly pay their share of the costs as and when required and agree that the conciliator may rely on the agreement contained in this clause for the recovery of any such costs from the parties or any parties.
- 20.10.12 The parties acknowledge and agree that in any conciliation:

- (i) everything that occurs before the conciliator will be in confidence and closed session;
- (ii) all discussions will be without prejudice;
- (iii) no documents brought into existence specifically for the purpose of the conciliation process will be called into evidence in any subsequent litigation by either party; and
- (iv) the parties grant the Conciliator immunity from any liability arising out of the conciliation.

## **21. ANCILLARY SERVICE AGREEMENTS**

- 21.1 The Manager may only enter into agreements for the provision of meals, laundry and other ancillary services to residents of Units in the Complex ("Service Agreements") if the Service Agreements and the fees payable to the Manager pursuant to the Service Agreements have been approved by the Body Corporate.



**SCHEDULE 1****DUTIES SCHEDULE****CARETAKING SERVICES****A. DUTIES IN RELATION TO COMMON PROPERTY**

The Manager shall be responsible for the following duties:

1. Providing the services of resident Caretaker of a development intended for use by aged persons.
2. Keeping the Common Property clean and in good working order and repair (fair wear and tear excepted) including without limitation:
  - 2.1 inspecting daily and carrying out sweeping and hosing of the laundry/ies, paths, walkways, roads, gutters, paved areas, recreation areas and access areas as necessary;
  - 2.2 sweeping, dusting, cleaning and removing all rubbish from the Common Property including the recreation and barbecue areas as to keep such areas at a high standard of cleanliness at all times;
  - 2.3 ensuring at all times that the gardens, lawns and shrubs on the Common Property are regularly watered, fertilised, trimmed, treated, weeded and otherwise maintained at a high standard;
  - 2.4 mowing all lawns on the Common Property, trim edges and remove all clippings when reasonably necessary;
  - 2.5 keeping clean and maintaining all recreational facilities barbecue areas and outdoor furniture in a state of good repair;
  - 2.6 carrying out the necessary cleaning of glass and the exterior of windows of any buildings on the Common Property;
  - 2.7 maintaining and, where necessary, repairing all fences on the Common Property;
  - 2.8 if required by the Body Corporate, arranging for the exterior walls and roofs of any buildings on the Common Property to be kept clean (at the expense of the Body Corporate).
3. Regularly during each day inspecting the Common Property to ensure that no unauthorised persons are using common property facilities and so far as the Body Corporate is reasonably able and lawfully capable of so doing ensure that the property behaviour standards are maintained by persons using the Common Property.

4. Keeping in the Manager's possession the master key or keys for any areas under the control of the Body Corporate PROVIDED HOWEVER that the possession of those keys shall be surrendered to no person other than a fully authorised representative of the Body Corporate. The Manager shall allow any lawfully authorised person in the course of his duties free access to any part of the Complex as authorised at all reasonable times and as necessary in any emergency.
5. Reporting promptly to the Body Corporate on all things requiring repair beyond the scope of the Manager's duties and on all matters creating a hazard or danger and take interim remedial action where applicable.
6. Compiling and maintaining a list of all items in the Complex which require regular maintenance and keeping a record of work performed with respect to such items, which list and records shall be produced for inspection on request by the Body Corporate.
7. Obtaining quotes and insurance quotes for repairs or replacements and complete insurance claim documents as requested and where appropriate for the Manager to do so.
8. Complying with and carry out all reasonable directions from time to time given by the Body Corporate in and about the control, management and administration of the Common Property including any rules or requirements contained in any Duties Schedule.
9. Replacing items owned by the Body Corporate from time to time as requested by the Body Corporate, with replacement costs to be paid by the Body Corporate and the goods remain at all times the property of the Body Corporate.

**PROVIDED THAT** nothing in this Agreement shall be construed as requiring the Manager to pay for repairs and replacements for items owned by the Body Corporate or to perform work that requires the services of a skilled tradesperson.

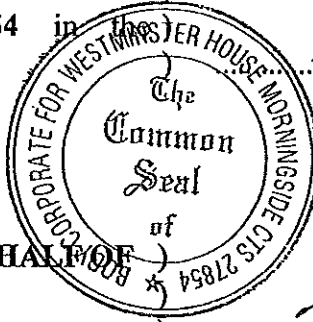
**B. DUTIES IN RELATION TO RESIDENTS**

The Manager shall be responsible for the following duties:

10. Monitor the observance of the By-Laws of the Scheme by the residents (including their guests and licensees) for the time being of the lots in the Plan and advise the Body Corporate of any serious or persistent breaches of the By-Laws of the Scheme.

EXECUTED as a deed on the date set out at the commencement of this Agreement.

THE BODY CORPORATE OF )  
 WESTMINSTER HOUSE )  
 MORNINGSIDE CTS 27854 in the  
 presence of:



EXECUTED FOR AND ON BEHALF OF

MANAGEMENT PTY LTD

ACN [REDACTED] in accordance with its  
 constitution:

DIRECTOR

DIRECTOR/SECRETARY