

STRATA COMMUNITY AUSTRALIA (VIC) ["SCA (Vic)"]

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CONTRACT OF APPOINTMENT SERVICE COMPANY MANAGER & COMPANY SHARE BASIS FLAT SCHEME MANAGER

CONTENTS:

REFERENCE SCHEDULE	2
Details of Company.....	2
Details of Manager.....	2
Term of Appointment.....	2
1. INSURANCE.....	3
1.1 Manager's professional indemnity insurance details.....	3
1.2 Australian Financial Services Licence and Authorisations	3
1.3 Insurance Agency Fee and Commissions.....	3
2. FEES AND SERVICES.....	4
2.1 Annual fee and services	4
2.2 Additional services paid by hourly rate or fixed fee.....	6
2.3 Disbursement Fees	7
2.4 Review of fees (detail any review dates and CPI requirements)	8
3. DELEGATIONS TO MANAGER.....	8
4. AUTHORITY TO PAY.....	8
5. DUTIES / OBLIGATIONS OF THE MANAGER.....	8
6. TRANSFER / ASSIGNMENT OF THIS APPOINTMENT.....	10
7. INDEMNITIES.....	10
8. TERMINATION OF MANAGER'S APPOINTMENT.....	11
9. OBLIGATIONS OF THE COMPANY.....	12
10. DISPUTE / COMPLAINTS PROCESS.....	14
11. ADDITIONAL CONDITIONS / PROVISIONS.....	16
12. DEFINITIONS / INTERPRETATIONS.....	17
13. GST.....	17
14. DECLARATIONS AND SIGNATURES.....	18

Contract of Appointment: Company Manager

This contract must be completed in accordance with the *Corporations Act 2001* ("the Act").

REFERENCE SCHEDULE

Details of Company

Company Name

Pty Ltd (the "Company")

Name and address of the Property:

ACN

Representatives of the Company

Name of main representative

Position held in Company

Director

Telephone number

Fax

Email

Name of alternative representative (if any)

Telephone number

Details of Manager

Manager Registration Number

Name of Manager (company or individual)

Business address

Telephone number

Facsimile

Email

ABN

ACN

Other Trading/Business Name(s) (if applicable)

Term of Appointment

Number of years

From (commencement date)

To (expiry date) (if applicable)

PLEASE NOTE: If no notice is given by the Company to the Manager at least 28 days prior to the expiry date the Appointment will continue until the expiration of one year after the expiry date which date will then become the expiry date.

1. INSURANCE

1.1 Manager's professional indemnity insurance details

Name of insurer

Name of policy holder

Policy Number

Date policy commenced

Date policy expires

Level of cover

1.2 Australian Financial Services Licence and Authorisations

(Insurance Companies/underwriting agencies/Insurance Broker/s)

Instructions: For each authorisation tailor the dealing and advising services you are permitted to provide by your authorising licensee/s. Check your written authority or agreement for details. Create a separate box for each licensee if you act for more than one. ^Delete the inapplicable authorisations.

Details of insurance services (dealing and advising service)	Authorising Licensee(s)
<p>Dealing service Arrange for a person to deal in a general insurance product^ Issue, acquire, vary or dispose of a general insurance product^ Apply for, acquire, vary or dispose of a general insurance product on behalf of another^</p> <p>Advising service Providing personal advice^ Providing general advice^ Providing factual information^</p>	

1.3 Insurance Agency Fee and Commissions

1.3.1 INSURANCE AGENCY FEE AND COMMISSIONS

The Company acknowledges that it has been fully informed by receipt of this Appointment of the Manager's arrangements with the authorising licensees listed in Clause 1.2 (or with various insurers if the Manager, or the Manager's employer, holds an Australian Financial Services Licence) and that it has agreed that:-

- 1.3.1.1 the manager may receive or retain commissions on the placing of insurance or the insuring of risks by the Company;
- 1.3.1.2 if the insurance commission is less than 15% of the premium paid by the Company the Company will pay to the Manager a fee being the difference between the commission received and 15% of the premium.
- 1.3.1.3 such fee shall be in addition to the fee for services set out in Clause 2.1.

1.3.2 CURRENT PRACTICE

The purpose of this memorandum is to facilitate uniform disclosure of insurance agency fees and commissions received by Managers who are members of SCA (Vic) and who comply with the conditions set out below.

SCA (Vic) endorses the current practice of Managers deriving insurance commissions on insurance premiums paid on behalf of the Company. The conditions applicable to endorsement by SCA (Vic) are as follows:-

- 1 such fees and commissions do not exceed 20% of the premium payable by the Company.
- 2 in all cases the best interest of the client is the paramount criterion when presenting quotations from particular insurance companies or placing insurance with any insurance company or broker that they are an authorised representative of.

The distribution of this document by the Manager to the members of the Company will serve as an announcement that such income is being received and that there is compliance with the restrictions as set out above.

2. FEES AND SERVICES

All fees must be listed and include GST.

2.1 Annual fee and services

Total Annual fee:

\$

How often paid:

(annually, ½ yearly, quarterly, monthly or other)

Annually in advance

Description of services to be provided by Manager in respect of annual fee payment

The Manager has the following duties :-

ACCOUNTING AND COMPLIANCE

- Provide an officer or employee of the Manager to act as secretary of the Company;
- Establish and operate a bank account in the name of the Company or a trust account for the Company;
- Keep financial records of the Company as required by the Act;
- Prepare annual financial reports of and annual director's report for and Annual financial reporting to members of the Company (the annual accounts) as required by the Act;
- Prepare and lodge Annual Returns with ASIC in accordance with the Act;
- Issue notices for service charges and maintenance contributions and additional service charges of the Company;
- Pay invoices and insurance premiums on behalf of the Company (provided reasonable funds are held by the Company);
- Reconciliation of bank account.

INSURANCE

- Arrange insurance or renewal only with or through the authorising licensees listed in Clause 1.2 in accordance with the authority(ies) to provide insurance services listed in Clause 1.2, unless the Manager or the Manager's employer holds its own Australian Financial Services Licence covering the provision of the services;
- Arrange a valuation of the cost of reinstatement and replacement of the building/s when requested by the Company;
- Prepare and lodge routine insurance claims with insurers/brokers (max. 15 minutes);
- Provide any other insurance services in respect of insurance products offered through the authorising licensees as listed in Clause 1.2, or as otherwise authorised by the Australian Financial Services Licence held by the Manager, or the Manager's employer.

DOCUMENTATION

- Maintain the share register of the Company the register of Directors and all registers required to be maintained under the Act;
- Issue all answers to requisitions and reasonable enquiries and provide appropriate information at the cost of the applicant/enquirer;
- Deal with routine inwards and outward correspondence;
- Keep and supervise the use of the common seal;
- Keep the records of the Company including notice of meetings, minutes of meetings, and records of proxies and circulate resolutions.

ANNUAL GENERAL MEETING

- Attend Annual General meetings held during office hours at the Manager's office or at another place agreed between the Company and the Manager;
- Convene, attend, submit a budget and financial statement to and record minutes of the Annual General Meeting;
- Submit a report of the Manager's activities to each Annual General Meeting;
- Meetings exceeding one (1) hours duration will be charged at the hourly rate for **Additional Services** set out in 2.2;
- Any meeting held outside the Manager's office will attract a fee for travel time as set out in 2.2;

MAINTENANCE - Arrange for minor (< \$1,000 or 15 minutes) repairs and maintenance of Company Property.

GUIDANCE - Provide guidance to the Company to enable the Company to carry out and perform its duties and functions, as set out in this clause.

GENERAL - Generally implement the decisions and instructions of the Company with respect to its duties and functions as set out in this clause and the Service Agreement.



2.2 Additional services paid by hourly rate or fixed fee

Hourly rate:

\$

Chargeable as follows:

in units of 6 minutes or part thereof

How often paid:

Upon presentation of invoice

Description of services to be provided by Manager on hourly rate or fixed fee basis	Amount
ABN/GST registration / de registration / alteration	
Affixing common seal	
Answering requisitions or questions arising out of provision of information	Hourly Rate
Any other services not included in this schedule	Hourly Rate
Arrange any major (> \$1,000 or 15 minutes) maintenance/repair/replacement of Company Property (% of project value)	
Attendances to dispute resolution	Hourly Rate
Attendances necessary for preparation of the share register of the Company the register of Directors and all registers required to be maintained under the Act	
Attendance to overdrawn accounts: Establishment of overdraft facility Professional fees for administering an overdrawn account (per month) Disbursement fees and charges relating to an overdrawn account (per month)	
Attendance to provide inspection of any records of the Company and its registers to authorised persons, and responding to enquiries (Minimum charge 1 hour)	Hourly Rate
Attending AGM outside hours of 9.00 a.m. and 5.00 p.m. on weekdays	Hourly Rate
Compiling records to enable preparation of accounts for audit purposes	Hourly Rate
Compiling records to enable preparation of accounts for lodgement of each BAS	
Compiling records to enable tax preparation	
Convene, distribute notices for and or attend Extraordinary General Meetings and or Meetings of Directors and/or committees of Directors	Hourly Rate
Counter signing of cheques (per month)	
Debt recovery letter	
Establish a maintenance fund in the name of the Company	Hourly Rate
Establishment of records and setting up of Company (per lot)	
Facilitate Preparation of a maintenance plan for the property of the Company	Hourly Rate
Handling Building Defects	Hourly Rate
Instruct debt collectors and or solicitors and generally supervise or attend any legal proceedings or hearings affecting the Company	Hourly Rate
Insurance claim – preparation and lodgement of claim (exceeding 15 minutes)	Hourly Rate
Keeping of keys (per annum)	
Keep wage, taxation and other related records required by the Company	Hourly Rate
Liaison & administration with Accountants, Auditors, Architects, Actuaries Engineers, Builders, Lawyers Surveyors, Valuers or other professionals in relation to work or matters affecting the Company	Hourly Rate
Maintain any additional accounts for the Company (eg investment, maintenance fund)	Hourly Rate
Preparation and lodgement of Returns other than Annual Returns required to be lodged with ASIC in accordance with the Act eg Change of Director, Change of Top 20 Shareholders. Per Notification. (excludes lodgement fee)	
Preparation of records on transfer of management	
Prepare and obtain a resolution in writing for signature by all Directors or all members of the Company (Minimum charge 2 hours)	Hourly rate
Property visits (other than the initial visit which is free)	Hourly Rate
Provide client payment history (where possible only) (paid by applicant)	
Provide financial report other than for an AGM	
Public Officer fee (per annum)	
Rectify record deficiency in new files at commencement of management	Hourly Rate
Supply of answers to requisitions and answers to other enquiries	Hourly Rate
Supply of copy documents and records of the Company (eg. Title, Memorandum and Articles/Constitution,	

Service Agreements, charges, leases and licences, past minutes or income and expenditure reports, etc.) plus copying costs (payable by applicant). Per Document.	
Supply of restricted keys/ key cards / remotes (plus cost)	
Travel time (plus reasonable travelling expenses) incurred to attend to any of the matters in this clause	Hourly Rate

2.3 Disbursement Fees

How often paid:

Annually

Description of disbursement fees to be claimed by Manager	Amount
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(a)

Archive box (Supply only)	
Sign (plus cost)	
Certificate of title/Copy of Plan of Subdivision/Search (plus cost)	
Cheque summary notice	
Common seal (plus cost)	
Courier charges (plus cost)	
Payment of creditors (incl. post & stat) (\$1.10 direct debit)	

(b)

Archive records storage fee (per box per month)	
Computer charge (levy/ cheque)	
Computer charge (cheque summary)	
E-mail outwards	
Facsimile inwards	
Facsimile local outwards	
Facsimile long distance outwards	Per facsimile + phone charge
Issue contribution notices (incl. postage & stationery) per notice	
Photocopying, collating, & stapling per copy	
Photograph (minimum of \$15.00)	
Postage charges – standard letter	
Postage charges other than standard (plus cost)	
Fee for dishonoured members cheque	
Process stop payment on cheque	
Telephone Charge Up to 20 lots (per month) 21 to 80 lots (per lot per month) 81 lots or more (per lot per month)	

Or, alternatively to (b)

(c)

Per lot per annum fixed fee covering all itemised disbursement fees listed above.	
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2.4 Review of fees (detail any review dates and CPI requirements)

Unless otherwise agreed:

- 2.4.1 the fees and additional fees provided for in 2.1 and 2.2 above will be increased annually on each anniversary of the commencement date of this Contract of Appointment by the increase in the AWOTE index or 5% whichever is the greater.
- 2.4.2 disbursement fees as set out in 2.3 above will be reviewed to reflect cost increases on 1 July during each year of the Term of Appointment.

3. DELEGATIONS TO MANAGER

The Company by this instrument, hereby delegates to the Manager all the powers and functions of the Company that are necessary to enable it to perform its duties under this Appointment and the Service Agreement. Such delegation includes the power to sign company returns contracts and other documents and correspondence on behalf of the Company not requiring a unanimous resolution or a special resolution or requiring the seal of the Company provided that the signature of contracts and other documents has been approved at a duly constituted meeting of Directors or a General Meeting or otherwise properly authorised by the Directors. The Manager may delegate to an employee of the Manager any function or duty conferred on the Manager including a function or duty conferred by this delegation.

4. AUTHORITY TO PAY

The Company authorises the Manager to disburse Company funds for the purpose of:

- 4.1 Payment of the annual fee for carrying out the Services specified in Clause 2.1,
- 4.2 Payment for performing the Additional Services specified in Clause 2.2
- 4.3 Payment for the disbursements fees listed in Clause 2.3;
- 4.4 Paying moneys in accordance with a budget approved by the Company;
- 4.5 Payment of insurance premiums and commission;
- 4.6 Payment of the cost of repairs and maintenance carried out with the authority of the Company or by the authority of the Manager and where performance of Additional Services is deemed by the Manager to be necessary for compliance with the Act;
- 4.7 Payment of all other day to day expenses incurred by the Company.

5. DUTIES / OBLIGATIONS OF THE MANAGER

The Manager must perform the following duties and adhere to the following obligations:

- 5.1 Act honestly and in good faith in the performance of the Manager's functions.
- 5.2 Exercise due care and diligence in the performance of the Manager's functions.
- 5.3 Not make improper use of the Manager's position to gain, directly or indirectly, an advantage personally or for any other person.
- 5.4 Hold all money held on behalf of the Company on trust for the Company.
- 5.5 Account separately for the money held for the Company.
- 5.6 Report at the Annual General Meeting.

5.7 FUNCTIONS OF THE MANAGER

The Manager has the functions conferred by the Service Agreement, a resolution at a general meeting, a delegation by the Company and the matters set out in this instrument or an instruction from the Company representative.

5.8 DUTIES OF THE MANAGER

The Manager must:-

- 5.8.1. submit a report of the Manager's activities to each annual general meeting of the Company;

and

- 5.8.2. include in the Manager's report details of the professional indemnity insurance held by the Manager.

5.9 OBLIGATIONS OF THE MANAGER

The Manager must:-

- 5.9.1. perform the Services set out in Clause 2.1 in consideration of the fees there set out plus the disbursement fees set out in Clause 2.3.
- 5.9.2. perform the Additional Services at the rates or the fixed fees as set out in Clause 2.2 if requested by the Company or the Directors of the Company or the representative or substitute representative and agreed to by the Manager or where the Manager is engaged in dispute resolution involving the Company or where performance of Additional Services is deemed by the Manager to be necessary for compliance with the Act;
- 5.9.3. provide the insurance services specified in Clause 1.3 in respect of insurance products offered through the authorising licensees or in accordance with the terms of an Australian Financial Services Licence held by the Manager or the Manager's employer;
- 5.9.4. obtain and present quotations for insurance if instructed by the Company from authorising licensees or from other insurance providers provided that the Company identifies for the Manager those other insurance providers from whom it wishes to seek insurance terms;
- 5.9.5. not provide insurance services:-
- (a) as a representative of any person who is not listed as an authorising licensee in Clause 1.2; or
 - (b) as a representative of a person who is listed in Clause 1.2 where the insurance service is outside the authority granted by that authorising licensee,
- unless the Manager or the Manager's employer holds its own Australian Financial Services Licence covering the provision of the insurance services;
- 5.9.6. refer the Company to an appropriately authorised or licensed insurance adviser if the Company requires personal advice in relation to an insurance product and the Manager is not authorised to provide personal advice (as listed in Clause 1.2);
- 5.9.7. not receive any commissions (other than those referred to in Clause 1.3), trade discounts or other fees from contractors, professionals or other providers of services to the Company directly or indirectly unless full disclosure of the percentage commission and a genuine estimate of the resulting dollar amount of such commission is given by the Manager in writing and approved by the representative of the Company in writing;
- 5.9.8. observe the Code of Professional Conduct of Strata Community Australia (Vic) Inc. ["SCA (Vic)"] and any other guideline or standard formally approved or adopted by SCA (Vic).

5.10 WARRANTIES OF THE MANAGER

The Manager warrants that:-

- 5.10.1. the Manager is registered as a Manager Under the Owners Corporations Act 2006 ("OCA") and will continue to remain registered during the currency of this Appointment;
- 5.10.2. the Manager is a member of SCA (Vic) and the Manager will immediately inform the Directors of the Company should that membership cease;
- 5.10.3. the Manager or an employee of the Manager holds an Australian Financial Service Licence with the appropriate licence authorisations or is an authorised representative of the authorising licensees listed in Clause 1.2 with authority to provide the financial services listed in Clause 1.2;
- 5.10.4. the Manager has been appropriately trained to provide the insurance services for which the Manager is authorised (as listed in the Clause 1.2) or as otherwise authorised under an Australian Financial Services Licence held by the Manager or the Manager's employer;
- 5.10.5. the Manager holds professional indemnity insurance that is sufficient to meet claims up to a level of the prescribed amount under the OCA in any one year and will continue to hold such insurance at all times during the continuance of this Appointment.

6. TRANSFER / ASSIGNMENT OF THIS APPOINTMENT

The Manager may transfer or assign this Appointment in the following ways:

The Manager may transfer or assign this Appointment to a person or company provided the procedures set out in this Clause are observed. The assignee must execute a Deed of Covenant whereby the assignee covenants with the Company to be responsible for compliance with the obligations of the Manager pursuant to this Appointment and must deliver the Deed of Covenant to the Company or the representative of the Company on behalf of the Company. Provided that the assignee provides written evidence of registration as a Manager under the OCA and that the assignee is a current member in good standing of SCA (Vic), then the Company must approve the assignment of this Appointment and upon delivery of the Deed of Covenant and without execution by the Company, the assignee will be entitled to all the benefits of the Manager under this Appointment. If the consent of the Company is required to any other transfer or assignment, such consent must not be unreasonably withheld. The Company must if called upon by the assignee formally appoint the assignee and execute a substitute instrument of delegation of powers pursuant to Clause 3 above to enable the assignee to comply with the terms of this Appointment.

7. INDEMNITIES

INDEMNITY BY THE COMPANY AND LIABILITY OF MANAGER

- 7.1. The Manager is liable to the Company:-
- 7.1.1. only for services actually supplied; and
 - 7.1.2. on the terms of this Clause 7.
- 7.2. The Company **hereby releases and indemnifies** the Manager and holds the Manager harmless from and against all actions, omissions, claims, demands, losses, costs, damages and expenses (including without limitation reasonable legal costs on a solicitor and own client basis) ("the loss") in relation to or arising directly or indirectly out of the performance or non performance by the Manager of any services or the exercise of its functions and powers pursuant to this Appointment or otherwise from any cause of action including negligence and including without limitation:-
- 7.2.1. defects or dangers arising in or out of the Company Property;
 - 7.2.2. arising from the failure of the Company to supply adequate information and advice or direction when requesting work to be performed by the Manager;
 - 7.2.3. arising from goods or services provided by or to third parties at the request of the Manager provided that such request was made in accordance with the provisions of this Appointment;
 - 7.2.4. arising from the handling or storage of goods, products or chemicals;
 - 7.2.5. resulting in death, bodily injury, damage to property or economic loss suffered by any person or persons whatsoever including members and occupiers of the property or part thereof;
- except to the extent that such loss is caused by or contributed to by the Manager's dishonesty or fraud.
- 7.3. Clauses 7.1 and 7.2 apply to the extent permitted by law.
- 7.4. If the Manager breaches its obligations in relation to the services and the Company has contributed to the Manager's breach, the Company agrees to indemnify the Manager immediately upon demand against any claim, or liability for loss to the extent that the Company has contributed to the breach.
- 7.5. This instrument evidences the resolution of the Company to grant this indemnity.
- 7.6. The Company must on demand repay to the Manager any amounts advanced by way of loan or otherwise by the Manager to it, and make good any funds overdrawn in the bank accounts of the Company.
- 7.7. The Company **hereby indemnifies** the Manager and will hold the Manager harmless against any claim cost or demand made by any third party in respect of monies lent, goods or services provided to

- or for the Company at the request of the Manager provided that such request was made in accordance with the provisions of this Appointment. This instrument evidences the resolution of the Company to grant this indemnity.
- 7.8. The Company must indemnify the Manager for all reasonable costs reasonably incurred by the Manager:
- 7.8.1. in connection with any matter relating to the Company or its property; or
- 7.8.2. from the exercise, attempted exercise or non-exercise of any function under this Appointment; or
- 7.8.3. in consequence of the manager being a party to any proceeding relating to the Company.
- 7.9. The Manager may exercise the power of the Company to make an additional service charge to cover the requirements for payment of any moneys due to the Manager.
- 7.10. The indemnities granted under this Clause survive termination of this Appointment.

8. TERMINATION OF MANAGER'S APPOINTMENT

The Manager's appointment may be terminated in the following ways:

- 8.1. This Appointment may be terminated by notice of termination in the following ways:
- 8.1.1. either party may terminate the Appointment at any time if the other party has committed a fundamental breach of the terms of this Appointment and fails to rectify such breach within a reasonable time after written notice from the other party specifying such breach.
- 8.1.2. after the initial term the Company may by ordinary resolution of the Company, at a general meeting only, resolve to terminate this Appointment effective upon the expiry date or any anniversary of the expiry date by giving 28 days prior notice in writing to the Manager without having to specify the reason for termination. This instrument evidences the resolution of the Company that its Directors shall not have the power or function to terminate the Manager's Appointment unless so resolved at a general meeting of the Company.
- 8.1.3. by the Manager after giving 3 business days notice at any time during the currency of this Appointment, if in the opinion of the Manager, the Company, is either acting unlawfully or with disregard for the safety of persons on the Company Property.
- 8.1.4. after the initial term the Manager may terminate this Appointment at any time after giving 28 days prior notice of termination in writing without having to specify the reason for termination.
- 8.2. The Company must comply with this Appointment when deciding to terminate the Appointment.
- 8.3. This Appointment will continue until the expiration of the period of 28 days referred to in Clause 8.5 or such earlier time as the records and funds of the Company are collected pursuant to Clause 8.5.

If the Manager's appointment is terminated the following conditions/obligations will apply:

- 8.4. The Company will remunerate the Manager;
- 8.4.1. pro-rata for services performed under Clause 2.1 up to the end of the Appointment; and
- 8.4.2. for any Additional Services rendered pursuant to Clause 2.2; and
- 8.4.3. for any outstanding Disbursement Fees at the rates specified in Clause 2.3; and
- 8.4.4. for work required to effect the termination and transfer of records including the cost of preparation of additional financial statements.
- 8.5. The Manager must within 28 days of lawful termination of this Appointment as Manager return to the representative of the Company all records relating to the Company or funds of the Company held or controlled by the Manager and will also provide a statement of income and expenditure and balance sheets up to the end of the Appointment.

9. OBLIGATIONS OF THE COMPANY

The Company must:

- 9.1 In carrying out its functions and powers act honestly and in good faith, and must exercise due care and diligence.

9.2 OBLIGATIONS OF THE COMPANY

The Company must:-

- 9.2.1. have at all times a Director as representative to deal with the Manager and must give the Director appropriate powers to act by executing an instrument of delegation;
- 9.2.2. if the Company appoints a substitute representative, give the substitute representative appropriate powers to act by executing an instrument of delegation;
- 9.2.3. make the Manager aware of any defects or hazards in the Company Property and make prompt decisions in relation to any necessary repairs maintenance or other works;
- 9.2.4. resolve and this instrument evidences, the resolution of the Company that the powers and functions of the Company delegated under the Act or otherwise to its Directors do not include the power or function to terminate this Appointment, which is a matter which must be dealt with only by the Company in General Meeting;
- 9.2.5. read the Product Disclosure Statement provided by the Manager before making a decision to purchase the insurance and decide as to the appropriate insurer, the amount of cover and the appropriate policy in good time to enable insurance renewal each year;
- 9.2.6. obtain a valuation of the cost of reinstatement and replacement of the building/s which the Company is obliged to insure not less frequently than every three years;
- 9.2.7. ensure that each of the representatives or Directors of shall not without giving seven days prior written notice to the Manager:-
- (a) Issue a notice to convene an annual general meeting or an extraordinary general meeting of the Company; or
 - (b) Arrange a resolution in writing for signature by all Directors or all members of the Company.

9.3 DIRECTORS OF COMPANY

The Company and the Directors of the Company and each of them undertake to ensure that:-

- 9.3.1. reasonable notice of all Directors meetings are provided to the Manager;
- 9.3.2. copies of all minutes of Directors meetings are provided to the Manager to enable the Manager to keep the records of the Company.

9.4 REPRESENTATIVE AND SUBSTITUTE REPRESENTATIVE OF THE COMPANY

The Company must appoint a Director as representative and may appoint a substitute representative as named in the Reference Schedule, being Directors of the Company, to communicate with the Manager and to receive communications from the Manager on behalf of the Company and to give instructions to the Manager upon which the Manager may act. The Company may from time to time appoint other Directors of the Company to be the representative and substitute representative and must give written notice to the Manager of such appointment whereupon the previous appointees shall cease to have the authority of the Company. Binding instructions to the Manager may only be given by a representative and in the event of any inconsistency or ambiguity the Manager may notify the representative and the substitute representative in writing to seek clarity. The Manager shall be entitled to act upon a direct instruction applying the following order of precedence:-

- 9.4.1. from the representative;
- 9.4.2. from the substitute representative.

9.5 RESPONSIBILITY FOR REPAIRS AND MAINTENANCE

- 9.5.1. The Company is responsible under Service Agreements with respective members of the Company for repair and maintenance of the Company Property. The Manager is not liable to the Company or to any other party in respect of any defects in the Company Property, failure to

comply with any building or other statutory regulations or town planning requirements or any need for repair or the existence of any danger or hazard unless:-

- (a) it has been brought to the attention of the Manager and the Manager fails to take steps within a reasonable time to make the Company aware of its need to make appropriate decisions in respect of and to raise funds for the necessary repairs maintenance or other works, or
- (b) the Manager has been instructed to arrange for the repairs maintenance or other works and sufficient funds are available for them to be carried out but fails to make such arrangements within a reasonable time,

9.5.2. The Manager is not required to:-

- (a) inspect the Company Property, attend itself to any repairs maintenance or other works, make itself aware of any defects in the Company Property, or remedy any failure to comply with the Building Code of Australia or other applicable requirements or town planning requirements or any need for repair or the existence of any danger or hazard; or
- (b) perform any services other than those referred to in Clauses 2.1 and 2.2.

9.5.3. The Company acknowledges that:-

- (a) the Company is the entity in control of the premises and Company Property
- (b) the Company has an obligation to ensure the safety of any person/s at the premises and on or using the Company Property
- (c) the Manager as agent will nominate the Company as the Principal in respect of any contracts or agreements entered into on behalf of the Company and has no liability as the Principal. The Manager is not in the business of providing repairs and maintenance services to the Company and will not do so.

9.5.4. The Company must ensure:-

- (a) compliance with the obligations under the OHS Act including but not limited to:
 - (i) obligations as employers for its employees and others at its Place of Work;
 - (ii) the obligations as occupier of premises;
 - (iii) obligations it has as controller of any plant or substance used by people at its *Place of Work*;
- (b) that it and all persons employed or engaged by it or on its behalf comply at all times with the requirements of the OHS Act and any directions, manuals, policies or rules formulated from time to time by the Company;
- (c) that it has systems in place to assess and eliminate risks and hazards at the Company Property and premises which meet the standards required by the OHS Act;
- (d) that where risks and hazards cannot be eliminated the risks and hazards are adequately controlled in a way which meets the standard required by the OHS Act;
- (e) that all persons employed or engaged by it at the Company Property are appropriately trained and supervised;
- (f) that only qualified persons are engaged to carry out any third-party work.

9.5.5. The Company will to the extent permitted by law, indemnify the Manager against all claims for any loss or damage which may arise as a result of any breach by the Company of obligations applicable to the principal contractor under the OHS Act in accordance with Clause 7;

9.5.6. The terms used in this Clause shall have the same meaning as in the OHS Act.

10. DISPUTE / COMPLAINTS PROCESS

The Manager and Company must adhere to the following dispute/complaints process:

10.1 DISPUTE RESOLUTION INVOLVING THE COMPANY, DIRECTORS OR MEMBERS OF THE COMPANY NOT INVOLVING COMPLAINT AGAINST THE MANAGER

- 10.1.1 The Manager may if requested by the Company, the representative or substitute representative participate in dispute resolution.
- 10.1.2 If the Manager participates in any dispute resolution process, attends on receipt or issue of a complaint, meets with the board of Directors or dispute resolution, issues or receives any Notices of complaint or breach or takes part in any dispute resolution proceeding litigation or otherwise the Manager will be entitled to payment of the fees and charges set out in Clause 2.2 from the Company.

10.2 DISPUTE RESOLUTION INVOLVING A COMPLAINT AGAINST THE MANAGER BY THE COMPANY, A DIRECTOR OR MEMBERS OF THE COMPANY

- 10.2.1 The party making the complaint must prepare a written statement setting out the complaint and inviting the Manager and any other party or parties to a meeting.
- 10.2.2 The party making the complaint must serve a copy of the complaint on the Manager and the representative of the Company and if appropriate, on any other party involved.
- 10.2.3 The representative and substitute representative must be notified of any dispute by the complainant regardless of whether the Company is an immediate party to the dispute.
- 10.2.4 The parties to the dispute must if requested by the complainant meet and discuss the matter in dispute with the Manager and the representative and substitute representative on a date within 14 working days after the dispute comes to the attention of all the parties.
- 10.2.5 A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting and each party shall have the right to make submissions and to be heard by the representative and substitute representative.
- 10.2.6 The parties must each:-
 - (a) use their best endeavours to make available to the Manager, representative and substitute representative all facts and circumstances required in order to consider and resolve the dispute or difference; and
 - (b) ensure that their respective employees, agents or consultants are available to appear at the meeting.
- 10.2.7 The representative and substitute representative shall be entitled to make reasonable directions to expedite or adjourn any meeting or determination of this dispute resolution process as they in their sole discretion think fit on behalf of the Company.

10.3 REFERENCE OF DISPUTE TO AN EXPERT

In the event of any dispute or difference as to the effect of or operation of the interpretation and performance of obligations under the Service Agreement, that dispute or difference may, if the Manager, representative, substitute representative and the complainant agree, be referred for determination by a person (**Expert**) who shall be agreed upon between the parties or appointed by the President for the time being of the Law Institute of Victoria.

10.3.1 Parties to use best endeavours

When any dispute or difference has been referred for expert determination, the parties must each:-

- (a) use their best endeavours to make available to the Expert all facts and circumstances which the Expert requires in order to settle or determine the dispute or difference; and
- (b) ensure that their respective employees, agents or Consultants are available to appear at any hearing or enquiry called for, by the Expert.

10.3.2 Right to be heard

The parties each have the right to:-

- (a) make submissions to; and
- (b) be heard by; and
- (c) each party may be legally represented before the Expert.

10.3.3 Expert's decision

The decision of the Expert must be made and delivered to the parties within a period of 1 month (or such other period as the parties may agree, or the Expert may determine) after the date of submission of the dispute or difference to the Expert and shall be final and binding upon the parties.

10.3.4 Expert may appoint other expert to assist

The Expert may appoint any other expert to consult with, assist and advise the Expert. The cost of such other expert is deemed to form part of the determination costs and expenses.

10.3.5 Expert to act as an expert

The Expert must act as an expert, not as an arbitrator, and his or her decision will be final and binding upon the parties.

10.3.6 Costs of determination

The Expert must also determine:-

- (a) the amount of the costs and expenses of, and relating to, the reference of any dispute or difference to him or her; and
- (b) which party or parties must bear the costs and expenses, and in what shares, and in making the determination, the Expert must take into account the reasonableness of the parties leading up to the expert determination including any offers made to resolve the dispute.

10.4 CONDUCT PENDING DISPUTE RESOLUTION AND/OR EXPERT DETERMINATION

In the event of any matter being the subject of dispute resolution or referred for the decision of an independent expert:-

- (a) This Contract of Appointment and the Service Agreement will be adhered to pending the decision; and
- (b) If either party is challenging any payment claimed by the other:-
 - (i) so much of that payment (as is admitted to be owing) must be paid immediately; and
 - (ii) an appropriate adjustment must be made within 14 days of resolution.

10.5 GENERAL PROVISIONS FOR DISPUTE RESOLUTION

- 10.5.1 The representative and/or substitute representative may determine the costs and expenses arising out of any breach by a member of the Company, of an obligation imposed on that person under the Service Agreement incurred by the Company including any costs payable by the Company to the manager pursuant to clause 2.2 (but excluding the personal time cost of any person acting in an honorary capacity including the representative, substitute representative or Directors of the Company). The costs and expenses so determined shall be due and payable as a debt due by the party in default or breach to the Company. This instrument evidences the resolution of the Company to recover such costs and expenses.

11. ADDITIONAL CONDITIONS / PROVISIONS

The following additional conditions/provisions apply:

11.1 ENTIRE AGREEMENT

This document embodies the entire agreement between the parties and any previous or simultaneous negotiations, representations, arrangements and agreements are superseded by this Appointment. No amendment or variation may be made to the terms of this Appointment other than in writing executed by each of the parties.

11.2 SEVERANCE

In the event that any condition or provision of this Appointment is held to be invalid or unenforceable for any reason whatsoever that condition or provision shall be read down to the extent necessary to give it, if possible, partial operation, but if that is not possible the condition or provision may be severed and the remainder of this Appointment shall remain in full effect.

11.3 DIRECTOR'S GUARANTEE

As the signatories on behalf of the Company represent other persons and entities (namely the Company, co-director(s) and shareholders or members), therefore the signatories engage the Manager on their behalf, and warrant that:

- (i) they have the authority to do so, and
- (ii) the other persons and/or entities will acknowledge that in writing if requested.

The signatories agree that they on behalf of the Company, other persons or entities they represent are bound by this Appointment, jointly and severally, and that each of them jointly and severally undertake personal liability to observe all of the obligations under this Appointment, and guarantee the Manager payment of all amounts due under this Appointment by the Company, other persons or entities and indemnify the Manager against all costs losses and expenses which the manager may incur pursuant to this Appointment.

11.4 SPECIAL CONDITIONS

- A. Additional Special Conditions (if any) are attached. If agreed, these Special Conditions make amendments to the Appointment.

12. DEFINITIONS / INTERPRETATIONS

INTERPRETATIONS

- 12.1 "Act" means the *Corporations Act 2001* as amended from time to time.
- 12.2 "Additional Services" means the additional services set out in Clause 2.2.
- 12.3 "Appointment" means this Instrument of Appointment of Manager and includes any Special Conditions.
- 12.4 "Arrange" means to arrange for the issue of the Policies by initiating applications for a contract of insurance or facilitating the renewal of a contract of insurance.
- 12.5 "ASIC" means the Australian Securities and Investments Commission.
- 12.6 "Australian Financial Services Licensee" means a person who holds an Australian financial service licence under the *Corporations Act 2001*.
- 12.7 "Authorised Representative" has the meaning given to that term under section 761A of the *Corporations Act 2001*.
- 12.8 "AWOTE" (Average Weekly Ordinary Time Earnings) means the number as published by the Australian Government Statistician for the trend estimate, of private and public sectors, of all persons in Australia, for full-time ordinary time earnings, for the previous year.
- 12.9 "General advice" means any recommendation or statement of opinion intended to influence a person to make a decision in relation to a Policy that is not Personal Advice.
- 12.10 "GST" means the tax levied by *A New Tax System (Goods and Services Tax) Act 1999* (Cth.)
- 12.11 "Manager" means the Manager named in the Reference Schedule and includes its successors and assigns and its officers and employees.
- 12.12 "SCA (Vic)" means Strata Community Australia (Vic) Inc. ABN 91 066 558 592.
- 12.13 "OHS Act" means the *Occupational Health and Safety Act 2004* (Vic).
- 12.14 "Personal advice" means any recommendation or statement of opinion intended to influence a person to make a decision in relation to a Policy where one or more of the person's objectives, financial situation or needs have been considered or a reasonable person might expect those matters to have been considered.
- 12.15 "Property" means the property described in the Reference Schedule and includes the residual land common property and all buildings on the land and any chattels, fixtures, fittings, equipment and services owned by the Company or for which the Company is responsible, or provided by the Company to shareholders or members of the Company or the public.
- 12.16 "Services" means the services set out in Clause 2.1 and the Additional Services set out in Clause 2.2.
- 12.17 "Service Agreement" means the Service Agreement/s or other document/s however called governing the objectives and operations of Company and its relationship with each shareholder/member including the Constitution or Memorandum and Articles of Association of the Company.
- 12.18 Expressions used in this Appointment that are defined in the *Transfer of Land Act 1958* shall have the same meaning under this Appointment.

13. GST

The fees and disbursement fees are inclusive of GST at a rate of 10%; and will be amended appropriately if the rate of GST changes so that the GST exclusive fees and disbursement fees payable to the Manager remain unchanged.

14. DECLARATIONS AND SIGNATURES

Company Declaration and Signature

The Company hereby appoints the Manager specified in this contract to carry out the duties and meet the obligations specified in this Appointment and act on behalf of the Company in accordance with the Service Agreement.

THE COMMON SEAL of the COMPANY

Pty Ltd (A.C.N.)
was affixed in accordance with the Corporations Law and the Constitution of the Company and witnessed by and in the presence of two Directors of the Company who warrant that they are duly authorised hereto.

Signature of Witness

Signature of Witness

Name of Witness (print full name)

Name of Witness (print full name)

Address of Witness

Address of Witness

Director

Director

Position (Director)

Position (Director)

Date:

Appointed Manager Declaration and Signature

I agree to carry out the duties and meet the obligations specified in this Appointment and in accordance with the Service Agreement.

Signature

Name (print full name)

Address

Company Seal (if applicable)

Position (if corporation)

Date: