

# STRATA MANAGEMENT AGREEMENT

FOR USE BY MEMBERS OF STRATA COMMUNITY AUSTRALIA (WA) INC ONLY

<b>Date of Agreement</b>	30 <sup>th</sup> October 2013	
<b>Strata Company</b>		
Name	The Owners of	147-159 Charles Street West Perth
	Strata Plan No.	5629
	ABN (if known)	23 678 875 633
Address	147-159 Charles Street West Perth	
<b>Strata Manager</b>		
Name	Bureau Pty Ltd atf the KO Unit Trust T/A Exclusive Strata Management	SCAWA Membership No. 430
ABN	20 422 677 948	Phone (08) 9362 1166
Business Name	Exclusive Strata Management	Fax (08) 9362 1133
Postal Address	PO Box 779 Victoria Park WA 6979	Email laura@exclusivestrata.com.au
<b>Particulars</b>		
Item 1	Term	2 Years
Item 2	Commencement Date	12 <sup>th</sup> November 2013
	Expiry Date	12 <sup>th</sup> November 2015
Item 3	First Review Date	12 <sup>th</sup> November 2014
	Second Review Date	N/A
Item 4	Percentage Increase	5 %
Item 5	Agreed Services Fee	\$11,220.00 per annum, including GST
Item 6	Fee Payment Method	paid Monthly in Advance
Item 7	Strata Company Representative	
Item 8	Manner and frequency of financial reporting	
<b>Notice: The fees and charges referred to in this agreement are not fixed by law and are to be agreed between the Strata Company and the Strata Manager</b>		

# AGREEMENT

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## 1. Appointment of and delegation to Strata Manager

- 1.1. The Strata Company:
  - (a) appoints the Strata Manager as the strata manager for the Strata Company;
  - (b) subject to clause 1.4, delegates the Agreed Services to the Strata Manager;
  - (c) requests that the Strata Manager perform the Agreed Services; and

the Strata Manager accepts that appointment and delegation and agrees to undertake the Agreed Services for the Term and any Successive Term for the Agreed Services Fee, unless and until terminated in accordance with clause 5.
- 1.2. At any time during the Term or any Successive Term, the Strata Company may request that the Strata Manager accept a delegation of and perform any or all of the Additional Services for the Additional Services Fees.
- 1.3. The Strata Manager, at its absolute discretion, may elect not to accept a delegation of the requested Additional Services.
- 1.4. The parties acknowledge that the delegations to the Strata Manager in clauses 1.1(b) and clause 1.2 do not:
  - (a) constitute a delegation by the Strata Company of its power to make:
    - (i) a delegation under the Act or the By-laws; or
    - (ii) a decision on a matter required by the Act or the By-laws to be decided by the Strata Company or the Council; or
    - (iii) a determination relating to the levying or payment of contributions on proprietors;

or
  - (b) prevent the Strata Company or the Council from exercising all or any of the Agreed Services or Additional Services.

## 2. Fees and charges

- 2.1. The Strata Company shall pay the Strata Manager:
  - (a) the Agreed Services Fee;
  - (b) the Additional Services Fees for any Additional Services performed by the Strata Manager; and
  - (c) the Charges associated with the performance of the Agreed Services and any Additional Services; and

in accordance with the Fee Payment Method.
- 2.2. The Strata Manager must account to the Strata Company for money received and payments made by the Strata Manager on behalf of the Strata Company in the manner and at the frequency set out in Item 8.
- 2.3. The Strata Company acknowledges that the Strata Manager may be offered rebates, discounts and commissions in the course of providing the Agreed Services and the Additional Services.
- 2.4. The Strata Manager may retain rebates, discounts and commissions paid to it by providers of goods and services to the Strata Company described in Schedule E or as later consented to in writing (which consent shall not be unreasonably withheld) by the Strata Company, provided the full nature and extent of the rebates, discounts and commissions are disclosed.



### 3. Review of fees and charges

- 3.1. The Agreed Services Fee, Additional Services Fees and Charges will be increased on each of the Review Dates by an amount agreed in writing between the parties, not being less than the amounts payable at each Review Date.
- 3.2. If the parties cannot agree on this before each of the Review Dates, the Agreed Services Fee, Additional Services Fees and Charges payable on and from the relevant Review Date will be increased by the Percentage Increase.

### 4. Insurance

The Strata Company acknowledges that:

- (a) the Strata Manager is only qualified to give general information and advice about insurance to the Strata Company;
- (b) the Strata Manager is not qualified to give personal advice about insurance to the Strata Company;
- (c) if the Strata Company requires specialist insurance advice, the Strata Manager can refer the Strata Company to an insurance advisor;
- (d) if the Strata Manager recommends that the insurance for the Strata Company should be placed with an insurer, that recommendation is general advice only, not personal advice; and
- (e) all proprietors should read the relevant product disclosure statement before deciding to buy any insurance.

### 5. Termination of this Agreement

- 5.1. This Agreement may be terminated without penalty at any time by mutual consent.
- 5.2. This Agreement will terminate on the Expiry Date if a party gives to the other party not less than 2 months written notice of termination before the Expiry Date.
- 5.3. If this Agreement does not terminate on the Expiry Date or is not otherwise terminated during the Term, this Agreement will automatically continue for Successive Terms unless and until terminated:

- (a) without penalty, by the Strata Company giving to the Strata Manager or the Strata Manager giving to the Strata Company at least 2 months written notice of that termination at any time during the Successive Term;
- (b) under clause 5.1; or
- (c) under clause 5.4.

- 5.4. Despite clauses 5.1, 5.2 and 5.3, this Agreement may be terminated without notice:

- (a) by the Strata Company:
  - (i) if the Strata Manager is in breach of this Agreement, the Act or any other statute and fails to remedy that breach (if capable of remedy) within 14 days after the Strata Company serves a written notice on the Strata Manager providing particulars of the breach; or
  - (ii) if the Strata Manager commits an act of bankruptcy or is placed under external administration;

and

- (b) by the Strata Manager if:
  - (i) the Strata Company fails to pay any money owing to the Strata Manager under this Agreement within 14 days after the Strata Manager serves a written notice on the Strata Company providing details of the unpaid amount; or

- (ii) the Strata Company acts or fails to so act as to prevent the Strata Manager from properly and lawfully carrying out its obligations under this Agreement.

5.5. If this Agreement is terminated, the Strata Manager must make available at the Strata Manager's office for collection by the Strata Company all records and other property of the Strata Company in its possession, within 7 days after the Strata Company pays all money owing to the Strata Manager.

## **6. Liability of Strata Manager and Indemnity by Strata Company**

6.1. The Strata Company acknowledges that:

- (a) the Act confers responsibility on the Strata Company for the management, control, maintenance, repair, renewal and replacement of Common Property; and
- (b) if, as part of the Agreed Services or Additional Services, the Strata Manager is required to carry out a function of the Strata Company relating to the management, control, maintenance, repair, renewal or replacement of Common Property:
  - (i) the responsibility of the Strata Manager is limited to those specifically identified services the Strata Company requests the Strata Manager to carry out in respect of that specific property; and
  - (ii) the Strata Manager has no liability for any Loss from any inherent defect or danger in Common Property or any disrepair, defect or danger in Common Property that is not the subject of a request under clause 6.1(b)(i).

6.2. The Strata Manager is not liable to the Strata Company if the Strata Manager fails to do any act it is obliged to do under this Agreement if the Strata Company fails to make the appropriate decision in relation to such act or to make sufficient money available to the Strata Manager to enable the Strata Manager to carry out its obligations.

6.3. The Strata Company indemnifies the Strata Manager against all Loss relating to or arising from the performance by the Strata Manager of its obligations, unless the Loss is caused by the Strata Manager's negligence or default under this Agreement.

6.4. This clause does not exclude or limit the application of any statute where to do so would contravene that statute or cause any part of this Agreement to be void.

## **7. Strata Company Representative**

7.1. The Strata Company warrants and acknowledges that:

- (a) the Strata Company Representative is validly nominated by the Strata Company to communicate with the Strata Manager on behalf of the Strata Company;
- (b) the Strata Manager may accept and act on instructions communicated to the Strata Manager by the Strata Company Representative; and
- (c) any communication by the Strata Manager to the Strata Company Representative is deemed to be a communication to the Strata Company.

7.2. The Strata Company Representative must be a member of the Council, or in the case of a corporate member of Council, the person nominated by that member of the Council to act for it.

7.3. The Strata Company may nominate a new Strata Company Representative at any time by written notice to the Strata Manager.

7.4. The appointment of the Strata Company Representative does not preclude the Strata Company from otherwise providing instructions to and communicating with the Strata Manager. If there is any discrepancy between instructions provided to the Strata Manager by the Strata Company and those provided by the Strata



Company Representative, the instructions provided by the Strata Company shall prevail.

**8. Assignment of this Agreement**

- 8.1. The Strata Manager may assign this Agreement with the consent of the Strata Company. That consent shall not be unreasonably withheld if the Strata Manager satisfies the Strata Company that the proposed assignee has sufficient qualifications, competence and experience to perform the Agreed Services and Additional Services.
- 8.2. The Strata Company must advise the Strata Manager of its decision whether to approve a proposed assignment within 28 days of receiving the information reasonably necessary to make that decision.
- 8.3. The Strata Company must not require or receive a fee or other consideration for approving the assignment (other than reimbursement for reasonable legal or accounting expenses incurred by the Strata Company in considering the proposed assignment).

**9. Service of Notices**

Any notice to be served under this Agreement must be served in writing by post, fax, e-mail or personally using the contact details provided on the front page of this Agreement or other contact details subsequently notified in writing by a party to the other party.

**10. GST**

- 10.1. Words or expressions used in this Agreement that are defined in the *GST Act* have the same meaning in this Agreement.
- 10.2. The parties acknowledge that:
  - (a) the Agreed Services Fee, Additional Services Fees and Charges include GST and are based on a GST rate of 10%; and
  - (b) if the rate of GST increases or decreases, the Agreed Services Fee, Additional Services Fees and Charges will simultaneously increase or decrease so that the Strata Manager receives the same GST-exclusive payment as it received before the change in the rate of GST.

**11. Governing Law**

This Agreement is governed by the law of Western Australia.

**12. Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa:
- (b) a reference to :
  - (i) a thing includes the whole or each part of it;
  - (ii) a document or agreement includes any variation or replacement of it;
  - (iii) a statute includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
  - (iv) a person includes that person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

**13. Definitions**

The following words have these meanings in this Agreement:

Act	<i>Strata Titles Act 1985 (WA)</i>
Additional Services	the services set out in Schedule B

Additional Services Fees	the fees for the supply of the Additional Services calculated according to the rates set out in Schedule C, as may be varied
Agreed Services	the services set out in Schedule A
Agreed Services Fee	the fee set out in Item 5 for the supply of the Agreed Services, as may be varied
Agreement	this agreement including the Particulars and Schedules
By-laws	the by-laws of the Strata Company
Charges	the costs and fees set out in Schedule D, as may be varied
Commencement Date	the earlier date set out in Item 2
Common Property	the property for which the Strata Company is responsible under the Act
Council	the council of the Strata Company
Expiry Date	the later date set out in Item 2
Fee Payment Method	the method set out in Item 6 for paying the Agreed Services Fee, Additional Services Fees and the Charges
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
Item	an item in the Particulars
Loss	actions, claims, demands, costs, damages, expenses and liabilities (including legal costs on a solicitor/own client basis)
Percentage Increase	the percentage rate set out in Item 4
Review Dates	the dates set out in Item 3
SCAWA	the Strata Community Australia (WA) Inc
Strata Company	the strata company described on the front page of this Agreement, including the Council and employees, agents (other than the Strata Manager) and contractors of the Strata Company
Strata Company Representative	the natural person named in Item 7
Strata Manager	the strata manager described on the front page of this Agreement, including any employees and contractors
Successive Term	a period of the same length as the Term, starting on the day after the Expiry Date or the preceding Successive Term, as the case may be
Term	the period set out in Item 1 commencing on the Commencement Date and expiring on the Expiry Date