ACQUA Palm Beach– Letting Deed

THE BODY CORPORATE FOR ACQUA PALM BEACH COMMUNITY TITLES SCHEME NO 53352

("Body Corporate")

AND

SMICK PTY LTD ACN 601 828 853 AS TRUSTEE FOR THE SMICK UNIT TRUST ABN 87 312 608 159

("Letting Agent")

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LETTING DEED – ACQUA PALM BEACH

THIS DEED takes effect as a deed and is made the 24th day of April 2020.

BETWEEN: **THE BODY CORPORATE FOR ACQUA PALM BEACH COMMUNITY TITLES SCHEME NO 53352** a Body Corporate constituted under the Body Corporate and Community Management Act 1997 care of Archers Body Corporate Management 3/9 Lawson Street, Southport QLD 4215.

("Body Corporate")

AND:

SMICK PTY LTD ACN 601 828 853AS TRUSTEE FOR THE SMICK UNIT TRUST ABN 87 312 608 159 of PO Box 1638, Broadbeach QLD 4218

("Letting Agent")

INTRODUCTION:

A. The Body Corporate was established upon creation of Community Titles Scheme No. 53352 and it is the body corporate of the Community Titles Scheme.

B. The Letting Agent proposes to provide a letting service for the benefit of the Body Corporate and the Owners and the Body Corporate agrees to the Letting Agent conducting the Letting Business for the benefit of the Owners.

THIS DEED WITNESSES:

1. TERMS OF AUTHORISATION OF LETTING AGENT

1.1 Authority

The Letting Agent is authorised to conduct the Letting Business and the Letting Agent agrees to conduct the Letting Business according to this Deed.

1.2 Body Corporate Manager

Nothing in this Deed requires the Letting Agent to carry out administrative duties nor to do anything which is the function of a "body corporate manager" as that term is defined in the Act. Should it be established that this Deed does contain such duties, they shall be severed from this Deed.

1.3 Term

The Letting Agent is authorised to conduct the Letting Business for a period of 25 years from the Start Date to midnight on the End Date.

2. RIGHTS AND OBLIGATIONS OF LETTING AGENT

2.1 Performance

The Letting Agent shall perform the Letting Agent's Duties personally or by staff engaged at the cost of the Letting Agent. The Letting Agent must take reasonable steps to ensure that the Letting Agent and any employee engaged by the Letting Agent complies with the code of conduct for Letting Agents under the Act and any relevant code of conduct prescribed under the PO Act or its regulations.

2.2 **Letting Business**

The Letting Agent shall:

(a) supervise the standard of tenants of all lettings that it arranges and take reasonable steps to minimise the likelihood of tenants creating a nuisance;

(b) use its best endeavours to improve and expand the Letting Business and increase the goodwill and to act at all times to further the interests of the Body Corporate and the Owners;

(c) obtain all necessary permits consents or licences required to conduct the Letting Business;

(d) act fairly and lawfully and not discriminate between Owners;

(e) keep proper records and books of all tenancies;

(f) act honestly, fairly and professionally in conducting the Letting Business; and

(g) exercise reasonable skill, care and diligence in conducting the Letting Business.

2.3 **Nominee of Letting Agent**

Where the Letting Agent is an entity other than a natural person the Letting Agent will nominate one person to communicate with the Body Corporate ("**Letting Agent Nominee**") and the Body Corporate shall be notified in writing of the appointment of the Letting Agent Nominee. If the Letting Agent is other than a natural person and a Letting Agent Nominee is not notified or is no longer engaged by the Letting Agent, then the Committee may nominate any director of the Letting Agent as interim Letting Agent Nominee pending the Letting Agent nominating a new Letting Agent Nominee.

2.4 **Additional Services**

The Letting agent may provide additional services to all Owners and Occupiers.

2.5 **Costs**

All costs of the Letting Agent in running the Letting Business shall be paid by the Letting Agent including all consents, licences, permits, signs and equipment.

2.6 **Scheme Name**

(a) If the Body Corporate holds a trade mark or any other proprietary interest in the Scheme Name then the Body Corporate grants to the Letting Agent a non exclusive licence to use the Scheme Name or any part of it, for the Term, for promoting or matters otherwise connected with the Letting Business. No warranty is given that the Body Corporate will hold or continue to hold a trade mark for the Scheme Name or that the Scheme Name is available or that it may be legally used.

(b) If the Letting Agent holds a trade mark or any other proprietary interest in the Scheme Name then the Letting Agent hereby grants a non exclusive licence to each Owner of a Lot in the Scheme to use the Scheme Name for the Owner's Permitted Use. The Letting Agent must not prevent any Owner of a Lot in the Community Titles Scheme or their nominees, agents, employees, contractors or any person authorised by an Owner of a Lot in the Community Titles Scheme from using the Scheme Name. Should the Letting Agent obtain a trademark over the Scheme Name or part of the Scheme Name, the Letting Agent will immediately grant to each Lot Owner a licence to use the Scheme

Name and to authorise other parties to use the Scheme Name. This clause 2.6(b) is an essential term of the Deed.

2.7 **Acknowledgments of Letting Agent**

The Letting Agent acknowledges that the Owners may utilise the services of other agents or let their Lot themselves, and the Letting Agent shall not unreasonably interfere with these rights.

2.8 **Signs**

The Letting Agent is granted an occupation authority by the Body Corporate to erect and maintain reasonable and tasteful signs in the Community Titles Scheme to promote and foster the Letting Business. The signage must be maintained by the Letting Agent in good condition.

2.9 **Fraudulent or Misleading Conduct**

Unless it is unlawful to do so the Letting Agent must as far as practicable act in the best interests of the Body Corporate and each Owner. The Letting Agent must not engage in fraudulent or misleading conduct in conducting the Letting Business.

2.10 **Unconscionable Conduct**

The Letting Agent must not engage in unconscionable conduct in conducting the Letting Business.

Examples of unconscionable conduct:-

(a) taking unfair advantage of the person's position as Letting Agent relative to the Body Corporate or an Owner; or

(b) exerting undue influence on, or using unfair tactics against, the Body Corporate or an Owner.

2.11 **Nuisances**

The Letting Agent must not:-

(a) cause a nuisance or hazard on the Common Property;

(b) interfere unreasonably with the use or enjoyment of a Lot;

(c) interfere unreasonably with the use or enjoyment of the Common Property by a person who is lawfully on the Common Property; or

(d) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a Lot or Common Property.

3. OBLIGATIONS OF BODY CORPORATE

3.1 **Exclusivity**

To the extent it is permitted under the Act, the Body Corporate agrees not to grant to any other person or entity any rights to conduct a business the same or similar to the Letting Business in the Community Titles Scheme or from the Common Property.

3.2 **Duties of Body Corporate**

The Body Corporate shall:

(a) ensure that the Common Property is cleaned and maintained to the standard of high quality residential/resort accommodation;

(b) co-operate with the Letting Agent (to the extent it is permitted under the Act) in taking all action that is reasonable, practical and necessary to stop any person or entity from conducting a business the same or similar to the Letting Business in the Community Titles Scheme or from the Common Property; and

(c) take reasonable steps to ensure the Common Property is a safe working environment and it complies with the relevant Workplace Health & Safety Legislation.

4. REMUNERATION

The Letting Agent shall not be paid any remuneration by the Body Corporate for providing the Letting Business. The Letting Agent shall negotiate commissions and charges with the Owners who require use of the Letting Business.

5. INSTRUCTIONS FROM BODY CORPORATE TO LETTING AGENT

5.1 Nominee of Body Corporate

The Body Corporate shall through its Committee nominate one (1) person to communicate with the Letting Agent ("**Body Corporate Nominee**") and the Letting Agent shall be notified in writing of the appointment of the Body Corporate Nominee. If no person is notified as the Body Corporate Nominee or the Body Corporate Nominee resigns or is removed from that position, then the Chairman of the Body Corporate from time to time will automatically be the Body Corporate Nominee.

5.2 Committee and General Meetings

The Letting Agent Nominee shall attend any general meeting or committee meeting of the Body Corporate if requested by the Body Corporate Nominee and given reasonable notice.

6. ASSIGNMENT OR DEALING

6.1 Permission to Assign or Deal

The Letting Agent shall not be entitled to assign or transfer its interest in this Deed (called a "Dealing"), unless it obtains the consent of the Body Corporate.

6.2 Consent of Body Corporate Committee

(a) The Body Corporate shall not unreasonably, arbitrarily or capriciously refuse or delay giving its consent to any Dealing;

(b) The Committee shall give its consent or refusal to any Dealing within thirty (30) days of the Letting Agent giving to the Committee, all information the Body Corporate can lawfully request to consider the proposed Dealing.

6.3 Consent Factors

If the Letting Agent requests the Body Corporate to consent to an assignment of its interest in this Deed, the Committee shall, prior to giving its consent, be entitled to require:

(a) satisfactory evidence that the other party to the Dealing and any Associates that intend to be involved in running the Letting Business are financially sound and reputable and capable of satisfactorily performing the Letting Agents Duties;

(b) a bank and business reference of the other party to the Dealing;

(c) the proposed assignee to execute in favour of the Body Corporate, a deed of covenant to comply with the terms of this Deed;

(d) the Letting Agent to pay to the Body Corporate, all legal and administrative costs reasonably incurred by the Body Corporate in giving its consent; and

(e) if the proposed assignee is a company, personal guarantees from the directors of the assignee, but no guarantee will be required if the assignee is a public company (or a subsidiary of a public company) or a company listed on a recognised stock exchange (or a subsidiary of a company listed on a recognised stock exchange). Where the other party to the Dealing is a subsidiary of a public company, a guarantee may be required from its parent public company.

6.4 **Form of Consent**

The committee of the Body Corporate is to determine whether the Body Corporate gives its consent under clause 6.1 unless the Act requires the consent to be given by the Body Corporate in general meeting.

6.5 **Letting Agent a Company**

If the Letting Agent is a company, then except where the Letting Agent or a company that wholly owns the Letting Agent is listed on a recognised stock exchange, any change or proposed change in shareholding, which alters the effective control of the Letting Agent, shall be a Dealing.

6.6 **Mortgage or Encumbrance**

The Letting Agent may offer to a financier this Letting Deed as security for a loan or guarantee.

6.7 **No Premium or Payment to Body Corporate**

The Body Corporate shall not be entitled to any premium payment or benefit for any request to consent to any Dealing or for any renewal, extension or variation of this Deed except as allowed under the Act.

6.8 **License or Delegation**

Notwithstanding anything in this Deed the Letting Agent shall be entitled to license its interest in this Deed or delegate the Letting Agent's Duties and rights to conduct the Letting Business to any person or entity in its absolute discretion without the consent of the Body Corporate and such licence or delegation shall not constitute an assignment of this Deed.

7. **TERMINATION**

7.1 **Termination by Body Corporate**

This Deed may be terminated by the Body Corporate delivering a notice in writing to the Letting Agent if:

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

(b) the Letting Agent is guilty of gross misconduct or gross negligence in performing the Letting Agent's Duties;

(c) the Letting Agent (if a company) becomes subject to any form of external administration referred to in the Corporations Law or (if being an individual) is bankrupt or makes any assignment for the benefit of creditors or enters into any composition or scheme of arrangement unless the Body Corporate has received a notice pursuant to Section 123 of the Act or any similar provision; or

(d) the Letting Agent is in breach of this Deed and that breach continues at the end of thirty (30) days after notice in writing delivered by the Body Corporate to the Letting Agent requiring that breach to be remedied.

7.2 **Termination by Letting Agent**

This Deed may be terminated by the Letting Agent delivering a notice in writing to the Body Corporate if:-

(a) the Body Corporate is in breach of this Deed and that breach continues at the end of 14 days after notice in writing delivered by the Letting Agent to the Body Corporate detailing particulars of the breach and requiring that the breach be remedied; or

(b) an administrator is appointed to the affairs of the Body Corporate.

7.3 **Waiver of Termination Rights**

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

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

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

(iii) **Specific Termination Provision**: clauses 7.1(c) in this Agreement.

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

(i) terminate the Agreement under the Specific Termination Provision;

(ii) refuse the exercise of an option because of a default under the Specific Termination Provision; and

(iii) refuse to consent to an assignment because of a default under the Specific Termination Provisions.

8. **STAMP DUTY AND COSTS**

8.1 The Letting Agent shall pay any stamp duty assessed on this Deed.

8.2 Each party must pay their own legal costs and expenses in relation to the preparation and execution of this Deed.

9. **INTERPRETATION**

9.1 Particular words used in this Deed are defined in Schedule One.

9.2 Rules of Interpretation of this Deed are contained in Schedule Two.

10. INTERDEPENDENCY WITH CARETAKING AGREEMENT

10.1 This Deed and the Caretaking Agreement both dated on or about the same date and between the same parties (Collectively the "Agreements") are interdependent.

10.2 A breach of one of the Agreements is deemed to be a breach of the other of the Agreements to the same extent of that breach.

10.3 If one of the Agreements is terminated for whatever reason then the other of the Agreements is terminated on and from the date of termination of the first Agreement.

10.4 One of the Agreements cannot be transferred without a contemporaneous transfer of the other of the Agreements to the same assignee and accordingly an assignee under one of the Agreements may or may not be a satisfactory assignee under the other Agreement.

SCHEDULE ONE

DEFINITIONS

Unless the contrary intention appears the following defined terms have the meaning set out opposite to them:

"Act"	means the Body Corporate and Community Management Act 1997 or any act that replaces this Act.
"Associates"	means: (a) if the Letting Agent is a company, its directors, substantial shareholders and its management staff; or (b) if the Letting Agent is a partnership, the partners and management staff of the partnership.
"Body Corporate Nominee"	means the person appointed or nominated in accordance with clause 5.1.
"By-Laws"	means the by-laws contained in the Community Management Statement of the Body Corporate.
"Caretaker"	means a party who has entered into a service agreement with the Body Corporate dated on or about the same date as this Deed to undertake caretaking duties.
"Caretaking Agreement"	means the agreement between the Body Corporate and a service contractor for the provision of caretaking services to the Body Corporate for the benefit of the Common Property or Lots included in the Community Titles Scheme.
"Committee"	means the committee of the Body Corporate.
"Common Property"	means common property of the Community Titles Scheme as defined by the Act including all chattels, fixtures, plant and equipment located on Common Property.
"Community Management Statement"	means community management statement number 53352
"Community Titles Scheme"	means the community titles scheme referred to in the introduction.
"End Date"	means 23rd APRIL 2045 being the date which is 25 years from the Start Date.
"Letting Agent's Duties"	means the duties and obligations of the Letting Agent set out in clause 2.2.
"Letting Agent Nominee"	means the person appointed or nominated in accordance with clause 2.3.
"Letting Business"	means the business of acting as the agent of owners of Lots who choose to use the services provided by the Letting

Agent for the letting and management of Lots and the option to provide the following services to Owners and Occupiers:-

(a) the sale of Lots;

(b) the hiring of equipment or items the Letting Agent considers desirable and that are not contrary to the interests of the Body Corporate and the Owners;

(c) the sale of confectionary, potato chips, packaged food items, magazines, drinks, newspapers and similar items to the extent that it is lawful;

(d) the provision of PABX; and

(f) the provision or sale of any other services or goods commonly provided or sold directly in connection with the letting of residential accommodation.

"Lot" or "Lots"	means any Lot or Lots detailed in the Community Titles Scheme as the context requires.
"Occupier"	has the same meaning as defined in the Act.
"Original Owner"	means the original owner identified in the first Community Management Statement for the Community Titles Scheme.
"Owner"	means the registered owner of a Lot, including a mortgagee in possession.
"Owner's Permitted Use"	means for all purposes other than advertising the letting of a Lot in the Scheme.
"PO Act"	means the Property Occupations Act 2014.
"Scheme Name"	means Acqua Palm Beach.
"Start Date"	means 24/4 2020.
"Term"	means the period from the Start Date to midnight on the End Date, subject to extensions under clause 1.

SCHEDULE TWO

RULES FOR INTERPRETATION

Unless the contrary intention appears in this Deed, the following apply to this Deed:

1. Queensland law applies.

2. Words denoting the singular include the plural and vice versa.

3. Headings are for convenience only and shall not form part of this Deed.

4. Reference to a Schedule are references to the Schedules appearing in this Deed.

5. Reference to this Deed includes reference to this Deed together with any amendments or variations of this Deed.

6. References to any party in this Deed, includes that party's successors, executors, administrators or assigns.

7. Words denoting any gender shall include all genders.

8. A covenant by more than one (1) person is given by them jointly and severally.

9. References to any legislation includes legislation which amends or replaces that legislation.

10. When any document or notice is to be served or delivered, it can be served or delivered to the parties address on page 1 of this Deed or such other address as one party notified the other party in writing from time to time.

11. A notice must be in writing and delivered or sent by prepaid post or facsimile. A notice is received 2 days after it is posted or on the day shown on a facsimile transmission report.

12. Any part of this Deed which is invalid, shall not effect the validity of the balance of this Deed and the invalid part shall be severed to the extent necessary to give effect to this Deed.

13. Reference to a person includes a corporation.

14. This Deed is the entire agreement of the parties.

15. Text printed in Italics provides an example or explanation of the intended operation of the relative clause and may be used to assist in the resolution of a dispute about the interpretation of that clause.

Executed as a Deed.

THE COMMON SEAL of **THE BODY CORPORATE FOR ACQUA PALM BEACH COMMUNITY TITLES SCHEME NO. 53352** was hereunto affixed by Authority of a resolution of the Body Corporate)
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.....
Chairperson/Secretary/Treasurer
Mr Chris Bolger

THE BODY CORPORATE FOR ACQUA PALM BEACH CTS 53352
THE COMMON SEAL OF

Executed by **SMICK PTY LTD ACN 601 828 853 AS TRUSTEE FOR THE SMICK UNIT TRUST**)
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Sole Director and Sole Secretary/Director

MICHAEL WHEATLEY
Print Name

.....
Director/Secretary

.....
Print Name