

# Deed of Variation

SIOSIFA PASA FA'OLIU AND LEXIE JOYCE FA'OLIU

AND

BODY CORPORATE FOR RUNAWAY HEIGHTS THREE CTS 20827

**MBA**  
L A W Y E R S

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## DEED OF VARIATION

THIS DEED is made this

day of

2019

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**BETWEEN:**                **SIOSIFA PASA FA'OLIU AND LEXIE JOYCE FA'OLIU** (hereinafter with its successors and assigns called "the Manager") of the First Part

**AND:**                        **THE BODY CORPORATE FOR RUNAWAY HEIGHTS THREE CTS 20827** 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 Second Part

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**WHEREAS:**

- A.     By a certain Caretaking Agreement dated 6<sup>th</sup> August 2002 (hereinafter called the "Caretaking Agreement") and by a certain Letting Agreement dated 6<sup>th</sup> August 2002 (hereinafter called "the Letting Agreement"), the Body Corporate entered into an agreement with Rodney David O'Leary and Lola Helen O'Leary in respect of the complex known as "Runaway Heights Three" erected on that piece or parcel of land situated at 641 Pine Ridge Road, Coombabah for a term of twenty-five (25) commencing on the 6<sup>th</sup> August 2002 and expiring on the 5<sup>th</sup> August 2027.
  
- B.     By virtue of a Deed of Assignment dated 18<sup>th</sup> December 2003, the Manager is presently the Manager under the Caretaking Agreement and Letting Agreement.
  
- C.     By virtue of a Deed of Variation dated 24<sup>th</sup> June 2009, the terms of the Caretaking Agreement and Letting Agreement were extended by the insertion of a further term of five (5) years, commencing on 6<sup>th</sup> August 2027 and expiring on 5<sup>th</sup> August 2032 ("First Option").
  
- D.     By virtue of a Deed of Variation dated 26<sup>th</sup> August 2014, the terms of the Caretaking Agreement and Letting Agreement were extended by the insertion of a further term of five (5) years, commencing on 6<sup>th</sup> August 2032 and expiring on 5<sup>th</sup> August 2037 ("Second Option").
  
- E.     The Body Corporate has resolved by ordinary resolution by way of secret ballot and without the use of proxies in general meeting to amend the terms of the Caretaking Agreement and Letting Agreement as set out in this Deed.

**NOW THIS DEED WITNESSETH:**

**1. Option**

The parties agree to vary the terms of the Caretaking Agreement to include a new Clause 10.1 as follows:

*"10.1 Third Option*

*The Manager shall be entitled on giving to the Owner not less than six (6) months written notice prior to the expiration of this Agreement an extension or renewal of this Agreement for a further prior of five (5) years from the date of expiration of this Agreement at a remuneration to be mutually agreed upon but to be not less than payable immediately prior to the expiration of the term of this Agreement but if the parties fail to reach agreement as to such remuneration, then the remuneration shall be determined by an expert appointed by the President for the time being of the Queensland Law Society whose decision shall be final and binding on the parties provided that such remuneration shall not be less than the remuneration payable immediately prior to the expiration of the terms of this Agreement and otherwise along the same terms and conditions as are herein continued but only if at the date of giving the aforesaid notice and if at the date of expiration of the said term the Manager shall not be in breach of any covenant condition or stipulation herein contained or implied and on the part of the Manager to be performed permitted or fulfilled and of such a nature as would entitle the Owner to determine this Agreement."*

**2. Option**

The parties agree to vary the terms of the Letting Agreement to include a new Clause 7(c) as follows:

*"7(c) Third Option*

*The Agent shall have the option for renewal of this Agreement for a further term as Agent for a period of five (5) years from the date of expiration of the Term stipulated under Clause 7(a) and 7(b) of this Agreement, upon the same terms and conditions as are set forth herein with the exception of this Clause and Clause 7(a) and Clause 7(b). Such option can only be exercised by the Agent by giving written notice in writing to the Owner at least six (6) calendar months prior to the date of expiration of the option contained in Clause 7(b) of this Agreement.."*

### **3. Termination of Financed Agreement**

The parties agree to vary the terms of the Letting Agreement to include a new Clause 5.1 as follows:

#### *“5.1 Termination of Financed Agreement*

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

- *Financier: a financier as that term is defined in the Act from which the Agent has obtained finance on the security of the Agreement;*
- *Receivership: where the Financier is acting in place of the Agent or the Financier has appointed a receiver or receiver and management for the Agreement; and*
- *Specific Termination Provision: clause 5(d) in this Agreement.*

*(a) The Body Corporate acknowledges and agrees that:*

- (i) if the Agent defaults under the Agreements, then subject to the fulfilment of the other requirements that that section, the Financier may choose to act under section 126(2) of the Act; and*
- (ii) in the event of and for the duration of a Receivership the Body Corporate waives any of the rights the Body Corporate has to terminate the Agreement under the Specific Termination Provision.*

*(b) The parties agree that nothing in this clause 5.1 prevents the Body Corporate terminating the Agreement in accordance with the Act or applicable Regulation Module or any other provision of the Agreement for something done by the Receiver after the Financier or a receiver or receiver and manager started to act under Section 126(2) of the Act.”.*

### **4. Ratification**

4.1 The parties ratify and affirm the Caretaking Agreement and Letting Agreement are both amended and covenant that they shall each continue to perform their respective obligations under the Caretaking Agreement and Letting Agreement so that each shall have continuing operation from the date hereof.

4.2 The parties ratify and confirm that a BCCM Form 20 in the approved form was circulated with the agenda of the general meeting in which the Body Corporate resolved to enter into this Deed.

5. **Counterpart Clause**

This Deed may be signed in any number of counterparts and by different persons on separate counterparts. All those counterparts will together constitute the one Deed.

6. **Costs**

The Manager must pay the costs of and incidental to the preparation of this Deed.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the date hereinbefore mentioned.

<b>SIGNED, SEALED AND DELIVERED</b> by <b>SIOSIFA PASA FA'OLIU</b> and <b>LEXIE JOYCE FA'OLIU</b> in the presence of an independent witness	
_____	_____
Siosifa Pasa Fa'oliu	Signature of Independent Witness
_____	_____
Lexie Joyce Fa'oliu	Signature of Independent Witness

<b>THE COMMON SEAL</b> of <b>THE BODY CORPORATE FOR RUNAWAY HEIGHTS THREE CTS 20827</b> was hereunto affixed under the hands of two (2) Members of the Committee in the presence of an independent witness:	
_____	_____
Authorised Signatory	Authorised Signatory
_____	_____
Print Full Name	Print Full Name
	_____
	Independent Witness