

## **MANAGEMENT AGREEMENT**

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**CENTRAL PARK PROPERTY INVESTMENT LIMITED (Company)**

**MAAT CONSULTING LIMITED (Manager)**

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**DATE** 5 February 2019

**PARTIES**

Name	<b>Central Park Investment Limited</b>
Short Name	<b>Company</b>
Notice Details	B4 17 Corinthian Drive Albany Auckland 0632
Attention	Mark Hughson

Name	<b>Maat Consulting Limited</b>
Short Name	<b>Manager</b>
Notice Details	B4 17 Corinthian Drive Albany Auckland 0632
Attention	Mark Hughson

**BACKGROUND**

This Agreement records the appointment of the Manager as manager of the Company

## **AGREED TERMS**

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### **1 DEFINED TERMS, INTERPRETATION AND EFFECTIVENESS**

#### **1.1 Defined terms**

**Act** means the *Companies Act 1993*.

**A Share** means an A Share in the Company, as set out in the Constitution.

**A Shareholder** means a holder of A Shares.

**B Share** means a B Share in the Company, as set out in the Constitution.

**B Shareholder** means a holder of B Shares.

**Board** means the board of Directors of the Company.

**Company Account** means an interest bearing deposit account opened and maintained for and on behalf of the Company pursuant to clause 3.

**Constitution** means the constitution of the Company, as amended or replaced from time to time.

**Director** means a director of the Company.

**Disbursements** means out of pocket expenses and disbursements incurred by the Manager as an incidental part of carrying out its obligations under this Agreement.

**Distribution** means in relation to Shares held by a Shareholder, means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of the Shareholder; or
- (b) the incurring of a debt by the Company to or for the benefit of the Shareholder,

whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means.

**Dividend** means a Distribution by the Company other than a Distribution to which section 59 or section 76 of the Act applies.

**Everest** means Everest Central Investment Limited.

**Everest Management Agreement** means the management agreement entered into between the Manager and Everest Central Investment Limited for the management of the Property.

**Financial Statements** means the financial statements in respect of the performance, financial position and cash flow of the Company to be prepared in accordance with clause 4.

**Financial Year** means a year ending on 31 March (or such other date as the Manager nominates) or that part of such a year occurring at the commencement or winding up of the Company or as a result of a change in balance date. The first financial year for the Company will be from the date of this Agreement to 31 March 2019.

**GST** means goods and services tax chargeable under the GST Act.

**GST Act** means the *Goods and Services Tax Act 1985*.

**Offer Document** means the product disclosure statement prepared on or about the date of this Agreement in relation to the offer of B Shares.

**Ordinary Resolution** means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

**Portfolio Investment Entity** or **PIE** means a portfolio investment entity as that term is defined in section YA 1 of the Tax Act.

**Prescribed Investor Rate** or **PIR** means the rate of tax applicable to a Shareholder under the Tax Act.

**Profit** means the monies paid into the Company Account, less any fees, costs charges, expenses, allowances, deductions and withholdings paid or payable out of the Company Account in accordance with the terms of this Agreement.

**Property** means the land and buildings situated at 160 Central Park Drive, Waitakere City, being unique identifier 618171.

**Register** means the register of Shares required by the Constitution and section 87 of the Act to be kept, and maintained by the Manager pursuant to this Agreement.

**Shares** means A Shares or B Shares or both or any of them as the context may require.

**Shareholders** means A Shareholders or B Shareholders or both or any of them as the context may require.

**Special Resolution** means a resolution of Shareholders approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

**Tax Act** means the *Income Tax Act 2007* or the *Tax Administration Act 1994* (as applicable).

**Working Day** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day and Waitangi Day;
- (b) a day in the period commencing with the 25<sup>th</sup> day of December in any year and ending with the 2<sup>nd</sup> day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) a reference to any monetary amount is to New Zealand currency;
- (b) expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the introduction and the schedules;
- (c) section, clause and other headings are for ease of reference only and do not form any part of the context or affect this Agreement's interpretation;
- (d) where two or more persons are bound by a provision in this Agreement, that provision will bind those person jointly and each of them severally;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) references to parties are references to parties to this Agreement and include each party's executors, administrators and successors;

- (g) references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- (h) singular words include the plural and vice versa, and words importing one gender include the other genders;
- (i) the schedules and their contents have the same effect as if set out in the body of this Agreement;
- (j) references to sections, clauses and schedules are references to sections and clause of and the schedules to this Agreement;
- (k) references to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise;
- (l) words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement;
- (m) a reference to any document, including this Agreement includes a reference to that document as amended or replaced from time to time;
- (n) any reference to loss includes any cost, claim, liability, damage, expense, fine, penalty or tax;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (p) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (q) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (r) a reference to time is to New Zealand time; and
- (s) a reference to "written" or "in writing" includes all models of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

## **2 THE ROLE OF MANAGER**

### **2.1 Appointment**

The Company appoints the Manager:

- (a) as the sole and exclusive manager of the Company; and
- (b) to provide those administrative, secretarial and other services as are set out in this Agreement,

and the Manager accepts such appointment.

### **2.2 General Powers**

Subject to the provisions of this Agreement, the Manager will manage and administer the Company for the benefit of the Company and the B Shareholders generally. In particular, the Manager will have full power to do (and covenants to do) the following in relation to the Company:

- (a) to keep accounting records and provide Financial Statements to Shareholders in accordance with clause 4;

- (b) to pay the costs of auditing the Financial Statements each year;
- (c) to procure compliance with all applicable legislation and regulations in respect of the Company;
- (d) without limiting clause 4.3, to provide to each Shareholder such information as the Shareholder may reasonably require with respect to the Company and the Property;
- (e) to keep and maintain up-to-date Register of Shareholders containing the information required under the Act and any other particulars that the Manager may consider desirable to include;
- (f) to administer and be responsible for the day-to-day management of the Company; and
- (g) to elect for the Company to be a PIE for the purposes of the Tax Act and administer the Company as a PIE in accordance with all relevant laws and the powers given to the Board in the Constitution.

### **2.3 Power to delegate**

The Manager may delegate to any related company of the Manager or to its or their officers and employees or any of them all or any of the powers, authorities and discretions exercisable by the Manager under the provisions of this Agreement. Any things required by this Agreement to be done by the Manager may be done by its delegate on its behalf provided that the Manager will at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.

### **2.4 Appoint agents**

The Manager may appoint and engage any property manager, valuer, barrister, solicitor, accountant and any such other person or persons as may be necessary, usual or desirable for the purpose of exercising its powers and performing its obligations under this Agreement.

### **2.5 Term of appointment**

Subject to clause 2.6, the term of the appointment of the Manager is for the duration of ownership of the Property by Everest.

### **2.6 Removal or resignation of Manager**

The Manager may resign on not less than 6 months' notice to the Company. In addition,

- (a) the Company; or
- (b) the B Shareholders by Ordinary Resolution

may remove the Manager, upon not less than 6 months' notice, but such removal will be conditional upon:

- (c) payment to the Manager of Management Fees to the date of removal; and
- (d) unless B Shareholders otherwise resolve in accordance with the Company's constitution, the appointment of a replacement manager

and on and from the removal or resignation of the Manager:

- (e) the A Shares in the Company held by the Manager will be surrendered for no consideration and cancelled;
- (f) the Manager will provide to the Company all accounting and other records relating to the Company which are then in the possession or control of the Manager; and

- (g) the Manager will be released from all of its covenants and obligations under this Agreement (other than in respect of any antecedent breach).

## **2.7 Matters relating to the Manager**

- (a) The appointment, and the terms of the appointment, of a new manager must be approved by Ordinary Resolution of B Shareholders. A new manager appointed pursuant to this clause 2.7 must promptly execute a document whereby the new manager undertakes to the Company to be bound by and to observe and perform such management obligations as shall have been approved by Ordinary Resolution of B Shareholders.
- (b) If the B Shareholders by Ordinary Resolution vote that the Manager should no longer continue to be the manager of Everest, then the Manager shall tender its resignation as the manager of Everest in accordance with the Everest Management Agreement.
- (c) If the B Shareholders by Special Resolution vote that they wish the Property to be sold, the Company (in its capacity as a Shareholder in Everest) will take all steps available to it to require the Property to be sold and the Manager will take all steps available to it to arrange for the Property to be sold on the open market and to subsequently wind up Everest.

## **2.8 Manager's entitlements preserved**

Nothing in this clause 2 will:

- (a) prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this Agreement prior to the date of, or arising on, the Manager's removal from office; or
- (b) prevent the Manager from also providing management services to Everest.

# **3 INCOME AND DISTRIBUTION**

## **3.1 Company Account**

The Company Account will be opened for and on behalf of the Company to:

- (a) receive all dividend income and other distributions from Everest;
- (b) pay all costs, fees, expenses, deductions and allowances provided for under this Agreement; and
- (c) pay all Dividends approved by the Board to B Shareholders.

The bank account signatories for the Company Account will be two directors of the Manager signing all cheques and authorising other payments from the Company Account by other means jointly.

## **3.2 Distribution of Dividends**

Subject to the requirements of the Act in relation to the ability of the Board to declare a Dividend, the Company directs the Manager to distribute and pay to B Shareholders Dividends or cash distributions monthly in arrears on the last day of each month or the next Working Day if that day is not a Working Day. Where the Board is unable to declare a full Dividend or cash distribution in accordance with the Act, no Dividend or cash distribution or a reduced Dividend or cash distribution will be paid.



## **4 RECORDS AND FINANCIAL STATEMENTS**

### **4.1 Records**

The Manager will keep such accounting records as correctly record and explain the performance, financial position and cashflows of the Company, and will enable the Financial Statements to be prepared and conveniently and properly in accordance with this Agreement.

### **4.2 Financial Statements**

As soon as practicable after the end of each Financial Year, the Manager will procure that Financial Statements for the Company for that Financial Year are prepared in accordance with generally accepted accounting practice and delivered to Shareholders no later than 3 months following the end of the Financial Year. Particulars of all charges which affect returns to Shareholders will be included in the Financial Statements.

### **4.3 On Request Information**

The Manager will provide to Shareholders on request (free of charge) the latest Financial Statements of the Company at the time of request.

## **5 SALE OF PROPERTY**

On the sale of the Property:

- (a) any proceeds received by the Company from Everest in respect of the sale of the Property will be paid into the Company Account;
- (b) the Company will be liquidated in accordance with the Constitution;
- (c) after deducting any allowable costs, fees and expenses from the Company Account the net balance will, subject to the requirements of the Act, be distributed to the B Shareholders pro rata according to the number of B Shares held by each of them; and
- (d) following distribution to the B Shareholders of all monies pursuant to this clause 5, this Agreement will terminate and neither the Manager nor the Company will have any further liability to each other.

## **6 NOTICES**

Any notice, communication or information required by this Agreement to be given to the Manager or the Company must be given in writing, or such other manner as agreed to from time to time by the Manager and the Company, to the address set out at the beginning of this Agreement or to such other address as may be notified in writing by one party to the other.

## **7 MONEY PAYABLE TO SHAREHOLDERS**

- (a) Any money payable by the Manager to a Shareholder under the provisions of this Agreement may be paid into such bank account as is nominated by that Shareholder or may be paid by cheque that is crossed "not transferable" and:
  - (i) is made payable to the Shareholder and sent through the post to the address of the Shareholder recorded in the Register; or
  - (ii) in the case of joint Shareholders, is made payable to the joint Shareholders and sent to their common recorded address or to the recorded address of that one of the joint Shareholders who is first named on the Register; or
  - (iii) in any other case, is made payable as the Shareholder or joint Shareholders with the approval of the Manager may from time to time specify, including a specification in writing to the Manager to pay money to an account (of a

bank or financial institution) nominated by the Shareholder or joint Shareholders.

- (b) Payment of every cheque, if fully presented and paid, will be a full satisfaction of the money payable and will be a good discharge to the Manager. Any payment made in any other manner in accordance with a Shareholder's instructions will be a full satisfaction of the money payable and will be a good discharge to the Manager.

## **8 MISCELLANEOUS**

### **8.1 Role of Manager**

Notwithstanding anything in this Agreement, the Manager may on its own account take up or acquire B Shares and for this purpose may borrow and grant security over such B Shares provided that the Manager and its associated persons (as that term is defined in the Income Tax Act 2007) may not take up and acquire more than 19% of the B Shares.

### **8.2 Severance**

If any provision of this Agreement is found by a court to be illegal invalid or unenforceable, that provision may be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable to give it a valid operation of practical character. If any provision cannot be so read down, the provision will be deemed to be void and severable and the remaining provisions of this agreement are not to be affected or impaired.

### **8.3 Amendment**

Any amendment to this Agreement must be agreed between the Company and the Manager, authorised by an Ordinary Resolution and thereafter recorded in writing between the Company and the Manager.

### **8.4 Governing Law**

This Agreement is governed by and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

### **8.5 Contracts Privity**

Clauses in this Agreement that refer to any rights of B Shareholders are for the benefit of, and intended to be enforceable by those B Shareholders against the Company and the Manager, as the case may be, in accordance with the Contracts (Privity) Act 1982.

### **8.6 Counterparts**

This Agreement may be executed in a number of counterparts. All the counterparts taken together constitute this agreement.


**SIGNING PAGE**

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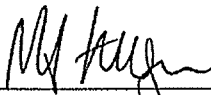
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**CENTRAL PARK PROPERTY INVESTMENT  
LIMITED**

by:

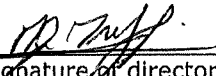
  
\_\_\_\_\_  
Signature of director

Neil James Tuffin  
\_\_\_\_\_  
Name of director


  
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Signature of director

Mark Geoffrey Hughson  
\_\_\_\_\_  
Name of director

**MAAT CONSULTING LIMITED** by:

  
\_\_\_\_\_  
Signature of director

Neil James Tuffin  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

Mark Geoffrey Hughson  
\_\_\_\_\_  
Name of director

