

BODY CORPORATE FOR NOTTINGHAM RESIDENCES COMMUNITY TITLES  
SCHEME

("BODY CORPORATE")

("CARETAKER")

CARETAKER'S AGREEMENT



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## CARETAKER'S AGREEMENT – NOTTINGHAM RESIDENCES COMMUNITY TITLES SCHEME

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ 201 .

**BETWEEN:** The Body Corporate for Nottingham Residences Community Titles Scheme  
c/-QBS Strata Management Pty Ltd, PO Box 1079 Oxenford QLD 4210;  
("Body Corporate")

**AND:**

("Caretaker")

### INTRODUCTION:

- A The Body Corporate wishes to provide for the better administration, control and management of the Complex and the better maintenance, caretaking and repair of the Common Property.
- B The Caretaker is appointed to perform the Caretaking Duties.
- C The Parties wish to record the terms of their agreement on the following terms.

### IT IS AGREED:

#### 1. DEFINITIONS

1.1 Unless the context otherwise requires:

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

"Agreement" means this agreement and all its schedules.

"Associated Party" means:

- (a) in the case of a corporation, a director, secretary or shareholder of that corporation;
- (b) in the case of an individual, a corporation in which the individual is a director, secretary, or shareholder; and
- (c) in the case of a partnership, the partners and management staff of the partnership.

"Body Corporate" means the Body Corporate for the Scheme

"Body Corporate Assets" means the Body Corporate assets for the Scheme.

"Building" means any of the buildings located on the Scheme Land.

"Caretaker's Lot" means the Lot in the Scheme of which the Caretaker or an Associated Party is the registered owner.

"Caretaking Duties" means those duties that the Caretaker must perform under this Agreement;

"Commencement Date" means the            day of            20    and ending 25  
years later on the            day of            20

"The Committee" means the Committee of the Body Corporate.

"Common Property" means the Common Property of the Scheme.

"Complex" means the Lots and Common Property comprised in the Scheme.

"CPI" means the Consumer Price Index All Groups for Brisbane published by the Australian Bureau of Statistics, or if that is suspended or discontinued, then a similar figure reasonably determined by the Body Corporate.

"Letting Agent" means the Letting Agent appointed by the Body Corporate for the Scheme.

"Letting Agreement" means a letting agreement entered into by the Body Corporate with the Letting Agent.

"Lots" means lots in the Scheme.

"Maximum Expenditure" means \$1,000.00.

"Nominee" means the person nominated by the Body Corporate.

"Occupation Authority Plan" means the plan attached as Annexure "A".

"Owners" means the owners of Lots included in the Scheme and includes mortgagees in possession.

"Plan" means the Survey Plan registered for the Scheme.

"Property" means all land comprised in the Scheme and all improvements erected on the land. Where the context permits the definition extends to all adjoining land over which the Body Corporate has easement rights.

"Related Agreement" means any agreement entered into by the Letting Agent with the Body Corporate for the provision of letting or other services.

"Related Person" means a person or persons who are the directors or shareholders of the Caretaker who in the reasonable opinion of the Body Corporate hold effective control of the Letting Agent.

"Remuneration" means the sum of \$1,000.00 for each Lot in the Scheme for which a title has been created for the first year of the term and subject thereafter to any adjustments made in accordance with Clause 4.1 of this Agreement.

"Scheme" means Nottingham Residences Community Titles Scheme .

"Scheme Land" means the Scheme land identified on the Plan.

"Term" means a period of twenty-five (25) years from the Commencement Date.

## **INTERPRETATION**

### **2.1 Reference to:**

- (a) One gender includes the other genders.
- (b) Singular includes the plural and the plural includes the singular.
- (c) A person includes a body corporate.
- (d) A party includes the parties' executors, administrators, successors and permitted assigns.
- (e) A statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
  - (i) That Statutory Provision as amended or re-enacted from time to time; and
  - (ii) A statute, regulation or provision enacted in replacement of the Statutory Provision.
- (f) All monetary amounts are in Australian dollars, unless otherwise stated.
- (g) If a party consists of more than one person then this Agreement binds them jointly and each of them separately.
- (h) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (i) A party that is a trustee is bound both personally and in its capacity as a trustee.
- (j) "Including" and similar expressions are not words of limitation.
- (k) 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.
- (l) If an act must be done, or the last day upon which it may be done, falls on a specified day that is not a Business Day, the act must be done instead on the next Business Day.

## **3. APPOINTMENT AND TERM**

3.1 The Body Corporate appoints the Caretaker for the Term to look after the Common Property from the Commencement Date being the                    day of                    201                    and ending 25 years later on the                    day of                    20                    .

### **3.2 The Caretaker**

- (a) accepts the appointment;
- (b) will look after the Common Property as required by this Agreement;
- (c) will ensure that the Common Property is able to be used by the persons entitled and is properly maintained and kept in good repair;
- (d) will perform the Caretaking Duties; and
- (e) is an independent contractor of the Body Corporate.

## **4. REMUNERATION**

4.1 The Remuneration will be increased for the second and subsequent years of the Term by the same percentage as the last percentage increase in the CPI for one

year as last recorded by the Australian Bureau of Statistics immediately before the year in which the Remuneration is to be reviewed.

- 4.2 Despite the previous clause the Remuneration for any year will never be less than the Remuneration for the previous year.
- 4.3 The Body Corporate must pay the Remuneration to the Caretaker by equal monthly instalments in arrears, the first payment one calendar month from the Commencement Date and monthly after that.
- 4.4 If the Caretaking Duties under this Agreement are a supply under the A New Tax System (Goods and Services Tax) Act 1999, the Body Corporate must pay to the Caretaker in addition to the Remuneration a further amount equal to the GST.
- 4.5 The Remuneration is paid only for the Caretaking Duties and not for any letting or ancillary services which the Caretaker or any other entity provides.

## **5. CARETAKER'S DUTIES**

- 5.1 In addition to any specific duties set out in any schedule to this Agreement, the Caretaker must as reasonably required:
  - (a) hose all walkways, access areas and other parts of the Common Property that require hosing;
  - (b) keep clean, tidy and maintained all parts of the Common Property;
  - (c) maintain and clean any swimming pool, spa and/or sauna, gymnasium and workshop;
  - (d) at the commencement of each day, set out any pool and recreation furniture and equipment;
  - (e) clean any drains and gutters on Common Property;
  - (f) maintain the gardens and shrubs (if any), which duty includes watering, fertilising, weeding, mulching and top dressing; and
  - (g) effect minor repairs and maintenance to the Common Property where the services of a skilled tradesman are not required.
- 5.2 The Caretaker must arrange and supervise contracts between the Body Corporate and independent contractors for all work of a specialist nature required for any of those things referred to in the previous clause or for any services to, or work to be carried out to, the Common Property including without limitation:
  - (a) specialist repairs and maintenance of the Common Property;
  - (b) cleaning of external windows or parts of the Complex not easily accessible by the Caretaker; and
  - (c) the provision of water, electricity, gas, fuel, telephone and other necessary services as required by the Body Corporate.

Such contracts with independent contractors will only be entered into with the prior consent of the Body Corporate, but the Body Corporate must not unreasonably withhold such consent.

- 5.3 The Caretaker must:

- (a) regularly ensure the correct operation and, if necessary, arrange for expert specialist maintenance of:
  - (i) any waste disposal system;
  - (ii) all Common Property electrical apparatus;
  - (iii) any pumps and auxiliary motors;
  - (iv) any lifts and security systems; and
  - (v) all other parts of the Common Property where inspection and/or maintenance is required;
- (b) arrange all appliances, equipment, materials and supplies necessary to carry out the Caretaking Duties and to generally maintain the Common Property;
- (c) promptly report and account to the Body Corporate for:
  - (i) matters requiring repair or creating a hazard or danger that involves expenditure of money in excess of the Maximum Expenditure;
  - (ii) use by the Caretaker of any Body Corporate funds; and
  - (iii) use by the Caretaker of any other property of the Body Corporate in carrying out the Caretaking Duties;
- (d) monitor compliance with the by-laws of the Body Corporate and advise the Body Corporate of any serious or persistent breaches of them;
- (e) monitor and administer the use of any recreational areas including without limitation any swimming pool, sauna, spa, home heater, gymnasium and workshop;
- (f) advise the Body Corporate of compliance or non-compliance with any relevant laws concerning the maintenance and operation of the Common Property;
- (g) notify the Body Corporate of any alteration of the fire safety requirements;
- (h) keep order and safeguard the Complex against unlawful entry and arrange security contracts at the expense of the relevant Body Corporate as required by the Body Corporate;
- (i) regularly inspect the fire fighting equipment, arrange any requisite inspections by the relevant officer when required and, at the expense of the Body Corporate as relevant, arrange for maintenance necessary to maintain the fire fighting equipment in an efficient working condition;
- (j) maintain and keep open an office as a reception for the caretaking business during such hours as the Caretaker reasonably considers necessary;
- (k) maintain and supervise carparking arrangements on the appropriate areas on the Common Property;
- (l) keep possession of all keys for any Common Property and keys of any owners who provide them to the Caretaker;

- (m) keep the lighting of Common Property operating efficiently; and
  - (n) carry out such other reasonable and appropriate tasks requested by the Body Corporate relevant to the caretaking of the Common Property.
  - (o) reside, or if the Caretaker is a corporation, ensure that the person carrying out the Caretaking Duties, resides in the Caretakers Lot.
- 5.4 The Caretaking Duties may be carried out by the Caretaker, its delegates or its employees.
- 5.5 The Caretaking Duties that require work of a specialist nature are limited to the arranging and supervision of all external contracts or agreements.
- 5.6 Despite any other term of this Agreement or any Community Management Statement, the Caretaker is not required to undertake any duties in relation to the exclusive use areas of any Lot and each Lot owner is responsible for maintaining their exclusive use areas, save that any car parking areas shall be kept clean by the Caretaker where not kept clean by the Lot Owner or occupier.

## **6. CARETAKER'S CONDUCT**

- 6.1 The Caretaker must:
- (a) have a good working knowledge and understanding of the Act, relevant to the Caretaking Duties;
  - (b) act honestly, fairly and professionally in performing the Caretaking Duties;
  - (c) exercise reasonable skill, care and diligence in performing the Caretaking Duties;
  - (d) act in the best interests of the Body Corporate unless it is unlawful to do so;
  - (e) keep the Body Corporate informed of any significant development or issue about an activity performed for the Body Corporate;
  - (f) take reasonable steps to ensure an employee of the Caretaker complies with the Act, in performing the Caretaking Duties;
  - (g) not engage in fraudulent or misleading conduct in performing the Caretaking Duties;
  - (h) not engage in unconscionable conduct in performing the person's functions under the person's engagement;
  - (i) not accept an engagement for another community titles scheme if doing so will place the person's duty or interests for the first scheme in conflict with the person's duty or interests for the other scheme; and
  - (j) take reasonable steps to ensure goods and services the person obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.
- 6.2 If a Body Corporate or its committee requests, in writing, the Caretaker to show that the Caretaker has kept the Body Corporate records as required under this Agreement in relation to the Caretaking Duties, the Caretaker must comply with the request within the reasonable period stated in the request.

## **7. EXPENSES**

- 7.1 All of the Caretaking Duties must be carried out at the cost and expense of the Caretaker unless this Agreement provides that they are to be carried out at the expense of the Body Corporate.
- 7.2 The Body Corporate must pay all costs and expenses for:
- (a) all work of a specialist nature;
  - (b) all other contracts or agreements with independent contractors;
  - (c) all fuels, appliances, materials, equipment and supplies necessary to enable the Caretaker to perform the Caretaking Duties; and
  - (d) all out-of-pocket costs for repair and maintenance of the Common Property.
- 7.3 The Caretaker can spend up to the Maximum Expenditure for each individual item of expenditure from monies of the Body Corporate in carrying out the Caretaking Duties.
- 7.4 The Body Corporate must reimburse the Caretaker for any of the Caretaker's monies spent under the previous clause within 14 days of the Caretaker providing written evidence of the expenditure.

## **8. INSTRUCTIONS**

- 8.1 The Body Corporate must:
- (a) nominate one person to communicate with the Caretaker on its behalf; and
  - (b) notify the Caretaker in writing of the appointment of that Nominee or its replacement.
- 8.2 The Caretaker must:
- (a) confer with the Nominee concerning the Caretaking Duties; and
  - (b) attend any general meeting or Committee meeting of the Body Corporate if requested and given reasonable notice by the Nominee.

## **9. ASSIGNMENT**

- 9.1 The Caretaker must not assign its interest in this Agreement unless it obtains the Body Corporate's consent.
- 9.2 The Body Corporate must:
- (a) not unreasonably, arbitrarily or capriciously refuse or delay giving its consent to any proposed assignment; and
  - (b) give its consent or refusal to any proposed assignment within 30 days of the Caretaker giving to it the information reasonably necessary for the Body Corporate to properly consider the proposed assignment.
- 9.3 Before giving its consent to any proposed assignment, the Body Corporate will be entitled to require:

- (a) satisfactory evidence that the proposed assignee and any Associates are financially sound and reputable, responsible, respectable and capable of satisfactorily performing the Caretaking Duties; and
  - (b) two business references, two personal references and a bank reference of the proposed assignee and any Associates.
- 9.4 As a condition of giving its consent to any assignment, the Body Corporate will be entitled to require:
- (a) that the proposed assignee execute in favour of the Body Corporate a Agreement of Covenant to comply with the terms of this Agreement;
  - (b) that the Caretaker pay to the Body Corporate all legal costs incurred by it in giving its consent;
  - (c) if the proposed assignee is a company, other than a public company, personal guarantees from the working directors and principal shareholders; and
  - (d) that the assignee, or if it is a company, it or its Controller becomes the registered owner of the Caretaker's Lots and is also the assignee of rights to act as caretaker in respect of the Scheme.
- 9.5 The Body Corporate must not require or receive any premium, payment or benefit for any request to consent or consent given under this clause, except as provided in this clause.

## **10. TERMINATION**

- 10.1 Each of the following events constitute a default by the Caretaker:
- (a) the Caretaker breaches an obligation under this Agreement and in the Body Corporate's reasonable opinion:
    - (i) the non-observance can be remedied but the Caretaker does not remedy it within 14 days after receiving written notice from the Body Corporate requiring rectification;
    - (ii) the non-observance is substantial and can not be remedied or compensated for; or
    - (iii) the non-observance cannot be remedied but the Body Corporate can be compensated and the Caretaker does not pay the Body Corporate compensation for the breach within 30 days after the Body Corporate gives it a notice to pay;
  - (b) the Caretaker becomes insolvent or is subject to a form of external administration under the Corporations Law or is subject to a sequestration order.
  - (c) it persistently and repeatedly breaches this Agreement (which shall mean at least 5 material breaches in any one year of the Term) despite the fact that individual breaches may from time to time be remedied;
  - (d) it engages in misconduct or is grossly negligent in carrying out or failing to carry out obligations under this agreement;

- (e) if the Caretaker is an individual and it is convicted upon indictment of any criminal charge;
  - (f) if the Caretaker sells or transfers its interest in the Manager's Unit without at the same time selling or assigning its interest in this Agreement as required by this Agreement;
  - (g) a Related Agreement is terminated;
- 10.2 If the Caretaker makes default at any time the Body Corporate may at its election by notice in writing at any time terminate this Agreement. Termination of this Agreement is without prejudice of the rights of the Body Corporate in respect of the default by the Caretaker.
- 10.3 If the Body Corporate fails to perform or observe any of its obligations and duties under this Agreement within 60 days after written notice from the Caretaker specifying the failure and requiring its rectification, the Caretaker may by written notice terminate this Agreement.
- 10.4 If a financier of the Caretaker acts in place of the Caretaker or a Controller as defined in the Corporations Act 2001 is appointed by that financier to the Caretaker in respect of this Agreement, the Body Corporate agrees with the Caretaker that:
- (i) the Body Corporate's rights to terminate this Agreement are limited to those set out in the Act and the Regulation Module (for example section 145 of the Act and sections 128 and 129 of the Accommodation Module) subject to the Body Corporate complying with section 126(1) of the Act; and
  - (ii) the Body Corporate cannot rely upon an event of default in clause 10 of this Agreement to refuse its consent to a transfer or assignment of this Agreement by the financier or Controller (as the case may be), or to terminate this Agreement once a transfer or assignment by the financier or Controller (as the case may be) has taken effect,
- provided that nothing in this clause prevents the Body Corporate terminating this Agreement in accordance with the Act or the Regulation Module.

## **11. CARETAKER'S LOTS**

- 11.1 The Caretaker must, or if it is a company it or its Controller must own or otherwise have the right to occupy the Caretaker's Lot.
- 11.2 If, under Clause 11.1, the registered owner of the Caretaker's Lots is some person or persons other than the Caretaker, the Caretaker must if requested by the Body Corporate procure such person or persons to enter into a Deed of Covenant with the Body Corporate (to be prepared by the Body Corporate at the expense of the Caretaker) to be bound by the terms of this Agreement as far as they relate to the Caretaker's Lot.
- 11.3 If the Body Corporate gives its consent under this Agreement to an assignment of the Caretaker's interest in this Agreement, the Caretaker or the owner of the Caretaker's Lot will be required to sell the Caretaker's Lot so that upon such assignment and sale, there will be compliance with this clause.
- 11.4 Upon the expiry or sooner termination of this Agreement, the Caretaker will cause the sale of the Caretaker's Lot to the party to whom the Body Corporate enters into an agreement on terms similar to those contained in this Agreement.

11.5 The purchase price of the Caretaker's Lot under this clause will be as agreed, or failing agreement as determined by a registered valuer nominated by the President of the Australian Institute of Valuers and Land Economists (Queensland Chapter). The valuer's costs will be paid by the Body Corporate except in the case of termination of this Agreement as a result of a breach by the Caretaker, in which case the valuer's costs will be paid by the Caretaker.

11.6 The terms and conditions of a sale referred to under this clause will be those contained in the standard REIQ Contract applicable to the sale of community title lots current at the time of such sale, and will provide for a 5% deposit and completion 30 days after the date of the Contract.

## **12. LETTING BUSINESS**

12.1 If the Caretaker or an Associated Party has entered into a Letting Agreement with the Body Corporate contemporaneously with entering into this Agreement, the parties acknowledge and agree that:

- (a) a default under the Letting Agreement will constitute a default under this Agreement, and vice versa;
- (b) upon the expiration or termination of the Letting Agreement, this Agreement will expire or terminate on the same date; and
- (c) the Body Corporate need not give its consent to an assignment of this Agreement unless the Caretaker assigns to the proposed assignee at the same time its interest in the Letting Agreement.

## **13. DELIBERATELY OMITTED**

## **14. OCCUPATION AUTHORITY**

14.1 The Body Corporate grants the Caretaker the exclusive right to use and occupy the area identified on the Occupation Authority Plan to assist the Caretaker in performing its duties under this Agreement.

## **15. COMPLIANCE**

15.1 The Parties agree to comply with the provisions of all statutes regulating or related to this Agreement.

## **16. FURTHER ASSURANCES**

16.1 Each party must promptly or at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

## **17. SEVERABILITY**

17.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

## **18. ENTIRE UNDERSTANDING**

18.1 This Agreement:

- (a) contains the entire Agreement and understanding between the Parties on everything connected with the subject matter of this Agreement;

- (b) supersedes any prior agreement or understanding or anything connected with that subject matter.

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

## **19. VARIATION**

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

## **20. WAIVER**

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

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

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

20.4 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.

## **21. COSTS AND DISBURSEMENTS**

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

21.2 The Caretaker shall pay all duties associated with this Agreement.

## **22. NOTICES**

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

- (a) delivered by hand at the address of the addressee set out in this Agreement or subsequently notified;
- (b) sent by post, postage pre-paid, to that address; or
- (c) sent by facsimile to the facsimile number of the addressee.

22.2 A Notice is deemed given and received:

- (a) if delivered, upon delivery;
- (b) if sent by post on the second Business Day (to the address to which it is posted) after posting; or
- (c) if sent by facsimile before 5.00pm on a Business Day at the place of receipt on the day it is sent or otherwise on the next Business Day at the place of receipt.

22.3 Despite the previous clause, 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 relevant facsimile has been sent.

## **23. GOVERNING LAW AND JURISDICTION**

- 23.1 The law of Queensland governs this Agreement.
- 23.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and consent to all claims and disputes in relation to this Agreement being instituted in the central Brisbane jurisdiction.

**24. CARETAKER'S LEAVE**

- 24.1 The Caretaker shall have the right to appoint a suitable person to carry out the Caretaker's functions and duties pursuant to this Agreement in the event of an emergency arising or annually for a period or periods totalling four (4) weeks for the purposes of allowing the Caretaker a holiday for that period each year.
- 24.2 On each occasion details of the proposed replacement shall be provided to the Body Corporate at least one (1) calendar month prior to the commencement of the Caretaker's proposed holiday, and the Body Corporate shall as soon as reasonably practicable by notice to the Caretaker advise of the Body Corporate's approval or otherwise of the proposed replacement provided that such details need only be provided twenty-four (24) hours prior to any proposed holiday for urgent family, business or personal reasons.
- 24.3 The Body Corporate shall not unreasonably withhold its consent to the Caretaker's replacement.
- 24.4 It shall be a matter for the Caretaker to ensure the replacement adequately performs the Caretaker's Duties and obligations under this Agreement, and any breach of this Agreement by the replacement shall be deemed a breach by the Caretaker.
- 24.5 Any remuneration payable to the Caretaker's replacement shall be the responsibility of the Caretaker.

## SCHEDULES OF CARETAKERS SPECIFIC DUTIES

### 1. Cleaning Duties – Specific

To maintain in a clean and tidy condition, using normal commercial practices, those areas of Common Property and elsewhere as nominated, defined at the frequency indicated.

TASK	ITEM	DETAILS	FREQUENCY
1.	Carpark Area	Sweep or hose dirt and rubbish.	Weekly and/or as required
		Replace blown light bulbs	Weekly and/or as required
2.	Pool Area (including wading and plunge pool)	Clean pool surrounds and keep ordered.	Daily and/or as required
3.	Communal recreation (BBQ, sauna and store/plant room)	Clean and remove rubbish and maintain consumable supplies.	Daily and/or as required
4.	Toilets	Clean, remove rubbish and maintain consumable supplies	Twice Daily and/or as required
5.	Common hallways, foyers, lifts	Vacuum carpets, dust rails, window frames, stairs and entries sills, skirting etc, clean lift indicator panels, clean tiled areas, garbage chute rooms, bin areas, clean windows and glass doors	Weekly as required. Inspect daily.
		Sweep and clean fire stairs, carpark, remove cobwebs.	Quarterly and/or as required
6.	Footpath at entrance	Sweep and clean, remove rubbish	Daily and/or as required

### 2. Gardening Duties – specific

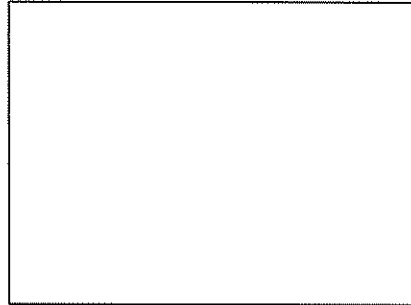
To maintain all common area gardens and facilities to a satisfactory commercial standard at the frequency indicated.

TASK	ITEMS	DETAILS	FREQUENCY
1.	Gardens	Ensure any watering system maintained in good working order and make necessary adjustments to timer to comply with rostered watering days.	Weekly and/or as required
		Remove all weeds	Weekly and/or as required
		Trim or prune plants, replace as necessary	Weekly and/or as required

		Fertilise	Quarterly and/or as required
2.	Lawns	Mow	Weekly and/or as required

Executed as an Agreement the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

The Common Seal of Nottingham ]  
Residences Community Titles Scheme ]  
was affixed this \_\_\_\_\_ day of \_\_\_\_\_ ]  
20 \_\_\_\_\_ in the presence of: ]



A witness

Full name of witness

Chairman

Signed Sealed and delivered by \_\_\_\_\_ ]  
\_\_\_\_\_ ]  
as Caretaker \_\_\_\_\_ ]  
the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ ]  
in the presence of \_\_\_\_\_ ]



A witness

Full name of witness

**ANNEXURE A**  
**OCCUPATION AUTHORITY PLAN**

**SCHEDULE 9**  
**LETTING CONTRACT**

BODY CORPORATE FOR THE NOTTINGHAM RESIDENCES COMMUNITY TITLES  
SCHEME

("BODY CORPORATE")

AND

("LETTING AGENT")

## LETTING AGENTS AGREEMENT



Level 7  
79 Adelaide Street  
Brisbane QLD 4000  
GPO Box 2495  
Brisbane QLD 4001  
Ph: (07) 3002 7444  
Fax: (07) 3002 7474  
E Mail: [info@warlowscott.com.au](mailto:info@warlowscott.com.au)  
Web: <http://www.warlowscott.com.au>  
#####



"Caretaker" means the caretaker under the Caretakers Agreement.

"Caretaker's Agreement" means the agreement entered into with the Body Corporate with the Caretaker.

"Commencement Date" means the            day of            20    and ending 25  
years later on the            day of            20    .

"The Committee" means the Committee of the Body Corporate.

"Common Property" means the Common Property of the Scheme.

"Complex" means the Lots and Common Property comprised in the Scheme.

"Letting Agent" means the Letting Agent appointed by the Body Corporate for the Scheme.

"Letting Agent Business" means:

- (a) the letting of Lots for residential tenancies;
- (b) the sale of Lots;
- (c) the hiring of equipment or items the Letting Agent considers desirable and that are not contrary to the interests of the Body Corporate and Owners and the hiring or renting of storage space (if any) comprising any part of the Letting Agent's Lot;
- (d) the provision of any other ancillary services or goods commonly provided in connection with the letting of lots in a complex of the nature of the Property and/or which the Letting Agent wishes to provide.

"Letting Agent's Lot" means that Lot in the Scheme of which the Caretaker or Associated Party is the registered proprietor.

"Letting Services" means the services, duties and obligations of the Letting Agent under this Agreement.

"Lots" means lots in the Scheme.

"Nominee" means the person nominated by the Body Corporate.

"Owners" means the owners of Lots included in the Scheme and includes mortgagees in possession.

"Plan" means the Survey Plan registered for the Scheme.

"Property" means all land comprised in the Scheme and all improvements erected on the land. Where the context permits the definition extends to all adjoining land over which the Body Corporate has easement rights.

"Regulation Module" means the regulation module applying to the Scheme.

"Related Agreement" means any agreement entered into by the Letting Agent with the Body Corporate for the provision of caretaking or other services.

"Related Person" means a person or persons who are the directors or shareholders of the Letting Agent who in the reasonable opinion of the Body Corporate hold effective control of the Letting Agent.

"Representative of the Letting Agent" means:

- (a) where the Letting Agent is a corporation, its officers, managers, employees or agents; and
- (b) where the Letting Agent is an individual, his employees or agents.

"Scheme" means the Nottingham Residences Community Titles Scheme .

"Scheme Land" means the Scheme land identified on the Plan.

"Term" means a period of twenty-five (25) years from the Commencement Date.

## **2. INTERPRETATION**

### **2.1 Reference to:**

- (a) One gender includes the other genders.
- (b) Singular includes the plural and the plural includes the singular.
- (c) A person includes a body corporate.
- (d) A party includes the parties' executors, administrators, successors and permitted assigns.
- (e) A statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
  - (i) that Statutory Provision as amended or re-enacted from time to time; and
  - (ii) a statute, regulation or provision enacted in replacement of the Statutory Provision.
- (f) All monetary amounts are in Australian dollars, unless otherwise stated.
- (g) If a party consists of more than one person then this Agreement binds them jointly and each of them separately.
- (h) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (i) A party which is a trustee is bound both personally and in its capacity as a trustee.
- (j) "Including" and similar expressions are not words of limitation.
- (k) 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.
- (l) If an act must be done, or the last day upon which it may be done, falls on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

### **3. APPOINTMENT AND TERM**

- 3.1 The Body Corporate appoints the Letting Agent for the Term to conduct the Letting Services from the Commencement Date being the            day of            20   and ending 25 years later on the            day of            20   .

### **4. LETTING AGENT BUSINESS**

- 4.1 The Body Corporate authorises the Letting Agent to conduct a Letting Agent Business for the Scheme during the Term.

### **5. ACKNOWLEDGEMENT**

- 5.1 The Letting Agent acknowledges that Owners are free to choose whether or not they use the services of the Letting Agent or instead, use the services of some other person.
- 5.2 The Body Corporate and the Letting Agent acknowledge and agree that:
- (a) no remuneration is payable by the Body Corporate under this Agreement or is attributable or apportionable for the conducting of the Letting Agent Business or providing the Letting Services.
  - (b) the Letting Agent is entitled to receive commission and/or fees for providing the Letting Agent Business or the Letting Services from such of the Owners in the Scheme. Any commission and/or fees received by the Letting Agent will be at the rate agreed between the Letting Agent and the consumer of those Letting Services.
  - (c) The Body Corporate will not authorise the conduct of the Letting Services from any Lot in the Scheme other than the Letting Agent's Lot during the Term.
  - (d) The Owner of a Lot may at its discretion engage persons other than the Letting Agent for the provision of Letting Services.
  - (e) The Body Corporate makes no representation that Owners will appoint the Letting Agent as Letting Agent or use the Letting Agent to provide Letting Services.
- 5.3 The Body Corporate consents to the Letting Agent registering and using a business name incorporating the name of the Scheme (excluding "Community Titles Scheme") or any part of it for the Term.

### **6. LETTING AGENT'S OBLIGATIONS**

- 6.1 The Letting Services may be carried out by the Letting Agent or the Representative of the Letting Agent.
- 6.2 The Letting Agent must conduct the Letting Agent Business and will provide the Letting Services from the Letting Agent's Lot or from any other part of the Property designated for use by the Letting Agent for that purpose.
- 6.3 The Letting Agent must:

- (a) offer Letting Services for the Owners who require that service;
- (b) conduct the Letting Services in a competitive manner to the standard reasonably expected of a development of this type;
- (c) use reasonable endeavours to improve and expand the letting of Lots and to act at all times to further the interests of the Body Corporate and the Owners;
- (d) obtain and comply with all necessary permits, consents or licenses required to provide the Letting Services;
- (e) maintain and staff a reception area from or adjacent to the Letting Agent's Lot during such hours as are reasonably necessary for the proper conduct of the Letting Services;
- (f) treat all Owners fairly;
- (g) not discriminate between Owners in the Scheme when letting Lots;
- (h) not give or take any secret commission;
- (i) keep proper records of all lettings and account to the Owners regularly regarding lettings and expenditure incurred in conjunction with those lettings;
- (j) accept the right of Owners to use other Letting Services and must not harass Owners in any way to obtain listings for the Letting Services;
- (k) only let a Lot for those purposes permitted by the by laws for the scheme;
- (l) supervise the standard of tenants of all lettings arranged by it and ensure so far as practicable that no nuisance is created on the Scheme Land and that the Building and Lots in the Scheme are not brought into disrepute;
- (m) reside, or if the Letting Agent is a corporation, ensure that the person operating the Letting Agent Business, resides in the Letting Agent's Lot; and
- (n) keep the Letting Agent's Lot clean and tidy and ensure that the Letting Agent Business is open and staffed at all times during normal office hours.

6.4 If an Owner engages another person to provide services to the Owner's lot, to assist that person provide those services (including making the lot available for inspection) without demanding any payment or compensation for that assistance.

## **7. LETTING AGENTS CONDUCT**

7.1 The Letting Agent must:

- (a) act honestly, fairly and professionally in conducting the Letting Agent Business;
- (b) exercise reasonable skill, care and diligence in conducting the Letting Agent Business;
- (c) as far as practicable, act in the best interests of the Body Corporate and individual lot owners, unless it is unlawful to do so;

- (d) take reasonable steps to ensure an employee of the Letting Agent complies with the Act, in conducting the Letting Agent Business;
- (e) not engage in fraudulent or misleading conduct in conduct in the Letting Agent Business;
- (f) not engage in unconscionable conduct in conducting the Letting Agent Business under the Letting Agent's authorisation;
- (g) not:
  - (i) cause a nuisance or hazard on Scheme Land; or
  - (ii) interfere unreasonably with the use or enjoyment of a Lot included in the Scheme; or
  - (iii) interfere unreasonably with the use or enjoyment of the Common Property by a person who is lawfully on the Common Property; or
  - (iv) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a Lot or Common Property.
- (h) take reasonable steps to ensure goods and services the Letting Agent obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.

## **8. BODY CORPORATE'S OBLIGATIONS**

8.1 To the extent that it can lawfully so covenant, the Body Corporate will not:

- (a) itself conduct; nor
- (b) grant to any other person or entity any rights to conduct in the Complex; a business the same or similar to the Letting Business.

8.2 To the extent that it can lawfully so covenant, the Body Corporate will:

- (a) ensure that the Common Property is cleaned and maintained to the standard of a complex of the nature as the Complex; and
- (b) co-operate with the Letting Agent in taking all action reasonably and practically necessary to stop any person or entity from conducting in the Complex a business the same or similar to the Letting Business.

## **9. SIGNS**

9.1 The Letting Agent may at its own cost, erect or procure the erection of signs in or about this Scheme Land for the purpose of promoting and advertising the Letting Services. Those signs must be of a size, type and design and be placed in locations approved of in writing by the Committee.

9.2 Upon the expiry or termination of this Agreement the Letting Agent must remove any signs erected pursuant to this clause and restore the surfaces of the effected Scheme Land to its original condition.

## **10. INSTRUCTIONS**

10.1 The Body Corporate must:

- (a) nominate one person to communicate with the Letting Agent on its behalf; and
- (b) notify the Letting Agent in writing of the appointment of that Nominee or its replacement.

10.2 The Letting Agent must:

- (a) confer with the Nominee concerning the Letting Services; and
- (b) attend any general meeting or Committee meeting of the Body Corporate if requested and given reasonable notice by the Nominee.

## **11. ASSIGNMENT**

11.1 The Letting Agent must not assign its interest in this Agreement unless it obtains the Body Corporate's consent.

11.2 The Body Corporate must:

- (a) not unreasonably, arbitrarily or capriciously refuse or delay giving its consent to any proposed assignment; and
- (b) give its consent or refusal to any proposed assignment within 30 days of the Letting Agent giving to it the information reasonably necessary for the Body Corporate to properly consider the proposed assignment.

11.3 Before giving its consent to any proposed assignment, the Body Corporate will be entitled to require:

- (a) satisfactory evidence that the proposed assignee and any Associates are financially sound and reputable, responsible, respectable and capable of satisfactorily performing the Letting Services; and
- (b) two business references, two personal references and a bank reference of the proposed assignee and any Associates.

11.4 As a condition of giving its consent to any assignment, the Body Corporate will be entitled to require:

- (a) that the proposed assignee execute in favour of the Body Corporate a Deed of Covenant to comply with the terms of this Agreement;
- (b) that the Letting Agent pay to the Body Corporate all legal costs incurred by it in giving its consent;
- (c) if the proposed assignee is a company, other than a public company, personal guarantees from the working directors and principal shareholders; and

- (d) that the assignee, or if it is a company, it or the Related Person become the registered owner of the Letting Agent's Lot and is also the assignee of rights to act as Caretaker in respect of the Scheme.

11.5 The Body Corporate must not require or receive any premium, payment or benefit for any request to consent or consent given under this clause, except as provided in Clause 11.4(b).

## 12. TERMINATION

12.1 Each of the following events constitute a default by the Letting Agent:

- (a) the Letting Agent breaches an obligation under this Agreement and in the Body Corporate's reasonable opinion:
  - (i) the non observance can be remedied but the Letting Agent does not remedy it within 14 days after receiving written notice from the Body Corporate requiring rectification;
  - (ii) the non-observance is substantial and can not be remedied or compensated for; or
  - (iii) the non observance can not be remedied but the Body Corporate can be compensated and the Letting Agent does not pay the Body Corporate compensation for the breach within 30 days after the Body Corporate gives it a notice to pay.
- (b) becomes insolvent or is subject to a form of external administration under the Corporations Law or is subject to a sequestration order.
- (c) persistently and repeatedly breaches this Agreement (which shall mean at least 5 material breaches in any one year of the Term) despite the fact that individual breaches may from time to time be remedied;
- (d) engages in misconduct or is grossly negligent in carrying out or failing to carry out obligations under this agreement;
- (e) if the Letting Agent is an individual and is convicted upon indictment of any criminal charge;
- (f) if the Letting Agent sells or transfers its interest in the Letting Agent's Lot without at the same time selling or assigning its interest in this Agreement as required by this Agreement;
- (g) a Related Agreement is terminated;

12.2 If the Letting Agent makes default at any time the Body Corporate may at its selection by notice in writing at any time terminate this Agreement. Termination of this Agreement is without prejudice of the rights of the Body Corporate in respect of the default by the Letting Agent.

12.3 If the Body Corporate fails to perform or observe any of its obligations and duties under this Agreement within 60 days after written notice from the Letting Agent specifying the failure and requiring its rectification, the Letting Agent may by written notice terminate this Agreement.

12.4 If a financier of the Letting Agent acts in place of the Letting Agent or a Controller as defined in the Corporations Act 2001 is appointed by that financier to the Letting Agent in respect of this Agreement, the Body Corporate agrees with the Letting Agent that:

- (i) the Body Corporate's rights to terminate this Agreement are limited to those set out in the Act and the Regulation Module (for example section 145 of the Act and sections 128 and 129 of the Accommodation Module) subject to the Body Corporate complying with section 126(1) of the Act; and
- (ii) the Body Corporate cannot rely upon an event of default in clause 10 of this Agreement to refuse its consent to a transfer or assignment of this Agreement by the financier or Controller (as the case may be), or to terminate this Agreement once a transfer or assignment by the financier or Controller (as the case may be) has taken effect,

provided that nothing in this clause prevents the Body Corporate terminating this Agreement in accordance with the Act or the Regulation Module.;

### **13. DELIBERATELY OMITTED**

### **14. LETTING AGENT'S LOT**

- 14.1 The Letting Agent must, or if it is a company it or its Related Person must own or otherwise have the right to occupy the Letting Agent's Lot.
- 14.2 If, under the previous clause the registered owner of the Letting Agent's Lot is some person or persons other than the Letting Agent, the Letting Agent must procure such person or persons to enter into a Deed of Covenant with the Body Corporate (to be prepared by the Body Corporate at the expense of the Letting Agent) to be bound by the terms of this Agreement as far as they relate to the Letting Agent's Lot.
- 14.3 If the Body Corporate gives its consent to an assignment of the Letting Agent's interest in this Agreement, the Letting Agent or the owner of the Letting Agent's Lot will be required to transfer the Letting Agent's Lot so that upon such assignment and transfer, there will be compliance with this Agreement.
- 14.4 Upon the termination of this Agreement, the Letting Agent will cause the transfer of the Letting Agent's Lot to the party to whom the Body Corporate enters into an agreement on terms similar to those contained in this Agreement.
- 14.5 The purchase price of the Letting Agent's Lot under this clause will be as agreed, or failing agreement as determined by a registered valuer nominated by the President of the Australian Institute of Valuers and Land Economists (Queensland Chapter). The valuer's costs will be paid by the Body Corporate except in the case of termination of this Agreement as a result of a breach by the Letting Agent, in which case the valuer's cost will be paid by the Letting Agent.
- 14.6 The terms and conditions of a sale referred to in clause 14.4 will be those contained in the standard REIQ contract applicable to the sale of strata title lots current at the time of such sale, and will provide for a 5% deposit and completion 30 days after the date of the contract.

### **15. CARETAKING BUSINESS**

- 15.1 If the Letting Agent has entered into a Caretaking Agreement with the Body Corporate contemporaneously with entering into this Agreement, the parties acknowledge and agree that:

- (a) a default under either of the Caretaking Agreement will constitute a default under this Agreement and vice versa;
- (b) upon the expiration or termination of the Caretaking Agreement, this Agreement will expire or terminate on the same date; and
- (c) the Body Corporate need not give its consent to an assignment of this Agreement unless the Letting Agent assigns to the proposed assignee at the same time its interest in the Caretaking Agreements.

## **16. COMPLIANCE**

- 16.1 The Parties agree to comply with the provisions of all statutes regulating or related to this Agreement.

## **17. FURTHER ASSURANCES**

- 17.1 Each party must promptly or at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

## **18. SEVERABILITY**

- 18.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

## **19. ENTIRE UNDERSTANDING**

- 19.1 This Agreement:

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

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

## **20. VARIATION**

- 20.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

## **21. WAIVER**

- 21.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 21.2 The exercise of a power or right does not preclude either its exercise in the further or the exercise of any other power or rights.
- 21.3 A waiver is not effective unless it is in writing.
- 21.4 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.

## **22. COSTS AND DISBURSEMENTS**

- 22.1 Each party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.
- 22.2 The Letting Agent shall pay all duties associated with this Agreement.

## **23. NOTICES**

- 23.1 A notice or other communication ("Notice") connected with this Agreement has no legal effect unless it is in writing and:
- (a) delivered by hand at the address of the addressee set out in this Agreement or subsequently notified;
  - (b) sent by post, postage pre-paid, to that address; or
  - (c) sent by facsimile to the facsimile number of the addressee.
- 23.2 A Notice is deemed given and received:
- (a) if delivered, upon delivery;
  - (b) if sent by post on the second Business Day (to the address to which it is posted) after posting; or
  - (c) if sent by facsimile before 5.00pm on a Business Day at the place of receipt on the day it is sent or otherwise on the next Business Day at the place of receipt.
- 23.3 Despite the previous clause, 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 relevant facsimile has been sent.

## **24. LETTING AGENT'S LEAVE**

- 24.1 The Letting Agent shall have the right to appoint a suitable person to carry out the Letting Agent's functions and duties pursuant to this Agreement in the event of an emergency arising or annually for a period or periods totalling four (4) weeks for the purposes of allowing the Letting Agent a holiday for that period each year.
- 24.2 On each occasion details of the proposed replacement shall be provided to the Body Corporate at least one (1) calendar month prior to the commencement of the Letting Agent's proposed holiday, and the Body Corporate shall as soon as reasonably practicable by notice to the Letting Agent advise of the Body Corporate's approval or otherwise of the proposed replacement provided that such details need only be provided twenty-four (24) hours prior to any proposed holiday for urgent family, business or personal reasons.
- 24.3 The Body Corporate shall not unreasonably withhold its consent to the Letting Agent's replacement.
- 24.4 It shall be a matter for the Letting Agent's to ensure the replacement adequately performs the Letting Agent's Duties and obligations under this Agreement, and any breach of this Agreement by the replacement shall be deemed a breach by the Letting Agent's.

24.5 Any remuneration payable to the Letting Agent's replacement shall be the responsibility of the Letting Agent.

**25. GOVERNING LAW AND JURISDICTION**

25.1 The law of Queensland governs this Agreement.

25.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and consent to all claims and disputes in relation to this Agreement being instituted in the central Brisbane jurisdiction.