

**BODY CORPORATE  
SERVICE CONTRACTOR  
AGREEMENT**

**PARTIES**

**P.D.G. HOLDINGS (QLD) PTY LTD ACN 080 460 420 ATF PETER  
DIGIANNANTONIO FAMILY TRUST  
("Service Contractor")**

**And**

**THE BODY CORPORATE FOR "RIVER TERRACES"  
CTS 47544  
("BODY CORPORATE")**

**And**

**PETER DIGIANNANTONIO  
("Guarantor")**

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AGREEMENT made this      day of                      20\_\_

## PARTIES

1.            **P.D.G. HOLDINGS (QLD) PTY LTD ACN 080 460 420 ATF DIGIANNANTONIO FAMILY TRUST** (“Service Contractor”)
2.            **THE BODY CORPORATE FOR “RIVER TERRACES” CTS 47544** (“Body Corporate”)
3.            **PETER DIGIANNANTONIO** (“Guarantor”)

## INTRODUCTION

- A.    The Body Corporate has a duty to properly administer the Property for the benefit of the owners of the Lots.
- B.    In order to better perform that duty, the Body Corporate has resolved to enter into this Service Agreement for the Service Contractor to care for the Property.

## IT IS AGREED

### 1. Definitions

#### 1.1 Unless the context otherwise requires:

- (1)    "**Act**" means the *Body Corporate and Community Management Act 1997*;
- (2)    "**Agreement**" means this document, including any Schedule or Annexure to it;
- (3)    "**Authorised Amount**" means up to \$1,000.00 plus GST in any month;
- (4)    "**Business Day**" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (5)    "**Commencement Date**" means the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_;
- (6)    "**Committee**" means the Committee of the Body Corporate constituted under the Act;
- (7)    "**Common Property**" means the Common Property of "River Terraces";
- (8)    "**Controlling Person**" means (for a company or a trust) a person who alone, or as part of a group of persons, directly or indirectly controls:-
  - (i)    More than fifty percent (50%) of the voting power at a general meeting; or
  - (ii)    The composition of a majority of the board of directors of the company and who has more than an insignificant beneficial interest in the Company.
- (9)    "**GST**" will have the same meaning given to it under the "A New Tax System (Goods and Services) Act 1999";
- (10)    "**Letting Agent**" means the person or persons, company or trust which holds the Letting Agent rights pursuant to an Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ between the Body Corporate and the Letting Agent.

- (11) **"Lot or Lots"** means a Lot or Lots created on Registration of the Plan and the recording of the Community Management Statement for the Community Titles Scheme;
- (12) **"Nominee"** has the meaning as defined in clause 3 of this Agreement.
- (13) **"Property"** means collectively:
  - (a) the Common Property of the Scheme, except parts being exclusively used for parking storage.
  - (b) chattels which are on the Common Property and are owned by the Body Corporate.
  - (c) any other property which the Body Corporate is responsible to maintain.but only to the extent of the powers and duties of the Body Corporate.
- (14) **"Regulation Module"** has the meaning as defined in section 3(2) of the Body Corporate and Community Management (Accommodation Module) 2008;
- (15) **"Scheme"** means CTS number 47544.
- (16) **"Term"** means the term set out in clause 2.2; and
- (17) **"Services"** means electricity supply, fire safety equipment, plumbing, pool filtration and cleaning systems and other services contained in or for the benefit of the Common Property.

## **2. Appointment**

- 2.1 The Body Corporate engages the Service Contractor to care for the Property under this Agreement and the Service Contractor accepts that engagement (as an independent contractor, and not as an employee or agent of the Body Corporate).
- 2.2 The engagement is for twenty-five (25) years from the Commencement Date.

## **3. Service Contractor's Nominee**

- 3.1 The Parties agree that in the event that the Service Contractor is a corporation, a partnership or a trust then the Service Contractor must appoint a nominee or nominees.
- 3.2 The Service Contractor must perform all of its duties or obligations under this Agreement through the nominee or nominees.
- 3.3 The nominee or nominees have all the rights given under this Agreement to the Service Contractor.
- 3.4 The Service Contractor is responsible for any remuneration payable to the nominee or nominees.
- 3.5 Despite the rest of this clause 3 the Service Contractor is liable and responsible for the performance of all acts deeds and things required under this Agreement.
- 3.6 The appointment of the nominee or nominees or any replacement is subject to the approval of the Body Corporate which approval must not unreasonably be withheld in the case of:
  - (1) a respectable and responsible person capable of performing the Service Contractor's duties under this Agreement; or
  - (2) where there is more than one nominee, respectable and responsible persons who between them are capable of performing the Service Contractor's duties under this Agreement.

The onus of proof of such respectability, responsibility and capability lies with the Service Contractor.

#### **4. Service Contractor**

##### **4.1 Service Contractor Duties**

The Service Contractor must perform the following duties ("**Service Contractor's Duties**"):

**(1) Cleaning**

- (a) keep the Property clean and tidy at all times including hosing (unless prevented by water restrictions), blowing, vacuuming, moping, sweeping or raking where necessary and the removal of cobwebs on a regular basis;
- (b) replace light globes etc when and where required.

**(2) Routine repairs and maintenance**

Where a skilled tradesman is not necessary perform routine repairs and maintenance necessary to keep the Property in good order;

**(3) Other repairs and maintenance**

Arrange as directed by the Body Corporate and supervise (but not pay for) repairs and maintenance which:

- (a) are the subject of specific maintenance agreements entered by the Body Corporate; or
- (b) need to be performed by licensed or specialist tradesmen;

**(4) Equipment and consumables**

- a) The Body Corporate must pay for the materials consumed by the Service Contractor in performing this Agreement including fuel, cleaning detergents and solutions and the like. However, the Service Contractor must purchase, provide and maintain at the Service Contractor's costs all equipment required to perform the Service Contractor's duties including cleaning equipment and tools etc.

**(5) Gardening**

regularly on the Property excluding exclusive use areas:

- (a) maintain the gardens and pot plants (if any), including (without limitation):
  - (i) watering;
  - (ii) fertilising;
  - (iii) weeding;
  - (iv) mulching;

**(6) Drains and gutters**

keep the Common Property drains and guttering clear; and

**(7) Dress**

be neatly and smartly dressed (to appropriate office standards) or in an appropriate manner having regard to the nature of the duties being performed.

**(8) Letter boxes**

ensure that all literature including junk mail is deposited within the boxes provided and not left in an untidy state.

**(9) Garbage collection**

implement garbage collection in accordance with arrangements in place with the Local Authority or any private contractor as directed by the Committee from time to time. Where necessary instruct owners in relation to a collection point as approved or required by the Local Authority and where necessary requesting the owner/s of any motor vehicle/s obstructing access by the authorised garbage collection vehicle/s to move such motor vehicle/s.

**4.2 Knowledge of Property and Services**

The Service Contractor must become familiar with:

- (1) The layout of the Property;
- (2) The location and functioning of the Services and Property;
- (3) The terms of any maintenance contracts;
- (4) The matters that must be fulfilled to comply with the fire safety approval for the Property and the fire safety regulations; and
- (5) The security devices and systems used in the Property.

**4.3 Performance of Duties**

- (1) The Service Contractor may perform the Service Contractor's Duties either personally or by paying for and supervising other contractors.

**4.4 Compliance with Laws and By-laws and Attendance at Meetings**

In addition to performing the Service Contractor's Duties, the Service Contractor must:

- (1) monitor compliance with the by-laws of the Body Corporate;
- (2) advise the Body Corporate of any serious or persistent breaches of the by-laws;
- (3) comply with all laws and regulations in performing the Service Contractor's Duties;
- (4) assist (to the extent that the Service Contractor is lawfully able to do so) the Body Corporate to comply with its obligations under any law or regulation;
- (5) attend meetings of the Body Corporate and its committee that the Service Contractor has received reasonable notice of; and
- (6) be aware of all approvals or consents given by the Body Corporate or the Body Corporate Committee to owners and report to the Committee on any breaches or non-observance of such approvals.

#### 4.5 Outlays & Reimbursement

- (1) The Service Contractor may spend up to the Authorised Amount for materials on behalf of the Body Corporate for consumables necessary for performance of the Service Contractor's Duties without reference to the Body Corporate. Any greater expenditure must be approved by the Body Corporate before it is incurred.
- (2) The Body Corporate must reimburse the Service Contractor for any Authorised Amounts properly made by the Service Contractor on behalf of the Body Corporate, within 14 days of receiving a proper request for payment and copies of receipted invoices from the Service Contractor.

#### 4.8 Service Contractor's Leave

- (1) The Service Contractor, or if it is a company, the nominee, may take four (4) weeks leave in each year of the Term, if:
  - (a) The Body Corporate is given reasonable notice; and
  - (b) There is a replacement Service Contractor during the period of the leave who is approved by the Body Corporate as being a person suitable to carry out the Service Contractor's Duties.

A replacement Service Contractor under this clause must be employed at the cost of the Service Contractor and the Service Contractor is liable for the performance of the Service Contractor's Duties by the replacement Service Contractor.

#### 5. Extra Duties

- 5.1 The Body Corporate may from time-to-time by notice in writing request the Service Contractor to perform extra duties over and above the Service Contractor Duties which the Service Contractor must perform for extra remuneration to be agreed on, or failing agreement, the extra remuneration will be determined by the President for the time being of the Real Estate Institute of Queensland or his nominee as being the remuneration properly payable to the Service Contractor.

#### 6. Service Contractor's Fee

##### 6.1 First Year

In consideration of the performance by the Service Contractor of the Service Contractor's Duties, the Body Corporate shall pay to the Service Contractor remuneration at the rate of **one thousand dollars (\$1,000.00)** plus GST per Lot payable by monthly instalments in arrear with the first payment 1 month after the commencement date.

##### 6.2 Annual Reviews

At the beginning of the second and each subsequent year of the Term the fee will be reviewed and will be the greater of either:

- (1) the fee for the previous year increased by 3%; or
- (2) the figure arrived at by increasing the previous year's fee by the same percentage as any percentage increase in the Brisbane All Groups Consumer Price Index figure for the quarter published immediately before the review date over the same figure for the quarter published immediately before the beginning of the previous year of this Agreement.

#### 7. Giving and Taking Directions

- 7.1 The Body Corporate shall notify the Service Contractor of a nominated person who is authorised to give directions to the Service Contractor on behalf of the Body Corporate. The Service

Contractor may only act on that person's reasonable directions except where contrary directions are given by the Body Corporate or the Committee.

7.2 The Body Corporate must, upon request, furnish to the Service Contractor a set of all plans relating to the Scheme in its possession or control together with copies of all current maintenance and service agreements entered into by the Body Corporate and a current list of the names and addresses of all owners of the Lots.

7.3 The Body Corporate must confer fully and freely with the Service Contractor concerning the performance of the Service Contractor's Duties and the control, management and administration of the Common Property and will provide proper and reasonable instructions to the Service Contractor in relation to the Service Contractor's Duties.

## 8. Disputes

8.1 Any dispute between the parties will be dealt with in accordance with the dispute resolution provisions of the Act

## 9. Default and Termination

9.1 The Body Corporate may by giving written notice thereof to the Service Contractor terminate this Agreement if the Service Contractor:

- (1) continues to fail to properly carry out the Service Contractor's Duties or any of the provisions of this Agreement, for 14 days after notice from the Body Corporate requiring the Service Contractor to properly carry out these duties, or any of them, or comply with the provisions of this Agreement;
- (2) purports to transfer the Service Contractor's interest in this Agreement without the Body Corporate's consent;
- (3) is convicted of an indictable offence involving fraud, dishonesty or assault;
- (4) if a company, is liquidated or is subject to the appointment of a provisional liquidator or an administrator is appointed, except where a financier acting in accordance with Section 126(2) of the Act (or any similar replacement section of the Act) has assumed performance of the duties under this Agreement and the financier is not otherwise in breach of this Agreement.; or
- (5) is subject to the appointment of a receiver of the Service Contractor's assets, with the exception of a receiver appointed by a financier of the Service Contractor.

9.2 Any right of termination afforded to the Body Corporate is exercisable subject to any restrictions, modifications or requirements imposed upon the Body Corporate under the Act or the Regulation Module.

### 9.3 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 Manager has obtained finance on the security of the Agreement;
- (ii) **Receivership:** where the Financier is acting in place of the Manager or the Financier has appointed a Controller (as defined in the *Corporations Act 2001* for the Agreement; and
- (iii) **Specific Termination Provision:** clause 9.1(4), (5) and (6) in the Agreement.

- (b) During any Receivership, the Body Corporate waives its rights to terminate the Agreement under any of the Specific Termination Provisions.

## **10. Transfer**

10.1 The Service Contractor's interest in this Agreement may only be transferred with the Body Corporate's consent (which may not be unreasonably withheld).

10.2 In deciding whether to approve a proposed transfer, the Body Corporate may consider:

- (1) the competence, qualifications, experience and character of the proposed Assignee or the Directors and Shareholders of the proposed Assignee if it is a company, and the extent to which the proposed Assignee or any Directors have received or will receive training;
- (2) the financial competence of the proposed Assignee, and

10.3 The Body Corporate must decide whether to approve the proposed transfer within 30 days after receiving all information reasonably necessary for it to consider the proposal.

10.4 The approval may be given on reasonable conditions.

10.5 The Service Contractor must pay the Body Corporate's reasonable legal costs in connection with approving a proposed transfer.

10.6 The Body Corporate may not demand any fee for approving a proposed transfer except if it is able to do so under the terms of the Act or the Regulation Module applicable to the Scheme or any other provision of this Agreement.

10.7 The Service Contractor must transfer the Service Contractor's Lot (if any) to the proposed Assignee (or other approved person or company or a Director of the proposed Assignee if the Assignee is a company).

- 10.8
- (1) If the Service Contractor is a company or a Trust then a change in the Controlling Persons of the Service Contractor is deemed to be a breach of this Agreement unless the Body Corporate first gives written consent to the change.
  - (2) The Body Corporate may refuse consent to a change in the Controlling Persons of the Service Contractor unless this clause 10 is satisfied.
  - (3) The Controlling Persons of the proposed Assignee must enter into a guarantee and indemnity in the same terms as clause 11 with the Body Corporate.

## **11. Guarantee and Indemnity**

11.1 In consideration of the Body Corporate entering into this Agreement, the Guarantor agrees with the Body Corporate as follows:

- (1) The Guarantor guarantees:
  - (a) Performance by the Service Contractor of its obligations under this Agreement; and
  - (b) The payment of all loss and damage recoverable by the Body Corporate from the Service Contractor.
- (2) This Guarantee will be a Continuing Guarantee and will not be affected or avoided in any way by:-
  - (a) Any agreement or arrangement made between the Body Corporate and the Service Contractor;



- (b) Any alterations or variations to the rights and obligations of either the Body Corporate or the Service Contractor;
- (c) The granting of any time or other indulgence or forbearance by the Body Corporate to the Service Contractor or to the Guarantor;
- (d) The making of any compromise with or waiver of any breach or default by the Service Contractor; or
- (e) The neglect or forbearance of the Body Corporate to enforce the provisions of this Agreement or those of this Guarantee.

it being the intention that this Guarantee is unconditional and absolute in any and all circumstances.

- (3) The obligations of the Guarantor include any obligations arising during any extension or renewal of this Agreement between the Body Corporate and the Service Contractor.
- (4) The Body Corporate will be at liberty to regard the Guarantor in all respects as a principal debtor and will not be obliged to take action first against the Service Contractor.
- (5) The obligations of the Guarantor will not merge or be deemed to have merged in any judgment obtained by the Body Corporate against the Service Contractor.
- (6) If any term of this Agreement is not enforceable against the Service Contractor as principal whether by reason of any legal limitation, disability or incapacity, the Guarantor will be responsible under this Guarantee as though the Guarantor was solely or principally liable as Service Contractor under this Agreement.

11.2 As a separate and independent obligation, the Guarantor indemnifies the Body Corporate from all claims suffered or incurred by the Body Corporate by reason of the Service Contractor's default in performing the Service Contractor's obligations under this Agreement and this clause.

11.3 The Guarantee shall terminate upon the completion of any lawful assignment of this Agreement to an unrelated third party.

## **12. Entire Understanding**

12.1 This Agreement:

- (1) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

12.2 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

## **13. Variation**

13.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

## **14. Waiver**

14.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

14.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

14.3 A waiver is not effective unless it is in writing.

14.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **15. Costs and Disbursements**

15.1 Each party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.

15.2 The Service Contractor must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due.

## **16. Notices**

16.1 A notice or other communication ("Notice") connected with this Agreement has no legal effect unless it is in writing and:

- (1) delivered by hand at the address of the addressee set out in this Agreement or subsequently notified;
- (2) sent by post, postage prepaid, to that address; or
- (3) sent by facsimile to the facsimile number of the addressee.

16.2 A Notice is deemed given and received:

- (1) if delivered, upon delivery;
- (2) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting; or
- (3) if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

16.3 Despite clause 16.2(3) a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

## **17. Governing Law and Jurisdiction**

17.1 The law of Queensland governs this Agreement.

17.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

## **18. Interpretation**

18.1 Reference to:

- (1) one gender includes each other gender;
- (2) the singular includes the plural and the plural includes the singular;
- (3) a person includes a body corporate;

- (4) a party includes the party's executors, administrators, successors and permitted assigns; and
- (5) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:
  - (a) that Statutory Provision as amended or re-enacted from time to time; and
  - (b) a statute, regulation or provision enacted in replacement of that Statutory Provision.

18.2 All monetary amounts are in Australian dollars, unless otherwise stated.

18.3 If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

18.4 Headings are for convenience only and do not form part of this Agreement or affect its interpretation.

18.5 A party, which is a trustee, is bound both personally and in its capacity as a trustee.

18.6 "Including" and similar expressions are not words of limitation.

18.7 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

18.8 If an act must be done on a specified day, which is not a Business Day, the act must be done instead on the next Business Day.

## 19. Severance

19.1 The parties agree that it is not intended:

- (1) to engage the Service Contractor as a Body Corporate Manager; or
- (2) To delegate to the Service Contractor any of the powers of the Body Corporate, the Committee for the Body Corporate, or of an executive member of the Committee of the Body Corporate; or
- (3) To have the Service Contractor perform duties which the Body Corporate has no power to pay the Service Contractor to perform.

and that it is the parties' intention that the remuneration payable by the Body Corporate to the Service Contractor under this Agreement is payable for the performance of duties which do not constitute such an engagement, and do not involve such delegation, and are not duties which the Body Corporate has no power to pay the Service Contractor to perform.

19.2 If any person, court or tribunal, having jurisdiction in the matter finds that any provision of this Agreement:

- (1) constitutes an engagement of the Service Contractor as a Body Corporate Manager; or
- (2) includes the delegation of any power referred to in clause 19.1(2); or
- (3) involves the performance of the duty which the Body Corporate has no power to pay the Service Contractor to perform, then such provision shall be severed or read down to avoid any such engagement, delegation or lack of power without any reduction in the remuneration payable by the Body Corporate to the Service Contractor under this Agreement.

19.3 Otherwise all rights, duties or obligations given or imposed by virtue of this Agreement are so given or imposed to the extent that they are lawful and if at any time, any provision hereof is, or becomes illegal, invalid, unenforceable or void in any respect then that provision shall be ignored, read down or severed respectively so far as is possible at the same time preserving the essence of

the bargain between the parties and evidenced by this Agreement, so as to uphold the legality and validity and enforceability of the remaining provisions of this Agreement.  
EXECUTED as an agreement.

**THE COMMON SEAL** of The Body Corporate for River Terraces Community Title Scheme 47544 was affixed by Authority of a Resolution of the Body Corporate:



.....  
Chairperson

.....  
Secretary/Committee Member

**SIGNED** by the SERVICE CONTRACTOR  
in the presence of: )

) .....

.....  
Witness

**SIGNED** by the Guarantor  
in the presence of: )

) .....

.....  
Witness