BODY CORPORATE FOR Click here to enter text.

CTS Click here to enter text.

BODY CORPORATE CONSULTANCY

RETAINER AGREEMENT

**Location: Insert the site address**

Marc J. Mercier

Director, MBCD



Direct mobile: 0421 414 458

Direct Email: marc@mercierbcs.com.au

Click here to enter a date.

**RETAINER AGREEMENT**

Between

Mercier Corporation Pty Ltd t/a Mercier Body Corporate Development (“MBCD”),

P.O. Box 3444 Sunnybank South QLD 4109

And

Click or tap here to enter developer name.

C/- Click here to enter contact person followed by the address

**RE: CONSULTATION ON BODY CORPORATE REQUIREMENTS, ESTABLISHMENT & BODY CORPORATE MANAGEMENT SITUATED AT** xxInset scheme addressxx

# PART ONE – COMPANY DETAILS

Refer to [Schedule A](#SCHEDULEA) (below).

# PART TWO – WORK TO BE PERFORMED

* 1. The scope of the Company’s engagement of MBCD is as per the terms and contents of this agreement - refer to [Schedule B](#SCHEDULEB) (below).
  2. MBCD’ proposed professional fees for acting for the company in finalising establishment of the Body Corporate is **$**Click here to enter the amount in addition to the appointment of Mercier Body Corporate Services (MBCS) under a three year term of appointment as Body Corporate Manager for the scheme, as per the proposed Body Corporate Management Agreement by the original owner in general meeting (Refer to [Schedule D](#SCHEDULEE)) executed under the scheme’s Body Corporate common seal, with the term of appointment commencing from the date of establishment of the Body Corporate.

Out of pocket expenses ([Disbursements](#Disbursements)) that MBCD incurs on your behalf in doing the work will be charged, including but not limited to any government statutory charges, postage and photocopying.

* 1. Notwithstanding the proposal professional fee regime set out in clause 2.2 above, MBCD is entitled to reassess its professional fees should any of the following factors occur or exist, namely:
     + 1. If MBCD needs to repeat its advices;
       2. If the company’s records and documents are disorganised;
       3. If meetings and conferences (where applicable) are protracted;
       4. If clear instructions are not provided when requested;
       5. If the company changes its instructions; and
       6. If MBCD needs to follow up requests for the payment of any invoices rendered.
  2. **Excluded Work:**

MBCD is not being retained to undertake work for the company that is classified as legal work; that is, work which is or would ordinarily be undertaken by a legal practitioner.

Further, the scope of work does not include preparation of the survey plan, however **includes preparation of the First CMS** for the scheme. Agreement under this retainer is taken to authorise MBCD to liaise with the appointed surveyor and/or lawyers, or other relevant contractor(s) acting for the company, in order to ensure completion of the required work.

* 1. **Costs and Fees and when they must be paid:**

Any accounts will be rendered in accordance with [Schedule C](#SCHEDULEC) of this Agreement and are payable strictly within seven (7) days from the date of invoice.

* 1. **When does MBCD start to work on the matter:**

Work is deemed to commence upon execution of the agreement by both parties, supply of required documentation and payment of the initial memorandum of fees per **Schedule C.**

* 1. **When will MBCD cease work:**

We may cease all work on your matter without recourse to the company, if:

* + - 1. Any accounts are not paid within our requested trading terms; or
      2. A party ends this agreement by 7 days written Notice in accordance with section 2.8.
  1. **Ending this agreement:**
     + 1. The company may end this agreement at any time by informing MBCD with 7 clear days that it is ended by way of a Notice of Termination (the “Notice”). MBCD will not undertake any further work from receipt of this notice and will not be responsible for any adverse changes that arise because of this inactivity.

The company will be responsible for full professional fees under this agreement, plus any additional costs reasonably incurred thereafter.

* + - 1. MBCD may end this agreement if:

The company asks MBCD to act in a manner that is illegal or unethical or likely to bring MBCD into disrepute;

The company instructs MBCD to adopt a course of action which is, in MBCD’ opinion, unreasonable or against the company’s interests such that it is inappropriate for MBCD to continue;

The company fails to provide instructions within a reasonable time; and

The company is in breach this agreement.

* + - 1. If this agreement is ended by either party:

MBCD does not have to continue to do the work;

The company must pay MBCD all outstanding fees and costs up to the date the agreement is ended;

MBCD may keep any files and correspondence in its possession until payment of those fees and costs are finalised;

MBCD shall be entitled to recover from the company its costs;

MBCD will not act further and it will not be responsible for any adverse changes to the company’s position that arise following the termination of this agreement.

* 1. **Miscellaneous:**
     + 1. Changes to this agreement must be in writing, signed by both parties;
       2. MBCD’ advice to the company may be based on qualifications and assumptions set out in any correspondence. Advice is also based upon your instructions. If the advice is based on assumptions and/or instructions which are not correct, MBCD shall not be liable for losses that result from that advice.
       3. The company agrees that MBCD will obtain indicative alternative insurance quotes on its behalf and then, upon confirmation of the insurance quote, proceed to effect insurance through its insurance broker for the scheme/building on behalf of the company and the resultant Body Corporate, with the company to pay all monies owed under the confirmed quotation. MBCD will then issue the company with policy details via the Insurance Certificate of Currency upon its receipt;
       4. The parties agree to act in good faith throughout the life of this agreement.
  2. **Goods and Services Tax (GST):**

If MBCD renders an account, and all or part of that account is or is deemed to be a “taxable supply” within the meaning of applicable taxation legislation, then MBCD will increase its charges by the sum equivalent to that payable under the relevant legislation provision in respect of that taxable supply, namely GST. All costs outlined in this Retainer are exclusive of GST of which such GST component is to the added to the base cost at the time of rendering accounts.

* 1. **Confidentiality & Authorisations:**

In order to ensure confidentiality, MBCD will communicate with the Company or the Managing Director of the associated development company. The company further implicitly authorises MBCD to communicate with relevant contractors, companies and Government Departments relevant to the development of the scheme (such as, but not limited to, lawyers, surveyors, engineers, Utilities suppliers, Local Authority and the Qld Titles Office)

# PART THREE – ACKNOWLEDGEMENT

* 1. **The Company acknowledges that:**
     + 1. It has read, understands and agrees to be bound by the terms of this Agreement by execution at 3.3 below;
       2. It has not retained MBCD until such time as both the Company and MBCD have signed this Agreement;
       3. It has received and will retain its own copies of this Agreement.
  2. MBCD agrees to act on behalf of the Company in accordance with the terms of this Agreement.
  3. **Execution:**

|  |  |
| --- | --- |
| **Click or tap here to enter developer name. ACN** Click here to enter ACN no.  Click here to enter the address. | **Date:**  Click or tap to enter a date. |
| **Signature(s):** | |
| **Mercier Corporation Pty Ltd (ACN 148 908 810)** | **Date:**  Click or tap to enter a date. |
| **Signature(s):** | |

# SCHEDULE A – COMPANY & AGENT DETAILS

**COMPANY DETAILS:**

|  |  |
| --- | --- |
| Company Name: |  |
| Contact & Company Postal Address:  (Unless otherwise advised we will send all postal correspondence to this address) |  |
| Company Phone numbers: |  |
| Mobile: |  |
| Company Email:  (By providing your email address, you agree that you are confirming that you check the email address regularly and that we can reliably contact and to communicate with the Company via this email.) |  |

**AGENT DETAILS (if applicable):**

|  |  |
| --- | --- |
| Agent Name: |  |
| Postal Address: |  |
| Phone: |  |
| Fax: |  |
| Mobile: |  |
| Email: |  |
| Other Relevant Details (if applic.): |  |

# SCHEDULE B – SCOPE OF WORKS

The required work comprises and includes:

**STAGE 1 – DEVELOPMENT PHASE**

* Review proposed plans and specifications, community management statement and make recommendations for Contribution Lot Entitlement allocations and exclusive use by-laws, and liaise with your Surveyor and Solicitor, if required;
* Liaising with lawyers and developer to obtain instructions for, and assistance in the preparation of, disclosure statement relating to existing lots under the BCCM Act (where necessary) for inclusion in contracts of sale of lots
* Make recommendations as to the appropriate Module for the scheme;
* Attendances to obtain instructions for, and to provide advice for inclusions in CMS, and thereafter, preparation of the CMS to accompany the survey plan;
* Establishment of all necessary rolls, registers and records of the body corporate;
* Preparing a budget for the administrative and sinking funds for the first year of operation;
* Obtaining competitive quotes for insurance;
* Obtaining quotes on the establishment of Lot Entitlements (where it is recommended that Lot Entitlements should not be equal);
* Expert advice on exclusive use and other by-laws for inclusion in the CMS (if required - for example, inclusions in by-laws of matters arising in special conditions in contracts of sale, e.g. allowing the keeping of pets by certain owners);
* Preparation of necessary exclusive use by-law for inclusion in CMS;
* Attendances to facilitate the obtaining of local authorisation notation on the CMS, and thereafter ensure registration of the plan and CMS to establish the body corporate (see below for further details);
* Calculate the Administration and Sinking Fund Levies, Management and Administrative Costs, for disclosure in the Contract of Sale;
* Provide a Body Corporate Manager’s Agreement for the Contract of Sale;
* Expert advice on any common property, or body corporate related issues (for example, occupation authorities by a service contractor (if required)).
* Provision of relevant section 205, and 206 or 213 certificates on behalf of the body corporate upon commencement of BC Management;
* Offering expert advice on the requirements for appointment of service contractors (e.g. the Caretaker Manager / Letting Agent (if any));
* Establishment of books, records and registers of the body corporate;
* All other attendances associated with the above matters to ensure establishment of the body corporate, its compliance with legal requirements upon establishment and to allow the sale of lots to contracted purchasers.

**STAGE 2 – COMPLETION / POST-DEVELOPMENT PHASE**

* Preparing Notices, convening and attending the first EGM and then the inaugural AGM of the body corporate;
* Attending to all matters necessary to legally establish the body corporate such as:
  + - Convene and attend the First Extraordinary General Meeting. This meeting will establish interim levies,
    - adopt insurances, authorise the use of the seal and the opening of a Bank Account, and appoint a Body Corporate Manager, and Caretaker/Manager;
    - Establishment of all necessary rolls, registers and records of the body corporate;
    - Establish a Bank Account for the Scheme;
    - Issue Body Corporate Levies;
    - Order a Common Seal;
    - Apply for a Tax File Number and ABN, register the Body Corporate for GST;
    - Change the electricity into the name of the Body Corporate;
    - When 50% of the Lots are sold, or 6 months, whichever first occurs, we will convene the First Annual General Meeting. The First AGM will review the by-laws, approve the levies and budgets, and elect a Committee; and
    - All other attendances associated with the above matters to ensure establishment of the body corporate, its compliance with legal requirements upon establishment and to allow the sale of lots to contracted purchasers.

The post-development phase is the phase following the first EGM of the body corporate at which the body corporate manager and all other service contractors are appointed. The appointment of the Body Corporate Manager is a three year appointment through MBCS, a quality boutique provider of Body Corporate Management Services specialising in large schemes.

# SCHEDULE C - PROPOSED PROFESSIONAL FEES and DISBURSEMENTS

MBCD’s professional fee for acting as body corporate consultants during the development phase (as per scope of works in [Schedule B](#SCHEDULEB)) is **$**Click here to enter the amount in addition to MBCS being appointed as body corporate manager for the scheme under a three year term of appointment executed under the scheme’s Body Corporate common seal, with the term of appointment commencing from the date of establishment of the Body Corporate (as per **Schedule D**)..

# SCHEDULE D – Proposed Body Corporate Management Agreement (MBCS)

[TO BE PROVIDED UPON ADVICE OF SPECIFICATION OF THE PROPOSED SCHEME]

[Refer to following pages]