

DATE

8 OCTOBER

2007

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**BODY CORPORATE FOR LINCOLN GREEN  
COMMUNITY TITLES SCHEME 37455**

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**LETTING AUTHORIZATION AGREEMENT**

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## LETTING AUTHORIZATION AGREEMENT

THIS AGREEMENT is made the

8 day of OCTOBER 20 07

BETWEEN:

**BODY CORPORATE FOR LINCOLN GREEN COMMUNITY TITLES SCHEME 37455** a body corporate formed pursuant to the Act at 175 Fryar Road, Eagleby, Qld, 4207.

("Body Corporate")

AND:

**COPY**

\_\_\_\_\_ of \_\_\_\_\_ Queensland

("Letting Agent")

### RECITALS

- A. The Body Corporate has by separate agreement appointed the Letting Agent as manager and caretaker of the Common Property.
- B. The Body Corporate has agreed to grant the Letting Agent the right to conduct a letting agent's business on the terms set out in this Agreement.
- C. The Body Corporate has by resolution authorised the execution of this Agreement.

### OPERATIVE PROVISIONS:

#### 1. DEFINITIONS

##### 1.1 Definitions

In this Agreement unless the context otherwise requires the following expressions have the following meanings:

"**Act**" means the Body Corporate and Community Management Act 1997 and a reference to the Act includes a reference to the particular regulation module applicable to the Community Titles Scheme in question;

"**Body Corporate**" means the Body Corporate for Lincoln Green Community Titles Scheme 37455 and, where the context requires, includes the Committee;

"**Common Property**" means so much of the Community Titles Scheme as from time to time is not comprised in any lot, and shall include where appropriate any easement(s) and any property shared between members of the relevant body corporate and any other person (whether by way of easement, lease or otherwise);

"**Committee**" means the Committee of the Body Corporate pursuant to the Act;

"**Community Titles Scheme**" means Community Titles Scheme 37455;

**“Development”** means the residential development known as Lincoln Green comprising the Community Titles Scheme;

**“Duties”** means the duties set out in **clause 3**;

**“Letting Service”** means a service by which the Letting Agent offers to proprietors to let their Lots and/or (without any obligation) provide ancillary services including (without limitation):

- (a) cleaning;
- (b) grounds and garden maintenance;
- (c) repairs and replacements;
- (d) interior decorating services;
- (e) indoor plant care and/or hire;
- (f) furniture, whitegoods and equipment rental;
- (g) car valet service;
- (h) dry cleaning service;
- (i) sales of snack food, beverages and smallgoods.

**“Letting Owners”** means Lot Owners who use the Letting Service;

**“Lot”** means any lot in the Community Titles Scheme;

## 1.2 Interpretation

In this Agreement except to the extent that the context otherwise requires:

- (a) Headings have been inserted for guidance only and shall not form part of nor affect the interpretation hereof;
- (b) References to clauses, sub-clauses, paragraphs and sub-paragraphs are references to clauses, sub-clauses, paragraphs and sub-paragraphs hereof;
- (c) References to a person include corporations, natural persons and all other entities capable of suing and being sued;
- (d) References to a statute include all statutory provisions amending, consolidating or replacing same and all by-laws, orders in council, ordinances, proclamations, regulations, rules and other authorities made thereunder;
- (e) References to writing including typing, lithography, photocopying, telex, facsimile and any other means of producing or reproducing words in a visible form;
- (f) Words importing the singular number include the plural and vice versa;
- (g) This instrument shall operate to bind the administrators, executors, successors and permitted assigns (as the case may be) of each person who is a party hereto;
- (h) Words importing any particular gender include all genders.
- (i) Where two (2) or more persons are named herein (or are encompassed herein) as the Letting Agent:
  - (i) the expression “the Letting Agent” shall be a reference to those persons jointly as well as to each of them severally; and

- (ii) this instrument and the obligations and agreements on their part therein contained or implied shall bind those persons jointly as well as each of them severally.
- (j) Where any provision hereof requires the doing of any act by the Body Corporate, that act shall be sufficiently done if done by a member of the Committee or any duly authorised managing agent of the Body Corporate or any other duly authorised person.
- (k) Where any provision hereof requires a determination to be made by the Body Corporate (other than by a special resolution of the Body Corporate), that determination shall be sufficiently made if done by the Committee or any duly authorised managing agent of the Body Corporate; and
- (l) Unless otherwise defined herein, words and expressions defined in the Act shall have that meaning when used herein.

## **2. APPOINTMENT OF LETTING AGENT**

- 2.1 The Body Corporate appoints the Letting Agent as letting agent for a term of ten years (10) years commencing on 8 OCTOBER 2007 and expiring on 7 OCTOBER 2017 ("**Term**") together with an option on the part of the Letting Agent for a further term of fifteen (15) years from the expiry date of the term. Such option shall be exercised by written confirmation to the Body Corporate no earlier than six (6) calendar months and no later than three (3) calendar months immediately prior to the expiry date and shall be subject to the same terms and conditions as for the initial term excluding an option. The Letting Agent accepts the appointment on the terms of this deed.
- 2.2 There is no remuneration paid or payable by the Body Corporate to the Letting Agent in respect of this appointment.

## **3. DUTIES OF THE LETTING AGENT**

- 3.1 The Letting Agent must:
  - (a) provide the Letting Service to all proprietors of Lots that require the service;
  - (b) supervise the standard of tenants of all Letting Owners and ensure so far as practicable that no nuisance is created in the Development and that neither the Development nor any Lot is brought into disrepute;
  - (c) use its best endeavours to achieve maximum possible rentals for Lots;
  - (d) not discriminate between Lot Owners;
  - (e) use its best endeavours to treat Lot Owners of all Lots and their tenants and invitees fairly;
  - (f) not give or take any secret commissions or bribes;
  - (g) keep proper records and make those records that relate to a particular Lot available to the Lot Owners of that Lot upon written request;
  - (h) at its own expense, obtain and maintain all necessary permits or consents or licences required by law to enable it to conduct the Letting Service;
  - (i) in providing the Letting Service comply with all statutes and regulations and, to the relevant extent, the by-laws of the Body Corporate and other by-laws applying to the Lot, and the planning scheme and town planning policies of the relevant local government; and

- (j) conduct the Letting Service in such a manner as not to interfere with the quiet enjoyment and occupation of the Lot.

3.2 The Letting Agent acknowledges the right of owners of Lots to use letting and other services provided by other persons.

#### **4. DUTIES OF THE BODY CORPORATE**

The Body Corporate must:

- (a) not unreasonably or unlawfully interfere with the Letting Services;
- (b) cause the Common Property to be properly kept and maintained in a manner consistent with the fact that Lots may be let to members of the public;
- (c) not grant to any other person or corporation the right to conduct any business of a similar nature to the Letting Services from within the Common Property or a Lot nor directly or indirectly conduct or attempt to conduct any business of a similar nature to the Letting Service from within the Common Property or a Lot;
- (d) not make any of the Common Property available to any person or corporation for the purpose of conducting a Letting Service;
- (e) not unreasonably withhold its consent to any application by the Letting Agent to erect signs in or about the Common Property for the purpose of promoting and fostering the Letting Service.

#### **5. RIGHT TO USE NAME**

The Body Corporate grants to the Letting Agent a right to use the name Lincoln Green in connection with the Letting Service during the Term.

#### **6. ASSIGNMENT**

6.1 The Letting Agent must not assign its interest in this deed except in accordance with this **clause 6**.

6.2 The Letting Agent may assign its interest in this deed with the prior written consent of the Committee. Such consent will not be unreasonably withheld if:

- (a) the Letting Agent gives to the Body Corporate not less than 1 month's written notice accompanied by:
  - (i) all pertinent details of the proposed assignee;
  - (ii) at least 2 character references of the assignee (or, if the proposed assignee is a corporation, at least 2 character references of at least two of the principal directors);
  - (iii) at least 2 business references (including a bank opinion) in respect of the assignee;
- (b) the Letting Agent is not as at the date of that notice or at the date of assignment in default in the observance or performance of any of the terms either expressed or implied in this deed entitling the Body Corporate to terminate this agreement;
- (c) the Letting Agent proposes to assign its interest in this deed to an assignee who:
  - (i) is a suitable, respectable, responsible and solvent person, financially substantial and otherwise capable of performing the obligations of the Letting Agent under this deed (the onus of proving which to the reasonable satisfaction of the Body Corporate is upon the Letting Agent);

- (ii) enters into a deed with the Body Corporate in a form reasonably required by the Committee containing, amongst other things, a covenant to duly perform the covenants on the Letting Agent's part contained in this deed.
  - (iii) if the assignee is a corporation furnishes to the Body Corporate such further covenants, indemnities and guarantees in respect of the performance of the obligations of the Letting Agent under this deed as the Committee reasonably requires (including guarantees, by the directors and for principal shareholders of that corporation, of the assignee's obligations under this deed);
- (d) the Letting Agent:
- (i) pays to the Body Corporate its reasonable fees and disbursements (including legal fees and stamp duty) of and incidental to the matters referred to in this clause;
  - (ii) enters into a deed with the Body Corporate in the form required by the Committee under which the Letting Agent releases the Body Corporate from all future claims which the Letting Agent has against the Body Corporate in relation to this deed.

6.3 If the Letting Agent is a company, other than one whose shares are listed on any Australian Stock Exchange, any change in the shareholding of the Letting Agent altering the effective control of the Letting Agent will be deemed a proposed assignment of this deed and the Letting Agent must not register, record or enter in its books any transfer of any share or shares in the capital of the Letting Agent, or deal with any beneficial interest in any such share or shares, or issue any new share or shares, or issue any new share or shares or take or attempt to take any action having the effect of altering the effective control of the Letting Agent or having the effect that the shareholders of the Letting Agent at the date of this deed together beneficially hold or control less than 51% of the voting rights in the Letting Agent unless the Letting Agent complies with the conditions of **clause 6.2**.

## 7. **TERMINATION BY BODY CORPORATE**

The Body Corporate may terminate this deed by written notice to the Letting Agent if the Letting Agent:

- (a) purports to assign its interest in this deed in breach of **clause 6**;
- (b) fails or neglects to carry out its Duties and that failure continues for 14 days after the Body Corporate gives written notice to the Letting Agent specifying the Duty which the Letting Agent has failed or neglected to carry out and calling upon the Letting Agent to perform that duty;
- (c) being a company enters into liquidation (whether voluntary, compulsory or provisions), is wound up or dissolved, enters into a scheme of arrangement, is placed under official management, or a receiver and/or agent of a mortgagee is appointed in respect of any of its assets is appointed other than for the purposes of amalgamation or reconstruction;
- (d) being an individual becomes bankrupt or is convicted upon indictment of any criminal offence; or
- (e) has had a separate agreement referred to in Recital A terminated.

## 8. **TERMINATION BY THE LETTING AGENT**

The Letting Agent may terminate this deed by written notice to the Body Corporate if the Body Corporate fails to carry out its obligations under this deed and that failure or neglect

continues for 14 days after the Letting Agent gives written notice to the Body Corporate specifying the obligation which the Body Corporate has failed to carry out and calling upon the Body Corporate to perform that obligation.

## **9. NOMINEE OF LETTING AGENT**

The Letting Agent may nominate in writing from time to time to the Body Corporate a person to carry out its Duties. Such nomination will not affect the liability of the Letting Agent under this deed.

## **10. LEAVE**

The Letting Agent:

- (a) may appoint a suitable replacement to carry out the Duties for a period, or aggregate periods, of up to four (4) weeks per annum for the purpose of allowing the Letting Agent a holiday for that period each year;
- (b) must provide details of the proposed replacement to the Body Corporate at least two weeks before the commencement of the Letting Agent's proposed holiday (and the Body Corporate will as soon as reasonably practicable indicate its assent or otherwise to the proposed replacement and must not unreasonably withhold or delay assent);
- (c) must ensure that the replacement adequately performs the functions of the Letting Agent under this deed, and any breach of this deed by the replacement will be deemed to be a breach by the Letting Agent.

## **11. DISPUTES**

If any dispute arises between the Letting Agent and the Body Corporate in relation to or incidental to this deed that dispute will be determined in accordance with the dispute resolution provisions of the Act.

## **12. NOTICES**

12.1 All notices and other communications required or permitted to be given under this deed must be in writing, be addressed to the address of the party set out in this deed or at its registered office or last known place of business or at such other address as the party may have notified to the other for that purpose, and be either delivered personally or sent by facsimile transmission or by ordinary mail, postage prepaid.

12.2 A notice sent by facsimile will be deemed to be received:

- (a) on the day of actual receipt if received between the hours of 9.00 a.m. and 4.30 p.m. at the place of receipt; or
- (b) otherwise on the next following day (other than a Saturday, Sunday or public holidays in the place of receipt).

12.3 A notice sent by mail will be deemed to be received only when actually received (and the addressee, when requested by the sender, shall promptly provide the sender with facsimile acknowledgment of receipt, but the delay or failure to give or receive any such acknowledgment will not affect the validity of the notice in respect of which it is sought).

**13. COSTS**

Each party will bear its own costs of and incidental to the negotiation and preparation of this deed but all stamp duty on this deed will be borne by the Letting Agent.

**14. NON-WAIVER ETC**

No waiver will be effective unless in writing and signed by or on behalf of the party giving it by a person duly authorised. Any extension of time or other indulgence granted by either party to the other under this deed will not affect the rights of either party under this deed or generally at law.

**15. SEVERANCE**

If it is held by a court of competent jurisdiction that:

- (a) any part of this deed is void, voidable, illegal or unenforceable; or
- (b) this deed would be void, voidable, illegal or unenforceable unless some part of this deed were severed from it, that part will be severed from, and will not affect the continued operation of, the rest of this deed unless to do so would change the underlying principal commercial purposes of this deed.

**16. PROPER LAW**

This deed will be governed by and interpreted in accordance with the laws of Queensland.

**17. STAFF**

The Letting Agent shall at its expense employ such staff as is necessary to carry out the Letting Agent's duties under this Agreement.

