

## CARETAKING AGREEMENT

Dated the

day of

30th October 2015

### PREAMBLE:

- A. Pursuant to its obligations under the Act, the Body Corporate wishes to provide for the management and administration of the Common Property and Body Corporate Assets for the benefit of the owners of lots in the Scheme.
- B. To assist the Body Corporate in carrying out its functions, the Body Corporate has resolved to engage the Caretaker to provide certain services associated with managing and maintaining the Common Property and Body Corporate Assets.

### OPERATIVE:

#### 1. Appointment of Caretaker

- 1.1 The Body Corporate appoints the Caretaker to manage the Common Property and the Body Corporate Assets for a term of TEN YEARS commencing on 01/11/15 and terminating on 31/10/25 upon the terms contained in this Agreement.
- 1.2 The Caretaker accepts such appointment upon the terms contained in this Agreement.

#### 2. Remuneration of Caretaker

- 2.1 In consideration of the performance by the Caretaker of the duties set out in clause 4 and the Second Schedule the Body Corporate shall pay the Caretaker's fee to the Caretaker, by monthly instalments, in arrears.

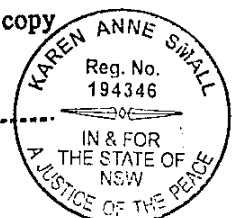
#### 3. Obligations of Caretaker

- 3.1 The Caretaker shall be responsible to the Body Corporate for the continuing efficient operation of the Scheme and for supervising maintenance of the Common Property and Body Corporate Assets.
- 3.2 Throughout the term of this Agreement:

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I certify that this is a true and correct copy  
of the original instrument.

Signed: \_\_\_\_\_



- (a) the Caretaker or its representative must be contactable and available at all reasonable times to perform the Caretaker's duties and obligations under this agreement;
- (b) the Caretaker and its representatives must strictly comply with any code of conduct contained in the Act.

**3.3 The Caretaker shall:**

- (a) at its expense employ all necessary staff or contractors to efficiently perform such functions and its duties hereunder;
- (b) use its best endeavours to supervise the performance of any improvements or capital or structural works to the Scheme undertaken from time to time by, for or, at the expense of the Body Corporate.

**3.4 The Caretaker shall promptly and efficiently undertake the duties specified in the Second Schedule to this Agreement.**

**3.5 The Caretaker shall be responsible for and shall promptly pay all remuneration payable to its staff and representatives and associated tax, work cover, superannuation payments and levies and carry out any other statutory obligations in relation to such staff.**

**4. Expenditure**

**4.1 The Caretaker shall be entitled to pledge the credit of the Body Corporate (within the limits previously approved by the Committee in writing) for the purpose of obtaining materials used in the performance of its duties or those of other employees or contractors of the Body Corporate and for such other purposes as are necessary or incidental to the discharge of the obligations of the Caretaker hereunder, provided that any major or extraordinary expenditure shall not be incurred without the prior approval of the Body Corporate or of its representative authorised pursuant to clause 5.**

**4.2 The Caretaker shall check and verify accounts for goods or services payable by the Body Corporate relative to matters which are the responsibility of the Caretaker under this Agreement, and shall notify the representative of the Body Corporate that they are in order for payment.**

**5. Instructions from Body Corporate to Caretaker**

**5.1 The Committee shall from time to time authorise not more than 2 of its members or other representatives of the Body Corporate to give instructions to and to communicate with the Caretaker on behalf of the Body Corporate.**

5.2 The Caretaker shall confer fully and freely with the representatives of the Body Corporate if so requested in relation to the performance of its duties.

5.3 The Caretaker or its representative shall, at the request of the Committee, attend all meetings of the Committee or of the Body Corporate held at the Building, and shall be entitled to be heard on any relevant question or matter at any meeting.

5.4 The Caretaker shall at all times co-operate with:

- (a) the auditor; and
- (b) any Body Corporate Manager

appointed by the Body Corporate, and shall provide to such persons full and free access to all books and records relating to the affairs of the Body Corporate and owners.

## 6. Assignment

6.1 The Caretaker must not sell, transfer or assign its interest in this Agreement without the prior written approval of the Body Corporate. The Body Corporate shall not unreasonably or capriciously withhold such approval provided that it shall be a condition precedent to the giving of such approval that:

- (a) the Caretaker satisfies the Body Corporate that the assignee is a capable, reputable, responsible and financially secure person;
- (b) the Caretaker provide to the Body Corporate a certified statement of assets and liabilities of the assignee;
- (c) the proposed assignee execute in favour of the Body Corporate a Deed of Covenant to perform, observe and fulfil the terms covenants and conditions on the part of the Caretaker contained or implied in this Agreement; and
- (d) if the assignee is a company, the directors and shareholders of the assignee execute personal guarantees in favour of the Body Corporate for the performance of the Caretaker's duties and obligations under this Agreement, if required.

6.2 The Deed of Covenant and personal guarantees (if any) shall be prepared and stamped by the solicitors for the Body Corporate at the expense of the Caretaker.

6.3 The Caretaker must pay any reasonable expenses incurred by the Body Corporate in considering any request for approval by the Caretaker for the sale, transfer or assignment of its interest in this Agreement (regardless of whether such approval shall be granted) and of preparing and stamping any documents relating to such sale, transfer or assignment.

6.4 If the Caretaker is a company, the transfer or assignment of more than 50% of the issued capital or of the voting rights in the company (other than by way of transmission on the death of a shareholder), or any change in the effective control of the company or its board of directors shall be deemed an assignment of the Caretakers interest in this Agreement and shall require the prior written consent of the Body Corporate, which consent shall not unreasonably or capriciously withhold such consent.

## **7. Termination**

7.1 This Agreement may be terminated by the Body Corporate by notice in writing to the Caretaker effective immediately if:

- (a) the Caretaker sells, transfers or assigns its interest in this Agreement in breach of clause 6;
- (b) the Caretaker is guilty of gross misconduct or gross negligence in the performance of its duties under this Agreement;
- (c) the Caretaker is declared bankrupt, or in the case of a company, the Caretaker is placed in liquidation or wound up, or if a receiver or official manager or provisional liquidator is appointed;

7.2 If either party to this Agreement is in default hereunder and such default continues after the other party shall have given 14 days notice in writing to the defaulting party specifying the default, then the party giving such notice may forthwith by further notice in writing effective immediately determine this Agreement if such default has not been remedied within such period of 14 days.

## **8. Equipment**

8.1 The Body Corporate shall at its expense provide the equipment specified below and such other equipment as is reasonably necessary for the Caretaker to efficiently carry out its duties hereunder.

**9. Occupation Authority**

The Body Corporate will procure the granting to the Caretaker of an occupation authority in respect of any part of the Common Property required to facilitate the Caretaker undertaking its duties hereunder.

**10. Notices**

Any notice to be given by one party to the other under this Agreement shall be in writing, and without prejudice to any other lawful method of service shall be sufficiently given or served if properly addressed and either left at or posted by registered or security mail to the registered office or last known address of the party to whom it is addressed. Instructions given by the Body Corporate to the Caretaker pursuant to clause 5 hereof need not be in writing.

**11. Severability**

All rights, duties or obligations given or imposed by virtue of this agreement are so given and/or imposed to the extent that they are lawful. To the extent that any right duty or obligation contained in any provision of this agreement contravenes the provisions of any statute or is otherwise unlawful or ultra vires the Body Corporate such provision shall be severed from this agreement but the remaining provisions shall otherwise remain in full force and effect.

**12. Definitions**

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 interpretation shall apply:

"the Act" means the *Body Corporate and Community Management Act 1997*;

"Body Corporate" means the body corporate for the Scheme;

"Body Corporate Assets" means any assets owned from time to time by the Body Corporate;

"the Building" means the buildings included in the Scheme;

"Caretaker's fee" means the remuneration payable by the Body Corporate to the Caretaker under this agreement and calculated in accordance with the First Schedule;

"Common Property" means the common property of the Scheme as defined by the Act;

"the Committee" means the Committee of the Body Corporate pursuant to the Act;

"GST" means tax that is payable under the GST law and imposed as goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999*;

"insolvent" means being an insolvent under administration or insolvent or having a controller appointed (each as defined in the Corporations Law), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute or otherwise unable to pay debts when they fall due;

"the Scheme" means The Waters Edge Community Titles Scheme

In this Agreement words of the masculine and neuter gender are deemed to include all genders and words of singular number shall include the plural and vice versa.

Except where the context requires otherwise words used herein which are defined in the Act shall have the meaning therein defined.

Headings are inserted for guidance only and shall not form part of or affect the interpretation hereof;

References to a person include corporations, natural persons and all other entities capable of suing and being sued;

References to any statute include all statutory provisions amending, consolidating or replacing same, and all by-laws, orders in council, ordinances, proclamations, regulations, rules and other authorities made thereunder;

This instrument shall operate to bind the administrators, executors, successors and permitted assigns (as the case may be) of each person who is a party hereto;

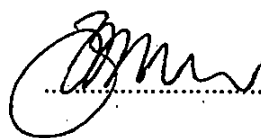
Where any provision hereof requires the doing of any act by the Body Corporate, that act shall be deemed sufficiently done if done by a Member of the Committee of the Body Corporate or any duly authorised managing agent of the Body Corporate or any other duly authorised person;

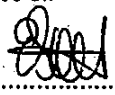
Where any provision hereof requires a determination to be made by the Body Corporate (other than by a special resolution of the Body Corporate), that determination shall be

sufficiently made if done by the Committee of the Body Corporate or any duly authorised managing agent of the Body Corporate.

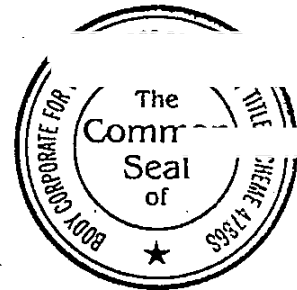
EXECUTED as an Agreement.

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, the duly )  
appointed Body Corporate Manager; in the )  
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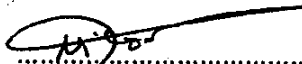
  
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Witness



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)  
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.....  
Director

  
.....  
Director/Secretary

## FIRST SCHEDULE

1. During the first year of the terms of this agreement, the Body Corporate shall pay to the Caretaker the sum of \$ 82,000.00 per annum (plus GST) payable by equal monthly instalments in arrears.
2. On each anniversary of the date of commencement of this agreement, the Caretaker's fee shall be increased in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where A = the Caretaker's fee for the year for which the remuneration is being calculated;

Where B = the Caretaker's fee for the preceding year of the term of this agreement;

Where C = the Index Number released for the quarter immediately preceding the year for which the Caretaker's fee is being calculated;

Where D = the Index Number released for the quarter one year prior to the quarter specified in C,

"Index Number" shall mean the All Groups Consumer Price Index Number for Brisbane released from time to time by the Australian Statistician. If the said Index is suspended or discontinued or if different factors are used to determine the same the Index Number shall be such Index as the parties agree reflects increases in the costs of living in Brisbane and in default of such agreement such Index as may be determined on the application of either party to the President of the Queensland Law Society Inc at the relevant time or its Nominee acting as an expert and not as an arbitrator and whose decision shall be conclusive.

The Caretaker shall present to the Body Corporate in each year evidence of the relevant movement in the Consumer Price Index in the form of the official release of such statistics by the Australian Bureau of Statistics and the Caretaker shall provide to the Body Corporate its calculation of any increase in the Caretaker's fee.



## SECOND SCHEDULE

### Caretakers Obligations

The Caretaker shall:

- (a) use its best endeavours to ensure that the Building (other than the interior of lots) is kept in good order and repair and that any obvious or likely defects in or damage to lots are reported to the relevant owners.
- (b) use its best endeavours to ensure that the Common Property and improvements and in particular any pool, gardens, stairwells, paths, driveways, walkways, lawns, garage areas and the exterior of the Building, and the interior and exterior of all Common Property, including windows and doors are kept clean and tidy at all times. The Caretaker shall not be required to clean the interior and exterior of windows of lots or buildings where the height exceeds 2,400mm above ground level.
- (c) generally use its best endeavours to cause the Building and Common Property and all plant and equipment used in connection therewith to be properly secured and maintained at all times in accordance with an appropriate schedule approved by the Committee, including attending to installation and fitting of lightglobes, cleaning and maintaining gas supplies in any barbecues and generally attending to all minor maintenance matters within the competence of an experienced general handyman but not including tasks requiring the skills of a specialised tradesman or contractor.
- (d) regularly water, fertilise, weed, mow and maintain as appropriate all landscaping, lawns, paths, gardens and shrubs which form part of the Common Property or are currently maintained or established as lawn or landscaping to a high standard. The Caretaker shall be responsible for replanting of plants, replacement of bark and maintenance of landscaping as required, but the Body Corporate shall bear the cost of any necessary plants, bark and materials.
- (e) cause any swimming pool to be adequately tested and kept clean, full and ph balanced, and undertake any other normal maintenance works required to permit regular use of the pool.
- (f) police the observance of the by-laws of the Body Corporate by the owners and/or occupiers of lots including their guests and licensees. The Caretaker is hereby granted the full authority of the Body Corporate to the extent, if any, to which such authority can be given, 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.

- (g) keep in the possession of a representative of the Caretaker the master key or keys for the switch room, sub-station, or other rooms under the control of the Body Corporate and the lots in the Scheme so far as individual lot owners shall permit, It shall be the responsibility of the Caretaker to ensure that such master key or keys are adequately protected against theft. Possession of such keys shall not be surrendered to any person other than an authorised representative appointed by the Committee of the Body Corporate for such purpose or the individual lot owner concerned. The Caretaker shall allow a lawfully authorised person in the course of its duties free access to any part of the Building so authorised at all reasonable times.
- (h) report promptly on all things requiring repair and on all matters creating a hazard or danger, and take remedial action where practicable.
- (i) arrange maintenance and repair contracts as and when required by the Body Corporate and use its best endeavours to ensure that any such contract entered into by the Body Corporate is carried out in accordance with its terms. The Caretaker shall unless otherwise authorised by the Committee or in any case of emergency obtain at least 2 written quotations from prospective suppliers or contractors in respect of materials to be supplied or work to be undertaken at the cost of the Body Corporate, and shall submit such quotations together with the Caretaker's recommendation to the Body Corporate Committee.
- (j) comply with and carry out all reasonable directions from time to time given by the Body Corporate to the Caretaker in and about the administration and management of the Building, Common Property and Body Corporate Assets and the performance by the Caretaker of its obligations and duties.
- (k) ascertain and be aware of the general condition of Building (other than the interior of lots), Common Property and the Body Corporate Assets and all machinery and equipment so it is able to keep the representatives of the Body Corporate informed in respect thereof.
- (l) use its best *endeavours* to manage and maintain the Scheme to the standard of a high class residential complex and ensure the Building (other than the interior of lots), Common Property and Body Corporate Assets are kept in first class order, and protect the interests of the Body Corporate and of the owners of lots in the Scheme.
- (m) as far as the Caretaker is reasonably able and lawfully capable of doing so to keep order in the Building (other than the interior of lots) and take such precautions as shall be necessary to safeguard and secure the Building and the Common Property against unlawful entry or accident or damage.

- (n) endeavour to generally supervise and keep clean car parking areas, having regard to the ownership of car parking spaces.
- (o) regularly inspect fire fighting equipment and ensure that fire department inspections are made at prescribed regular intervals at the expense of the Body Corporate.
- (p) keep all lifts that are the responsibility of the Body Corporate in a clean and tidy condition, monitor cleaning of the goods lift in the Building report faults to the appropriate lift maintenance contractor.
- (q) account promptly and faithfully to the Body Corporate or to owners of lots as the case may be for all its or their funds or other property (if any) coming into the hands of the Caretaker.
- (r) at all reasonable times attend meetings of the Body Corporate and its Committee held in the building as and when requested by the Body Corporate.
- (s) perform such other acts and duties as are reasonably necessary and proper in the discharge of its duties pursuant to clause 3 of this agreement or specified in this Schedule or are reasonably required by the Body Corporate from time to time, including compliance with reasonable schedules of duties to be undertaken weekly, monthly and annually.