

**DEED OF VARIATION
THIS CTS 37983**

BETWEEN

BODY CORPORATE FOR THIS CTS 37983

AND

GNW ENTERPRISES PTY LTD ACN 128 186 934



Deed of Variation

This CTS 37983

THIS DEED is made the _____ day of _____ 2018

BETWEEN: BODY CORPORATE FOR THIS CTS 37983 (Body Corporate)

AND: GNW ENTERPRISES PTY LTD ACN 128 186 934 (Manager)

RECITALS:

- A. The Manager has been appointed by the Body Corporate to act as caretaker and letting agent for the Scheme pursuant to the Agreement.
- B. The Body Corporate and the Manager have agreed to vary the Agreement as set out in this Deed.

OPERATIVE PART:

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Deed these terms have the following meanings unless the context otherwise requires:

Agreement means a certain Caretaker's Agreement dated 20 February 2008 between the Body Corporate and the Manager whereby the Body Corporate appointed the Manager as caretaker and letting agent of the Scheme for a term of 25 years commencing on 20 February 2008 and ending on 19 February 2033, including all extensions, renewals, assignments and variations to the Caretaker's Agreement;

Deed means this deed, including any schedule or attachment; and

Scheme means This CTS 37983.

1.2 Interpretation

In the interpretation of this Deed unless the context otherwise requires:

- (a) variations made to the Agreement which include terms not defined in that agreement shall incorporate the meaning of those terms as defined in this Deed;
- (b) words importing any gender will include all other genders;
- (c) words importing persons will include all bodies, associations, trusts partnerships, instrumentalities and entities corporate or otherwise and vice versa;
- (d) 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;
- (e) any obligation on the part of or for the benefit of two or more persons will be deemed to bind or benefit as the case may be, any one or more of them jointly and each of them severally;
- (f) words importing the singular will include the plural and vice versa;
- (g) headings are included for convenience only and will not affect the interpretation of this Deed or any annexure;
- (h) in interpreting this Deed, 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 it; and
- (i) 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.

2. VARIATION OF AGREEMENT

2.1 Variations to Caretaker Agreement

The Body Corporate and the Manager agree to vary the Agreement as follows:

- (a) by including the following clause 2A.3:

‘2A.3 The Service Contractor shall have the option of extending this Agreement for a further term of 2 years commencing on 20 February 2042 and expiring on 19 February 2044 upon the same terms and conditions with the exception of

this clause 2A.3 which shall be deleted. Such option can only be exercised by the Service Contractor giving notice in writing to the Body Corporate at least 3 months before, but not more than 6 months before, the expiry of the Option term granted in clause 2A.2 and further provided that at the time of giving the notice and at the expiry of the Option term granted in clause 2A.2 the Service Contractor is not in breach of this Agreement entitling the Body Corporate to terminate this Agreement.’

(b) by including the following clause 16.2:

‘16.2 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 Service Contractor has obtained finance on the security of the Agreement;

(ii) **Receivership:** where the Financier is acting in place of the Service Contractor or the Financier has appointed a receiver or receiver and manager for the Agreement; and

(ii) **Specific Termination Provisions:** clauses 16(a), (b), (c) and (f) in the Agreement.

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

(i) terminate the Agreement under the Specific Termination Provisions; and

(ii) refuse the exercise of an option because of a default under the Specific Termination Provisions.’

3. BODY CORPORATE WARRANTY

The Body Corporate warrants that it has resolved to vary the Agreement in accordance with this Deed and to enter into this Deed by the passing of a secret ballot, without the use of proxies and in compliance in all respects with the requirements of the *Body Corporate and Community Management Act 1997* and the applicable Regulation Module at a general meeting called by notice which included an appropriately completed BCCM Form 20.

4. COVENANT BY THE BODY CORPORATE AND THE MANAGER

The Body Corporate and the Manager:

- (a) ratify and confirm all of the terms and conditions of the Agreement as varied by this Deed; and
- (b) agree to be bound by the terms and conditions of the Agreement as varied.

5. COSTS

The Manager shall pay its own costs and those of the Body Corporate (including its legal costs on a full indemnity basis) regarding the negotiation, preparation and execution of this Deed, together with the cost of a returning officer retained by the Body Corporate. The Manager will pay all duty on this Deed and in respect to the transaction to which it relates.

6. FURTHER ASSURANCE

Each of the parties will and will procure every other person as required to sign and execute all such further documents and otherwise do all such things as may be necessary or desirable to give full force and effect to this Deed.

7. WARRANTY OF AUTHORITY

Each person signing this Deed:

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

8. SEVERANCE

In the event that any part of this Deed be acknowledged by the parties, or be adjudged by a Court or be held or rendered by any competent Government authority to be invalid, illegal

or unenforceable, such part will be severed from the remainder of this Deed and will be deemed never to have been part of it and the remainder of it will subsist and remain in full force and effect unless the basic purposes of it would be defeated.

9. AUTHORITY TO COMPLETE ERRORS IN DEED

The Body Corporate authorise and direct the Manager to insert dates or correct errors in the Deed and update it to reflect information that is current as at the date the Deed is executed, provided however that the Deed substantially reflects the form of the Deed approved by the Body Corporate advisers.

10. COUNTERPART CONDITION

This Deed may be executed in any number of counterparts and by different persons on separate counterparts. All such counterparts shall together constitute the one Deed.

EXECUTION

Executed as a Deed.

Body Corporate

THE SEAL OF BODY CORPORATE)
FOR THIS CTS 37983 is attached on the)
_____ day of _____ 2018 in)
accordance with s190 of the *Body Corporate*)
and Community Management)
(Accommodation Module) Regulation 2008 in)
the presence of:)

Affix Body Corporate Seal here

*Chairperson/Secretary

Committee Member

(Print full name of Chairperson/Secretary)

(Print full name of Committee Member)

** The Body Corporate seal must be attached in the presence of at least 2 committee members, one of whom must be the chairperson or secretary and the committee members must sign as witnesses to the sealing of the document*

Manager

EXECUTED by **GNW ENTERPRISES**)
PTY LTD ACN 128 186 934 in accordance)
with Section 127 of the *Corporations Act*)
(Cth) 2001)

Director/Secretary

Director

(Print full name of Office Holder)

(Print full name of Office Holder)