THE BODY CORPORATE FOR CLEARWOOD
COMMUNITY TITLES SCHEME 24079
('the Body Corporate')

and

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# DEED OF ENGAGEMENT

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**THIS DEED** is dated the 27th day of April, 2001

**BETWEEN:** THE BODY CORPORATE FOR CLEARWOOD COMMUNITY TITLES SCHEME 24079 ('the Body Corporate')

**AND:** TJ MOLONEY PTY LTD ('the Manager')

**RECITAL:**

A. The Body Corporate and the Beama Pty Ltd ACN 069 399 122 are parties to the First Agreement.

B. The Manager has requested the Body Corporate to enter into this Engagement which will adopt the terms and conditions of the First Agreement with certain variations.

C. The Body Corporate has agreed to do so at a general meeting held on 20 April, 2001.

**OPERATIVE PART:**

## 1. DEFINITIONS

1.1 In this Engagement:-

(a) **'Engagement'** means this deed of engagement.

(b) **'First Agreement'** means the management agreement dated 18 August 1997 between the Body Corporate and Beama Pty Ltd ACN 069 399 122 through its predecessors in title as varied by the deed of variation dated 31 May 1999 (as attached to Engagement and marked with the letters 'A' and 'B' respectively).

(c) **'Scheme'** means community titles scheme 24079.

## 2. ENGAGEMENT

2.1 The Body Corporate engages the Manager as a service contractor for the Scheme on the same terms and conditions as contained in the First Agreement varied as follows:-

(a) The definition of 'the Act' in clause 1 is deleted and replaced with the following:-

*'"The Act" means the Body Corporate and Community Management Act 1997.'*

(b) The deletion of clause 2 and the insertion of the following clause in lieu thereof:-

*'The Body Corporate hereby engages the Manager as Manager of the scheme to perform the duties and functions set out in this agreement for a term of 25 years*

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*commencing on 12 April 2001 and expiring on 11 April 2026 ('the Term'). The Manager accepts such engagement subject to the provisions of this agreement.'*

(c) By the deletion of clause 6.02 and clause 7.

(d) By the deletion of clause 10.01 and the inserting the following:-

*'The parties agree that the Manager is not a body corporate manager under the Act.'*

(e) By the deletion of clause 1 in schedule 3 and inserting the following:-

*'1. The remuneration payable to the manager for the first year of the Term shall be $50,845.00 per annum payable by equal calender monthly instalments in arrears.'*

(f) By the deletion of the words *'31 December 1996'* in clause 2 of schedule 3 and the insertion of *'31 December 2000.'*

(g) By insertion of the following clause 3 in schedule 3:-

*'3. Where*

*(a) a Goods and Services Tax ('GST') pursuant to the provisions of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) becomes payable on the supply of any goods or services ('supply') under or in connection with this Agreement; and*

*(b) the Manager is required to pay GST in respect of that supply;*

*the Body Corporate must pay the GST applicable on that supply to the Manager in addition to any other amounts payable by the Body Corporate to the Manager under this Agreement.'*

(h) By the deletion from schedule 2 of the deed of variation the words *'including any part or parts thereof which are situate in an area to which exclusive use has been granted to a proprietor or proprietors.'*

## 3. NEW ENGAGEMENT

3.1 This is a new Engagement and replaces the rights and obligations of the parties contained in the First Agreement from and including the date of commencement of this Engagement.

## 4. COSTS

4.1 The legal costs of and incidental to the preparation and stamping of this Engagement shall be borne by the Manager.

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## 5. INTERPRETATION

5.1 In this Engagement:-

(a) Terms used in the First Agreement shall have the same meaning as those terms have in the First Agreement except as otherwise provided for in this Engagement.

(a) Words importing the singular will include the plural and vice versa.

(b) Reference to any party includes reference to that party's representatives, successors and permitted assigns.

(c) Any obligation on the part of or for the benefit or two or more persons will be deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally.

(d) Headings are to be disregarded in the interpretation of this Engagement.

(e) Reference to any document includes all amendments, variations and extensions of that document.

## SIGNING:

The Parties have executed this Engagement on the date previously appearing in this Engagement.

THE COMMON SEAL of the **BODY CORPORATE FOR CLEARWOOD COMMUNITY TITLES SCHEME 24079** was affixed by authority of a resolution of the Body Corporate under the hands of two duly authorised officers )

Secretary

CHAIRMAN

BODY CORPORATE FOR CLEARWOOD COMMUNITY TITLES SCHEME 24079 The Common Seal of

Signed by **TJ MOLONEY PTY LTD** in the presence of: )

DIRECTOR

SECRETARY

T.J. MOLONEY PTY LTD ACN 010 585 903 A.B.N. 60 010 585 903 Common Seal

Witness



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Commissioner of Stamp Duties,
Queensland

# MANAGEMENT AGREEMENT

THIS AGREEMENT is made by way of Deed the 18TH day of AUGUST 1997

BETWEEN:

THE PROPRIETORS "CLEARWOOD" BUILDING UNITS PLAN NUMBER 106089 a Body Corporate formed pursuant to the Act ("the Body Corporate")

AND:

KEVIN ~~KEVIN~~ DONALD BAYLISS AND LINDA JOAN BAYLISS of c/- Short Punch & Greatorix Corner Bundall Road and Crombie Avenue Bundall in the State of Queensland 4217 (hereinafter with their executors and successors called "the Manager")

WHEREAS:

A. The Body Corporate wishes to provide for the better caretaking, administration, control and management of the Common Property and for the better exercise and performance of its powers and duties in relation thereto. In particular, the Body Corporate wishes to provide for the better maintenance and repair of the Common Property.

B. The Body Corporate has by resolution authorised the execution of this Agreement.

C. The Manager for the consideration hereinafter appearing has agreed with the Body Corporate on the terms and conditions herein set forth to perform the duties herein set forth.

## 1. INTERPRETATION

In the interpretation hereof, except to the extent that such interpretation shall be excluded by or be repugnant to the context, the following words and phrases shall have the meanings respectively assigned to them and the following provisions relating to the interpretation shall apply:-

"the Act" means the Building Units and Group Titles Act 1980 or if it has commenced by the commencement of this Agreement then the Body Corporate and Community Management Act (proposed New Act);

"Agreement" or "this Agreement" includes the Schedules hereto;

"Building" shall mean the building known as "CLEARWOOD" erected upon Lot 2 on Registered Plan Number 890395 in the County of Ward Parish of Tallebudgera;

"Business" means any activities associated with this Agreement;

"Common Property" means so much of the parcel and the building as from time to time is not comprised in any Lot in the Plan and shall include where appropriate any easement(s) and any Property shared between members of the Body Corporate and any other person or persons (whether by way of agreement, easement, lease or

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otherwise);

"Committee" means the Committee of the Body Corporate elected or otherwise appointed from time to time pursuant to the Act;

"Manager's Lot" means Lot 3 in the Plan;

"Lot" means a Lot in the Plan;

"The Plan" means Building Units Plan No 106089;

"Property" shall mean the Lots and the Common Property comprised in the Plan and unless specified to the contrary in the By-laws shall include any area of the property which has been allocated to the exclusive use of a proprietor or proprietors;

headings have been inserted for guidance only and shall not form part of nor affect the interpretation hereof;

references to clauses, subclauses, paragraphs and sub-paragraphs are references to clauses, subclauses, paragraphs and sub-paragraphs hereof;

references to a person include where the context requires, a corporation, a natural person and any other entity capable of suing and being sued;

references to any statutory provision or other such legislative or like enactment shall include any statutory provisions amending, consolidating or replacing same, and all by-laws, orders in Council, ordinances, proclamations, regulations, rules and other authorities made thereunder;

words importing the singular number include the plural and vice versa;

words importing any particular gender include where the context requires all genders;

where two (2) or more persons are named herein (or are encompassed herein) as the Manager:-

(a) the expression "the Manager" shall be a reference to those persons jointly as well as to each of them severally; and

(b) this instrument and the obligations and agreements on their part herein contained or implied shall bind those persons jointly as well as each of them severally;

where any provision hereof requires a determination to be made by the Body Corporate that determination shall be sufficiently made if done in accordance with the provisions of the Act.

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## 2. APPOINTMENT OF MANAGER

The Body Corporate hereby engages the Manager as the Manager of the Property to perform the duties and functions set out in this Agreement for a term of five (5) years commencing on the 14th day of August 1997 and terminating on 13th day of August 2002 (herein called "the Term"). The Manager hereby accepts such appointment subject to the provisions hereof.

Where Manager is a Corporation

(a) Where at any time the Manager pursuant hereto shall be a corporation, it shall be the responsibility of the Manager to ensure at all times that an adequate number of its officers, managers, servants or agents are available to carry out the Manager's duties and functions pursuant hereto;

(b) Persons used by the Manager to carry out the Manager's General Duties set out in Schedule One, where they not be the principal shareholders and/or directors of the Manager at the date of appointment of the Manager, shall require the prior approval in writing of the Committee. It shall be the responsibility of the Manager to seek such approval and the Manager shall provide to the Committee sufficient information concerning the persons involved to enable the Committee to make a reasonable determination based upon the criteria with respect to consent to assignment set out in Clause 5 hereof;

(c) Where at any time the Manager pursuant hereto is a corporation and there is, or is proposed, any alteration to the Board of Directors, or any alteration to the beneficial ownership of, or issue of further shares in, the share capital of the Manager, which, in the opinion of the Body Corporate, alters the effective control of the corporation from the control thereof as at the date hereof, such change or proposed change in control of the corporation shall be deemed to be an assignment or proposed assignment of this Agreement and the provisions herein relating to assignments shall apply.

## 3. REMUNERATION AND OTHER CONDITIONS

### 3.01 Remuneration

(a) In consideration of the due and punctual performance by the Manager of his obligations hereunder, the Body Corporate shall pay to the Manager remuneration as set out in Schedule Three;

(b) The Manager acknowledges that his obligations under this Agreement are those of a contractor and that he shall be responsible for all Workers Compensation, Income Tax and any other statutory charges incidental to this contract and payable with respect to any agents or employees engaged by the Manager for the performance of duties hereunder;

(c) In the event that any remuneration instalments are not paid to the Manager on the due date for payment then such instalments shall bear interest from the due date for

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payment to the date of payment at the rate per annum applicable from time to time for the Westpac Banking Corporation prime rate of interest charged on overdraft accounts on the date of default which interest shall be paid contemporaneously with payment of the remuneration instalment owed but unpaid.

3.02 Leave

The Manager shall have the right to appoint a suitable replacement for the person or persons responsible for the performance of the Manager's duties and obligations for a period of or an aggregate of periods totaling, up to four (4) weeks per annum, for the purpose of allowing the Manager a holiday or holidays for that period or aggregate of periods. On each occasion, details of the proposed replacement shall be provided to the Body Corporate Representative at least fourteen (14) days prior to the commencement of the Manager's proposed holiday, and the Body Corporate Representative shall as soon as reasonably practicable by notice to the Manager advise the Manager of its approval or otherwise of the proposed replacement PROVIDED THAT such details need only be provided twenty four (24) hours prior to any proposed absence for urgent business, family or personal reasons. Such approval shall not be unreasonably withheld. It shall be a matter for the Manager to ensure that the replacement from time to time adequately performs the duties and obligations of the Manager pursuant to this Agreement. Any breach of this agreement on the part of such replacement shall be deemed to be a breach of this Agreement by the Manager. Any remuneration payable to such replacement shall be the responsibility of the Manager.

3.03 Duties

(a) The Manager shall perform the duties set out in Schedules One and Two hereof and will ensure that an adequate number of staff, agents and servants is engaged by him at his expense to carry out those duties.

(b) Where the Manager is :-

(i) a natural person, the Manager's General Duties under Schedule One shall be duly and punctually performed by the Manager personally;

(ii) a corporation, the Manager's General Duties in Schedule One shall be performed by those persons automatically authorised (as the principal shareholders and/or directors of the Manager) or who are approved under Clause 2(b);

3.04 Expenditure

(a) The Manager shall be entitled to pledge the credit of the Body Corporate and incur an expense on behalf of the Body Corporate, in respect of any single transaction, for an amount not exceeding TWO HUNDRED DOLLARS ($200.00) or such amount as the Committee may from time to time authorise in writing, or in an emergency as approved in writing by the Body Corporate Manager duly appointed from time to time PROVIDED THAT such credit is pledged or expense incurred for the purpose of obtaining goods or services reasonably necessary for the performance of the duties of the Manager pursuant to this Agreement, or in relation to the performance of any

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duty of any employee of the Body Corporate, or for such other purposes as are necessary or incidental thereto. Any such expense shall be paid by the Body Corporate, or if paid by the Manager shall be reimbursed by the Body Corporate to the Manager;

(b) The Body Corporate shall provide a cash advance (float) of TWO HUNDRED DOLLARS ($200.00) to the Manager to enable payment of day to day Body Corporate expenses for which the Manager shall conduct a cash book and verify all amounts for payment as set out in Clause (c) hereunder.

(c) The Manager will check and verify accounts for goods and services payable by the Body Corporate and will notify the Body Corporate's Representative as to whether such accounts are in order for payment.

3.05 Body Corporate Representative

(a) The Committee shall, from time to time, appoint one (1) of its members or a member of the Body Corporate to communicate with, and to give instructions to the Manager, on behalf of the Body Corporate. Not more than one (1) such person shall be appointed at any one time;

(b) The Manager shall confer from time to time fully and freely with the Body Corporate Representative (if so requested) relative to the performance by the Manager of his duties and other obligations hereunder. If the Body Corporate Representative so requests, the Manager shall attend (where it is a corporation, by its approved representative) Committee meetings and general meetings. If the Manager is requested to attend any such meeting, the Manager shall be entitled to be heard on any relevant questions or matter at any such meeting. After being so heard, the Manager may be requested to leave such meeting if he is not otherwise entitled to attend.

3.06 Materials and Equipment

(a) The Body Corporate shall supply or reimburse to the Manager the cost of all materials utilised for the performance of the duties herein including but not limited fuels, cleaning materials and gardening supplies. The Manager shall ensure that materials and equipment used in the performance of duties for the Body Corporate are properly used with respect to those duties only, and are not wasted or used with respect to individual Lots let by or occupied by the Manager and shall account, when reasonably requested, to the Body Corporate for the use thereof. The Manager shall prepare a list of cleaning materials in stock when requested to do so by the Body Corporate Representative.

(b) The Body Corporate shall reimburse to the Manager the amount expended by the Manager on telephone calls made by the Manager on behalf of the Body Corporate and in the event that agreement is unable to be reached the Manager shall keep a record of calls made on behalf of the Body Corporate in the performance of his duties over a three (3) month period and the total cost of those calls, providing they are reasonably made in the course of management (but not letting) duties shall be deemed

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to be the amount payable quarterly by the Body Corporate to the Manager on account of telephone costs;

(c) The Body Corporate shall be responsible for the purchase of any equipment necessary to allow the Manager to complete the duties and obligations set out in Schedule One and Two of this Agreement. The Manager shall be responsible for the safekeeping of such equipment.

4. MANAGER'S COVENANTS

4.01 The Manager covenants with the Body Corporate as follows:-

(a) Statutes

At his own expense, from time to time, and at all times during the continuation of this Agreement, or any extension or renewal thereof, duly and punctually to comply with the provisions of:-

(i) all Statutes and relevant delegated legislation;

(ii) without limiting the generality of the immediately preceding paragraph, the Workers Compensation Act (Queensland) to cover as required by law any person employed by him;

(iii) all By-laws and rules of the Body Corporate pursuant to the Act.

(b) Use

To use the Manager's Lot for the purpose of carrying on the business of a Building Unit Manager's residence and office and for other matters incidental thereto and for no other purpose whatsoever PROVIDED THAT where the Manager is licensed to do so he may conduct a letting agency service, a property sales business for Lots in the Plan and such other services as the occupiers may require, as the Manager deems desirable in the interests of the complex as a whole.

(c) Advertising Signs

Not to exhibit, affix, or permit to be exhibited, affixed or placed upon any part of the Manager's Lot any sign, poster, hoarding, placard or notice except as approved by the Body Corporate Representative (which approval shall not be inconsistent with the Body Corporate By-Laws and which approval shall not be unreasonably withheld).

(d) Requirement to Keep Premises in a Clean and Tidy Condition

To keep that part of the Property which is used as an office and reception area in a clean and tidy condition and in a good state of repair;

(e) Annoyance to Adjoining Occupiers

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Not during the continuation of this Agreement or any extension or renewal thereof, to do, or permit to be done any matter or thing in or upon the Manager's Lot or any part thereof which shall be or become an annoyance, nuisance, grievance, damage or disturbance to the tenants, occupiers or owners of Lots in the Property or adjoining premises, PROVIDED HOWEVER, that the reasonable usage of the Manager's Lot for the purposes provided for herein shall not constitute a breach by the Manager of the provisions of this subclause;

(f) Indemnity by Manager

To indemnify the Body Corporate against all damage and expense which the Body Corporate may sustain by reason of any failure on the part of the Manager to observe any of the covenants on the part of the Manager herein contained or hereby implied;

(g) Covenant not to prejudice the Body Corporate's Insurance

Not to do any thing whereby the policy or policies of insurance effected in respect of the Property shall become prejudiced, or be rendered void or voidable or which may cause the rate of insurance on the Property to be increased and in the event of any breach of this paragraph, in addition to any other liability or penalty, the Manager will pay to the Body Corporate all damage suffered by the Body Corporate and all increases in relevant insurance premiums.

(h) Covenant to Insure re: Public Risk

To insure and keep insured the Manager's Lot with an insurance company to be approved by the Body Corporate against public risk liability for an amount as reasonably required by the Committee (but not less than $5,000,000.00).

5. TRANSFER

5.01 When Permitted

The Manager shall not assign his interest in this Agreement except in accordance with this Clause 5. Any purported assignment not made in accordance with this Clause shall not bind the Body Corporate and shall not pass any interest in this Agreement to any purported assignee. The Manager may assign his interest in this Agreement with the prior approval of the Body Corporate which consent shall not be unreasonably withheld.

5.02 Conditions of Approval

In deciding whether to approve a proposed transfer the Body Corporate may have regard to -

(a) the character of the proposed transferee and any associates (as defined in the Act); and

(b) the financial standing of the proposed transferee; and

(c) the proposed terms of the transfer; and

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(d) the competence, qualification and experience of the proposed transferee and any associates, and the extent to which the transferee and any associates has received or will receive training.

5.03 Consent

(a) The Body Corporate shall decide whether to approve the proposed transfer within thirty (30) days after the applicant for approval gives it the information reasonably necessary to decide the application for approval.

(b) The approval may be given on condition that the transferee enters into a deed of covenant to comply with the terms of the Management Agreement.

6. TERMINATION

6.01 The Body Corporate without prejudice to any other claim which the Body Corporate may have against the Manager in respect of any breach of this Agreement by the Manager may terminate this Agreement if the Manager:-

(a) is convicted of an indictable offence involving fraud or dishonesty; or

(b) is convicted on indictment of an assault or an offence involving an assault; or

(c) engages in misconduct, or is grossly negligent, in carrying out, or failing to carry out, the functions required under this Agreement; or

(d) fails to carry out his duties under this Agreement and persists in the failure for fourteen (14) days or more after the Body Corporate, by written notice, requires him to carry out the duties; or

(e) carries on a business involving the supply of services to the Body Corporate, or to owners or occupiers of lots, without holding a licence or other authority required by law; or

(f) transfers, or accepts the transfer of, an interest in this Agreement without the Body Corporate's approval.

(g) if the Manager is a corporation, and an order is made or resolution is effectively passed, for the appointment of a receiver, receiver and manager or provisional liquidator or for the winding up of the Manager (other than for the purposes of an amalgamation or reconstruction), or if the Manager ceases, or threatens to cease, to carry on the business which the Manager is authorised to conduct hereunder;

(h) if the Manager is a corporation and the Manager enters into any scheme of arrangement for creditors or any class thereof, or an official manager of the Manager is appointed, or a receiver or a receiver and manager of the Manager's property or assets, or any of them, is appointed pursuant to the Corporations Law;

(i) if any creditor of the Manager is entitled to exercise a Power of Sale of the

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Manager's Lot;

(j) if the Manager is an individual and enters into a scheme of arrangement for creditors or any class thereof, or has a sequestration order made against him;

(k) if the Manager is an individual and is declared bankrupt;

(l) if the Manager is an individual and is committed pursuant to any legislation in Queensland relating to mental health;

(m) if the Manager (or if the Manager is a corporation, the person performing the duties of Manager under Schedule One and Two) ceases to reside in the Manager's Lot;

6.02 Option to Purchase Lot 3 on Termination

Should this Agreement be terminated by the Body Corporate pursuant to Clause 6.01 hereof then the Body Corporate may nominate in writing on or before the date being ninety (90) days after the termination of the Agreement, any person or persons, corporation or corporations (herein called "the nominee") who shall thereby be deemed to have the option to purchase from the Manager Lot 3 in the building together with the Manager's interest in this Agreement at such price and upon such terms as are agreed upon between the Manager and the nominee or, failing such agreement, at such price as is fixed as being the fair market value of the said lot and the Manager's interest herein by a valuer appointed for that purpose by the President for the time being of the Queensland Law Society Incorporated and on such terms and conditions as are fixed as being the usual ones applicable in such a transaction by a Solicitor appointed for the purpose by the President for the time being of the Queensland Law Society Incorporated. The exercise of such option shall be made in writing and served upon the Manager within fourteen (14) days after the date of nomination by the Body Corporate of the nominee as hereinbefore set forth. If no nomination is made by the Body Corporate within the time limited or if the option so created is not exercised then the Manager shall be at liberty to retain the said lot or to sell the same.

7. OPTION TO RENEW

7.01 Provided that the Manager shall have carried out his functions and duties pursuant to this Agreement and there being no unremedied default, the Manager shall have the option of extending the term of this Agreement for a further period of five (5) years from the expiration of the initial term of agreement upon the same terms and conditions as are herein contained except for this present clause, provided that the remuneration during such renewed period shall be calculated on the basis that the first year of the renewed terms is the sixth year of the original term.

7.02 If the Manager wishes to exercise the option for renewal of this Agreement, the Manager shall give notice in writing of such exercise of option to the Body Corporate not more than six (6) and not less than three (3) calendar months prior to the expiration of the initial term of this agreement.

8. ARBITRATION

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In the event of any dispute arising between the Manager and the Body Corporate touching upon any matter arising under the terms of this Agreement or incidental hereto or relative to the interpretation of any of the provisions hereof then the same shall be settled by an arbitrator to be mutually agreed upon between the parties and in default of agreement then by such arbitrator as may be nominated for the purpose by the President for the time being of the Queensland Law Society and the decision of such arbitrator shall be final and binding between the parties and such arbitration shall be carried out pursuant to the provisions of the Commercial Arbitration Act 1990 or any statutory modification or re-enactment thereof for the time being in force.

## 9. MISCELLANEOUS

### 9.01 Notices

(a) Any Notice, demand or other document authorised or required to be given or served pursuant hereto shall be dated the date upon which it is despatched, and shall be sufficiently given or served if given or served:-

(i) by delivering same personally to the addressee;

(ii) by posting same to the addressee by prepaid certified post as a letter addressed to the addressee at the addressee's usual or last known place of abode or, if the addressee is in business as a principal, at his usual or last known place of business;

(iii) in the case of a corporation by leaving same, or by posting same by prepaid certified post, as a letter addressed, in either case to the corporation, at or to, as the case may be, its registered office or principal place of business in Queensland;

(iv) in accordance with the procedures set out in Section 257 of the Property Law Act 1974;

(v) in accordance with the procedures set out in Section 127 of the Act; or

(vi) in any other manner recognised by law.

(b) A notice, demand or other document which is posted shall be deemed to have been served unless the contrary is shown, at the time when by ordinary course of post, the same would be delivered.

### 9.02 Severance

(a) The provisions of all statutes and laws, now or hereafter in force, whereby or in consequence whereof any of the obligations, powers, remedies and rights of any person hereunder may be curtailed, defeated, extinguished, postponed or suspended, shall not apply hereto, and are expressly excluded, but only so far as this may legally be done.

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(b) If at any time, any provision hereof, is, or becomes illegal, invalid, unenforceable or void in any respect that provision shall be ignored, read down or severed restrictively so far as is possible at the same time preserving the essence of the bargain between the parties hereto, and evidenced by these presents, so as to uphold the legality, validity and enforceability of the remaining provisions hereof.

9.03 No Waiver

(a) Nothing herein, nor in any document executed pursuant hereto, shall be construed as a waiver, neglect, forbearance, omission or delay in respect of any antecedent breach hereof or any of the obligations arising hereunder;

(b) All the powers, remedies and rights of each party pursuant hereto shall remain and continue in full force, notwithstanding any apparent or valid waiver, neglect, forbearance, omission or delay in the enforcement thereof, on any prior occasion, for any reason whatsoever.

9.04 Costs and Stamp Duty

(a) Each party hereto shall bear their own costs but all stamp duty assessed on, applicable to or in any way connected with this Agreement shall be borne by the Manager;

(b) Where either party hereto is in default hereunder, that party shall pay to the other party all costs (including legal costs on a Solicitor and own client basis) which are reasonably incurred by the other party in connection with such default. Without derogating from the generality of the foregoing, legal costs shall be deemed to have been reasonably incurred in the obtaining of advice, the attempted exercise of any power, remedy or right hereunder, the actual exercise of any power, remedy or right hereunder, or the institution or prosecution of proceedings in respect of any such default.

9.05 Authority to Date and Complete

The Manager hereby authorises the Committee and the Solicitors for the Body Corporate to do all or any of the following things:-

(a) to date, or to complete any blank spaces in this instrument in accordance with the agreement reached between the parties hereto in relation to these presents:

(b) to complete any Real Property Description herein or the details of encumbrances, liens and interests to be specified herein;

(c) to complete and sign any document or paper writing as is necessary to stamp or register this Agreement.

10.01 Managers Acknowledgement

The parties acknowledge and agree that the Manager is not a Body Corporate Manager within the definition of Section 50 of the Act.

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IN WITNESS WHEREOF this Agreement has been signed sealed and delivered on the dates hereinafter set out.

GIVEN under the COMMON SEAL of THE BODY CORPORATE FOR CLEARWOOD COMMUNITY TITLES SCHEME 24079 in the presence of ANDREW GLEN JOHNSON the Chairman and sole committee member on the 18th day of August 1997 )

BODY CORPORATE FOR CLEARWOOD COMMUNITY TITLES SCHEME 24079 The Common Seal of

SIGNED SEALED AND DELIVERED by the said ~~KEVIN~~ KEVIN DONALD BAYLISS on the 18th day of August 1997 in the presence of : )

A Justice of the Peace/Solicitor

SIGNED SEALED AND DELIVERED by the said LINDA JOAN BAYLISS on the 18th day of August 1997 in the presence of : )

L J Bayliss

A Justice of the Peace/Solicitor

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## SCHEDULE ONE

### 1. GENERAL DUTIES AND OBLIGATIONS

The Manager shall have the following general duties and obligations:-

(a) Supervise any agents, contractors or employees of the Body Corporate or the Manager engaged in gardening, cleaning, building maintenance or any other work whatsoever upon the Property.

(b) Use his best endeavours to see that the Property (other than the interior of Lots) is kept in good order and repair and to protect the interests in relation thereto of the Body Corporate and the owners of Lots therein.

(c) Police the observance of the by-laws of the Body Corporate by the owners and the occupiers (including their guests and licensees) for the time being of the Lots in the Property. The Manager is hereby authorised by the Body Corporate to evict or deal with any person creating a nuisance or annoyance on the Common Property or committing any breach of the by-laws of the Body Corporate to the same extent as that exercisable by the Body Corporate itself without constituting the Manager a Body Corporate Manager.

(d) Regularly during each day inspect all Common Property areas to ensure that no unauthorised persons are using Common Property facilities and so far as the Manager is reasonably able and lawfully capable of so doing ensure that proper behaviour standards are maintained by persons using Common Property areas.

(e) At the request of the Body Corporate advise the Body Corporate concerning the duties of the Manager and provide such other advice which the Body Corporate shall request relative to the management and care of the Property.

(f) Reside, or if the Manager is a corporation, ensure that the person performing the duties of Manager under this schedule, resides, in the Manager's Lot.

(g) Keep in his possession the master key or keys for any areas under the control of the Body Corporate and the Lots in the Property so far as individual Lot owners shall permit PROVIDED HOWEVER that the possession of those keys shall be surrendered to no person other than a fully authorised Representative of the Body Corporate or the individual Lot owner concerned. The Manager shall allow any lawfully authorised person in the course of his duties free access to any part of the Property as authorised at all reasonable times and as necessary in any emergency.

(h) Report promptly on all things requiring repair and on all matters creating a hazard or danger and take remedial action where applicable.

(i) Arrange maintenance contracts (including pool maintenance on a quarterly

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basis) as required by the Body Corporate and ensure that any such contracts in force are carried out in accordance with their terms and for this purpose maintain a schedule of contracts with the due dates for service calls and dates of attendance which shall be made available to the Body Corporate upon request.

(j) Compile and maintain a list of all items in the complex which require regular maintenance and keep 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.

(k) Compile and maintain a register of the personal property of the Body Corporate.

(l) Arrange for common area carpets to be shampooed as requested by the Body Corporate.

(m) Obtain insurance quotes for repairs or replacements as directed by the Body Corporate.

(n) Comply with and carry out all reasonable directions from time to time given by the Body Corporate to the Manager in and about the administration and management of the Property and the performance by the Body Corporate of its lawful obligations and duties.

(o) At all times ascertain and be aware of the general condition of the Property and all machinery and appurtenances thereto so that at all times the Manager is able to keep informed the Body Corporate in respect thereof.

(p) As far as the Manager is reasonably able and lawfully capable of so doing keep order on the Property and take such precautions as he sees fit to safeguard the whole of the Property against unlawful entry or accident.

(q) With the aid of the plans issued to the Manager, the Manager will inform himself of the layout, construction, location, character, plan and operation of the lighting, heating, plumbing, ventilating systems and other mechanical equipment installed in the Property and shall advise the Body Corporate generally on the condition thereof from time to time and shall recommend to the Body Corporate Representative should the Manager consider it necessary, any changes or modifications to be made in respect of any matters in relation to the aforesaid.

(r) Generally, to the best of his ability manage the Property and ensure that it is kept in first class order and repair and protect the interest in the Property of the Body Corporate and the owners of Lots and in these respects to cause the Property, appurtenances and grounds and all plant and equipment used in connection therewith to be properly maintained at all times.

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(s) Account promptly and faithfully to the Body Corporate for all its property (if any) coming into his hand or custody, and secure for credit to the Body Corporate any discounts, commissions or rebates obtained with respect to any purchase or expenditure on behalf of the Body Corporate.

(t) Check Body Corporate mail and refer to secretary, chairman or individual proprietor or occupier promptly and as appropriate.

(u) Perform such maintenance tasks as do not require the services of a skilled tradesman.

(v) The Manager shall attend at the office area or be available in the Property Monday to Friday 8am to 5pm and Saturday 8am to 12 Noon or such other reasonable time as agreed with the Body Corporate. While not in attendance at the Managers Lot the Managers must display a notice visible from the outside of the office stating a phone number at which they can be contacted or advising as to the Managers location within the property.

(w) Supervise the installation or removal of any furniture or possessions by tenants of any lots and to record the details of any damage caused to the common property during such installation or removal and to assist in the recovery of compensation for damage repair costs.

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## SCHEDULE TWO

## CLEANING, GARDENING AND MAINTENANCE DUTIES

| AREA | WORK DESCRIPTION |
|---|---|
| A. DAILY ROUTINE | |
| Cabana, BBQ and Pool Area | |
| | - Sweep area clean. Wash if necessary using disinfectant |
| | - Wipe clean all outdoor furniture and reinstate to suitable position |
| | - Empty all rubbish bins and smokers receptacles |
| | - Check walls for dirty marks and clean if necessary |
| | - Check gas bottle and replenish gas supply if necessary |
| | - Clean off all fats and greases from BBQ plates and facings |
| | - Replace any broken or blown light bulbs or dysfunctional luminaries |
| Cabana Toilets & Handbasins | - Mop over tiles (wall and floor tiles) in toilets using cleaner and disinfectant |
| | - Check walls and clean if necessary |
| | - Clean and disinfect toilet and handbasins |
| | - Replace any broken or blown light bulbs or dysfunctional luminaries |
| | - Replenish toilet paper, paper towels, smelling essence and soaps |
| | - Empty any rubbish bin |

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- Check doors for dirty marks and clean if necessary
- Check door catches to ensure they operate correctly

Letter Boxes

- Ensure all mail and delivered material is deposited within the letter box and not left in an untidy state
- Clear each of the boxes of the unoccupied lots after postal delivery and maintain mail in office for collection or distribution
- Ensure latches to letter boxes work correctly

Grounds and Footpaths

- Clean all footpaths of leaves, garden clippings, grass clippings and rubbish
- Clean the grounds generally of leaves, garden clippings and rubbish
- Mow and aerate all lawns as required including any part or parts thereof which are situate in an area to which exclusive use has been granted to a proprietor or proprietors
- Weed garden beds as required inclusive of any planter boxes
- Water plants and lawn as required
- Fertilise plants and lawn as required
- Check any sprinkler system (particularly sprinkler nozzles) to ensure they operate correctly. Replace any part if necessary
- Trim all garden and path edges as necessary
- Clip all trees, hedges and shrubs as necessary
- Replenish plants or shrubs if necessary
- Spray chemicals to plants to control insects

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and pests as required

- Treat lawns for insects and pests as required
- Replace sections of turf if necessary
- Clean any oil spills if necessary
- Aerate, weed and mulch all gardens as required

Pool

- Vacuum swimming pool and clean skimmer baskets
- Remove all floating and suspended matter
- Empty filter baskets
- Check chlorine and PH levels
- Check that automatic chlorinators are working
- Check pump and filter for normal operation and pressure

**The pool must be ready for use by 6.30 am each day**

| AREA | DESCRIPTION |
|---|---|
| B. WEEKLY ROUTINE | |
| Garbage Collection | - Advise all lot occupiers (when necessary) where to transport garbage 'wheelie bins' from individual lots to a collection point on the land as designated by the local authority on the day of collection |
| | - Wash out all common property bins and smokers receptacles (if any) |

| AREA | WORK DESCRIPTION |
|---|---|
| C. MONTHLY ROUTINE | |
| Generally | - Clean insects out of all common property light fittings |

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- Clean any windows located in common property buildings
- Check operation of BBQ controls and fittings
- Hose, clean and scrub all outdoor furniture
- Wash out all common property bins and smokers receptacles
- Check pool pumps and motor for serviceability

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## SCHEDULE THREE

The following provisions shall apply to the Manager's remuneration payable by the Body Corporate to the Manager:-

1. Notwithstanding anything to the contrary herein contained the remuneration payable to the Manager for the first year of the original term of this Agreement shall be the sum of Thirty Six Thousand Eight Hundred Dollars ($36,800.00) per annum payable monthly in arrears in the sum of Three Thousand and Sixty-Six dollars and Sixty-Six Cents ($3,066.66) per calendar month.

2. The remuneration of the Manager shall be reviewed annually for each next ensuing twelve (12) month period during the currency of this Agreement and any extension or renewal thereof shall be as mutually agreed to by the parties PROVIDED HOWEVER that such remuneration for each annual period shall be not less than the rate paid for the immediately preceding twelve (12) month period plus an adjustment equal to the proportion that the Index Number at the commencement of the relevant twelve (12) month period bears to the Index Number at the commencement of the immediately preceding twelve (12) month period or the previous year's remuneration increased by 4% whichever shall be the greater. In this clause the words "Index Number" shall mean the All Groups Consumer Price Index at Brisbane published from time to time by the Australian Bureau of Statistics PROVIDED THAT in the event of any change after the Thirty-first day of December, 1996 in the reference base used to compile the said Index the figure to be used in the abovementioned calculation shall be the figure which would have been shown in the said Index if the reference base current at the date of execution hereof had been maintained PROVIDED FURTHER that if it becomes impossible to determine the remuneration at any time during the term hereof by reason of any change after the date hereof in any of the methods used to compile the said Index or if any dispute shall arise between the parties hereto with respect to the amount of additional remuneration or with respect to the construction or effect of this clause the determination of the additional remuneration or other matter in dispute shall be made by the President of the Queensland Law Society Incorporated or by his nominee.



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B

# DEED OF VARIATION OF MANAGEMENT AGREEMENT

made this 31st day of May 1999

BETWEEN BODY CORPORATE FOR "CLEARWOOD" CTS 24079 a Body Corporate constituted under the Body Corporate & Community Management Act 1997 in the State of Queensland (hereinafter with its successors and assigns called "the Body Corporate") of the First Part

AND BARRY EDWARD WEBB AND CAROL ANNE WEBB of 3/15 Simpsons Road, Elanora in the State of Queensland (hereinafter called "the Manager") of the Second Part

WHEREAS:-

A. Pursuant to a Management Agreement dated 18th August 1997, the Body Corporate appointed Kevin Donald Bayliss and Linda Joan Bayliss as Manager for a term of five (5) years commencing on 14th August 1997 (hereinafter called "the Management Agreement").

B. By Deed of Assignment dated 12th May 1998 the said Kevin Donald Bayliss and Linda Joan Bayliss assigned all their interest in the Management Agreement to the Manager.

C. The Body Corporate has resolved to increase the remuneration paid to the Manager by $8,000.00 per annum and in consideration, the Manager has agreed to perform additional cleaning, gardening and maintenance duties and those duties, as varied are contained in this Deed.

NOW THIS DEED WITNESSETH:

1. The Body Corporate shall increase the remuneration currently being paid to the Manager by $8,000.00 per annum.

2. The Manager has agreed to vary the cleaning, gardening and maintenance duties set forth in Schedule Two as a result of such increased remuneration and Schedule Two incorporating the additional duties is now as attached hereto.

3. The increase in remuneration referred to in paragraph 1 hereof and the additional duties referred to in paragraph 2 hereof shall commence and have effect from the 18th day of May 1999 and the increase in remuneration shall be calculated on a pro-rata basis.

4. The Manager shall pay all of the costs of the Body Corporate including legal costs, if any, of an incidental to the calling of the general meeting and in respect to the Deed of Variation.

5. The parties ratify and affirm the Management Agreement as varied.

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## SCHEDULE TWO

## CLEANING, GARDENING AND MAINTENANCE DUTIES

| AREA | WORK DESCRIPTION |
|---|---|
| A. Daily Routine | |
| Cabana, BBQ and Pool Area | - Sweep area clean. Wash if necessary using disinfectant.<br>- Wipe clean all outdoor furniture and reinstate to suitable position.<br>- Empty all rubbish bins and smokers receptacles.<br>- Check walls for dirty marks and clean if necessary.<br>- Check gas bottle and replenish gas supply if necessary.<br>- Clean off all fats and greases from BBQ plates and facings.<br>- Replace any broken or blown light bulbs or dysfunctional luminaries. |
| Cabana Toilets & Handbasins | - Mop over tiles (wall and floor tiles) in toilets using cleaner and disinfectant.<br>- Check walls and clean if necessary.<br>- Clean and disinfect toilet and handbasins.<br>- Replace any broken or blown light bulbs or dysfunctional luminaries.<br>- Replenish toilet paper, paper towels, smelling essence and soaps.<br>- Empty any rubbish bin.<br>- Check doors for dirty marks and clean if necessary.<br>- Check door catches to ensure they operate correctly. |
| Letter Boxes | - Ensure all main and delivered material is deposited within the letter box and not left in an untidy state.<br>- Clear each of the boxes of the unoccupied lots after postal delivery and maintain mail in office for collection or distribution.<br>- Ensure latches to letter boxes work correctly. |
| Grounds & Footpaths | - Clean all footpaths of leaves, garden clippings, grass clippings and rubbish.<br>- Clean the grounds generally of leaves, garden clippings and rubbish. |

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parts thereof which are situate in an area to which exclusive use has been granted to a proprietor or proprietors.

- Weed garden beds as required inclusive of any planter boxes.
- Water plants and lawns as required.
- **Fertilise all plants, bushes, trees and lawns as required.**
- Check any sprinkler system (particularly sprinkler nozzles) to ensure they operate correctly. Replace any part if necessary.
- Trim all garden and path edges as necessary.
- **Slashing, cleaning and planting of large banks and undeveloped areas.**
- **Clear mud and clay run off from banks and dispose of as necessary.**
- **Prune trees, hedges, shrubs in all areas and dispose of branches and clippings as necessary.**
- Replenish plants or shrubs if necessary.
- **Spray bush area where natural bush borders on Body Corporate land and also the continual spraying of undeveloped areas.**
- **Spray chemicals to plants to control insects and pests as required.**
- Treat lawns for insects and pests as required.
- Replace sections of turf if necessary.
- Clean any oil spills if necessary.
- Aerate, weed and mulch all gardens as required.

**Pool**

- Vacuum swimming pool and clean skimmer baskets.
- Remove all floating and suspended matter.
- Empty filter baskets.
- Check chlorine and PH levels.
- Check that automatic chlorinators are working.
- Check pump and filer for normal operation and pressure.

**The pool must be ready for use by 6.30am each day.**

B. <u>Daily Routine</u>

**Garbage Collection**

- Advise all lot occupiers (when necessary) where to transport garbage 'wheelie bins' from individual lots to a collection point on the land as designated by the local authority on the day of collection.

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C. Monthly Routine

**Generally**

- Wash out all common property bins and smokers recept. (if any).
- Clean insects out of all common property light fittings.
- Clean any windows located in common property buildings.
- Check operation of BBQ controls and fittings.
- Hose, clean and scrub all outdoor furniture.
- Wash out all common property bins and smokers receptacl
- Check pool pumps and motor for serviceability.

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The parties have executed this Deed on the date previously appearing in this Deed.

**THE COMMON SEAL of CLEARWOOD COMMUNITY TITLE SCHEME NO. 24079** was hereunto affixed under the hands of Barry Webb - Chairman and Carolyn Sargeant - Secretary in the presence of:

Witness: Jennie Nelson Jennie Nelson

BODY CORPORATE FOR CLEARWOOD COMMUNITY TITLES SCHEME 24079 The Common Seal of

**SIGNED SEALED AND DELIVERED by BARRY EDWARD WEBB and CAROL ANNE WEBB** in the presence of:

BW x CW x

Witness: Timothy Crowley

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