

Letting Agreement

This Agreement is made the 26th day of August 2021

BETWEEN: THE BODY CORPORATE FOR WHARF APARTMENTS CTS 28245 ('the Body Corporate')

AND: RAZCRUZ PTY LTD ACN 608 306 556 AS TRUSTEE FOR THE RASMUSSEN FAMILY TRUST ('the Agent')

AND: BRETT WALTER RASMUSSEN AND REYMAR RASMUSSEN ('the Guarantors' and 'the Lot Owners')

RECITALS:

- A. The Body Corporate is constituted consequent upon the establishment of the Scheme in respect of a property situated at the corner of Wharf Road and Old Burleigh Road, Surfers Paradise, Queensland.
- B. The Body Corporate wishes to provide the owners of lots in the Scheme with a service for letting out their respective lots.
- C. The Body Corporate and the Agent have reached agreement on the performance of certain duties by the Agent and the granting to the Agent of certain privileges by the Body Corporate.
- D. The Body Corporate has, by resolution, authorised the execution of this Agreement.

TERMS:

1. INTERPRETATION

1.1 The following words and expressions shall have the following meanings respectively assigned to them namely:

- (a) "Act" – means the *Body Corporate and Community Management Act (Qld) 1997*;
- (b) "Management Unit" – means Lot 103 in the Scheme;
- (c) "Commencement Date" means 26 August 2021;
- (d) "Committee" – means the committee of the Body Corporate;
- (e) "Regulation Module" means the *Body Corporate and Community Management (Accommodation Module) Regulation 2020*;
- (f) "Related Person" – means the natural person or persons who in the reasonable opinion of the Body Corporate hold effective control of the relevant company or partnership;

- (g) "Representative" – means the person appointed by the Committee from time to time pursuant to clause 7;
- (h) "Scheme" – means Wharf Apartments Community Titles Scheme 28245;
- (i) "Termination Date" means 2 July 2025.

1.2 In this Agreement, unless a contrary intention appears:

- (a) the Schedules to this Agreement form part of this Agreement;
- (b) words denoting the masculine include the feminine and vice versa;
- (c) words importing the singular include the plural and vice versa;
- (d) reference to persons include corporations;
- (e) headings are for reference purposes only and do not form part of this Agreement;
- (f) reference to any statute is as amended or replaced from time to time;
- (g) words and expressions defined in the Act to have a particular meaning shall have that meaning when used in this Agreement.

1.3 This Agreement shall bind the administrators, executors, successors and permitted assigns of each party to this Agreement.

1.4 Every agreement or obligation expressed or implied in this Agreement by which two or more persons agree to be bound, binds such persons jointly, and each of them severally, and every provision expressed or implied in this Agreement which applies to two or more persons applies to such persons jointly and each of them severally.

2. APPOINTMENT OF AGENT

2.1 The Body Corporate appoints the Agent as the letting agent of the Scheme. This appointment shall continue for a term commencing on the Commencement Date and expiring on the Termination Date. The Agent accepts the appointment subject to the provisions of this Agreement.

2.2 If there is not, at the time the Agent gives notice under this clause nor at 2 July 2025, an outstanding breach of this Agreement by the Agent entitling the Body Corporate to terminate it, the Agent may by giving written notice to the Body Corporate not more than six (6) months and not less than three (3) months before 2 July 2025, extend or renew this Agreement or the term of it for the period of five (5) years commencing on 3 July 2025 and ending on 2 July 2030, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause which will be deleted.

2.3 If there is not, at the time the Agent gives notice under this clause nor at 2 July 2030, an outstanding breach of this Agreement by the Agent entitling the Body Corporate to terminate it, the Agent may by giving written notice to the Body Corporate not more than six (6) months and not less than three (3) months before 2 July 2030, extend or renew this Agreement or the term of it for the period of five (5) years commencing on 3 July 2030 and ending on 2 July 2035, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause which will be deleted.

- 2.4 If there is not, at the time the Agent gives notice under this clause nor at 2 July 2035, an outstanding breach of this Agreement by the Agent entitling the Body Corporate to terminate it, the Agent may by giving written notice to the Body Corporate not more than six (6) months and not less than three (3) months before 2 July 2035, extend or renew this Agreement or the term of it for the period of five (5) years commencing on 3 July 2035 and ending on 2 July 2040, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause which will be deleted.
- 2.5 If there is not, at the time the Agent gives notice under this clause nor at 2 July 2040, an outstanding breach of this Agreement by the Agent entitling the Body Corporate to terminate it, the Agent may by giving written notice to the Body Corporate not more than six (6) months and not less than three (3) months before 2 July 2040, extend or renew this Agreement or the term of it for the period of five (5) years commencing on 3 July 2040 and ending on 2 July 2045, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause which will be deleted.

3. BUSINESS

- 3.1 The Agent shall be entitled to conduct from the Management Unit the business of letting lots in the Scheme for such of the owners of lots in the Scheme as desire to let their respective lots; and the Agent will provide all associated services commonly rendered in connection with the provisions of such accommodation.

4. AGENT'S COVENANTS

- 4.1 The Agent covenants that it shall at its own expense:
- (a) obtain and keep current all necessary permits, consents or licences required by any lawful authority to enable it to conduct such business;
 - (b) conduct such business in a manner so as to not unduly interfere with the quiet enjoyment and occupation of lots in the Scheme and in compliance with every by-law of the Body Corporate;
 - (c) maintain and staff the reception and office area at such times as are reasonably necessary for the provision of the letting service;
 - (d) supervise the standard of tenants of all lettings arranged by it and ensure, so far as is practicable, that no nuisance is created in the Scheme and that the Scheme is not brought into disrepute; and
 - (e) it, or the natural person or persons who in the reasonable opinion of the Body Corporate hold effective control of the Agent remain the owner of the Management Unit.
- 4.2 Where the Agent is a corporation the Agent must ensure an adequate number of its officers, servants or agents are available at the Scheme to carry out the Agent's duties and functions.

5. ACKNOWLEDGEMENT

- 5.1 Subject to Clause 3 of this Agreement, the Agent covenants that it will provide the letting service only to such of the owners of lots in the Scheme as shall require that service and the Agent acknowledges that the owners of lots in the Scheme are free to choose whether or not they use the services of the Agent or instead use the services of any other person and the Agent covenants that it will not hinder any person so engaged.
- 5.2 The Agent may only let any lot in the Scheme for residential purposes.

6. BODY CORPORATE'S COVENANTS

- 6.1 The Body Corporate covenants with the Agent that:
- (a) during the continuance of this Agreement it will not directly or indirectly, nor will it permit any person including its staff, to carry on or render or be concerned in any business of service of letting lots in the Scheme;
 - (b) the Body Corporate will not lease or grant any licence in respect of any part of the common property of the Scheme to any person or corporation other than the Agent for the purpose of a business of letting lots in the Scheme.

7. BODY CORPORATE'S REPRESENTATIVE

- 7.1 The Committee may appoint a Representative (who is a member of the Committee) to give instruction to and to communicate with the Agent on behalf of the Body Corporate.
- 7.2 The Agent will confer freely and fairly with the Representative relative to the performance by the Agent of its duties. If the Representative requests the Agent shall attend meetings of the members of the Body Corporate. The Agent shall be entitled to be heard on any relevant question or matter raised at any meeting. After being so heard, the Agent may be requested to leave the meeting if not otherwise entitled to attend.

8. ASSIGNMENT

- 8.1 The Agent's interest in this Agreement may be transferred only if the Body Corporate approves the transfer.
- 8.2 In deciding whether to approve a proposed transfer, the Body Corporate may have regard to:
- (a) the character of the proposed transferee and Related Persons of the proposed transferee;
 - (b) the financial standing of the proposed transferee;
 - (c) the proposed terms of the transfer;
 - (d) the competence, qualifications and experience of the proposed transferee and any Related Persons of the proposed transferee and the extent to which the transferee and any Related Persons have received or are likely to receive training;
 - (e) that the proposed transferee or the natural person or persons who in the reasonable opinion of the Body Corporate hold effective control of the proposed transferee will be the owner of the Management Unit.

- 8.3 The Body Corporate must decide whether to approve a proposed transfer within thirty (30) days after it receives the information reasonably necessary to decide the application for approval.
- 8.4 The approval may be given on condition that the transferee enters into a Deed of Covenant to comply with the terms of this Agreement.
- 8.5 The Body Corporate must not:
- (a) unreasonably withhold approval of the transfer; or
 - (b) require or receive a fee or other consideration for approving the transfer (other than reimbursement for legal expenses reasonably incurred by the Body Corporate in relation to the application for its approval).

9. APPOINTEE

- 9.1 The Agent may from time to time appoint a person resident in the Management Unit to act as its employee or agent ("Appointee"). The Agent shall not appoint an Appointee without the prior approval in writing of the Body Corporate, which approval shall not be unreasonably withheld.
- 9.2 The Agent may perform any of its duties or obligations through the Appointee.
- 9.3 The Appointee may exercise all the authorities and powers given to the Agent.
- 9.4 The Agent shall be responsible for any remuneration payable to the Appointee.
- 9.5 The Agent shall be liable and responsible for the performance of all acts, deeds and things required under this Agreement despite the appointment of any Appointee.

10. TERMINATION

- 10.1 The Body Corporate may terminate this Agreement if the Agent, or a Related Person to the Agent:
- (a) is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty;
 - (b) is convicted (whether or not a conviction is recorded) on indictment of an assault or an offence involving an assault;
 - (c) engages in misconduct or is grossly negligent in carry out or failing to carry out the functions required under this Agreement;
 - (d) does not carry out duties under this Agreement and persists in not carrying out the duties for fourteen (14) days or more after the Body Corporate by written notice requires the Agent to carry out the duties;
 - (e) carries on a business involving the supply of services to the Body Corporate or to owners or occupiers of lots and the carrying on of the business is contrary to law; or
 - (f) transfers an interest in this Agreement without the Body Corporate's approval.

11. NOTICE

- 11.1 A notice is to be given under this Letting Agreement may be given by a party or its solicitor.
- 11.2 A party may give a notice by:
- (a) delivering or posting it to the other party or its solicitor; or
 - (b) sending it to the email address of the other party or its solicitor.
- 11.3 A notice is taken to be given:
- (a) when delivered; or
 - (b) if sent by post, 2 Business Days after posting; or
 - (c) If sent by email and received before 5.00pm on a Business Day, on the day it is sent; and
 - (d) if sent by email and received after 5.00pm on a Business Day or received on a day that is not a Business Day, on the next Business Day after it is sent.
- 11.4 Notice by a party's solicitor to the other party or its solicitor will be treated as given with the first party's authority.

12. OCCUPATION AUTHORITY

- 12.1 In accordance with the Act and the applicable Regulation Module, the Body Corporate authorises the Agent to have the exclusive use and occupation of those parts of the Common Property identified on the plan or plans attached to this Agreement for all purposes necessary to enable the Agent to perform its obligations under this Agreement and provide the letting services.
- 12.2 In respect of the occupation authority areas referred to in clause 12.1, the Agent is responsible for:
- (a) keeping the relevant areas in a clean and tidy condition; and
 - (b) an increase in insurance premiums payable by the Body Corporate as a result of the occupation authority being granted and the use of the occupation authority areas by the Agent (if any).

13. LOT OWNER COVENANT

- 13.1 The parties acknowledge and agree that this clause and the covenants contained in it comprise and operate as a Deed as prescribed under section 116(2)(b) of the Act.
- 13.2 This clause only operates if a Deed is required to be entered into between the Body Corporate and the Lot Owner pursuant to Section 116 of the Act.
- 13.3 The Lot Owner is or will be the owner of the Management Unit and is or will be the lot holder pursuant to, and as that term is defined in, the Act.
- 13.4 The Lot Owner agrees to transfer the Lot Owner's interest in the Management Unit, in accordance with the arrangements provided for in this Agreement, if the Agent is required to transfer the management rights under Division 8 of Part 2 of Chapter 3 of the Act.

- 13.5 The Lot Owner, as the proposed registered owner of the Management Unit:
- (a) agrees to transfer its interest in the Management Unit if the Body Corporate gives the Agent a valid transfer notice under Section 140 of the Act;
 - (b) must do all that is required to ensure that the transfer of the Management Unit under this clause occurs contemporaneously with the transfer of the management rights;
 - (c) agrees, in relation to the Management Unit, to follow and comply with the procedures set out in Division 8 of Part 2 of Chapter 3 of the Act, so that upon any transfer under that Division of the management rights, the Management Unit is also transferred; and
 - (d) authorises the Body Corporate to act in its place if it does not comply with its obligations under this Clause.
- 13.6 Nothing in this Agreement implies or requires that Division 8 of Part 2 of Chapter 3 of the Act applies to the Agreement or to the management rights.

14. GUARANTEE AND INDEMNITY

14.1 The Guarantors hereby agree with the Body Corporate as follows:

14.1.1 the Guarantors guarantee:

- (a) the performance by the Agent of its obligations under this Agreement; and
- (b) on a full indemnity basis the payment of all loss and damage (including reasonable legal and other expenses) recoverable by the Body Corporate from the Agent for any reason whatsoever and howsoever arising.

14.1.2 this guarantee is not discharged and the Body Corporate's rights against the Guarantors are not affected by any of the following:

- (a) the granting of any extension of time by the Body Corporate to the Agent or to the Guarantors;
- (b) the Body Corporate's failure to enforce covenants under the Agreement against the Agent;
- (c) the total or partial release of liability of the Agent or the Guarantors by the Body Corporate;
- (d) the death, bankruptcy or winding up of the Agent or Guarantors; and
- (e) the disclaimer of the Agreement following the Agent's insolvency.

14.1.3 in respect of any payment made by or on behalf of the Agent under the Agreement that is void or is voided for any reason, the Guarantors shall remain liable under the Guarantee as if the payment had not been made.

14.1.4 the Body Corporate is entitled to require the Guarantors pay to the Body Corporate any outstanding money or other amount to compensate the Body Corporate for any loss or damage without the Body Corporate having made any claim or instituted any proceedings against the Agent in respect of such monies.

15. TRUSTEE

- 15.1 If the Agent enters into this Agreement or otherwise at any time holds the Agreement as a trustee of any trust (*Trust*) then, whether or not the Body Corporate has any notice (actual or constructive) of the Trust, the following applies:
- 15.1.1 the Agent warrants it has full power under the Trust to enter into and perform its obligations under this Agreement;
 - 15.1.2 the obligations and liabilities of the Agent under this Agreement extend to the fund and any other assets of the Trust (*Trust Fund*);
 - 15.1.3 the Agent shall on the written demand or direction of the Body Corporate exercise all rights of indemnity it may at any time have against the Trust Fund and any beneficiaries or unit holder under the Trust or any of the same for the benefit of the Body Corporate;
 - 15.1.4 the Agent is liable under this Agreement both in its personal capacity and as trustee of the Trust; and
 - 15.1.5 the Agent must produce to the Body Corporate the original stamped trust deed (or a photocopy certified by an accountant or solicitor) and all other documents evidencing the Trust and the Trust Fund within 14 days of written request for the same by the Body Corporate.

16. SURRENDER AND REPLACEMENT

- 16.1 This is a new Agreement and surrenders and replaces the rights and obligations of the parties contained in the Letting Agreement dated 28 November 2000 from and including the Commencement Date.

17. AUTHORITY TO COMPLETE BLANKS

- 17.1 The Body Corporate Manager is authorised to complete any blanks in this Agreement as agreed to in writing by the parties.

Executed as a Deed

SIGNED, SEALED AND DELIVERED by the **BODY CORPORATE FOR WHARF APARTMENTS CTS 28245** in accordance with the provisions of the *Body Corporate and Community Management Act (Qld) 1997*

** The Body Corporate seal must be attached in the presence of any two (2) committee members, one of whom must be the chairperson or secretary and the committee members must sign as witnesses to the sealing of the document **



[Handwritten signature]

Authorised Signatory

Darren Heidke

Print full Name

(Chairman)

B Mellross

Authorised Signatory

BARRY MELLROSS

Print full Name

EXECUTED by **RAZCRUZ PTY LTD ACN 608 306 556 AS TRUSTEE FOR THE RASMUSSEN FAMILY TRUST** in accordance with Section 127 of the *Corporations Act 2001* (Cth)



Director/Secretary

Reymar Rasmussen
Print full Name



Director

Brett Walter Rasmussen
Print full Name

SIGNED, SEALED AND DELIVERED BY BRETT WALTER RASMUSSEN (as Guarantor and Lot Owner) in the presence of:



Brett Walter Rasmussen



Witness

SIGNED, SEALED AND DELIVERED BY REYMAR RASMUSSEN (as Guarantor and Lot Owner) in the presence of:



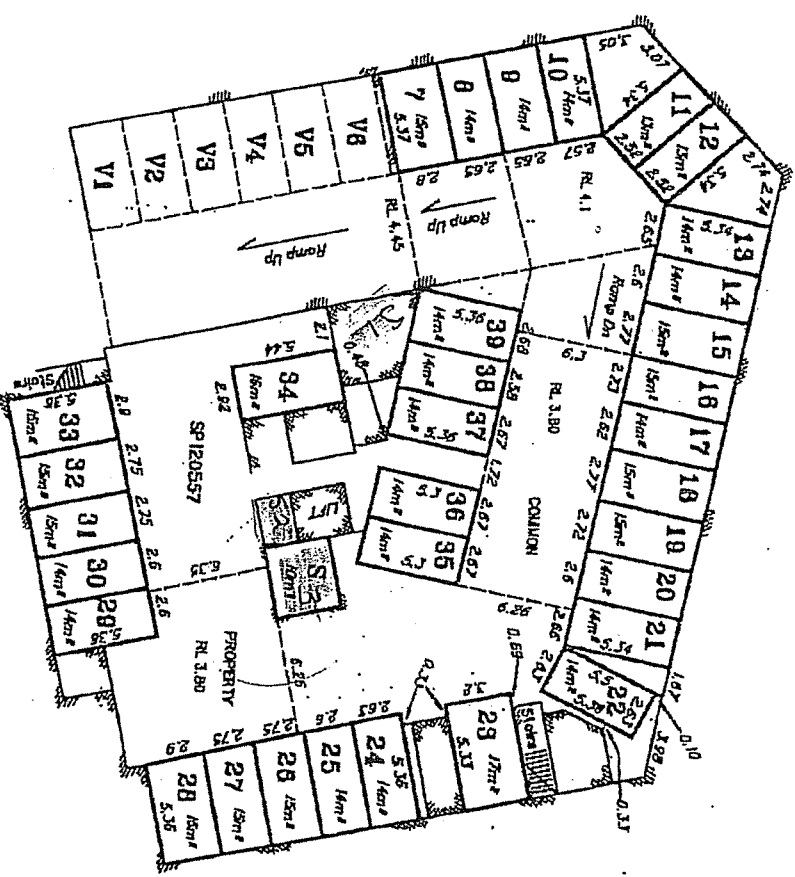
Reymar Rasmussen



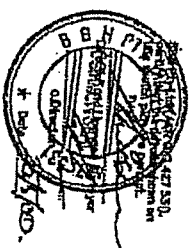
Witness

OCCUPATION AUTHORITY PLAN

Levels are Indictive only and referred to the Australian Height Datum.



PLAN A
SCHEDULE E
"WHARF APARTMENTS" CTS



SCALE 1:250

- NOTES:**
1. Drawn to Scale on A3 sheet.
 2. Completely Title Scheme "WHARF APARTMENTS".
 3. Title Reference.....
 4. Location of SP 120557
 5. Exclusion Use Areas are defined by the internal face of wall and the dimensions shown.
 6. Areas reserved for use of the Council.
 7. V denotes vehicle parking V1-V8.



Bennett & Bennett
Consulting Surveyors, Development Consultants
& Town Planners

30 Lyons Street, Berala
Ph: (07) 5574 0774
Fax: (07) 5574 0005

Berl Pty. Ltd. A.C.N. 810 477 431
Attended by: P.O. Box 6271 9, C.A.L.C. QLD 4072
original Documents: Queensland 121

21 Dromedary Parkway, Coomera
Ph: (07) 5577 8177
Fax: (07) 5529 4142

Plan of Exclusive Use Areas
7 - 39 & S1
in part of the Common Property
on Level A (Basement) of
"WHARF APARTMENTS" CTS

Stand	POJ	Folios	Amendments
Drawn	DC	Unbook	885
Prepared	DC	Unbook	885
Scale	1:250	Ward	WARD
Job No.	96.182.477	City	WARRAWONG
Client	LANDEX PROJECT PTY LTD	Area /	Area /
		Plan No.	6885/201/2/2/20
		Date	11/8/99