

Tenant-in-Common Deed

(Co-owner's Agreement)



Tenant in Common (TIC) DEED: Each investor will be registered on title in the name <or nominee> of the investor as a Tenant in Common. Tenancy in common (TIC) allows each investor to hold a separate and distinct share in the property, with their interests between themselves being regulated by this TIC Deed. A TIC share can be willed (bequeathed), sold, or mortgaged separately.

THIS DEED is made the day of 20

BY AND BETWEEN the party named in the First Schedule hereto (hereinafter termed “the TIC co-owner”) together with their executor, administrator, trustee and assigns.

RECITALS:

- A) The TIC co-owner is, or is entitled to become, registered as a proprietor as a tenant in common in the real property described in item 1 of the First Schedule (‘the property’), in the proportions set out in item 2 of the First Schedule hereto;
- B) The TIC co-owner has agreed to record various rights and obligations in respect of the property as set out in this deed.

THIS DEED WITNESSES:

1. *Interpretation*

- (a) references to persons include corporations and vice versa;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing one gender include each other gender;
- (d) a reference to any of the parties by their defined terms includes that party’s executors, administrators and permitted assigns, or being a company its successors and permitted assigns;
- (e) every agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation or derive any benefit under this deed binds or benefits those persons jointly and each of them severally;
- (f) head notes are for reference purposes only;
- (g) a reference to an item is a reference to an item in the First Schedule to this deed;
- (h) a reference to ‘the property’ shall also mean the managed investment property.

2. *Ownership Control*

- (a) The TIC co-owner will have a say in all matters in connection with the property in the proportion set out in item 2 of the First Schedule;
- (b) The TIC co-owner covenants and agrees not to apply to any court for an order for partition or sale of the property.
- (c) The TIC co-owner, by signing this deed, understands and acknowledges that buying a share in the property should be viewed as a long-term investment.

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3. *Maintenance*

- (a) **Property:** the TIC co-owner will, through the Property Management & Letting Agent, maintain the property, or contribute to same, in the proportion set out in item 2 of the First Schedule.
- (b) **Insurance:** the TIC co-owner will, through the Property Management & Letting Agent, effect public liability insurance for not less than five million dollars in respect of the property and pay for same in the proportion set out in item 2 of the First Schedule.
- (c) **Common payments:** the TIC co-owner will pay as and when required, through the Property Management & Letting Agent, all common general costs in respect of the property (including without limitation body corporate levies, council rates, water rates, land tax, public liability insurance and the costs of maintaining the property) in the proportion set out in item 2 of the First Schedule.

In the event that there is a shortfall of rental income and a TIC co-owner fails to pay any common general cost on the due date and the other TIC co-owners elect to pay the cost in full, the defaulting TIC co-owner will pay to the other TIC co-owners, in addition to the amount which he should have paid, interest on that amount at the rate of % per annum calculated on daily balances from the date on which the cost was paid by the other TIC co-owners until the date of actual payment by the defaulting TIC co-owner.

- (d) **Occupying TIC co-owner:** Should a TIC co-owner also become an “occupying lessee” of the property, that TIC co-owner will, at their own cost, maintain, and fully comply with and observe all statutes, ordinances, by-laws and regulations and fully comply with the requirements of all relevant authorities relating to the use and occupation of the property during any lease period. The occupying TIC co-owner will be responsible for, and indemnify the other TIC co-owners against, any action, suit, claim, loss or demand arising from the TIC co-owner’s failure to comply with this clause and any other loss or liability arising from any act, neglect or omission of that TIC co-owner or of that TIC co-owner’s invitees, servants, agents, contractors or sub-tenants. Fair market rent shall be paid by the occupying TIC co-owner equal to an amount and in proportion only to the percentage of TIC ownership held by the non-occupying TIC co-owners.
- (e) **Rental Stream:** in the event that the property is tenanted, the rental (after deduction by the Management & Letting Agent of all relevant overheads and commission) shall be divided between the TIC co-owners in the proportion of their tenure of the property, less any costs paid out on the TIC co-owner’s behalf by the Property Management & Letting Agent. See item 3 of the First Schedule.

4. *Management & Letting Agent*

- (a) The parties agree to appoint the Property Management & Letting Agent nominated in Item 4 of the First Schedule hereto, or such other Property Management & Letting Agent as a majority of the parties hereto from time to time decide to appoint, or in default the Letting Agent from time to time of the strata or community title plan of which the property forms part, if applicable, as their agent for the purpose of arranging and managing day-to-day care and maintenance of the property and all the ordinary and usual business affairs associated therewith including without limitation any necessary repairs to the property and its furnishings and chattels, the tenancing of the property, the arrangement of insurance and the collection and remittal of rental to the TIC co-owners entitled thereto.

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- (b) The address for service of all the TIC co-owners shall be the address of the Property Management & Letting Agent, who shall be and hereby is instructed by all the TIC co-owners to forward to them and each of them a copy of any mail or notice mailed to or served upon the TIC co-owners.
- (c) The Property Management & Letting Agent shall be directed to:
 - (i) manage the property in accordance with, and limited by, the terms of this Agreement;
 - (ii) protect and preserve the titles and interests of the TIC co-owners with respect to the property and chattels therein;
 - (iii) keep, or cause another to keep under their supervision, all books of account and other records required in respect of management of the property in accordance with good accounting principles and procedures applied in a consistent manner, keep statements, receipted bills and invoices, and all other records covering all collections, disbursements, and other data in connection with the property and its tenancing or periodic occupation;
 - (iv) allow each TIC co-owner, or any person designated in writing by the TIC co-owners, at any reasonable time during regular business hours, and upon reasonable advance notice, to review or audit such books, records, and accounts;
 - (v) to deliver to each TIC co-owner a balance sheet and a profit & loss (income) and cash flow statement, together with information necessary for preparation of tax returns, as soon as reasonably practicable but no later than 90 days after the close of each financial year;
 - (vi) to retain or employ and coordinate the services of any independent contractors, accountants, solicitors, and other persons necessary or appropriate to perform duties under this clause;
 - (vii) to the extent that funds are available from income from the property, to pay all insurance premiums, debts, and other obligations arising from performance of duties under this clause;
 - (viii) maintain all TIC co-owners' funds in a trust account and, subject to the terms hereto, have the power to deposit and withdraw funds, provided that no funds belonging to all TIC co-owners may be commingled with funds or accounts of any single TIC co-owner or combination of them;
 - (ix) when permitted or required by this Agreement, to make distributions monthly to the TIC co-owners, or any of them, in accordance with the provisions of this Agreement;
 - (x) subject to the provisions of this Agreement, to operate, maintain, repair and otherwise manage the property; and
 - (xi) generally to maintain, manage and operate the property in a reasonable manner.

5. **Selling**

- (a) Upon the death of a TIC co-owner, his rights hereunder shall vest in his executor; trustee or administrator according to law and the surviving TIC co-owners shall have no rights of pre-emption regarding same.

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- (b) (i) **No pre-emptive rights:** Each TIC co-owner may at any time sell, transfer or otherwise dispose of the whole or any part of their interest in the property provided that, prior to each such sale, transfer or disposition, the transferee or any other party executes a deed in the form set out in Annexure B ('purchaser's deed') by which the transferee and each other party agrees to be bound by the provisions of this deed as if the transferee had been named as an original party to this deed. Upon execution of the purchaser's deed by all parties, the transferee will be deemed to be party to this deed and will thereafter have the same rights and obligations under this deed as the relevant original party to this deed, whether or not the transferee is the original or a subsequent transferee. An original or subsequent party who has transferred the whole of his interest in the property will, upon compliance with this clause, cease thereafter to be a party to this deed. The sale price shall be that which a willing seller and a willing buyer agree to.
- (ii) Nothing contained in this agreement shall in any way be construed as making any TIC co-owner the guarantor of another TIC co-owner.

6. *Administrative provisions*

- (a) **Power of attorney:** the TIC co-owner hereby irrevocably appoints the other TIC co-owners and the Property Manager & Letting Agent appointed hereunder (or any principal of same for the time then being) as his attorney for the purposes of signing all documents which should be signed by a TIC co-owner pursuant to this deed, and without limiting the generality of the foregoing any purchaser's deed, any proposal for public liability insurance, and any development or building application. Such appointment will take effect seven (7) days after failure of the other TIC co-owners to execute such document after written request.
- (b) **Capital Injections:** if the TIC co-owners, by a 2/3 majority of the interests held as per the First Schedule hereto, determine that the property requires additional capital for reasonable repairs or operating expenses, all TIC co-owners shall make equal contributions pro rata to the proportion held. If any TIC co-owner is unwilling or unable to loan the required amount and the other TIC co-owners or any of them loan the shortfall then interest shall be paid on this shortfall at the Commonwealth Bank prime rate at the date of payment, plus two percent (2%), and both the shortfall and interest on same shall be a charge over the interest of the unwilling TIC co-owners in the property.
- (c) **Special charges:** in the event that any rate or tax is levied on the property or any part of it as a result of circumstances applying only to one TIC co-owner (for example, if land tax is levied on the property because of one TIC co-owner's debt), the TIC co-owners whose circumstances give rise to the levying of the rate or tax will pay in full the amount of such rate or tax and there will be no apportionment under clause 3(c).
- (d) This Agreement contains the entire agreement between the parties hereto relative to the ownership, management and operation of the property. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.
- (e) **Disputes:** any dispute or difference as to the performance or interpretation of this deed or in relation to the use of any part of the property will be resolved in the manner set out in Annexure 'C'.

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- (f) **TIC Co-owners:** the TIC co-owner hereby consents, authorises and directs the Property Manager & Letting Agent to disclose details and the identity of those TIC co-owners who have an interest in the property to any TIC co-owner who is subject to this deed, upon request.

7. **Caveats**

The TIC co-owner may lodge a caveat over the title of the other TIC co-owners to the property to protect their interest under this deed and agrees that each TIC co-owner has a caveatable interest arising from the provisions of this deed. The TIC co-owner consents as caveator to any dealing authorised by this deed.

8. **No Partnership**

- (a) The TIC co-owner agrees that nothing in this agreement shall constitute a relationship akin to a general partnership and shall hold out nor represent that such a partnership exists.
- (b) Save for acting under Power of Attorney pursuant to clause 6(a), nothing herein contained shall authorise the TIC co-owner hereto to act as agent for, or to bid or contract on behalf of, another TIC co-owner.
- (c) The TIC co-owner shall not have the right to borrow money on behalf of another TIC co-owner or to use the credit of another TIC co-owner for any purpose, except as specifically agreed to in writing.
- (d) The TIC co-owner shall be at liberty to conduct any business or activity whether or not in competition with any other TIC co-owner or with any business conducted at the subject property.
- (e) In the event the TIC co-owner consents to execute or enter into or to be bound by any lease, contract, or other agreement with any entity related to or affiliated with any specific TIC co-owner or combination of them, that latter contracting party shall be deemed to be an independent unrelated entity for the purpose of any such lease, contract, or agreement and as to the performance, implementation, and enforcement of same.

Notice to Investors: All parties, including any new investor joining existing co-owners, buying into a property shall be required to execute a TIC Deed in the required standard form without alteration or amendment of any kind.

Disclaimer: The ticX platform operator shall not have any liability in contract, tort or otherwise to any other legal person in respect of any loss or damage (including without limitation direct or consequential loss or financial loss) arising out of advice, inaccuracy, error, or omission from any part of information supplied by the platform operator.

The platform operator is not engaged in providing financial or legal advice, and any information is given on the basis that if financial or legal advice is required, the services of an independent financial or legal advisor should be sought.



FIRST SCHEDULE

ITEM 1.

Description of the Property: <input style="width:90%;" type="text"/>		
Address: <input style="width:95%;" type="text"/>		
Suburb: <input style="width:30%;" type="text"/>	State: <input style="width:15%;" type="text"/>	Post Code: <input style="width:15%;" type="text"/>
Lot: <input style="width:15%;" type="text"/>	Plan: <input style="width:15%;" type="text"/>	Parish/County: <input style="width:30%;" type="text"/>
Title Reference: <input style="width:80%;" type="text"/>		

ITEM 2.

Proportion of ownership being purchased expressed as a percentage %.

TIC Co-owner Name: <input style="width:95%;" type="text"/>		
Address: <input style="width:95%;" type="text"/>		
Suburb: <input style="width:30%;" type="text"/>	State: <input style="width:15%;" type="text"/>	Post Code: <input style="width:15%;" type="text"/>
Phone: <input style="width:20%;" type="text"/>	Mobile: <input style="width:30%;" type="text"/>	
Email Address: <input style="width:80%;" type="text"/>		

ITEM 3.

Maintenance Costs:

Maintenance costs of the property, which shall include without limitation all improvements, fixtures, fittings, floor coverings, furnishings and chattels, ticX listing fees if any, includes arranging necessary repairs to the property, insurance, payment of outgoings, tenanting the property, collection and remittance of rent and payment of utilities and body corporate levies, if applicable.

ITEM 4.

Property Management and Letting Agent:

The appointment of the Property Management & Letting Agent whose details appear below shall take effect on the signing of this agreement and will be confirmed in a formal letter of appointment sent to all parties upon settlement of the purchase of the property.

In the event of a majority of the parties appointing a replacement Property Management & Letting Agent a formal letter confirming the appointment shall be sent to all parties.



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Managing Agent Name: <input style="width: 90%;" type="text"/>		
Address: <input style="width: 95%;" type="text"/>		
Suburb: <input style="width: 30%;" type="text"/>	State: <input style="width: 15%;" type="text"/>	Post Code: <input style="width: 15%;" type="text"/>
Phone: <input style="width: 20%;" type="text"/>	Mobile: <input style="width: 20%;" type="text"/>	
Email Address: <input style="width: 55%;" type="text"/>		

EXECUTION SECTION

Date of TIC Co-owners' Deed: The day of 20

THE PARTIES sign, seal, and deliver this document as their deed.

SIGNED SEALED AND DELIVERED by:	
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>
<i>Name of TIC co-owner.</i>	<i>Signature of TIC co-owner</i>

IN THE PRESENCE of:	
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>
<i>Name of Witness.</i>	<i>Signature of Witness</i>



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ANNEXURE A

[The plan and any other relevant details of the property should be attached here.]



ANNEXURE B

PURCHASER'S DEED

(This Purchaser's Deed is a pro-forma deed to be used on a resale of a co-owner's interest in the property)

THIS DEED is made the day of 20

1. *[Name of party] of [address] ('the TIC vendor Co-owner')*

Vendor (TIC Co-owner) Name: <input type="text"/>		
Address: <input type="text"/>		
Suburb: <input type="text"/>	State: <input type="text"/>	Post Code: <input type="text"/>
Phone: <input type="text"/>	Mobile: <input type="text"/>	
Email Address: <input type="text"/>		

2. *[Name of party] of [address] ('the purchaser')*

Purchaser Name: <input type="text"/>		
Address: <input type="text"/>		
Suburb: <input type="text"/>	State: <input type="text"/>	Post Code: <input type="text"/>
Phone: <input type="text"/>	Mobile: <input type="text"/>	
Email Address: <input type="text"/>		

RECITALS:

- A. The vendor is registered as proprietor as tenants in common or joint tenants in the land described in item 1 of the Schedule ('the property');
- B. The purchaser desires to purchase the vendor's interest in the property in the proportion set out in item 2 of the Schedule pursuant to the TIC co-owners' deed.

THIS DEED WITNESSES:

1. Interpretation

- (a) references to persons include corporations and vice versa;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing one gender include each other gender;



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- (d) a reference to any of the parties by their defined terms includes that party's executors, administrators, and permitted assigns, or being a company its successors and permitted assigns;
- (e) every agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation or derive any benefit in terms of this deed shall bind or benefit such persons jointly and each of them severally;
- (f) head notes are for reference purposes only;
- (g) a reference to an item is a reference to an item in the schedule to this deed.

2. *Assumption of liability*

The purchaser agrees to perform and observe all the terms covenants and conditions contained in the TIC co-owners' deed a copy of which is annexed hereto. The purchaser hereby releases the vendor from any prospective liability under the TIC co-owners' deed but not from any breaches occurring before the date of this deed.



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PURCHASER'S DEED SCHEDULE

ITEM 1.

Description of the Property: <input style="width: 95%;" type="text"/>			
Address: <input style="width: 95%;" type="text"/>			
Suburb: <input style="width: 30%;" type="text"/>	State: <input style="width: 15%;" type="text"/>	Post Code: <input style="width: 20%;" type="text"/>	
Lot: <input style="width: 15%;" type="text"/>	Plan: <input style="width: 15%;" type="text"/>	Parish/County: <input style="width: 45%;" type="text"/>	
Title Reference: <input style="width: 95%;" type="text"/>			

ITEM 2.

Proportion of ownership being purchased expressed as a percentage %.

ITEM 3.

Date of TIC Co-owners' Deed: The day of 20

THE PARTIES sign, seal, and deliver this document as their deed.

SIGNED SEALED AND DELIVERED by:	
<input style="width: 95%;" type="text"/> <i>Name of TIC co-owner.</i>	<input style="width: 95%;" type="text"/> <i>Signature of TIC co-owner</i>

IN THE PRESENCE of:	
<input style="width: 95%;" type="text"/> <i>Name of Witness.</i>	<input style="width: 95%;" type="text"/> <i>Signature of Witness</i>

SIGNED SEALED AND DELIVERED by:	
<input style="width: 95%;" type="text"/> <i>Name of Purchaser</i>	<input style="width: 95%;" type="text"/> <i>Signature of Purchaser</i>

IN THE PRESENCE of:	
<input style="width: 95%;" type="text"/> <i>Name of Witness.</i>	<input style="width: 95%;" type="text"/> <i>Signature of Witness</i>

ANNEXURE C

DISPUTES

1. (a) Any dispute or difference as to the performance of this deed may be referred by any party for determination by a person ('determinator') in accordance with the provisions of this clause.
- (b) A party who decides to refer any dispute or difference for determination must do so by written notice ('first determination notice'). The first determination notice will specify the following:
 - (i) the name, address and occupation of a specific determinator ('nominated determinator'); and
 - (ii) a nomination of a specific class of determinators, being one of the classes specified in the left hand column of sub-clauses (i) to (vi) of paragraph (d).
- (c) (i) Unless another party gives written notice ('second determination notice') to the party giving the first determination notice within seven (7) days of receipt of the first determination notice, the nominated determinator will be the determinator.
- (ii) The second determination notice may reject the nominated determinator but accept the specific class of determinator specified in the first determination notice, in which event the determinator will be a member of the class of person or persons specified in the first determination notice and will be appointed by the appropriate institute or association in accordance with the relevant part of sub-paragraph (d).
- (iii) If the second determination notice rejects the specific class of persons nominated as determinator, the question of the appropriate class of determinator will be referred at the request of any party to a barrister appointed by the President for the time being of the Bar Association of Queensland whose decision as to the class of persons from which the determinator will be appointed will be final and binding upon the parties.
- (d) Failing agreement to the contrary, where any dispute or difference is referred for determination as provided in sub-paragraphs (a) and (c) the determinator will be appointed by such one of the following institutes or associations, being that in or closest to the State where the property is situated, as is appropriate in the circumstances:
 - (i) if an architect: by the President for the time being of the Royal Australian Institute of Architects
 - (ii) if a valuer: by the President for the time being of the Australian Institute of Valuers and Land Economists
 - (iii) if an expert in insurance: by the President for the time being of the Insurance Institute
 - (iv) if a real estate agent: by the President for the time being of the Real Estate Institute
 - (v) if a quantity surveyor: by the President for the time being of the Institute of Quantity Surveyors
 - (vi) if a barrister: by the President for the time being of the Bar Association
- (e) When any dispute or difference has been referred for determination, the parties will each use their best endeavours to make available to the determinator all facts and circumstances which the determinator requires to settle or determine the dispute or difference, and will ensure that their respective employees, agents or consultants are available to appear at any hearing or enquiry called by the determinator.
- (f) The decision of the determinator will be made and delivered to the parties within one (1) month (or such other period as the parties may agree or the determinator may determine) from the date of submission of the dispute or difference to the determinator or the date of completion of any, or the last, hearing or enquiry called by the determinator.
- (g) The determinator will act as an expert and not as an arbitrator and his decision will be final and binding upon the parties. The parties will not be entitled to commence or maintain any action upon any dispute or difference until it has been referred and determined as provided in this clause.
- (h) The determinator will also decide the amount of the costs and expenses relating to the reference to him of any dispute or difference, and in default of such decision the costs and expenses will be borne by the parties in equal shares.