

BODY CORPORATE MANAGEMENT AGREEMENT

Dated the 12th November 2024

PARTIES:

BODY CORPORATE NO. – 559725 (**the Body Corporate**)

PITCAITHLY BODY CORPORATE SERVICES LIMITED (**the Manager**)

BACKGROUND:

- A** The Body Corporate has appointed the Manager as the Body Corporate Manager, to provide body corporate management and secretarial services.
- B** The Act and the Regulations require this appointment to be in writing and to stipulate those services that are to be supplied to the Body Corporate by the Manager and to include certain further terms that must be included.

AGREEMENT

1 DEFINITIONS AND INTERPRETATIONS

In this Agreement:

1.1 Definitions

- 1.1.1 Act** means the Unit Titles Act 2010 and all its amendments up to and including the date of this Agreement and thereafter.
- 1.1.2 Business Day** means any day in New Zealand commencing at 9.00 am and terminating at 5.00 pm New Zealand time other than:
 - (a) A Saturday or Sunday or any other day declared to be a public holiday in New Zealand or the days of the Provincial Anniversaries in the Provinces of domicile of the Body Corporate and/or the Manager.
 - (b) A day in the period commencing on 23 December in any year and ending on 14 January in the following year.
- 1.1.3 Financial Year (of the Body Corporate)** means the twelve months ending at the end of the last day of the Body Corporate's financial year end in every calendar year.
- 1.1.4 Operational Rules** means the operational rules of the Body Corporate pursuant to the Act and the Regulations up to and including the date of this Agreement including and incorporating any amendments made thereto prior

to or after that date that have been properly lodged with and accepted by the Registrar of Land.

1.1.5 Property means the unit titled property at Stead & Wheatsheaf Lanes, Heathcote Valley, Christchurch 8022.

1.1.6 Regulations means the Unit Titles Regulations 2011 and all its amendments up to and including the date of this Agreement and thereafter.

1.1.7 Unit Owners means all the owners of Principal Units in the Body Corporate.

1.2 Interpretation

1.2.1 Headings and sub-headings are included for ease of reference and none of the provisions of this Agreement are to be considered or interpreted by reference to such headings or sub-headings.

1.2.2 References to:

(a) Laws, statutes, regulatory requirements, ordinances, or by-laws shall be deemed to extend to all laws, statutes, regulatory requirements, ordinances, or by-laws amending, consolidating or replacing them.

(b) Monetary amounts expressed in this Agreement refer to New Zealand currency which shall be the currency of this Agreement.

1.2.3 Unless the context otherwise requires:

(a) Words importing a particular gender include any other gender or neuter.

(b) The singular shall include the plural and vice versa.

2 APPOINTMENT

2.1 The Body Corporate appoints the Manager to provide the services as set out in the First and Second Schedules in return for the fees referred to in the Third Schedule and has appointed the Manager as its agent for those purposes and the Manager agrees to such appointment.

3 ANNUAL MANAGEMENT FEE

3.1 The annual management fee for this contract is set out in clause 9 and the Third Schedule. The annual management fee represents remuneration for the performance by the Manager of the services and duties set out in the First Schedule and does not include the additional services set out in the Second Schedule which will be charged for on a time and attendance basis plus disbursements.

4 TERM

- 4.1** Initially two years commencing on the date of the Body Corporate's balance date.
- 4.2** If neither of the termination provisions in clauses 5.2 or 5.3 have been successfully invoked before the end of the initial term in clause 4.1, this Agreement will continue for further consecutive terms of one financial year of the Body Corporate until terminated by one of the provisions in clause 5.2 or 5.3 having been successfully invoked.

5 TERMINATION OF AGREEMENT

- 5.1** Either party may terminate this Agreement immediately by giving notice in writing to the other party if:
 - 5.1.1** The other party has defaulted on any of its obligations, duties or covenants pursuant to this Agreement and remains in default for 30 business days after notice of the default has been served on it.
 - 5.1.2** The other party resolves to become or becomes subject to any form of insolvency or other legislatively enforced administration.
 - 5.1.3** The other party is found to be guilty of serious misconduct or gross negligence in any judicial proceedings in New Zealand in the performance of its obligations under this Agreement.
- 5.2** The Manager may terminate this Agreement by giving not less than 90 days' written notice to the Body Corporate of the intended date of the termination and the reason/s therefor which reasons may be mediated by the parties ending in the withdrawal of the notice.
- 5.3** The Body Corporate may terminate this Agreement by giving not less than 90 days' written notice to the Manager of the intended date of the termination and the reason/s therefor which reasons may be mediated by the parties ending in the withdrawal of the notice.

6 OBLIGATIONS OF THE BODY CORPORATE

- 6.1** The Body Corporate shall not allow, condone or permit any activity from upon or within the boundaries of its Unit Plan which are illegal or are, or which could be construed to be, injurious to the reputation of the Body Corporate or to the reputation of its Unit Owners, their Occupiers or the Manager.
- 6.2** The Body Corporate shall give fair consideration and attention to any written recommendations made to it by the Manager and shall either adopt those recommendations and ensure they are carried out or explain the reasons for not doing so in writing to the Manager and to the Unit Owners.
- 6.3** The Body Corporate shall be responsible for ensuring that it complies in all respects with the Health and Safety Laws of New Zealand.
- 6.4** The Body Corporate shall allow the Manager to perform its obligations under this

Agreement and assist it to facilitate the said performance in a co-operative and friendly manner.

7 OBLIGATIONS OF THE MANAGER

- 7.1** The Manager shall carry out its obligations under this Agreement responsibly, honestly, and fairly having full regard to the respective rights of the Unit Owners and its obligations under the Act.
- 7.2** The Manager shall perform the services and undertake the duties set out in the First and Second Schedule to this Agreement.
- 7.3** The Manager will abide by and discharge its duties in accordance with the code of conduct for body corporate managers as detailed in Schedule 1B of the Regulations.
- 7.4** The Manager shall give consideration and attention to any written recommendations made to it by the Body Corporate and shall either adopt those recommendations and ensure they are carried out or explain the reasons for not doing so in writing to the Body Corporate and to the Unit Owners.
- 7.5** The following further obligations of the Manager apply pursuant to Regulation 28C:
 - 7.5.1** The Manager is to report to every Annual General Meeting of the Body Corporate in writing or verbally on the performance of its functions and duties and on whether or not there has in its opinion been any need for any further periodic reviews of targets or other performance matters.
 - 7.5.2** The Manager or its representative is to chair all General Meetings of the Body Corporate unless the Chairperson of the Body Corporate insists on doing so.
 - 7.5.3** The Manager upon termination of this Agreement must within 3 months thereof deliver to the Body Corporate or to its new Manager all of the funds belonging to the Body Corporate together with those of its records and other things that are considered by law to be essential to its ongoing functions and operations.

8 FACILITIES MANAGEMENT

The Manager shall carry out the following facilities management duties:

- 8.1** Ensure as far as practical that the Common Property and common services of the Body Corporate are kept clean and tidy and maintained in accordance with the Body Corporate's repairs and maintenance obligations.
- 8.2** Arrange at the cost of the Body Corporate through external consultants as necessary, the development and preparation of a long-term maintenance plan (**LTMP**) in accordance with the requirements of the Act.
- 8.3** Arrange at the cost of the Body Corporate through external consultants as necessary, the development and preparation of a Health and Safety Plan in accordance with the requirements of the Health and Safety at Work Act 2015, so as to enable the Body Corporate to fulfill its obligations under clause 6.3.
- 8.4** Appoint all maintenance and service contractors required to maintain the Common

Property and services to an appropriate standard.

- 8.5** Maintain a current schedule of contracts for which the Body Corporate is responsible relating to the Property.
- 8.6** Inspect the property for which the Body Corporate assumes responsibility to ensure a satisfactory standard of repair and maintenance.
- 8.7** Initiate any preventative maintenance works required (where such works are the responsibility of the Body Corporate and are not subject to a maintenance contract) within the cost limits given in the budget approved by the Body Corporate and refer to the Body Corporate any such works more than the approved budget.
- 8.8** Take whatever measures are required without reference to the Body Corporate to eliminate risk in the event of an emergency when the safety of the Property or its occupants or the supply of essential services is at risk.
- 8.9** Advise the Body Corporate on any insurance claims in respect of the Property, initiate such claims and report in writing to the Body Corporate on the progress and completion of all such claims.
- 8.10** Where applicable, organise the renewal and display of the annual Warrant of Fitness as required by the Building Act 2004.
- 8.11** Where a compliance schedule is required for any buildings on the Property:
 - 8.11.1** obtain a compliance schedule, if not already issued.
 - 8.11.2** ensure that the inspection, maintenance and reporting procedures specified in the compliance schedule are undertaken in accordance with the requirements of the compliance schedule.
 - 8.11.3** comply with all other obligations imposed on building owners under the Building Act 2004, where these can reasonably be undertaken by the Manager.
- 8.12** When required review in conjunction with the Body Corporate and where necessary any person qualified to advise security measures, fire and safety responsibilities and evacuation procedures for the Property (Fire Safety and Evacuation of Building Regulations).

9 MANAGEMENT FEE REVIEWS

- 9.1** For the 1st and 2nd terms referred to in clauses 4.1 and 4.2 of this Agreement the remuneration to be paid by the Body Corporate to the Manager by way of the annual management fee shall be \$13,861.80 (plus GST). For clarification, the annual management fee referred to in this clause includes recovery all the disbursements paid for by the Manager incurred in the carrying out of its functions, duties, and obligations pursuant to this Agreement which previously in many instances had been recovered by it by way of a separate disbursements charge.
- 9.2** At the commencement of each subsequent term of 1 year pursuant to clause 9.1 the annual management fee to be paid by the Body Corporate to the Manager shall be the annual amount payable for the immediately concluded term uplifted by not more than 5% or uplifted by an amount equivalent to the movement in the Consumer Price Index

(All Groups) or nearest equivalent as measured by Statistics New Zealand as relating to the previously completed 1 measurable Index year (plus GST), whichever is the greater.

- 9.3** If the duties, functions or obligations to be undertaken or met by the Manager should change in any significant manner from those set out in this Agreement either party may commence a negotiation to change the annual management fee payable to the Manager and the said negotiations must be concluded in good faith by mutual agreement of the parties or be determined by the formal process of mediation, the costs of which shall be borne equally by the parties. Thereafter the annual management fee payable to the Manager shall be the newly determined amount and subsequent uplifts shall apply to that amount in the manner set out in clause 9.2 of this Agreement.

10 NOTICES

- 10.1** Any notice to be given under this Agreement to the Body Corporate or to the Manager shall be in writing and shall be either:

- 10.1.1** Personally delivered.
- 10.1.2** Mailed by prepaid registered mail.
- 10.1.3** Delivered by email transmission.

to the addressee's last known address in New Zealand,

- 10.2** The following are the parties' addresses at the date of this Agreement:

10.2.1 The Body Corporate:

- (a) Street Address - 76 Moorhouse Avenue, Addington, Christchurch
- (b) Postal Address - P O Box 41076 Ferrymead, Christchurch
- (c) Email Address - info@pbcs.co.nz
- (d) Registered Office – as for clause 10.2.1 (a) of this Agreement.

10.2.2 The Manager:

- (e) Street Address - 76 Moorhouse Avenue, Addington, Christchurch
- (f) Postal Address - P O Box 41076 Ferrymead, Christchurch
- (g) Email Address - info@pbcs.co.nz
- (h) Registered Office – as for clause 10.2.2 (e) of this Agreement.

- 10.3** Any Notice required to be given under this Agreement or implied by statute shall be

valid and effectual if given under the hand of the party, the party's solicitor, or any authorised representative for the time being of the party and if the party is a corporation by its general manager or a director.

- 10.4** Any such Notice sent by registered mail shall be deemed to have been received on the 5th business day following the date of mailing. Any such Notice sent by email shall be deemed to be received by 10.00 am on the next business day after it is sent.
- 10.5** If a party changes its address or its email address the addresses previously specified in this Agreement shall continue to be the addresses of that party for the purposes of this Agreement until that party gives written Notice to the other party giving full particulars of the change or changes.
- 10.6** For the avoidance of doubt, noting the registered address of the Body Corporate is the Manager's address, any formal notices served on the Body Corporate, shall also be sent via email to each of the Chairperson and the Body Corporate committee.

11 SEVERANCE

- 11.1** Every provision in this Agreement shall be read and construed so as not to be in contravention of law and where any provision of this Agreement would, but for this clause, be void, inoperative or ineffective wholly or partly, for any reason it shall nevertheless be valid to the extent that it is not void, inoperative or ineffective and shall not affect the validity or force of any other provision or term of this Agreement. It is expressly agreed that for the purpose of giving effect to this clause of this Agreement, any provision in this Agreement or any part of this Agreement may be severed, ignored or read down.

12 GOVERNING LAW

- 12.1** This Agreement shall be governed and construed in all respects in accordance with the Laws of New Zealand and to the extent that the Body Corporate and the Manager are legally able to do so they hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any legal proceedings in connection therewith.

13 COSTS

- 13.1** Any costs and disbursements incurred in the preparation, execution and/or amendment of this Agreement shall be borne equally by the parties.

14 ENTIRE AGREEMENT

- 14.1** This Agreement records the entire agreement and understanding between the parties in relation to the matters contemplated by this Agreement and supersedes any prior agreement, correspondence or undertaking made between them.

15 ASSIGNMENT BY THE MANAGER

- 15.1** The Manager shall be entitled to assign all of its rights, interests and obligations arising out of this Agreement or to arrange for any change in its ownership in favour of any

other reputable Body Corporate Manager after giving prior Notice to the Body Corporate and the consent of the Body Corporate shall automatically be deemed to have been given thereto unless the Body Corporate lodges a written Notice to the Manager within 10 business days of its receipt or deemed receipt of the said Notice pursuant to clause 10 of this Agreement of a decision of the Body Corporate to not consent to the said assignment or change and the said consent shall not be unreasonably withheld by the Body Corporate.

16 ADOPTION OF THIS AGREEMENT

- 16.1** Adoption of this Agreement by the parties shall be achieved at the General Meeting of the Body Corporate by an Ordinary Resolution proposing its adoption being passed by the requisite majority.

FIRST SCHEDULE

Within Two Months Before an Insurance Due Date or Within Two Months After the Financial Year End whichever applies

The Duties of the Body Corporate Manager will comprise:

- Issuing annual instructions to a Registered Valuer to prepare a Buildings Valuation Report for Insurance renewal purposes.
- Arranging quotations for Replacement Insurance for the Buildings and other appurtenances on the best possible terms through reputable Insurance Brokers together with cover for Public Liability and, if required by the requisite number of Unit Owners, for Statutory Liabilities, Employers Liability and Fines and Penalties and any other insurable risks requested by them and ensuring that all Insurance Policies are renewed, paid up and kept current.
- Preparing the Annual Financial Accounts and Notes thereto and attesting to their truth and fairness.
- Preparing the detailed Budgets for the ensuing financial year for submission to the Annual General Meeting for approval.
- Preparing and dispatching the Annual General Meeting package to all Unit Owners (comprising a Notice of Meeting including a detailed Agenda with full text of Proposed Resolutions, detailed Annual Financial Accounts for the year plus Budgets for the ensuing year covering the Operating Account and the Long-Term Maintenance Fund and/or any other applicable Funds).
- Attending the Annual General Meeting.
- Preparing the Minutes of every Annual General Meeting and every Extraordinary General Meeting and dispatching them to every Unit Owner.

Throughout the Financial Year

These Duties will comprise:

- Liaising with Unit Owners and Unit Occupiers on all necessary matters.
- Periodically inspecting the Body Corporate's property to ensure that everything is tidy and running smoothly and that all contractors are performing.
- Preparing and dispatching the periodic Body Corporate levy accounts to Unit Owners for payment.
- Receiving and banking the periodic levies to the credit of the Body Corporate's account in the Manager's Trust Bank Account and ensuring these are received by the respective due dates. The Manager is authorised to use its discretion to remove interest penalties on late payments in appropriate circumstances.
- Paying all the Body Corporate's accounts for payment through the Body Corporate's account in the Manager's Trust Bank Account.

- Where they are recoverable in terms of the Act, recovering amounts paid out from time to time on behalf of Unit Owners and, if required, initiating legal recovery action in respect of such amounts and in respect of any overdue Body Corporate levies.
- Maintaining the Books of Account of the Body Corporate and supplying to authorised persons any information contained therein to which they are entitled.
- Maintaining the Body Corporates Register of Unit Owners and Mortgagees and advising details of changes therein to Insurers as required by the Act and supplying copies to authorised persons upon request.
- Initiating appropriate changes to the Body Corporate's Operational Rules as required and maintaining an updated copy of same.
- Advising the Registrar of Land of any changes to the Body Corporate's Operational Rules or to its Address for Service and lodging any other document as required by the Act and supplying copies of the Operational Rules to Unit Owners and prospective Unit Purchasers upon request.
- Ensuring that renewal of the Building Warrant of Fitness has been issued if required.
- Preparing and filing Income Tax and Goods and Services Tax Returns if required.
- Attending to sundry correspondence and to all other miscellaneous matters that arise.

SECOND SCHEDULE

The Manager will undertake the following additional services and charge for them on a time and attendance basis plus disbursements:

- Providing any certificates or information of the Body Corporate or on behalf of an owner under Part 2, Subpart 14 of the Act (Disclosure Information).
- Attendance on any solicitors or other agents appointed to act for the Body Corporate under section 171 of the Act or in any other Court or Tribunal.
- Convening and attending any meetings additional to an Annual General Meeting (for example an Extraordinary General Meeting).
- Convening and attending any committee meetings for the Body Corporate, in excess of the agreed one per year.
- Subject to the terms of any Building Manager's contract or written directions from the Body Corporate (or its committee or Chairperson), dealing with any consulting engineer or other professional for purposes relating to a building warrant of fitness, the Health and Safety Plan, the long-term maintenance plan or other matters relating to the Body Corporate.
- Additional services required as the result of insurance events such as earthquake, floods or similar.
- All and any other services, where directed by the Body Corporate (or its committee or Chairperson) relating to the administration of the Body Corporate or its common property or infrastructure outside of those matters referred to above and in the First Schedule.
- Hosting an audit of the Body Corporate's Financial Accounts for any of its Funds or Plans commissioned as a result of a decision by the Body Corporate or by any other authorised body.

THIRD SCHEDULE: SCHEDULE OF FEES

Annual Management Fee

The annual management fee for the initial term pursuant to clause 4.1 and the first continuation term pursuant to clause 4.2 shall be \$13,861.80 plus GST.

Pre-Contract and Pre-Settlement Disclosure Fees

Pre-Contract Disclosure Statements' (PCDSs) and Pre-Settlement Disclosure Statements' (PSDSs) fees are charged on a user pays basis and all fees are payable by the unit owner or its legal representative requesting the disclosure(s). Until renegotiated by the Body Corporate and the Manager the following fees apply:

- The fee for a PCDS shall be \$450 plus GST.
- The fee for a PSDS shall be \$390 plus GST.

Additional Work Fees

Hourly rates payable for additional work as defined in the Second Schedule of this Agreement until renegotiated by the Body Corporate and the Manager shall be:

- Office and support staff – \$100 per hour plus GST.
- The Body Corporate Manager or its Financial Controller – \$250 per hour plus GST.

Commissions

The Manager may receive commissions from Insurance Brokers on insurance business placed and/or interest credited on nominal monies in its Westpac Bank Trust Account. These receipts are used to defray the cost of the Manager's computer operations and upgrades and other operating costs.

The Manager does not earn commissions from the tradesmen that are engaged to perform services for its Body Corporate clients.

Term Deposits

Surplus funds over \$20,000 held in the Manager's Trust bank account belonging to the Body Corporate will be invested on Term Deposit with a bank in multiples of \$20,000 in the name of the Body Corporate. The resultant interest earnings may warrant the need for an Income Tax Return to be prepared and lodged at no additional charge on behalf of the Body Corporate.

On-Charge Invoices

For any invoices charged outside the normal Body Corporate levy structure such as miscellaneous invoices we reserve the right to charge an administration fee for our attendances in preparing these.