

DEED OF VARIATION

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THIS DEED is made on the 21ST day of SEPTEMBER 2017.

BACKGROUND:

- A. The Body Corporate and the Manager are parties to the Agreements.
- B. The parties have agreed to vary the terms of the Agreements as set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1 Definitions

Agreements means the Caretaking Agreement and the Letting Agreement.

Caretaking Agreement means the Deed of Engagement between the Manager and the Body Corporate dated 15 December 2011.

Commencement Date means the date the Body Corporate approves this Deed, being ... 31 AUGUST 2017.

Letting Agreement means the Deed of Authorisation between the Manager and the Body Corporate dated 15 December 2011.

2 Interpretation

2.1 In this Deed, except to the extent the context otherwise requires:

- (a) Words importing any gender shall include all other genders.
- (b) Words importing persons shall include all bodies, associations, trusts, partnerships, instrumentalities and entities corporate or unincorporate, and vice versa.
- (c) References to any of the parties include, in the case of a person, their personal representatives and permitted assigns and, in other cases, their successors and permitted assigns.

- (d) Any obligation on the part of or for the benefit of two or more persons shall be deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally.
- (e) Words importing the singular shall include the plural and vice versa.
- (f) Headings are included for convenience only and shall not affect the interpretation of this Deed or any Schedule.
- (g) References to Sections, Clauses, Recitals, Schedules and Annexures are to Sections and Clauses of and Recitals, Schedules and Annexures to this Deed.
- (h) References to this Deed are to this Deed and all modifications and variations to this Deed effected in accordance with this Deed.
- (i) References to any document or agreement shall include all references to such document or agreement as amended, narrated, supplemented, varied or replaced from time to time.
- (j) All references to dates and times are to Brisbane time.
- (k) All references to "\$" and "dollars" are to lawful currency of Australia.
- (l) Recitals to this Deed shall be read as and form part of this Deed.
- (m) References to writing shall include typing, telex, facsimile and all other means of reproducing words in a permanent and visible form.
- (n) References to any legislation or any provision of any legislation shall include any legislative provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations, instruments, proclamations or other subordinate legislation made under such legislation or legislative provision.
- (o) References to institutes, associations, bodies and authorities whether statutory or otherwise will, if that institute, body, association or authority ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to any other institute, association, body or authority, be deemed to refer respectively to the institute, association, body or authority established or constituted in place thereof or which substantially succeeds to the powers or functions of the institute association body or authority referred to.
- (p) No rules of construction will apply to the disadvantage of a party because that party was responsible for the drafting of this deed or any part of this Deed.

- (q) Unless application is mandatory by law, any statute, proclamation, order, regulation or moratorium present or future will not apply to this Deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect the exercise or enjoyment of any rights, powers, privileges, remedies or discretions given or accruing to any party.

3 Variation of the Agreements

3.1 From the Commencement Date, the Caretaking Agreement is varied as follows:

- (a) clause 3.2(i) is amended by replacing "Schedule 1" with "Schedule 2";
- (b) the following new clause 3.3 is added:

3.3

- (a) *If the Caretaker, not more than six and not less than three calendar months prior to the expiration of the further term granted pursuant to clause 3.2 of this Agreement, gives written notice to the Body Corporate that it wishes to renew this Agreement; and*
- (b) *there being no unremedied default;*

the Body Corporate will grant to the Caretaker a renewal of this Agreement for a further term of five years on the following conditions:

- (i) *the remuneration for the first year of the renewed term will be the remuneration for the final year of the further term granted pursuant to clause 3.2 of this Agreement reviewed in accordance with Schedule 2 hereto; and*
- (ii) *the terms and conditions will be the same as the terms and conditions of this Agreement except for the deletion of this clause 3.3.*
- (c) the first line in clause (2) of Schedule 2 is amended by adding "and any further term" after "Term";
- (d) the definitions of "A" and "B" in clause (2) of Schedule 2 are amended by adding "or further term (as the case may be)" after "Term"; and
- (e) the definition of "B" in clause (2) of Schedule 2 is amended by replacing "conducted" with "concluded".

3.2 From the Commencement Date, the Letting Agreement is varied as follows:

- (a) the following new clause 3.3 is added:

3.3

- (a) *If the Letting Agent, not more than six and not less than three calendar months prior to the expiration of the further term granted pursuant to clause 3.2 of this Agreement, gives written notice to the Body Corporate that it wishes to renew this Agreement; and*
- (b) *has carried out its duties and functions pursuant to this Agreement and there being no unremedied default such that the Body Corporate can terminate it;*

the Body Corporate will grant to the Letting Agent a renewal of this Agreement for a further term of five years on the following condition:

- (i) *the terms and conditions will be the same as the terms and conditions of this Agreement except for the deletion of this clause 3.3.*

4 Ratification

- 4.1 The parties otherwise ratify and confirm the terms and conditions of the Agreements (as varied by this Deed).

5 Further Assurance

- 5.1 Each of the parties hereto shall procure every person as required to sign and execute all such further documents and otherwise do all such acts, matters and things as shall be necessary or desirable to give full force and effect to the provisions in this Deed.
- 5.2 Without limiting the generality of the preceding clause, the Body Corporate hereby agrees that, in the event any term or provision of this Deed requires the repeal, enactment or amendment of any By-law to make such a term or provision valid, the Body Corporate shall do all such acts and matters and things as shall be reasonably necessary to ensure such By-law is so repealed, enacted or amended.

6 Governing Law

- 6.1 This Deed shall be governed by and construed in accordance with the law of Queensland and each of the parties hereby submits to the non-exclusive jurisdiction of the Queensland courts notwithstanding the domicile or residence of any part or the occurrence of any act, matter or thing outside of Queensland.

7 Warranty of Authority

- 7.1 Each party signing this Deed:

- (a) as an attorney for any party warrants to the other parties that, at the date of execution, he or she has not received any notice of the revocation of the power of attorney; and
- (b) as an authorised officer, agent or trustee of any party warrants to the other parties that, at the date of execution, he or she has full authority to execute this Deed in that capacity.

8 Costs

- 8.1 The Manager will pay the Body Corporate's reasonable costs of and incidental to the preparation, approval and execution of this Deed, as well as any stamp duty.

9 Authority to Date and Complete

- 9.1 Each party hereby authorises the other and their respective solicitors to:
- (a) date or complete any blank spaces in this Deed; and
 - (b) complete and sign any documents or paper writing as is necessary to stamp or register this Deed (as required).

Executed as a Deed