

# DEED OF ENGAGEMENT AND AUTHORISATION

Queensland Duty Paid  
On the Amount of \$N/A  
Duplicate

\$Nil

Duty Code CONV

13A:CONV:665 Transaction Number 171 / 02  
Signed: [Signature] 28 / 11 / 02

is made this 28th day of November 2002

**BETWEEN** **BODY CORPORATE FOR "HATLOWE HEIGHTS" CTS 23726** of C/-Body Corporate Services, Level 1, 45 Nind Street, Southport, in the State of Queensland (hereinafter called "the Body Corporate") of the First Part

**AND** **FINVOY PTY LTD ACN 010 304 757 as Trustee for the Finvoy Services Trust** of C/-PO Box 3123, Robina Town Centre in the State of Queensland (hereinafter called "the Manager") of the Second Part

## RECITAL -

- A. By a certain Management Caretaking Agreement dated 26th October 1994 annexed hereto marked "A" (hereinafter called the "Management Agreement") the Body Corporate contract as to certain caretaking and letting arrangements for the scheme.
- B. By a certain Deed of Extension dated 23rd March 1998 (hereinafter called "the Deed of Variation") the Body Corporate agreed to extend the Management Agreement for a period of nineteen (19) years from 19 September 2003.
- C. The Body Corporate has now agreed in General Meeting to engage the Manager and authorise lettings in terms of the Management Agreement and to enter into this Deed in replacement of the existing Agreement.

**NOW THIS DEED WITNESSES THAT** in consideration of the premises and in consideration of the covenants and conditions hereinafter contained IT IS HEREBY AGREED AND DECLARED by and between the parties as follows -

- 1. The Body Corporate hereby engages and authorises the Manager on the same terms and conditions as set out in the Management Agreement save and except for the following amendments -

(a) Clause 1 shall read -

"The Body Corporate engage the Manager for the term commencing on the 28~~th~~ day of November 2002 and expiring on the 18th day of September 2022 upon the terms of this Agreement."

- (b) In clause 3(p) the word "reasonable" is added before the word "satisfaction" appearing in the second line.
- (c) Clauses 12 and 12B as to options to renew are deleted.
- (d) Clause 15 is amended by replacing the words from "such lot as may be agreed upon by and between the Body Corporate and the Manager" appearing in the second line with "Lot 1" and inserting at the end of that clause the words -

"The Body Corporate authorises the Manager to be the letting agent for the scheme. No part of the remuneration payable by the Body Corporate hereunder to the Manager shall be applied on account of or for the provision of letting agent services provided by the Manager. To the extent that it may lawfully so agree, the Body Corporate shall not authorise any other party during the term."

- (e) Clause 16 is added as follows -

"16. The Manager in performing the duties and obligations hereunder shall not be required to perform duties that can only reasonably be carried out by a skilled tradesman (as opposed) to a handy person or grounds person)."

- (f) Paragraph 1 of Schedule A shall be replaced with -

"For the period commencing on the date hereof and expiring on 19th September 2003 \$61,928.16 per annum payable month in arrears."

and paragraph 2 shall be amended by replacing the reference to "1994" with "2000".

- (g) Paragraph 3 is added to Schedule A as follows -

- "3.1 The Body Corporate acknowledges that the remuneration payable to the Manager is expressed as a GST exclusive amount and that the calculation of remuneration does not make allowance for GST.
- 3.2 Where GST is applicable to any supply in connection with this Agreement and the Caretaker is required to pay GST in respect of that supply then the Body Corporate will pay to the Caretaker in addition to the remuneration or other amounts payable by the Body Corporate the amount of any such GST.
- 3.3 The expressions "GST" and "supply" have the same meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*."
- (h) Delete clause 4(b) and insert -
- "4(b) On the basis of an operating schedule, job standards and wage rates previously approved by the Body Corporate on the recommendation by the Manager, the Manager shall investigate, hire, pay, supervise and discharge the personnel necessary to be employed in order to properly maintain and operate the building. PROVIDED HOWEVER that the Manager shall perform such duties at the direction of the Body Corporate and with its prior approval in all respects. Such personnel shall be in every instance be in the Body Corporate's and not the Manager's employ."
- (i) Clauses 3(a) and 3(i) are amended by adding the following words at the end of each such clause "PROVIDED HOWEVER that the duty of the Manager in this clause is not a delegation of the Body Corporate's powers."
- (ii) Clause 3(b) is varied by deleting the words "and it is hereby provided that the Manager has the full authority of the Body Corporate to evict or deal with any person creating a nuisance or annoyance on the said property or committing any breach of the by-laws of the Body Corporate to the same extent as that exercisable by the Body Corporate itself." and inserting the words "and to report persistent breaches of the by-laws to the Body Corporate."

2. The Body Corporate acknowledges that no part of the duties to be performed by the Manager pursuant to the Management Agreement relates to work being performed on the lots.
3. The Manager hereby accepts the within engagement and authorisation and COVENANTS AND AGREES that from the date of hereof, the Manager will observe and perform the covenants and agreements contained and implied in the Management Agreement on the part of the Manager to be observed and performed.
4. If any term agreement or condition of this Deed or the application thereof to any person or any circumstance shall be or become illegal, invalid or unenforceable, the same shall be severed and the remaining terms agreements and conditions shall not be affected.
5. The parties agree that the agreement contained in this Deed replaces the Agreements referred to in the Recitals from the date of this Deed and that the agreements referred to in the Recitals have been terminated and have now come to an end except to the extent that they are renewed by this Deed.
6. If the Manager enters into this Deed as a trustee of any Trust ("the Manager's Trust") then, whether or not the Body Corporate has any notice (actual or constructive) of the Manager's Trust, the following applies -
  - (a) The Manager warrants that it has full power under the Manager's Trust to enter into and perform this Deed;
  - (b) The obligations and liabilities of the Manager under this Deed extend to the funds or any other assets of the Manager's Trust;
  - (c) The Manager shall on the written demand or direction of the Body Corporate exercise all rights of indemnity that the Manager may at any time have against the Trust Fund and any beneficiaries or unit holders of the Managers Trust or any of the same for the benefit of the Body Corporate;
  - (d) The Manager is liable under this Deed both in its personal capacity and as Trustee



of the Manager's Trust;

- (e) The Manager shall produce to the Body Corporate the original stamped Trust Deed (or a photocopy certified by an Accountant or Solicitor) and all other documents evidencing the Manager's Trust and the Trust fund within fourteen (14) days of written request for same by the Body Corporate.

**IN WITNESS WHEREOF** The parties have executed this Deed on the date previously appearing in this Deed.

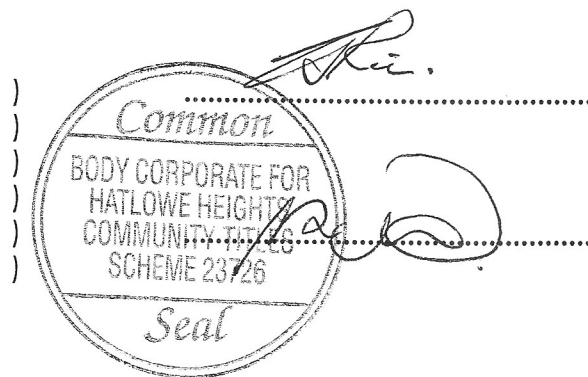
**THE COMMON SEAL** of **HATLOWE HEIGHTS COMMUNITY TITLE SCHEME NO. 23726** was hereunto affixed under the hands of  
and  
in the presence of:

Witness:

**EXECUTED** by **FINVOY PTY LTD ACN 010 304 757**  
**As Trustee** in accordance with the  
provisions of the Corporations Act 2001  
with the authority of the Directors:

Witness

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Director

Director/Secretary

"A"

Commissioner of Stamp Duties,  
Queensland

MANAGEMENT CARETAKING AGREEMENT

THIS AGREEMENT is made the 26 day of October One thousand nine hundred and eighty NINETEEN FOUR BETWEEN THE PROPRIETORS "HATLOWE HEIGHTS" GROUP TITLES PLAN NUMBER 100608 (hereinafter called "the plan") a Body Corporate constituted under the "Building Units and Group Titles Act" (hereinafter together with its successors and assigns called "The Body Corporate") of the one part AND

Leikkari Holdings Pty Ltd of 7 Cloune Road, Southport in the State of Queensland (hereinafter with their successors and permitted assigns called "the Manager") of the other part.

WHEREAS:

A. The Body Corporate is constituted consequent upon registration of the Plan in respect of a Group Titles Unit Development known as "HATLOWE HEIGHTS" erected and situated at Merrimac in the State of Queensland (which buildings and their surrounds is hereinafter called "the said development").

B. The Body Corporate is desirous of providing for the better caretaking, management, administration, control and use and enjoyment of the common property and for the better exercise and performance of its powers and duties in relation thereto in particular to the keeping thereof in a state of good and serviceable repair and the proper maintenance thereof.

C. It has been agreed by and between the parties hereto that the Body Corporate will engage the Manager and the Manager will accept such engagement for the purpose of performing certain duties on behalf of the Body Corporate as hereinafter set out.

1. Appointment of Manager

The Body Corporate hereby appoints the Manager as the Manager of the said development for the period of THREE YEARS certain to commence on the date of registration of the Group Titles Plan and the Manager hereby accepts such appointment upon the terms and conditions hereafter appearing.

2. Remuneration of Manager

In consideration of the performance by the Manager of its duties as herein set out the Body Corporate shall pay the Manager a sum calculated as set out in Schedule "A" hereto.

### 3. Duties of Manager

The Manager shall by its employees or agents:-

- a. Use its best endeavours to see that the said land and buildings (other than the interior of units) are kept in good order and repair and maintained as a first class residential complex.
- b. Police the observance of the By-laws of the Body Corporate by the proprietors and/or the occupiers including their guests and licensees for the time being of the lots in the said Strata Title Plan and it is hereby provided that the Manager has the full authority of the Body Corporate to evict or deal with any person creating a nuisance or annoyance on the said property or committing any breach of the By-laws of the Body Corporate to the same extent as that exercisable by the Body Corporate itself.
- c. At the request of the Body Corporate advise the Body Corporate concerning the performance of the duties of the Manager and provide other advice which the Body Corporate shall request relative to the management and care of the said property.
- d. Keep in its possession the master key or keys for the switch room, sub-station, other rooms under the control of the Body Corporate and the units in the said development so far as individual unit owners shall permit PROVIDED HOWEVER that the possession of those keys shall be surrendered to no person other than an authorised representative appointed by the Committee of the Body Corporate or the individual unit owner concerned but the Manager shall allow a lawfully authorised person in the course of his duties free access to any part of the building so authorised at all reasonable times.
- e. Report promptly on all things requiring repair and on all matters creating a hazard or danger and take remedial action where practicable. *SLIP + TRIP*
- f. Arrange maintenance contracts as required by the Body Corporate and ensure that any such contracts in force are carried out in accordance with their terms.
- g. Comply with and carry out all reasonable directions from time to time given by the Body Corporate to the Manager in and about the administration and management of the said building and the performance by the Body Corporate of its lawful obligations and duties.

- h. At all times ascertain and be aware of the general condition of the buildings and all machinery and appurtenances thereto so that at all times the Manager is able to keep informed the representative of the Body Corporate in respect thereof.
- i. To the best of its ability the Manager shall manage the said development and endeavour to ensure that it is kept in first class order and repair and to protect the interest in the said development of the Body Corporate and of the owners of units therein.
- j. As far as the Manager is reasonably able and lawfully capable of so doing to keep order on the said property and take such precautions as it sees fit to safeguard the whole of the said property against unlawful entry or accident or damage.
- k. The Body Corporate shall furnish to the Manager a set of plans of the said development and with the aid of these documents and inspection made by competent personnel the Manager will inform itself with the layout, construction, location, character, plan and operation of the power, lighting, heating, plumbing, ventilating systems and other mechanical equipment installed in the said building and shall advise the Body Corporate generally on the condition thereof from time to time and shall recommend to the representative of the Body Corporate should the Manager consider it necessary for any changes or modifications to be made in respect of any matters in relation to the aforesaid.
- l. To perform such other acts and things as are reasonably necessary and proper in the discharge of its duties under this Agreement.
- m. To carry out the written directions of the Body Corporate regarding specific matters or regarding permanent policies or procedures to be observed in the conduct of the business PROVIDED HOWEVER that the Manager may refer any such directions to arbitration in manner provided in Clause 11 hereof.
- n. Generally cause the building appurtenances and grounds and all plant and equipment used in connection therewith to be properly maintained at all times.
- o. Ensure that the manager or the managers nominee resides at all reasonable times in a lot in the said development.



- p. Without limiting the foregoing to carry out the work listed in Schedule B hereto as required to the satisfaction of the Body Corporate.

#### 4. Staffing

- a. The Body Corporate shall at its discretion employ such further staff as is necessary to keep the land and buildings (apart from the interior of units) in good and proper order and repair and provided further that should the Manager require additional staff for the proper performance of his duties then such staff shall be at his cost.
- b. On the basis of an operating schedule, job standards and wage rates previously approved by the Body Corporate on the recommendation of the Manager, investigate, hire, pay, supervise and discharge the personnel necessary to be employed in order properly to maintain and operate the building. Such personnel shall in every instance be in the Body Corporate's and not in the Manager's employ.

#### 5. Expenditure

- a. The Manager shall be entitled to pledge the credit of the Body Corporate (within the limits previously approved by the Body Corporate) for the purpose of obtaining materials used in the performance of its duties or those of other employees of the Body Corporate and for such other purposes as are necessary or incidental to the discharge of the obligations of the Manager pursuant hereto PROVIDED THAT any major or extraordinary expenditure shall not be incurred without the prior approval of the Body Corporate or of its representative authorised pursuant to Clause 10 hereof.
- b. Everything done by the Manager under the provisions of this Agreement hereof shall be done as Agent of the Body Corporate and all obligations or expenses incurred thereby shall be on account of the Body Corporate
- c. The Manager will check and verify accounts for goods or services payable by the Body Corporate relative to matters which are the responsibility of the Manager under this Agreement and notify the representative of the Body Corporate that they are in order for payment.

ASSIGNMENT

6. Permitted Assignment by Manager

- a. The Manager shall not be entitled to assign its interest in this Agreement except in accordance with the terms hereof and any purported assignment not made in accordance with the terms hereof shall not bind the Body Corporate and shall not pass any interest in this Agreement to the purported Assignee.
- b. The Manager may only assign its interest in this Agreement to the extent that the Manager may lawfully assign its interest herein but with and subject to the written consent of the Committee of the Body Corporate.
- c. The Committee of the Body Corporate shall not withhold its consent to a proposed assignment arbitrarily or capriciously but shall be entitled to require prior to giving its consent:-
  - i) satisfactory evidence that the proposed Assignee is a reputable responsible respectable person capable of satisfactorily performing the duties of the Manager pursuant to this Agreement;
  - ii) that the proposed Assignee execute in favour of the Body Corporate a Deed of Covenant binding the proposed Assignee to observe the terms of this Agreement as if named herein as Manager. Such Deed of Covenant shall be settled, prepared and stamped by the Solicitors for the Body Corporate, at the expense of the Manager.
- d. If the Committee of the Body Corporate refuses its consent to a proposed assignment the Manager may refer the matter to arbitration as provided in Clause 10 of this Agreement.

7. Termination by Body Corporate

This agreement may be terminated by the Body Corporate by notice in writing to the Manager in any of the following events:-

- a. If the Manager without good reason shall fail or neglect to carry out its duties pursuant to this Agreement and such failure or neglect shall continue for a further period of fourteen (14) days after notice in writing shall have been given to the Manager specifying the duty which the Manager has failed or neglected to carry out and calling upon the Manager to perform such duty;

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- b. If the Manager shall be guilty of gross misconduct or gross negligence in the performance of its duties hereunder;
- c. If the Manager shall be adjudicated bankrupt or be liquidated or wound up or convicted on indictment or any criminal charge.

8. Termination Otherwise

- a. In the event of either party to this Agreement being in default thereunder and such default continuing after the other party shall have given fourteen (14) days notice in writing to the party in default specifying the default not have been remedied within the period of fourteen (14) days as aforesaid then the party giving such notice may forthwith by further notice in writing determine this Agreement;
- b. This Agreement may be terminated by the manager at any time by giving three (3) calendar months' notice in writing to the Body Corporate of its intention in that behalf.

9. Deleted.

10. Arbitration

In the event of any dispute arising between the Manager and the Body Corporate touching upon any matter arising under the terms of the Agreement or incidental hereto or relative to the interpretation of any of the provisions thereof then the same shall be settled by an arbitrator to be mutually agreed upon between the parties and in default of agreement then by such arbitrator as may be nominated for the purpose by the President for the time being of the Queensland Law Society and the decision of such arbitrator shall be final and binding between the parties and such arbitration shall be carried out pursuant to the provisions of the Arbitration Act or any statutory modification or re-enactment thereof for the time being in force.

11. Instructions from Body Corporate to Manager

- a. The Committee of the Body Corporate shall from time to time authorise one of its members to give instructions to and communicate with the Manager on behalf of the Body Corporate and not more than one member of the Body Corporate at any time shall be given such authority.



- b. The Manager will confer fully and freely with the representative of the Body Corporate if so requested relative to the performance of the duties of the Manager herein set forth and shall at the request of the representative of the Committee of the Body Corporate attend by its authorised representative meetings of the Committee or members of the Body Corporate. The representative of the Manager shall be entitled to be heard on any relevant question or matter at any such meeting.

## 12. Option

The Manager shall be entitled on giving to the Body Corporate not less than six months written notice prior to the expiration of this Agreement an extension or renewal of this Agreement for THREE YEARS from the date of expiration of this Agreement at a remuneration to be mutually agreed upon but to be not less than that payable immediately prior to the expiration of this Agreement such remuneration being payable in accordance with this Agreement but if the parties fail to reach agreement as to such remuneration then the remuneration shall be determined by an expert to be appointed by the President for the time being of the Queensland Law Society whose decision shall be final and binding on the parties provided that such remuneration shall be not less than the remuneration payable and otherwise upon the same terms and conditions as are herein contained save and except this clause but only if at the date of giving the aforesaid notice and if at the date of expiration of the said term the Manager shall not have committed any breach of any covenant condition or stipulation herein contained or implied and on the part of the Manager to be performed permitted or fulfilled and of such a nature as would have entitled the Body Corporate to determine this Agreement.

## 12.B. Further Option

The Manager shall be entitled on giving to the Body Corporate not less than six (6) months written notice prior to the expiration of the extended term of this Agreement a further extension or renewal of this Agreement for a period of Three (3) Years from the date of expiration of the extended term of this Agreement at a remuneration to be mutually agreed upon but to be not less than that payable immediately prior to the expiration of this Agreement such remuneration being payable in accordance with this Agreement but if the parties fail to reach agreement as to such remuneration then the remuneration shall be determined by an expert to be appointed by the President for the time being of the Queensland Law Society whose decision shall be final and binding on the parties provided that such remuneration shall be not less than the remuneration payable and otherwise upon the same terms and conditions as are herein contained save and except this clause but only if at the date of giving the aforesaid notice and if at the date of expiration of the said term the Manager shall not have committed any breach of any covenant condition or stipulation herein contained or implied and on the part of the Manager to be performed permitted or fulfilled and of such a nature as would have entitled the Body Corporate to determine this Agreement.

### 13. Managers Leave

The Manager shall be entitled to appoint a temporary manager to undertake the manager's duties hereunder for a period of not more than FOUR (4) weeks in each year of the term of the Agreement to enable the Manager to take holidays PROVIDED ALWAYS that the Manager shall give the Body Corporate not less than ONE (1) month prior to written notice of such intention supplying full details and references of the proposed temporary manager and such appointment shall be subject to the consent of the Committee of the Body Corporate provided that such consent shall not be arbitrarily or capriciously withheld in the case of a person who is respectable, responsible and capable of carrying out the duties of the manager hereunder. Notwithstanding such appointment the Manager shall remain fully liable for the performance of the Manager's duties under this Deed and shall indemnify the Body Corporate against any loss or expense occasioned by any breach or default by the temporary manager.

### 14. Corporate Manager

In the event that a Company is the Manager hereunder at all time and that this Deed requires the performance of a duty or the acceptance of a benefit personally by the Manager then in each case the Manager may appoint a representative for that purpose by notice to the Body Corporate.

In this Agreement words importing the singular number shall include the plural and vice versa and words importing any particular gender shall be read as importing such gender as the case may require from time to time and words importing Corporations shall include a person or persons and vice versa as the case may require from time to time.

### 15. Letting Business

The Body Corporate shall make no objection to the Manager conducting from such Lot as may be agreed upon by and between the Body Corporate and the Manager the business of a letting agency for the letting of Lots for such of the proprietors thereof as shall require that service provided that the Manager has obtained all such approvals consents licences of such governmental statutory and other authorities as may be required to be obtained held and/or maintained to lawfully conduct and/or operate the said business.

THE SCHEDULE HEREINBEFORE REFERRED TO

The Body Corporate will pay to the Manager:-

1. For the first year of the term the sum of \$50,000.00 per annum payable monthly in arrears.
2. Thereafter the remuneration of the Manager shall be reviewed annually for each next ensuing twelve (12) month period during the currency of this Agreement and any extension or renewal thereof and shall be as mutually agreed to by the parties and failing such agreement at such remuneration as shall be determined by an arbitrator appointed for that purpose by the President for the time being of the Queensland Law Society Incorporated PROVIDED HOWEVER that such remuneration for each annual period shall be not less than the rate paid for the immediately preceding twelve (12) month period plus an adjustment equal to the proportion that the Index Number at the commencement of the relevant twelve (12) month period bears to the Index Number at the commencement of the immediately preceding twelve (12) month period. In this clause the words "Index Number" shall mean the All Groups Consumer Price Index at Brisbane published from time to time by the Australian Bureau of Statistics PROVIDED THAT in the event of any change after the Thirty-first of December 1994 in the reference base used to compile the said Index the figure taken to be shown in the said Index after such change shall be the figure which would have been shown in the said Index if the reference base current at the date of execution hereof had been maintained PROVIDED FURTHER that if it becomes impossible to determine the remuneration at any time during the term hereof by reason of any change after the date hereof in any of the methods used to complete the said Index or if any dispute shall arise between the parties hereto with respect to the amount of additional remuneration or with respect to the construction or effect of this clause the determination of the additional remuneration or other matter in dispute shall be made by the President for the time being of the Queensland Law Society Incorporated or by his nominee.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and month of the year first hereinbefore written.

SCHEDULE "B" HEREINBEFORE REFERRED TO

The following duties shall be performed by the Manager as required:

- (a) Grounds to be inspected. Rubbish, items of clothing, etc to be removed;
- (b) swimming pool - clean tiles, keep surrounding tidy, apply chemicals and maintain water at correct levels, vacuum, keep concrete areas in pool enclosure clean and tidy;
- (c) hose and sweep main driveway and other concrete areas;
- (d) supervise water and maintenance of lawns and gardens;
- (e) attend to garbage disposal;
- (f) supervise mowing of lawns and fertilize, trim gardens, paths and edges and dispose of clippings and cuttings;
- (g) maintain repair book, noting all items requiring attention or reference to the Body Corporate;
- (h) accompany members of the Body Corporate on inspection of Common Property and carry out general maintenance work on the Common Property extending to minor repairs except where prohibited by law. This includes ensuring that all light bulbs and locks are working satisfactorily;
- (i) advise residents and/or tenants regarding the use of the Building and the Common Property, restrictions on parking, use of pool;
- (j) clear Body Corporate mail box daily and place all mail in private boxes;
- (k) general attendance and supervision of the Buildings and the Common Property.



IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and month of the year first hereinbefore written.

THE COMMON SEAL OF THE PROPRIETORS )  
"HATLOWE HEIGHTS" BUILDING UNITS )  
PLAN NO. 100608 was hereunto affixed )  
this 26th day of October 1994 )  
by authority of a resolution of the )  
Committee of the Body Corporate in )  
the presence of: )



NOMINEE OF THE  
SOLE PROPRIETOR

Amcert. C. Dec. 8373.....  
~~Justice of the Peace/Solicitor~~  
Commissioner for Declarations

THE COMMON SEAL OF LEIKKARI HOLDINGS )  
PTY LTD was hereunto affixed this )  
10th day of October 1994 )  
by authority of a resolution of the )  
Committee of the Body Corporate in )  
the presence of: )



.....  
~~Justice of the Peace/Solicitor~~