

# MANAGEMENT AGREEMENT

**BETWEEN: Strata Corporation ##### Inc.**

**The Party listed in Item B of the Schedule ("the Body Corporate")**

**and**

**The Party listed in Item C of the Schedule ("the Manager")**

**IT IS AGREED:**

## **1. DEFINITIONS AND INTERPRETATIONS**

### **1.1 Definitions**

In this agreement: **Act** means the legislation specified in Item D of the Schedule and any applicable regulations made pursuant to that Act.

**Annual Increase** where the contract is for more than 12 months, is the greater of;

(a) 5%; or

(b) any other percentage agreed by the parties.

**Additional Services** means the services specified in Item K of the Schedule.

**Agreed Services** means the services specified in Item J of the Schedule.

**Claim** means any action, proceeding, account, right, claim, demand, costs and expenses (including legal expenses) wherever and however arising, whether under statute or otherwise, whether present or future, actual or contingent, secured or unsecured, liquidated or unliquidated, due or which may become due and whether known or unknown.

**Commencement Date** means the date specified in Item E of the Schedule.

**Committee** means the committee or management committee of the Body Corporate, as appointed in accordance with the Act.

**Committee Nominee** means the person or persons nominated by the Committee in accordance with clause 8.1.

**CPI** means the all groups Consumer Price Index for the capital of the state specified in item D of the Schedule published by the Australian Bureau of Statistics.

**Disbursements** means the disbursements listed in Item H of the Schedule.

**End Date** means the date specified in Item E of the Schedule.

**Fee** means the fees for the Agreed Services and Additional Services as specified in Items F and G respectively of the Schedule.

**Member** means a person who is a member or unit holder of the Body Corporate in accordance with the Act.

**Review Date** means the date specified in item I of the Schedule.

**Services** means the Agreed Services, Additional Services, and includes any services provided by the Manager in the exercise of the powers delegated to it by the Body Corporate pursuant to clause 5.

**Special Conditions** means the special conditions specified in Item N of the Schedule.

**Term** means the term specified in Item E of the Schedule.

1.2 **Special Conditions**

Where there is any inconsistency between any Special Conditions and these Terms and Conditions, the provisions of the Special Conditions prevail to the extent of any such inconsistency.

**2. ENGAGEMENT OF MANAGER**

2.1 The Manager is engaged by the Body Corporate (as an independent contractor) to provide the Services to the Body Corporate.

**3. TERM**

3.1 This engagement is for the Term, commencing on the Commencement Date.

3.2 As at the End Date this engagement will be extended by the Body Corporate in one year (12 month) increments, under the same terms and conditions, unless the Body Corporate notifies the Manager in writing thirty days before the End Date or anniversary of End Date.

**4. SERVICES TO BE PROVIDED**

4.1 The Manager must supply the Agreed Services to the Body Corporate.

4.2 The Manager must supply the Additional Services to the Body Corporate at the Body Corporate's request.

4.3 The Manager has the custody of and use of the common seal of the Body Corporate and is authorised to execute documents and instruments for and on behalf of the Body Corporate, including the authority to sign notices on behalf of the secretary of the Body Corporate and by-law contravention notices on behalf of the Body Corporate.

**5. DELEGATED POWERS OF THE MANAGER**

5.1 The Body Corporate delegates to the Manager all of the powers of the executive and ordinary members of the committee including signing under seal of the Body Corporate to the full extent permitted by law.

5.2 The Manager must only use these delegated powers in performing the Services or if there are circumstances that dictate the Manager must use the delegated power.

5.3 To avoid doubt, the delegation of powers to the Manager does not make the Manager responsible for performing the functions the Body Corporate or the committee are required to perform under law, nor does the delegation relieve the Body Corporate or the committee of these functions.

5.4 The Body Corporate agrees to ratify any proper exercise by the Manager of the powers delegated to the Manager under this clause 5.

5.5 The delegated powers do not extend to the Manager being required to obtain a second quote for providing body corporate management services to the Body Corporate.

## 6. FEES

6.1 The Body Corporate must pay the Manager the Fees and Disbursements.

6.2 The Fees increase on each Review Date by the Annual Increase.

6.3 The Manager is entitled to:

- (a) charge the Body Corporate for Disbursements properly incurred;
- (b) keep fees paid to it for information which the Manager must supply about the Body Corporate under the Act or any other applicable legislation;
- (c) keep fees paid to it for any services supplied by it to Members at the request of Members; and
- (d) retain commissions paid to it by the providers of goods and services to the Body Corporate as disclosed in Item M.

## 7. GOODS AND SERVICES TAX

7.1 In this Clause:

**GST** means a goods and services tax imposed by the GST Law;

**GST Law** means A New Tax System (Goods & Services Tax) Act 1999 and Regulations and any other similar or related Act or Regulation;

**taxable supply** has the same meaning as defined in the GST Law;

**tax invoice** has the same meaning as defined in the GST Law;

**recipient** means the party receiving a taxable supply;

**supplier** means the party making a taxable supply;

**supply** has the same meaning as defined in the GST Law; and

7.2 Unless otherwise provided for in these terms and conditions, any amount payable pursuant to this agreement is expressed inclusive of GST.7.3

If a supply made pursuant to this agreement is a taxable supply, the recipient shall pay on demand to the supplier, any GST payable on that supply in addition to any other amount that may be payable by the recipient to the supplier for that supply pursuant to this agreement provided that the supplier provides to the recipient a valid tax invoice in the form prescribed by the GST Law within 14 days of such payment.

## 8. PROVIDING INSTRUCTIONS

8.1 The Body Corporate must nominate a person or persons to provide instructions to the Manager on behalf of the Body Corporate.

8.2 If the Body Corporate does not do this, the Presiding Officer is taken to be the nominee to give instructions to the Manager on behalf of the Body Corporate.

- 8.3 The Manager agrees to carry out any reasonable direction of the Body Corporate or the person or persons nominated to provide instructions to the Manager pursuant to this clause in providing the Services.
- 8.4 The Manager will not be liable for any failure to perform its obligations under this Agreement if the Body Corporate does not provide timely and accurate instructions.

## **9. DISCLOSURE BY MANAGER**

- 9.1 The Manager proposes to have the Body Corporate enter into contracts with providers of:
- (a) repair and maintenance services; and
  - (b) insurance services.
- 9.2 The Manager discloses that if it is associated with the providers of repair and maintenance services or the providers of insurance services the details of the relationship are disclosed in Item L.
- 9.3 Where the Manager has an arrangement with the providers of repair and maintenance services or the providers of insurance services and the Manager is entitled to receive, other than from the Body Corporate, a commission, the details are disclosed in Item M.
- 9.4 The Body Corporate acknowledges that it made its decision to enter into this agreement and into the contracts with the providers of repair and maintenance services or the providers of insurance services, after having been given this agreement in writing disclosing the relationship with the Manager and the commission payable to the Manager.
- 9.5 The Manager will provide the Presiding Officer of the Body Corporate with a copy of any contract entered into pursuant to this clause, within 7 days of the date of execution.

## **10. LIABILITY**

- 10.1 The Body Corporate is liable for all actions taken against it and will maintain public liability insurance cover at all times.
- 10.2 The Body Corporate may elect to obtain office bearers' liability insurance cover to protect Committee members.
- 10.3 The Manager will, at all times, maintain professional indemnity insurance in relation to the provision of the Services.
- 10.4 The Body Corporate will indemnify the Manager from and against any Claim against the Manager in connection with the provision of the Services by the Manager, except to the extent that the Claim arises through the negligence of or breach of this Agreement by the Manager.

- 10.5 To avoid doubt, the Manager will not be liable to the Body Corporate for any loss or damage suffered by the Body Corporate or the Members because the Body Corporate does not have sufficient funds to allow the Manager to carry out its functions under this agreement.
- 10.6 The Manager is not required to pay any monies on account of the Body Corporate from its own money.

## **11. ASSIGNMENT**

- 11.1 This agreement may be assigned by the Manager if the Body Corporate approves the assignment.
- 11.2 The Body Corporate must decide whether to approve a proposed assignment within thirty days after it receives such information as is reasonably necessary for it to decide the application for approval.
- 11.3 The approval may be given on the condition that the assignee enters into a deed of covenant to comply with the terms of this agreement.
- 11.4 The Body Corporate must not:
- (a) unreasonably withhold approval to an assignment of this agreement by the Manager; or
  - (b) require or receive a fee or other consideration for approving the transfer (other than reimbursement for legal expenses reasonably incurred by the Body Corporate in relation to the application for its approval).
- 11.5 Subject to any requirement to the contrary in the Act, nothing in this clause shall restrict:
- (a) the Manager from assigning this agreement; or
  - (b) from delegating any of its duties under this agreement; to a related body corporate (as that term is defined in the Corporations Act 2001 (Cth)) of the Manager.
- 11.6 The Manager must not require or receive a fee or other consideration in relation to any assignment approved by the Body Corporate pursuant to this agreement.

## **12. TERMINATION**

- 12.1 Subject to clause 3.2, this agreement terminates on the End Date, or when the Body Corporate gives notice of termination under this agreement.
- 12.2 The Body Corporate may terminate this agreement if the Manager or a director of the Manager:
- (a) is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty;
  - (b) assigns an interest in this agreement other than in accordance with clause 11; or
  - (c) engages in misconduct, or is grossly negligent in carrying out or failing to carry out functions required under this agreement.

- 12.3 The Body Corporate may terminate this agreement if the Manager or a director of the Manager:
- (a) does not carry out duties under this agreement and the Body Corporate has, prior to the resolution being passed, served a written notice on the Manager specifying:
  - (b) the conduct or failure said to constitute a breach of paragraph 12.3(a);
  - (c) that Manager must remedy the conduct or failure specified within 14 days of the date of the notice; and
  - (d) that the Body Corporate may terminate this agreement if the notice is not complied with; and
  - (e) the Manager has not complied with that notice.
- 12.4 The Manager may terminate this agreement by giving written notice to the Body Corporate if:
- (a) the Body Corporate fails to pay the Manager in accordance with this agreement; or
  - (b) the Body Corporate acts, or fails to act, in a way which prevents the Manager from properly performing its functions under this engagement or complying with the Act.
- 12.5 Either the Manager or the Body Corporate may terminate this agreement in the circumstances and in accordance with the procedures (if any) prescribed by the Act.
- 12.6 If this agreement is terminated:
- (a) the Body Corporate must pay to the Manager promptly all fees due to the Manager under this agreement at the date of termination;
  - (b) provided the Manager receives payment of all fees, the Manager must deliver the records of the Body Corporate to the nominee stated in clause 8.1 with thirty days of the termination; and
  - (c) the Manager shall pay to the Body Corporate the trust money standing to the credit of the Body Corporate in the Trust Account, within 7 days of termination.

## **13. CONTINUING ENGAGEMENT**

- 13.1 If the Manager continues to supply administrative services to the Body Corporate after the Term or any extended Term under clause 3.2 expires:-
- (a) the Manager is engaged by the Body Corporate on a month to month basis;
  - (b) the Fees payable to the Manager for the Services is the same as the Fees payable by the Body Corporate during the last year of the Term;
  - (c) as far as applicable, the month to month engagement will otherwise be on the same terms and conditions as this engagement; and
  - (d) either the Body Corporate or the Manager may terminate the month to month engagement by giving the other 1 month's written notice expiring on any date.

# EXECUTED AS AN AGREEMENT

Executed for and on behalf of  
**Strata Corporation ##### Inc.** by:

\_\_\_\_\_ Signature

Mr B Sampson

Print Name

Presiding Officer

Print Position

Executed for and on behalf of **THE MANAGER** by:



Signature

#####

Print Name

Body Corporation Manager

Print Position

# SCHEDULE

## A : AGREEMENT DATE

27th November 2008

## B : BODY CORPORATE

Strata Corporation ##### Inc.

## C : MANAGER

Whittles Management Services Pty Ltd (ACN 064 789 377)  
as trustee for the Whittles Strata Unit Trust (ABN 31 493 603 726) trading as  
Whittles Body Corporate Management,  
of 176 Fullarton Road, Dulwich SA 5065

## D : STATE AND ACT

State of South Australia  
Strata Titles Act 1988

## E : TERM

One (1) year

Commencement Date:

September 2008

End Date:

August 2009

## F : MANAGEMENT FEE

|                                       |                   |
|---------------------------------------|-------------------|
| Management fee for Agreed Services    | \$1,620 per annum |
| Meeting Fee : (per 90 minute meeting) |                   |
| Business hours at Whittles            | \$88.00           |
| After hours at Whittles               | \$132.00          |
| Onsite during business hours          | \$132.00          |
| Onsite after business hours           | \$154.00          |

## G : FEE FOR ADDITIONAL SERVICES

|                                |                     |
|--------------------------------|---------------------|
| Body Corporate Manager         | \$110.00 per hour   |
| Accountant                     | \$110.00 per hour   |
| Directors Consulting Fee       | \$165.00 per hour   |
| Secretarial Staff Services     | \$ 88.00 per hour   |
| Utility Billing & Processing   | \$ 8.80 per invoice |
| Insurance Claim Processing     | \$44.00 per claim   |
| Wages Preparation Per employee | POA                 |

## **H : DISBURSEMENTS**

### **Telephone**

Static telephone charge \$0.33 per lot per month

### **Facsimile**

Outgoing & Incoming \$1.10 per lot per annum

**Email** \$2.20 per lot per annum

### **Photocopying**

Collating & stapling \$0.35 per page

### **Archiving Fee**

Archiving Fee \$0.88 per lot per annum

Archive Box \$6.50 each

Archive folder \$0.95

Archive Retrieval at cost

### **Miscellaneous**

Common Seal at cost

Courier at cost

Dishonoured Cheque \$25.00 per cheque

### **Stationery**

Envelopes (each)

- A4 (C4) \$0.25

- A4 Reply Paid \$0.25

- Medium (C5) \$0.20

- Medium Reply Paid (C5) \$0.15

- Small (DLX) \$0.15

- Small Reply Paid (DLX) \$0.15

Letterhead \$0.15 per page

Levy Notice/ Overdue Notice \$0.75

Levy Reminder Notice (90 days or more overdue) \$5.50 per notice

### **Postage**

Postage at cost

#### **1: Tax Compliance**

Tax File Number Application Fee \$66.00 per application

Tax Return - Single Source Income \$231.00

Tax Return - Multiple Source Income \$345.40

Preparation of Information for external use \$88.00

#### **2: GST Compliance**

GST Registration \$ 66.00 per application

BAS Return - per plan fee \$ 77.00 per quarter

IAS Return (Instalment Activity Statement) \$ 44.00 per statement

#### **3: Audit Fees**

Independent Auditor - Non-GST Registered Plan \$11.50 per lot / minimum \$62.50 per plan

Independent Auditor - GST Registered Plan Actual cost as quoted

#### 4: Travelling Expenses

For the Manager to attend on site meetings charged at ATO rate

#### 5: Lodgement of Documents

LTO - By-law / Community Management Stmt \$82.50

ASIC - Company Annual return \$110.00

#### 6: Building Management

Building & Maintenance Supervisor \$110.00 per hour

#### 7: Funds Investment Management

Calculated @ 1.25% per annum of the average balance of funds invested.

Includes Auditing of Trust A/C, cheques & remittances, EFT facilities, Investments & bank charges

External Funds Investment \$132.00 to set up and  
\$55.00pa to maintain

### **I : REVIEW DATES**

Anniversary of commencement date.

### **J : AGREED SERVICES**

Secretarial and Administrative

1. Undertake the duties of the secretary and treasurer of the Corporation.
2. Organise and attend any general meetings and Committee meetings of the Body Corporate when required, and to take and prepare minutes of those meetings.
3. To possess, use and supervise the use of the Common Seal in accordance with resolutions of the Committee and Body Corporate and the terms of this agreement.
4. To ensure that insurances are effected promptly and renewed and to make necessary claims. For the avoidance of doubt, the Manager will not be held liable for any loss incurred as a result of a failure by a Member to notify a change in occupancy of a lot or unit.
5. To possess and maintain proper records of the Body Corporate as required by the Act and to provide access to such records to such persons as is required by the Act.
6. To maintain the register of Members.
7. To prepare and distribute notices of meetings and call for nominations for office bearers and Committee members.
8. To generally deal with inward and outward correspondence to the Corporation and inform the Committee Nominee of its nature and importance wherever necessary.
9. To provide general advice and assistance to the Body Corporate's officers and Committee in the exercise of their rights and the discharge of their obligations.
10. To arrange maintenance, repair and replacement of the common property and personal property vested in the Body Corporate which is normal maintenance repair and replacement.

#### **Financial**

11. To collect, bank and account for all money payable to the Corporation in accordance with legislative requirements.
12. To issue levy and other contribution notices to Members on behalf of the Body Corporate.

- 13 To invest money as instructed by the Body Corporate and in accordance with the Act and any other statutory requirements.
14. To prepare draft budgets (excluding, if applicable, sinking fund budget forecasts) for consideration by the Committee.
15. To prepare annual statements of account of the Body Corporate in accordance with the requirements of the Act.
16. To pay Corporation accounts and outgoings in accordance with the Act.

#### **K : ADDITIONAL SERVICES**

1. Attendance at any tribunal or court either as a witness or on behalf of the Body Corporate.
2. Attending to instruct solicitors and generally to supervise any legal proceedings involving the Body Corporate.
3. Attending at the premises of the Body Corporate other than for the provision of the Agreed Services.
4. Arranging and attending at any meetings other than those provided as Agreed Services.
5. To arrange maintenance, repair and replacement of the common property and personal property vested in the Body Corporate, which is not normal maintenance, repair and replacement and to liaise with architects, engineers, surveyors, builders, loss adjusters and assessors and the like in relation to any such work.
6. To keep any wage, income tax or other records required by any law from time to time in respect of any employees or contractors of the Body Corporate and to complete and submit any relevant returns.
7. To collect electricity and other utility charges or to read meters and any other ancillary work associated with the supply of services to individual units.
8. Any Agreed Services required to be undertaken outside of usual business hours.
9. Any reasonable request by the Body Corporate and not stated as an Agreed Service.

#### **L : DISCLOSURE OF ASSOCIATES**

Providers that are associates of the Manager and the nature of the relationship:

Name of Company: MGA Insurance Brokers Pty Ltd (ABN 29 008 096 277)  
Relationship: Various Common Shareholders

#### **M : DISCLOSURE OF ASSOCIATES**

Providers that may pay a commission to the Manager and the details of the commission:

Any insurance policy effected through any insurance brokers, including MGA Insurance Brokers Pty Ltd. Such commission will not exceed 10% of the premium for that policy.

Providers of repair and maintenance services may pay to the Manager a fee not exceeding 7% of the invoiced value of any contract works. Such fees will be applied by the Manager to oversee and inspect maintenance works and authorise payment and provide an after hours emergency contact service.

#### **N : SPECIAL CONDITIONS**

The Fee for Agreed Services will be increased at the rate per lot/unit listed in item F above for each Unit added to the Body Corporate after the Agreement Date.