

**BODY CORPORATE FOR CENTRAL TOOWONG COMMUNITY TITLES SCHEME  
49512**

**("BODY CORPORATE")**

**ASPECT PROPERTY GROUP AUST. PTY LTD A.C.N. 099 103 161 AS TRUSTEE  
FOR THE LARKIN FAMILY TRUST**

**("CARETAKER")**

## **CARETAKER AGREEMENT**

# CARETAKER AGREEMENT – CENTRA` TOOWONG COMMUNITY TITLES SCHEME 49512

This Agreement is made the 22<sup>nd</sup> day of December 2016

**BETWEEN:** The Body Corporate for Centra` Toowong Community Titles Scheme 49512  
c/- Aspect Body Corporate Management, PO Box 2194, Toowong Qld 4066  
("Body Corporate")

**AND:** Aspect Property Group Aust. Pty Ltd A.C.N. 099 103 161 as trustee for the  
Larkin Family Trust of PO Box 2194, Toowong Qld 4066  
("Caretaker")

## INTRODUCTION:

- A The Body Corporate wishes to provide for the better administration, control and management of the Complex and the better maintenance, caretaking and repair of the Common Property.
- B The Caretaker is appointed to perform the Caretaking Duties.
- C The Parties wish to record the terms of their agreement on the following terms.

## IT IS AGREED:

### 1. DEFINITIONS

#### 1.1 Unless the context otherwise requires:

"Act" means the *Body Corporate and Community Management Act 1997*.

"Agreement" means this agreement and all its schedules.

"Associated Party" means:

- (a) in the case of a corporation, a director, secretary or shareholder of that corporation;
- (b) in the case of an individual, a corporation in which the individual is a director, secretary, or shareholder; and
- (c) in the case of a partnership, the partners and management staff of the partnership.

"Body Corporate" means the Body Corporate for the Scheme

"Body Corporate Assets" means the Body Corporate assets for the Scheme.

"Building" means any of the buildings located on the Scheme Land.

"Caretaking Duties" means those duties which the Caretaker must perform under this Agreement;

"Commencement Date" means 1 January 2017.

"The Committee" means the Committee of the Body Corporate.

"Common Property" means the Common Property of the Scheme.

"Complex" means the Lots and Common Property comprised in the Scheme.

"CPI" means the Consumer Price Index All Groups for Brisbane published by the Australian Bureau of Statistics, or if that is suspended or discontinued, then a similar figure reasonably determined by the Body Corporate.

"Letting Agent" means the Letting Agent appointed by the Body Corporate for the Scheme.

"Letting Agreement" means a letting agreement entered into by the Body Corporate with the Letting Agent.

"Lots" means lots in the Scheme.

"Maximum Expenditure" means \$1,000.00.

"Nominee" means the person nominated by the Body Corporate.

"Occupation Authority Plan" means the plan attached as Annexure A.

"Owners" means the owners of Lots included in the Scheme and includes mortgagees in possession.

"Plan" means the Survey Plan registered for the Scheme.

"Property" means all land comprised in the Scheme and all improvements erected on the land. Where the context permits the definition extends to all adjoining land over which the Body Corporate has easement rights.

"Related Agreement" means any agreement entered into by the Letting Agent with the Body Corporate for the provision of letting or other services.

"Related Person" means a person or persons who are the directors or shareholders of the Caretaker who in the reasonable opinion of the Body Corporate hold effective control of the Letting Agent.

"Remuneration" means the sum of \$161,000.00 (plus GST) for the first year of the term and subject thereafter to any adjustments made in accordance with Clause 4.1 of this Agreement.

"Scheme" means the Centra` on Archer Community Titles Scheme.

"Scheme Land" means the Scheme land identified on the Plan.

"Term" means a period of 25 years from the Commencement Date.

## **2. INTERPRETATION**

### **2.1 Reference to:**

- (a) One gender includes the other genders.

- (b) Singular includes the plural and the plural includes the singular.
- (c) A person includes a body corporate.
- (d) A party includes the parties' executors, administrators, successors and permitted assigns.
- (e) A statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
  - (i) That Statutory Provision as amended or re-enacted from time to time; and
  - (ii) A statute, regulation or provision enacted in replacement of the Statutory Provision.
- (f) All monetary amounts are in Australian dollars, unless otherwise stated.
- (g) If a party consists of more than one person then this Agreement binds them jointly and each of them separately.
- (h) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (i) A party which is a trustee is bound both personally and in its capacity as a trustee.
- (j) "Including" and similar expressions are not words of limitation.
- (k) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (l) If an act must be done, or the last day upon which it may be done, falls on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

### **3. APPOINTMENT AND TERM**

3.1 The Body Corporate appoints the Caretaker for the Term to look after the Common Property from the Commencement Date being the 1<sup>st</sup> day of January 2017 and ending 25 years later on the 31<sup>st</sup> day of December 2041.

3.2 The Caretaker

- (a) accepts the appointment;
- (b) will look after the Common Property as required by this Agreement;
- (c) will ensure that the Common Property is able to be used by the persons entitled and is properly maintained and kept in good repair;
- (d) will perform the Caretaking Duties; and
- (e) is an independent contractor of the Body Corporate.

#### **4. REMUNERATION**

- 4.1 The Remuneration will be increased for the second and subsequent years of the Term by the same percentage as the last percentage increase in the CPI for one year as last recorded by the Australian Bureau of Statistics immediately before the year in which the Remuneration is to be reviewed.
- 4.2 Despite the previous clause the Remuneration for any year will never be less than the Remuneration for the previous year.
- 4.3 The Body Corporate must pay the Remuneration to the Caretaker by equal monthly instalments in arrears, the first payment one calendar month from the Commencement Date and monthly after that.
- 4.4 If the Caretaking Duties under this Agreement are a supply under the A New Tax System (Goods and Services Tax) Act 1999, the Body Corporate must pay to the Caretaker in addition to the Remuneration a further amount equal to the GST.
- 4.5 The Remuneration is paid only for the Caretaking Duties and not for any letting or ancillary services which the Caretaker or any other entity provides.

#### **5. CARETAKER'S DUTIES**

- 5.1 In addition to any specific duties set out in any schedule to this Agreement, the Caretaker must as reasonably required:
- (a) hose all walkways, access areas and other parts of the Common Property that require hosing;
  - (b) keep clean, tidy and maintain all parts of the Common Property;
  - (c) maintain and clean any swimming pool, spa and/or sauna, gymnasium and workshop;
  - (d) clean any drains and gutters on Common Property;
  - (e) maintain the gardens and shrubs (if any), which duty includes watering, fertilising, weeding, mulching and top dressing; and
  - (f) effect minor repairs and maintenance to the Common Property where the services of a skilled tradesman are not required.
- 5.2 The Caretaker must arrange and supervise contracts between the Body Corporate and independent contractors for all work of a specialist nature required for any of those things referred to in the previous clause or for any services to, or work to be carried out to, the Common Property including without limitation:
- (a) specialist repairs and maintenance of the Common Property;
  - (b) cleaning of external windows or parts of the Complex not easily accessible by the Caretaker; and
  - (c) the provision of water, electricity, gas, fuel, telephone and other necessary services as required by the Body Corporate.

Such contracts with independent contractors will only be entered into with the prior consent of the Body Corporate, but the Body Corporate must not unreasonably withhold such consent.

5.3 The Caretaker must:

- (a) regularly ensure the correct operation and, if necessary, arrange for expert specialist maintenance of:
  - (i) any waste disposal system;
  - (ii) all Common Property electrical apparatus;
  - (iii) any pumps and auxiliary motors;
  - (iv) any lifts and security systems; and
  - (v) all other parts of the Common Property where inspection and/or maintenance is required;
- (b) arrange all appliances, equipment, materials and supplies necessary to carry out the Caretaking Duties and to generally maintain the Common Property;
- (c) promptly report and account to the Body Corporate for:
  - (i) matters requiring repair or creating a hazard or danger that involves expenditure of money in excess of the Maximum Expenditure;
  - (ii) use by the Caretaker of any Body Corporate funds; and
  - (iii) use by the Caretaker of any other property of the Body Corporate in carrying out the Caretaking Duties;
- (d) monitor compliance with the by-laws of the Body Corporate and advise the Body Corporate of any serious or persistent breaches of them;
- (e) monitor and administer the use of any recreational areas;
- (f) advise the Body Corporate of compliance or non-compliance with any relevant laws concerning the maintenance and operation of the Common Property;
- (g) notify the Body Corporate of any alteration of the fire safety requirements;
- (h) keep order and safeguard the Complex against unlawful entry and arrange security contracts at the expense of the relevant Body Corporate as required by the Body Corporate;
- (i) regularly inspect the fire fighting equipment, arrange any requisite inspections by the relevant officer when required and, at the expense of the Body Corporate as relevant, arrange for maintenance necessary to maintain the fire fighting equipment in an efficient working condition;
- (j) maintain and supervise carparking arrangements on the appropriate areas on the Common Property;

- (k) keep possession of all keys for any Common Property and keys of any owners who provide them to the Caretaker;
- (l) keep the lighting of Common Property operating efficiently;
- (m) carry out such other reasonable and appropriate tasks requested by the Body Corporate relevant to the caretaking of the Common Property; and

5.4 The Caretaker must ensure the Body Corporate complies with all relevant statutory testing and maintenance of the Common Property. The Caretaker shall engage contractors to undertake all compliance testing and reports on behalf of the Body Corporate, and ensure detailed records and logs are kept up to date at all times. Costs associated with these reports, testing and compliance are to be borne by the Body Corporate. Common Property compliance and testing shall include, but is not limited to:

- (a) fire hydrants, sprinklers and fire booster systems and pumps;
- (b) fire hose reels;
- (c) fire doors;
- (d) exit and emergency lighting systems;
- (e) fire exit and escape plans;
- (f) ongoing compliance with any fire engineering reports;
- (g) fire and smoke alarms, monitoring, fire indicator panels and fire control room access;
- (h) mechanical ventilation systems, including carpark exhaust systems, fire stair pressurization systems and lobby relief systems.
- (i) backflow prevention devices; and
- (j) termite control.

5.5 The Caretaking Duties may be carried out by the Caretaker, its delegates or its employees. The Caretaker may, with the prior approval of the Body Corporate, allow a third party to provide the Caretaking Duties delegate to that third party the obligation to provide the Caretaking Duties and direct payment of the Remuneration for doing so to be made direct to the delegated third party.

5.6 The Caretaking Duties that require work of a specialist nature are limited to the arranging and supervision of all external contracts or agreements.

## **6. CARETAKER'S CONDUCT**

6.1 The Caretaker must:

- (a) have a good working knowledge and understanding of the Act, relevant to the Caretaking Duties;
- (b) act honestly, fairly and professionally in performing the Caretaking Duties;

- (c) exercise reasonable skill, care and diligence in performing the Caretaking Duties;
- (d) act in the best interests of the Body Corporate unless it is unlawful to do so;
- (e) keep the Body Corporate informed of any significant development or issue about an activity performed for the Body Corporate;
- (f) take reasonable steps to ensure an employee of the Caretaker complies with the Act, in performing the Caretaking Duties;
- (g) not engage in fraudulent or misleading conduct in performing the Caretaking Duties;
- (h) not engage in unconscionable conduct in performing the person's functions under the person's engagement; and
- (i) take reasonable steps to ensure goods and services the person obtains for or supplies to the Body Corporate are obtained or supplied at competitive prices.

6.2 If a Body Corporate or its committee requests, in writing, the Caretaker to show that the Caretaker has kept the Body Corporate records as required under this Act, the Caretaker must comply with the request within the reasonable period stated in the request.

## **7. EXPENSES**

7.1 All of the Caretaking Duties must be carried out at the cost and expense of the Caretaker unless this Agreement provides that they are to be carried out at the expense of the Body Corporate.

7.2 The Body Corporate must pay all costs and expenses for:

- (a) all work of a specialist nature;
- (b) all other contracts or agreements with independent contractors;
- (c) all fuels, appliances, materials, equipment and supplies necessary to enable the Caretaker to perform the Caretaking Duties; and
- (d) all out-of-pocket costs for repair and maintenance of the Common Property.

7.3 The Caretaker can spend up to the Maximum Expenditure for each individual item of expenditure from monies of the Body Corporate in carrying out the Caretaking Duties.

7.4 The Body Corporate must reimburse the Caretaker for any of the Caretaker's monies spent under the previous clause within 14 days of the Caretaker providing written evidence of the expenditure.

## **8. INSTRUCTIONS**

8.1 The Body Corporate must:

- (a) nominate one person to communicate with the Caretaker on its behalf; and



- (b) notify the Caretaker in writing of the appointment of that Nominee or its replacement.

8.2 The Caretaker must:

- (a) confer with the Nominee concerning the Caretaking Duties; and
- (b) attend any general meeting or Committee meeting of the Body Corporate if requested and given reasonable notice by the Nominee.

## 9. ASSIGNMENT

9.1 The Caretaker must not assign its interest in this Agreement unless it obtains the Body Corporate's consent.

9.2 The Body Corporate must:

- (a) not unreasonably, arbitrarily or capriciously refuse or delay giving its consent to any proposed assignment; and
- (b) give its consent or refusal to any proposed assignment within 30 days of the Caretaker giving to it the information reasonably necessary for the Body Corporate to properly consider the proposed assignment.

9.3 Before giving its consent to any proposed assignment, the Body Corporate will be entitled to require:

- (a) satisfactory evidence that the proposed assignee and any Associates are financially sound and reputable, responsible, respectable and capable of satisfactorily performing the Caretaking Duties; and
- (b) business and personal references of the proposed assignee and any Associates.

9.4 As a condition of giving its consent to any assignment, the Body Corporate will be entitled to require:

- (a) that the proposed assignee execute in favour of the Body Corporate a Deed of Covenant to comply with the terms of this Agreement;
- (b) that the Caretaker pay to the Body Corporate all legal costs incurred by it in giving its consent; and
- (c) if the proposed assignee is a company, other than a public company, personal guarantees from the directors.

9.5 The Body Corporate must not require or receive any premium, payment or benefit for any request to consent or consent given under this clause, except as provided in this clause.

## 10. TERMINATION

10.1 The Body Corporate may terminate this Agreement in any of the circumstances allowed for under the Act and Regulation. Any such termination shall be effected in the manner as specified in the Act and Regulation.

**11. LETTING BUSINESS**

11.1 If the Caretaker or an Associated Party has entered into a Letting Agreement with the Body Corporate contemporaneously with entering into this Agreement, the parties acknowledge and agree that:

- (a) a default under the Letting Agreement will constitute a default under this Agreement, and vice versa;
- (b) upon the expiration or termination of the Letting Agreement, this Agreement will expire or terminate on the same date; and
- (c) the Body Corporate need not give its consent to an assignment of this Agreement unless the Caretaker assigns to the proposed assignee at the same time its interest in the Letting Agreement.

**12. OCCUPATION AUTHORITY**

12.1 The Body Corporate grants the Caretaker the exclusive right (with the Letting Agent) to use and occupy the areas identified on the Occupation Authority Plan for the purposes of operation of an office and storage and to assist the Caretaker in performing it's duties under this Agreement

**13. FURTHER ASSURANCES**

13.1 Each party must promptly or at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

**14. SEVERABILITY**

14.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

**15. ENTIRE UNDERSTANDING**

15.1 This Agreement:

- (a) contains the entire Agreement and understanding between the Parties on everything connected with the subject matter of this Agreement;
- (b) supersedes any prior agreement or understanding or anything connected with that subject matter.

15.2 Each Party has entered into this Agreement without relying on any representation by any other Party or any person purporting to represent that Party.

**16. VARIATION**

16.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

**17. WAIVER**

17.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

17.2 The exercise of a power or right does not preclude either its exercise in the further or the exercise of any other power or rights.

17.3 A waiver is not effective unless it is in writing.

17.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **18. COSTS AND DISBURSEMENTS**

18.1 Each party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.

18.2 The Caretaker shall pay all duties associated with this Agreement.

## **19. NOTICES**

19.1 A notice or other communication ("Notice") connected with this Agreement has no legal effect unless it is in writing and:

(a) delivered by hand at the address of the addressee set out in this Agreement or subsequently notified;

(b) sent by post, postage pre-paid, to that address; or

(c) sent by facsimile to the facsimile number of the addressee.

19.2 A Notice is deemed given and received:

(a) if delivered, upon delivery;

(b) if sent by post on the second Business Day (to the address to which it is posted) after posting; or

(c) if sent by facsimile before 5.00pm on a Business Day at the place of receipt on the day it is sent or otherwise on the next Business Day at the place of receipt.

19.3 Despite the previous clause, a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that relevant facsimile has been sent.

## **20. GOVERNING LAW AND JURISDICTION**

20.1 The law of Queensland governs this Agreement.

20.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and consent to all claims and disputes in relation to this Agreement being instituted in the central Brisbane jurisdiction.

## **21. COMPLIANCE**

21.1 The Parties agree to comply with the provisions of all statutes regulating or related to this Agreement.

## SCHEDULES OF CARETAKERS SPECIFIC DUTIES

### 1. Cleaning Duties – Specific

To maintain in a clean and tidy condition, using normal commercial practices, those areas of Common Property and elsewhere as nominated, defined at the frequency indicated.

TASK	ITEM	DETAILS	FREQUENCY
1.	Carpark Area	Sweep or hose dirt and rubbish.	Weekly
		Replace blown light bulbs	Weekly
2.	Recreation areas	Clean and remove rubbish and maintain consumable supplies.	Daily
3.	Toilets	Clean, remove rubbish and maintain consumable supplies	Daily
4.	Common hallways, foyers, lifts	Vacuum carpets, dust rails, window frames, stairs and entries sills, skirting etc, clean lift indicator panels, clean tiled areas, garbage chute rooms, bin areas, clean windows and glass doors	Weekly as required. Inspect daily.
		Sweep and clean fire stairs, carpark, remove cobwebs.	Quarterly
5.	Paths	Sweep and clean, remove rubbish	Daily as required.
6.	Swimming Pool and surrounding areas	Clean, remove rubbish, clean filter, maintain water quality	Daily

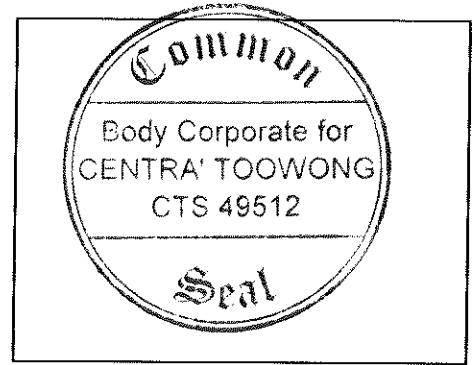
### 2. Gardening Duties – specific

To maintain all common area gardens and facilities excluding exclusive use areas of lots to a satisfactory commercial standard at the frequency indicated.

TASK	ITEMS	DETAILS	FREQUENCY
1.	Gardens	Ensure system retained in good working order and make necessary adjustments to timer to comply with rostered watering days.	Weekly
		Remove all weeds	Weekly
		Prune plants, replace as necessary	Weekly
		Fertilise	Quarterly

Executed as an Agreement the 22<sup>nd</sup> day of December 2016.

The Common Seal of Centra' Toowong  
Community Titles Scheme 49512 was  
affixed this 22<sup>nd</sup> day of December 2016  
in the presence of: ]  
] ] ] ]



Chairman 

Signed Sealed and delivered by  
the Caretaker  
the 22<sup>nd</sup> day of December 2016  
in the presence of ]  
] ] ] ]



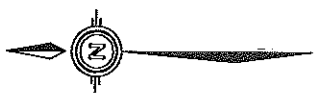
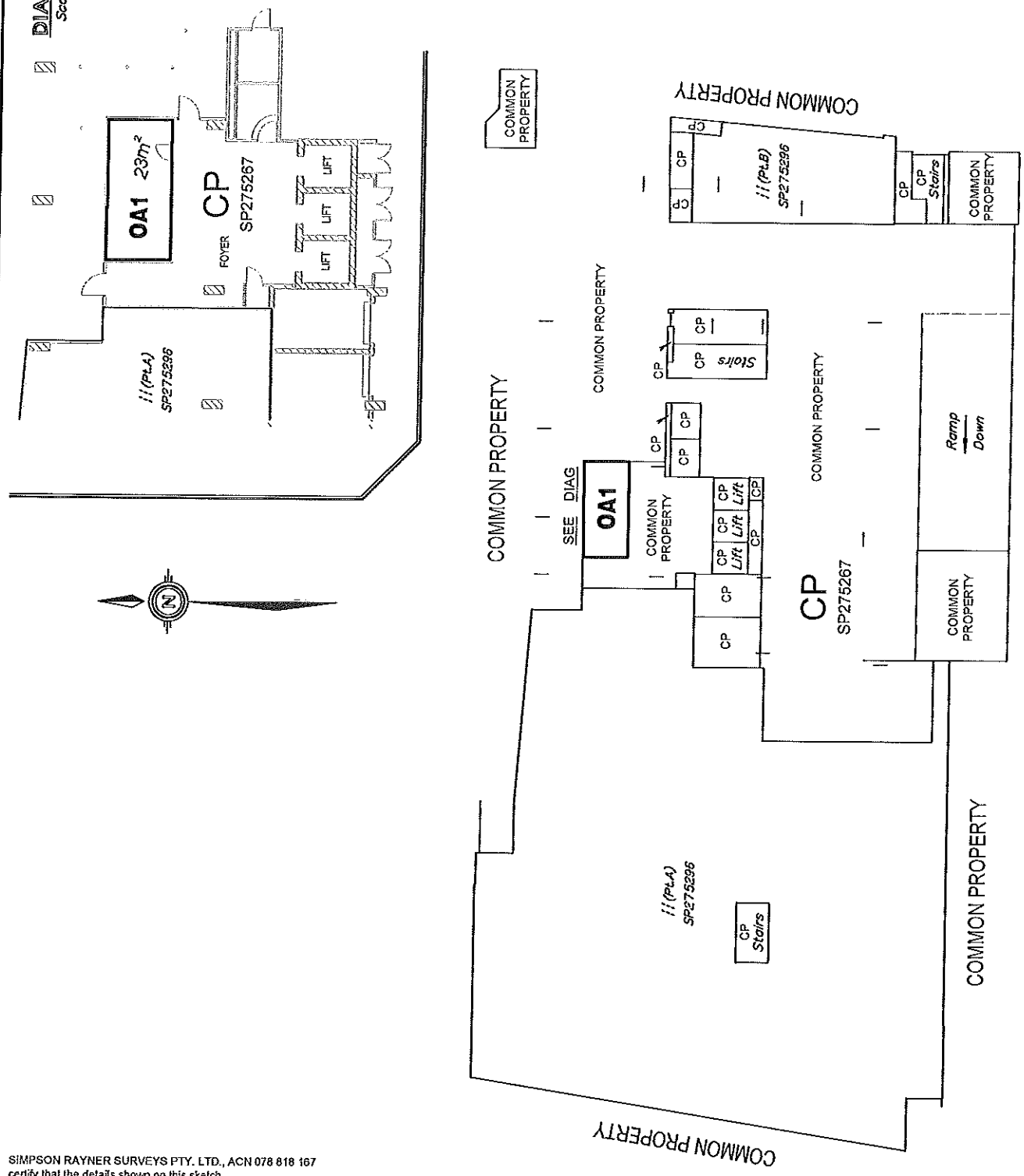
A witness 

*BARBARA LOCKYER*  
Full name of witness

**ANNEXURE A**  
**OCCUPATION AUTHORITY PLAN**

# "CENTRÀ ON ARCHER" CTS

**DIAGRAM**  
Scale 1:200



SIMPSON RAYNER SURVEYS PTY. LTD., ACN 078 818 167  
certify that the details shown on this sketch  
plan are correct.

*[Signature]*  
Cadastral Surveyor  
28/10/2016  
Date

Occupation Authority areas are defined  
by structural elements as shown.

**LEGEND**

— Denotes face of wall

Lengths are in Metres.



EXAMINED	SIMPSON RAYNER SURVEYS PTY LTD A.C.N. 078 818 167
PASSED	<i>[Signature]</i>
DESIGNATION	CADASTRAL SURVEYOR
ENDORSED	ACCREDITED

**SIMPSON RAYNER SURVEYS**  
SIMPSON RAYNER SURVEYS PTY LTD A.C.N. 078 818 167  
CADASTRAL LAND SURVEYORS, PLANNERS  
AND LAND DEVELOPMENT CONSULTANTS  
5/M53 Metroplex Avenue, MURARRIE Q 4172  
Telephone (07) 3899 8105 Fax. (07) 3899 8107  
Email: info@srsurveys.com.au

PLAN OF OCCUPATION AUTHORITY  
AREA ON LEVEL D IN  
COMMON PROPERTY ON SP275267  
"CENTRÀ ON ARCHER"  
CTS  
LOCALITY TOOWONG

LOCAL AUTHORITY BRISBANE CITY COUNCIL		SURV. J.C.
JOB NO. 14056	DWG FILE SR140512	DRAWN J.C.
DATE 28/10/2016		S.R.P.D. J.C.
HORIZONTAL DATUM SP275267	VERTICAL DATUM	CHECK J.C.
SCALE @ A3 1:300	PLAN REF. 14056 A3/6	

DRAWN - Starfields