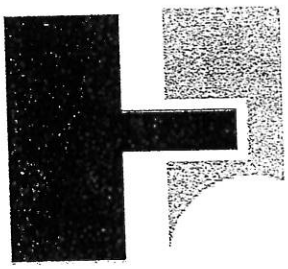
deed of engagement



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This Deed is made the 6 day of September ~~2006.~~ 2005

BETWEEN: **THE BODY CORPORATE FOR ST ANDREWS PARK COMMUNITY TITLES SCHEME 19592** ('the Body Corporate')

AND: **OCEANS ELEVEN PTY LTD ACN 100 941 991 AS TRUSTEE FOR THE CRIST ORIGINALS TRUST** ('the Caretaker')

WHEREAS:

A. The Body Corporate and the Caretaker are parties to the First Agreement.

B. The Caretaker 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 6 September 2005.

The Parties agree and covenant as follows:-

1. Definitions and Interpretation

1.1 Definitions

In this Engagement:-

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

(b) **'First Agreement'** means the caretaking agreement dated 5 September 2002 between the Body Corporate and Silverburg Pty Ltd ACN 090 053 213 (a copy of which is annexed to this Engagement and marked with the letter 'A').

(c) **'Scheme'** means St Andrews Park Community Titles Scheme 19592.

1.2 Interpretation

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.

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

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

(d) 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.

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

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

(g) Words and phrases defined in the *Body Corporate and Community Management Act 1997* have the same meaning in this engagement.

2. Engagement

2.1 The Body Corporate engages the Caretaker as a service contractor for the Scheme for a term of 18 years commencing 25 October 2005 and expiring on 24 October 2023 on the same terms and conditions as contained in the First Agreement varied as follows:-

(a) Clause 1.1 is deleted and replaced with the following:

'1.1 The Body Corporate engages the Caretaker for a period of 18 years commencing on 25 October 2005 and expiring on 24 October 2023.

(b) Clause 2 is deleted.

(c) Clause 1 of Schedule 1 is deleted and replaced with the following:

'1. The remuneration payable to the Caretaker shall be an amount of $37,730.62 plus GST per annum plus a further amount calculated by multiplying $37,730.62 by the annual increase in the CPI for the quarter ending 30 June 2005 for the period of twelve months commencing from the date specified in clause 1.1 of this Agreement.'

(d) Clause 5 of Schedule 1 is deleted.

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 Caretaker.

5. Termination of First Agreement

5.1 The First Agreement is hereby terminated from and including the date of commencement of this Deed.

Executed as a Deed

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

THE COMMON SEAL of the **BODY CORPORATE FOR ST ANDREWS PARK COMMUNITY TITLES SCHEME 19592** was affixed by authority of a resolution of the Body Corporate under the hands of two duly authorised Officers of the Body Corporate who certify that they are the proper officers to affix such seal and in the presence of:

)
)

Authorised Signatory

Authorised signatory

SIGNED SEALED AND DELIVERED BY OCEANS ELEVEN PTY LTD ACN 100 941 991 AS TRUSTEE FOR THE CRIST ORIGINALS TRUST in accordance with section 127 of the *Corporations Act* 2001 (Cth):

)
)
)

J. Crist

Sole Director

JAN CRIST

Print full Name

'A'

Herd & Janes
LAWYERS

COPY

BODY CORPORATE FOR ST ANDREWS PARK CTS 19592

AND

SILVERBURG PTY LTD ACN 090 053 213

AND

MARINUS WILLIAM VERSLUIS, HELEN JENNIFER VERSLUIS AND

CHRISTOPHER JAMES BRANDENBURG

CARETAKING AGREEMENT

Herd & Janes
Lawyers
Level 3, 27 Peel Street
South Brisbane Qld 4101
PO Box 8403
Woolloongabba Qld 4102
Ph: (07) 3255 3444
Fax: (07) 3255 3134
Email: mail@herdandjanes.com.au

Queensland Stamp Duty Paid
On the Amount of $ Nil
13A: BNE: 16040 Transaction Number

THIS AGREEMENT is made the day of 2002

BETWEEN: **BODY CORPORATE FOR ST ANDREWS PARK COMMUNITY TITLES SCHEME 19592** of care of Premier Body Corporate Management, 51 Edmonstone Street, South Brisbane in the State of Queensland ("Body Corporate").

AND: **SILVERBURG PTY LTD ACN 090 053 213** of Unit 15 St Andrews Park, 106 St Andrews Street, Kuraby in the State of Queensland ("Caretaker").

AND: **MARINUS WILLIAM VERSLUIS, HELEN JENNIFER VERSLUIS AND CHRISTOPHER JAMES BRANDENBURG** of Unit 15 St Andrews Park, 106 St Andrews Street, Kuraby in the State of Queensland ("Guarantors").

WHEREAS:

A. The Body Corporate is constituted under the *Body Corporate and Community Management Act 1997.*

B. The Body Corporate is desirous of providing for the better maintenance of the common property including in particular, the care and maintenance of the gardens and grounds.

C. The Body Corporate and the Caretaker have reached agreement on the performance of certain duties on behalf of the Body Corporate.

D. The Guarantors have agreed to guarantee the performance of the duties of the Caretaker under this Agreement.

1 ENGAGEMENT

1.1 The Body Corporate engages the Caretaker for a period of five (5) years commencing on 8th day of June 2002 and ending on the 7th day of June 2007.

1.2 The Caretaker accepts the engagement on the terms contained in this Agreement.

1.3 The Caretaker is an independent contractor of the Body Corporate.

2 OPTION TO RENEW

2.1 If the Caretaker is not at the time it gives notice under this clause nor at the end of the term of this Agreement then in breach of any covenant, condition or stipulation contained or implied and on the part of the Caretaker to be performed permitted or fulfilled and of such a nature as would entitle the Body Corporate to terminate this Agreement, then the Caretaker shall be entitled on giving the Body Corporate not less than three calendar months and not more than six calendar months written notice prior to the expiration of this Agreement an option to renew this Agreement for a further period of five (5) years from the 8th day of June 2007 and ending on the 7th day of June 2012, and otherwise upon the same terms and conditions as are contained in this Agreement except that this clause shall be deleted.

3 WHERE CARETAKER IS A CORPORATION

3.1 If at any time the Caretaker under this Agreement is a corporation of any kind whatever, then it shall be the responsibility of the Caretaker to ensure at all times an adequate number of its officers, servants or agents are available to carry out the Caretaker's duties and functions under this Agreement. Such persons used by the Caretaker to carry out the Caretaker's duties, where they are not the principal shareholders and/or directors of the Caretaker, shall require the approval of the committee of the Body Corporate.

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3.2 It shall be the responsibility of the Caretaker, where necessary, to seek such approval which shall not be unreasonably withheld. When seeking any approval, the Caretaker shall provide to the committee of the Body Corporate sufficient information concerning the persons involved to enable the committee of the Body Corporate to make a reasonable determination.

3.3 If at any time the Caretaker under this Agreement is a corporation of any kind whatever, and there is any alteration to the board of directors or any alteration in the beneficial ownership or issue of further shares in the share capital of the Caretaker or any holding company of the Caretaker which in the reasonable opinion of the committee of the Body Corporate alters the effective control of the Caretaker from the control at the date of this Agreement, then such change in control of the Caretaker shall be deemed to be an assignment of this Agreement and the provisions of clause 12 shall apply.

4 REMUNERATION

4.1 In consideration of the due and punctual performance by the Caretaker of its duties under this Agreement, the Body Corporate shall pay to the Caretaker the remuneration on the basis set out in Schedule 1.

4.2 The Caretaker must not take any secret commissions.

5 CARETAKER'S LEAVE

5.1 The Caretaker shall have the right to engage a suitable replacement for the person responsible in accordance with this Agreement for the performance of the Caretaker's duties for a period of, or an aggregate of periods up to four weeks per annum, for the purpose of allowing the Caretaker a holiday or holidays for that period or aggregate of periods each year.

5.2 On each occasion, details of the proposed replacement shall be provided to the committee of the Body Corporate at least one calendar month prior to the commencement of the Caretaker's proposed holiday, and the committee of the Body Corporate shall as soon as reasonably practicable by notice to the Caretaker advise the Caretaker of its approval or otherwise of the proposed replacement provided such details need only be provided twenty-four hours prior to any proposed holiday for urgent business, family or personal reasons. Any approval under this clause shall not be unreasonably withheld.

5.3 It shall be a matter for the Caretaker to ensure that the replacement from time to time adequately performs the duties under this Agreement. Any breach of this Agreement on the part of the replacement shall be deemed to be a breach of the Agreement by the Caretaker. Any remuneration payable to the replacement shall be the responsibility of the Caretaker.

6 STAFFING

6.1 The Caretaker shall employ at the Caretaker's expense staff as is necessary to perform its duties under this Agreement provided the engagement and dismissal of staff shall be in the hands of and at the sole discretion of the Caretaker.

6.2 The Caretaker may at its discretion sub-contract part or all of the duties of the Caretaker under this Agreement provided any sub-contract shall not diminish the obligations and responsibility of the Caretaker under this Agreement.

7 DUTIES OF THE CARETAKER

7.1 The Caretaker shall by its employees, contractors or agents perform the duties set out in Schedule 2 ("Duties").

7.2 The Caretaker shall perform the Duties in a manner consistent with the position of a

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caretaker of first class residential apartments.

7.3 The Caretaker shall provide all equipment necessary for the performance of the Duties under this Agreement.

8 DUTIES OF THE BODY CORPORATE

8.1 The Body Corporate shall:

(a) At its own cost supply to the Caretaker the consumables necessary for the performance of the Duties under this Agreement.

(b) Provide proper and reasonable instructions to the Caretaker regarding the performance of the Duties and the control, management and administration of the Common Property.

(c) Reimburse the Caretaker for all out of pocket expenses incurred in the repair and maintenance of the common property or incurred in performing the Duties under this Agreement.

8.2 The committee of the Body Corporate shall from time to time authorise a person to give instructions to and communicate with the Caretaker on behalf of the Body Corporate and if no authorisation is given, the chairperson is deemed to be the authorised person under this clause.

8.3 The Caretaker will confer fully and freely with the person authorised under clause 8.2 relative to the performance of the duties of the Caretaker and shall at the request of the authorised person attend meetings of the committee or of the Body Corporate. The Caretaker shall be entitled to be heard on any relevant question or matter at any such meeting.

8.4 The Body Corporate shall furnish to the Caretaker a set of plans and with the aid of these documents and inspection made by competent personnel the Caretaker will inform itself with the layout, construction, location, character plan and operation of the power, lighting, security, plumbing and other mechanical equipment.

9 EXPENDITURE

9.1 The Caretaker shall be entitled to pledge the credit of the Body Corporate and incur expense on behalf of the Body Corporate in respect of any single transaction within the limits approved by the committee of the Body Corporate in writing from time to time.

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

10 COLLATERAL AGREEMENT

10.1 The Body Corporate and the Caretaker acknowledge that it is intended that the Caretaker enter into an agreement with the Body Corporate for the purpose of providing a letting service to owners who wish to use the service ("Letting Authority").

10.2 The Body Corporate and the Caretaker agree that a breach under the Letting Authority shall be deemed a breach under this Agreement. If the Letting Authority comes to an end, then this Agreement shall be deemed to be also at an end.

11 DISPUTE RESOLUTION

11.1 If at any time there is any, or a party contends that there is any, dispute whatsoever between

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the parties touching or concerning this Agreement or any provision of it, or the construction of it or its effect, then any party may have that dispute dealt with under the dispute resolution provisions of the *Body Corporate and Community Management Act 1997.*

11.2 No party shall be entitled to commence or maintain any action upon any dispute whatsoever between the parties touching or concerning this Agreement or any provision of it, or the construction of it or its effect, until such dispute has been referred to the dispute resolution process as determined by clause 11.1.

12 TRANSFER OF ENGAGEMENT

12.1 The interest of the Caretaker in this Agreement may be transferred if the Body Corporate approves the transfer.

12.2 (a) In deciding whether to approve a proposed transfer, the Body Corporate may have regard to –

(i) the character of the proposed transferee and related persons of the proposed transferee

(ii) the financial standing of the proposed transferee

(iii) the proposed terms of the transfer

(iv) the competence, qualifications and experience of the proposed transferee and any related persons of the proposed transferee, and the extent to which the transferee and any related persons have received or are likely to receive training, and

(v) matters to which, under this Agreement, the Body Corporate may have regard.

(b) In determining the factors in clause 12.2(a), the Body Corporate may require the Caretaker to provide evidence the proposed transferee is a reputable, responsible and respectable person who is capable of satisfying the obligations under this Agreement.

12.3 The Body Corporate must decide whether to approve the proposed transfer within 30 days after it receives the information reasonably necessary to decide the application for approval.

12.4 The approval may be given on condition that the transferee enters into a deed of covenant to comply with the terms of this Agreement.

12.5 (a) The Body Corporate must not -

(i) unreasonably withhold approval to the transfer of this Agreement, or

(ii) subject to section 85 of the *Body Corporate and Community Management (Standard Module) Regulation 1997*, require or receive a fee or other consideration for approving the transfer (other than reimbursement for legal expenses reasonably incurred by the Body Corporate in relation to the application for its approval).

(b) If the committee of the Body Corporate refuses to consent to a proposed transfer of this Agreement, then the Caretaker may invoke the dispute resolution provisions under clause 11 of this Agreement.

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12.6 To avoid doubt, it is declared the committee of the Body Corporate is authorised to approve a transfer of this Agreement.

13 TERMINATION OF ENGAGEMENT

13.1 Termination by Body Corporate

(a) The Body Corporate may terminate this Agreement if the Caretaker –

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

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

(iii) engages in misconduct, or is consistently negligent, in carrying out, or failing to carrying out, the functions required under this Agreement

(iv) does not carry out duties under this Agreement, and persists in not carrying out the duties for 14 days or more after the Body Corporate, by written notice, requires the Caretaker to carry out the duties

(v) carries on a business involving the supply of services to the Body Corporate, or to owners or occupiers of lots, and the carrying on of the business is contrary to law

(vi) is declared bankrupt, liquidated or wound up, the subject of official management, receivership or administration

(vii) is in breach of clause 14 of this Agreement, or

(viii) transfers or attempts to transfer an interest in this Agreement without the Body Corporate's approval.

(b) For the purposes of clause 13.1(a), where the Caretaker is a corporation, it includes the directors of the corporation.

13.2 Termination by Caretaker

The Caretaker may terminate this Agreement if the Body Corporate does not comply with its obligations under this Agreement, and persists in not complying with its obligations for 14 days or more after the Caretaker, by written notice, requires the Body Corporate to carry out its obligations.

14 CARETAKER'S UNIT

14.1 During the term of this Agreement, the Caretaker must own lot 15 in GTP 3621.

14.2 If the Caretaker is a corporation or trustee and does not own lot 15 in GTP 3621, then clause 14.3 shall apply to this Agreement.

14.3 Where clause 14.2 applies, then the owner of lot 15 in GTP 3621 must be the natural person or persons who have effective control of the Caretaker.

14.4 The Body Corporate is not obliged to give its consent to a transfer under clause 12 of this Agreement unless there is compliance by the transferee with this clause 14.

15 COMMON PROPERTY OCCUPATION AUTHORITY

(a) The Body Corporate grants to the Caretaker an exclusive right to occupy the area

known as the office as identified on the plan annexed and marked "A" ("office") to enable it to perform its duties under this Agreement.

(b) The Body Corporate acknowledges that this common property occupation authority does not unreasonably interfere with the rights of other owners and occupiers.

(c) The Caretaker must keep the office clean and tidy.

(d) The Caretaker will be responsible for the repair and maintenance of the office and will also be liable for any increase in the Body Corporate's insurance premium as a result of the Body Corporate including the office in its insurance policy.

(e) The Caretaker will be responsible for insuring –

(i) contents contained in the office, and

(ii) public liability within the office.

16 GUARANTEE

16.1 The Guarantors covenant and agree that they shall personally guarantee the performance of the Caretaker of all of its duties and obligations under this Agreement.

17 MISCELLANEOUS

17.1 Notices

Any notice required to be given or served by either party to this Agreement shall be given or served in the same manner as is provided for in section 347 of the *Property Law Act 1974* whether or not the Act or that section shall be repealed, substituted or amended subsequent to the date of this Agreement.

17.2 Costs and stamp duty

The Caretaker will be responsible for all stamp duty assessed on this Agreement.

17.3 Severance

If for any reason a provision of this Agreement is adjudged by a Court or held by any competent authority to be invalid, illegal or unenforceable, then the provision will be severed from this Agreement and will be deemed never to have been part of this Agreement. The remainder of the provisions of this Agreement will remain in force unless the basic purposes of this Agreement would be defeated by the severance of the offending provision.

17.4 Governing law

This Agreement shall be governed and construed with reference to the laws in force in the state of Queensland.

17.5 Surrender of existing agreement

The parties acknowledge and agree that as and from 8 June 2002 the caretaking agreement dated 22 June 1993 between the Body Corporate and Brian John Looker and subsequently assigned to the Caretaker is surrendered and terminated.

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SCHEDULE 1

The Body Corporate will pay the remuneration to the Caretaker as follows:

1. The remuneration payable to the Caretaker shall be an amount of $35,787.08 per annum for the period of twelve months commencing from the date specified in clause 1.1 of this Agreement.

2. In addition to the remuneration, the Body Corporate shall also pay any goods and services tax under this Agreement. For the purpose of this clause any goods and services tax means any tax imposed by any government or regulatory authority which is a tax on goods and services, a tax on consumption, a value added tax or any other similar impost.

3. The remuneration shall be payable calendar monthly in arrears, the first payment being due and payable one calendar month from the date specified in clause 1.1 of this Agreement and subsequent payments calendar monthly thereafter.

4. (a) At the end of the first year and then annually for the term and any option the remuneration must be increased by the same percentage, if any, as the percentage increase in the consumer price index for the city of Brisbane for the last year recorded by the Commonwealth Statistician before the year for which the review is being done.

   (b) However, the remuneration for any year must not be less than the remuneration for the year before.

5. Despite clause 4(a) of this schedule, the remuneration for the first year of the option shall be the fair market value to be determined as follows:

   (a) The amount of the remuneration advised by the Caretaker to the Body Corporate and accepted by the Body Corporate as being the fair market value.

   (b) If the Body Corporate and the Caretaker cannot agree within one month of the Caretaker giving the Body Corporate notice in writing of the remuneration to be paid in accordance with clause 5(a) of this schedule, then the remuneration is to be determined by a valuer specialising in management rights or other suitably qualified person appointed by the parties and failing agreement appointed by the president for the time being of the Queensland Law Society or by his nominee.

   (c) The valuer or other person's determination will be final and binding on the parties. The valuer or other person shall be deemed to be acting as an expert and not as an arbitrator. The parties will each contribute equally to the cost of the determination by the valuer or other person.

   (d) Despite clauses 5(a) and 5(b) of this schedule, the remuneration for the first year of the option must not be less than the remuneration payable in the previous year.

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SCHEDULE 2

CARETAKER'S DUTIES

1. Supervise those employees or contractors of the Body Corporate engaged in building repairs and maintenance.

2. Use its best endeavours to ensure that the common property is kept in good order and repair.

3. Police the observance of the by-laws of the Body Corporate by the owners and/or the occupiers including their guests and licensees. The Caretaker has the full authority of 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.

4. At the request of the Body Corporate advise the Body Corporate concerning the performance of the duties of the Caretaker and provide other advice which the Body Corporate shall request relative to the management and care of the common property.

5. Where practicable to ensure that all pumps, pipes, pressurised water systems in or upon the scheme land are operating properly and being serviced regularly.

6. Where practicable ensure that all drainage from the buildings and common property is clear and functioning.

7. Account promptly and faithfully to the Body Corporate or to the owners, as the case may be, for all its or their funds or other property (if any) coming into its hands or custody.

8. Report promptly on all things requiring repair and all matters creating a hazard or danger and take remedial action where practicable.

9. Comply with and carry out all reasonable directions from time to time given in accordance with clause 8.2 of this Agreement in relation to the administration and management of the scheme land and the performance by the Body Corporate of its lawful obligations and duties.

10. At all times ascertain and be aware of the general conditions of the common property and all equipment and appurtenances thereto so that at all times the Caretaker is able to keep informed the representative of the Body Corporate in respect thereof.

11. As far as the Caretaker is reasonably able and lawfully capable of so doing, to keep order on the common property and take such precautions as its sees fit to safeguard the whole of the common property against unlawful entry or accident or damage.

12. Perform such other acts and things as are reasonably necessary and proper in the discharge of his duties under this Agreement.

13. Keep in a clean and neat condition all common property grounds, lawns, gardens, pathways and nature strips, including mowing and edging (but not watering or weeding lawns in private courtyards), to a standard and at a frequency to be set by the Committee of the Body Corporate.

14. Regularly water common property lawns and gardens, prune and replant, fertilise and till gardens as directed by the Committee of the Body Corporate with all plants, fertiliser and other materials required being at the cost of the Body Corporate.

15. Fully and faithfully in a good and workmanlike manner carry out the necessary hosing or cleaning of common property walkways, paved areas and access areas at appropriate times.

16. Check pumps and filters connected to the swimming pool, test the chlorine and PH level of the pool, add necessary chemicals to pool, and generally maintain the swimming pool on a daily basis and to carry out the necessary cleaning thereof by the use of equipment and materials supplied by the Body Corporate.

17. Remove all rubbish and waste material daily from the common property to the point of disposal.

18. Effect minor repairs and maintenance to common property of such nature as not to require the services of a skilled tradesman.

19. Ensure that all public lighting operates efficiently and that time switches are reset when necessary.

20. Ensure that the Duties are carried out in accordance with this Agreement, but the Caretaker is not required to work in excess of forty (40) hours per week.

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Executed as an Agreement.

THE COMMON SEAL of the BODY CORPORATE FOR ST ANDREWS PARK COMMUNITY TITLES SCHEME 19592 was affixed in the presence of two members of the committee:

Richard Williams

Sandra Roby

THE COMMON SEAL of SILVERBURG PTY LTD ACN 090 053 213 was affixed in accordance with its constitution in the presence of:

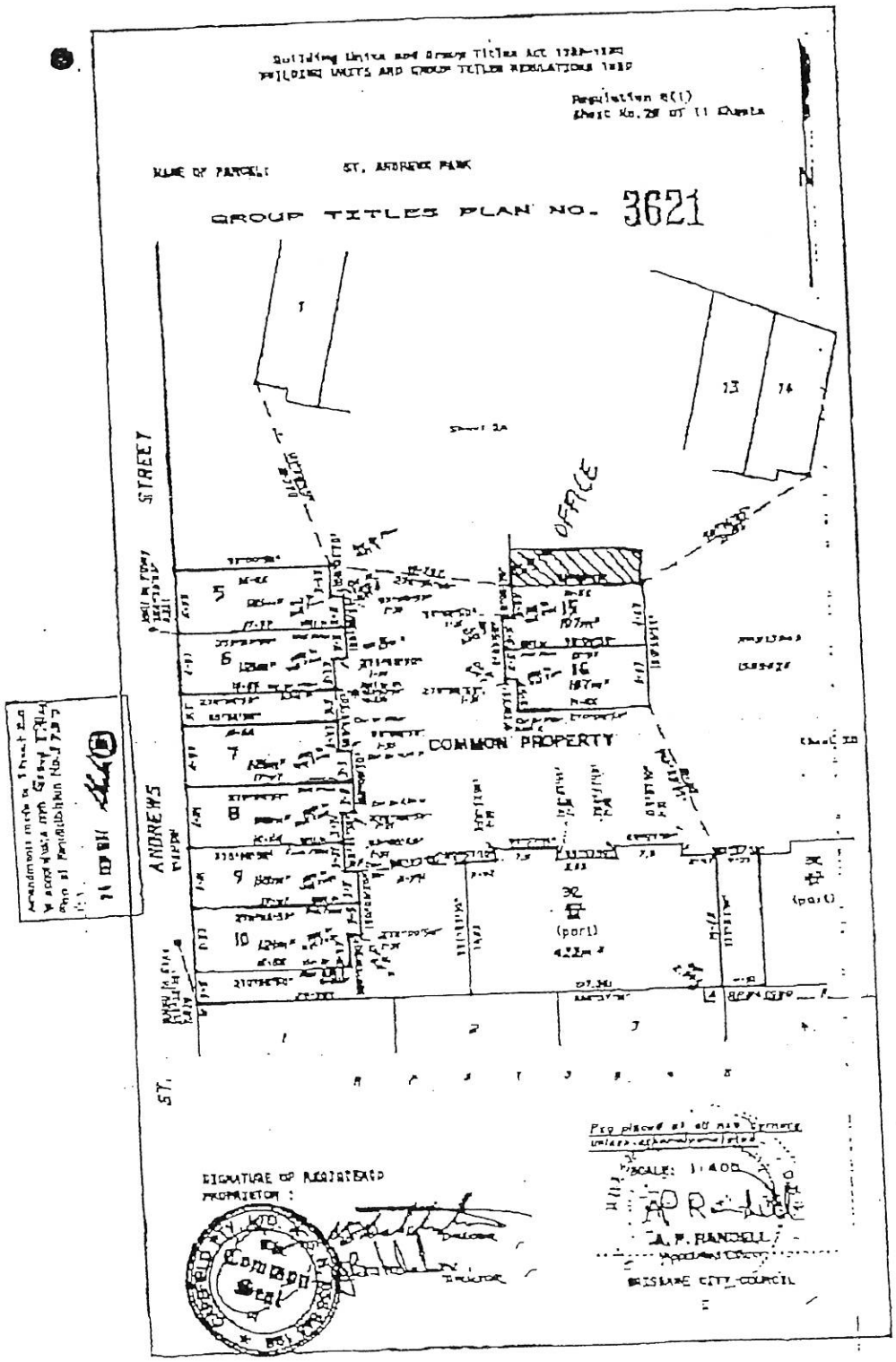
Clerk CRec 24103

SIGNED by MARINUS WILLIAM VERSLUIS AND HELEN JENNIFER VERSLUIS in the presence of:

Clerk CRec 24103

SIGNED by CHRISTOPHER JAMES BRANDENBURG in the presence of:

JP (Qual) #77502


Building Units and Group Titles Act 1980-1981
BUILDING UNITS AND GROUP TITLES REGULATIONS 1982
Regulation 8(1)
Sheet No. 2 of 11 Sheets
NAME OF PARCEL: ST. ANDREWS PARK
GROUP TITLES PLAN NO. 3621
STREET
ANDREWS
OFFICE
COMMON PROPERTY
(part)
(part)
SCALE: 1:400
A. F. RANDELL
BRISBANE CITY COUNCIL
SIGNATURE OF REGISTERED PROPRIETOR :
Common Seal