BODY CORPORATE FOR HANDFORD VILLAS COMMUNITY TITLES SCHEME

("BODY CORPORATE")

######

("LETTING AGENT")

LETTING AGREEMENT

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LETTING AGENT'S AGREEMENT
HANDFORD VILLAS COMMUNITY TITLES SCHEME

This Agreement is made the day of 20 .

BETWEEN: The Body Corporate for Handford Villas Community Titles Scheme c/- QBS Strata Management, Level 3/ 3 Northward, Upper Coomera in the State of Queensland

("Body Corporate")

AND:

_____ of _____

("Letting Agent")

INTRODUCTION:

A The Body Corporate has the power to grant the right to conduct the Letting Agent Business and to enter into an agreement for the provision of Letting Services.

B The Body Corporate will grant the Letting Agent the right to conduct the Letting Agent Business, and the Letting Agent will provide the Letting Services.

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 (Qld)*.

"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;

(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” 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 *[insert fixed date which will be settlement]*

"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.

“Further Term” means fifteen (15) years commencing on the day immediately after the end of the Term.

“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 (if any).

“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 Menser Residences Community Titles Scheme.

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

"Term" means a period of ten (10) 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 10 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 and the Further 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) if there is a Letting Agent's Lot, maintain and staff a reception area from or adjacent to the Letting Agent's Lot during such hours as reasonably necessary for the proper conduct of the Letting Services; or

If there is no Letting Agent Lot, the Letting Agent must maintain and keep open an office as a reception for the letting business during the following minimum hours:

Monday – Friday 9.00am -5.00pm; and
Saturday – 9.00am – 12noon

For the avoidance of doubt, if the Letting Agent is absent from the office during the above hours while performing its obligations under this Agreement then it will be sufficient compliance with this clause for the Letting Agent to be contactable via telephone during that time.

The Letting Agent must also be contactable by telephone or mobile phone 24/7 hours in the event of an emergency;

(f) respond to the Body Corporate and occupants promptly

(g) treat all Owners fairly;

(h) not discriminate between Owners in the Scheme when letting Lots;

(i) not give or take any secret commission;

(j) keep proper records of all lettings and account to the Owners regularly regarding lettings and expenditure incurred in conjunction with those lettings;

(k) 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;

(l) only let a Lot for those purposes permitted by law and by the by-laws for the scheme;

(m) 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) to 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 (If there is one); and

(n) keep the Letting Agent's Lot (if there is one) clean and tidy and ensure that the Letting Agent Business is open and staffed at all times during normal office hours.

7. LETTING AGENT'S 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.

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 (if applicable) 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 cannot be remedied or compensated for; or

(iii) the non-observance cannot 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) it becomes insolvent or is subject to a form of external administration under the Corporations Law or is subject to a sequestration order provided that if a Financier (as defined by the Body Corporate and Community Management Act 1997) or a Controller (as defined in the Corporations Act 2001) is appointed by a Financier to the Caretaker in respect of this Caretaking Agreement, the rights of the Body Corporate to terminate this Caretaking Agreement under this clause do not apply;

(c) persistently and repeatedly breaches this Agreement materially or substantially (which shall mean at least 5 times 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) if 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.

13. AUTOMATIC TERMINATION OF LETTING AGREEMENT FOR SUBSIDIARY SCHEME

Intentionally deleted

14. FURTHER TERM

14.1 If there is not, at the time the Letting Agent gives notice under this clause nor at the end of the Term, an outstanding breach of this Agreement by the Letting Agent entitling the Body Corporate to terminate it, the Letting Agent may by giving written notice to the Body Corporate not later than 3 calendar months nor earlier than 6 calendar months prior to the expiration of the Term, extend or renew this Agreement for the Further Term, otherwise upon the same conditions as are contained in this Agreement with the exception of this clause which will be deleted.

14.2 No option may be exercised unless the option in a Related Agreement is exercised.

15. LETTING AGENT'S LOT

15.1 The Letting Agent may, or if it is a company it or its Related Person may own or otherwise have the right to occupy the Letting Agent's Lot.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 The terms and conditions of a sale referred to in clause 15.4 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.

16. CARETAKING BUSINESS

16.1 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.

17. COMPLIANCE

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

18. FURTHER ASSURANCES

18.1 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.

19. SEVERABILITY

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

20. ENTIRE UNDERSTANDING

20.1 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.

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

21. VARIATION

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

22. WAIVER

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

22.2 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.

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

22.4 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.

23. COSTS AND DISBURSEMENTS

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

23.2 The Letting Agent shall pay all duties associated with this Agreement.

24. NOTICES

24.1 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.

24.2 A Notice is deemed given and received:

(a) if delivered, upon delivery;

(b) if sent by post on the third 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.

24.3 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.

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.

Executed as an Agreement the day of 20 .

The Common Seal of Handford Villas 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]
the Letting Agent]
the day of 20]
in the presence of]

A witness

Full name of witness