



CLARKE GROUP
PROPERTY MANAGEMENT

Property Management Agreement for Swanson Road

Henderson Residences Limited

Owner

Clarke Group Management Limited

Manager

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Agreement dated

Parties

Henderson Residences Limited (company number 6126654) (**Owner**)

Clarke Group Management Limited (company number 4444798) a company having its registered office at Clarke Group, Level 3, 60 Parnell Road, Parnell, Auckland, 1052, New Zealand (**Manager**)

Introduction

- A The Owner is or will be on the Commencement Date the registered proprietor of the Property.
- B The Manager has been requested by the Owner to manage the Property in accordance with the terms and conditions contained in this Agreement and will do so as agent of the Owner.

Agreements

1 Interpretation

- 1.1 In this Agreement, unless inconsistent with the context, the following definitions apply:

Account Management means the account management duties specified in Schedule 1.

Agreement means this agreement together with the schedules attached to this agreement and any amendments made from time to time.

Building Management means the building management duties specified in Schedule 1.

Commencement Date means [*insert settlement date*](which is the date the Property is scheduled to be transferred to the Owner) or such other date as the Property is in fact transferred to the Owner.

Further Terms means two further terms of three years each.

GST means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985, and any penalties, additional tax or interest payable in respect thereof.

Harmed and **Hazard** have the meaning given to those words by section 2(1) of the Health and Safety in Employment Act 1992.

Leases means leases relating to the Property or any part of it and includes tenancy agreements and licences.

Letting Fee means the letting fee specified in Schedule 2.

Management Fee means the management fee specified in Schedule 2.

Manager means the original manager named as a party to this Agreement, and the manager's executors, administrators, successors, permitted assigns and where not repugnant to the context includes the employees, agents, contractors and any other person under the control or direction of the manager.

Owner means the original owner named as a party to this Agreement, and the owner's executors, administrators, successors and assigns and, where not repugnant to the context, included the employees, agents and authorised representatives of the owner.

Property means the land and buildings described in Schedule 3.

Property Income means the total gross income received in respect of the Property (excluding GST) including all monies payable by the Tenants for example (without limitation):

- (a) the rent payable under the Leases;
- (b) laundry, internet and car parking charges; and
- (c) all other income related to the Property.

Property Trust Account means the trust account operated for the purpose of receiving and disbursing all money received or payable in respect of the Property.

Risk Management means the risk management duties specified in Schedule 1.

Tenancy Management means the tenancy management duties specified in Schedule 1.

Tenants means tenants and licensees occupying the Property or any part of it pursuant to a Lease.

Term means an initial term of three years and includes any Further Term(s) if the Owner elects to renew this Agreement.

Unit Title means the unit title duties specified in Schedule 1.

Working Day means any day other than a Saturday, Sunday, statutory public holiday in New Zealand, the provincial anniversary day observed where the Property is situated, and any day in the period commencing 24 December and ending on 5 January in the succeeding year. A Working Day shall be deemed to commence at 8.30am and to end at 5pm.

Year means each 12 month period commencing on 1 April and ending on 31 March in the succeeding year or such other 12 month period as the Manager may nominate.

1.2 In this Agreement, unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;

- (d) references to individuals include companies and other corporations and vice versa;
- (e) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, notated, supplemented or replaced from time to time;
- (f) references to sections, clauses and schedules are references to sections, clauses and schedules in this Agreement unless otherwise states;
- (g) reference to monetary amounts, money or money's worth are to New Zealand dollars unless specifically stated otherwise;
- (h) any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
- (i) where the Owner's consent or approval is required under this Agreement, such consent or approval shall not be unreasonably withheld or delayed or given subject to unreasonable conditions; and
- (j) where any party comprises more than one person, such persons shall be deemed to have entered into this deed both joint and severally.

2 Appointment

- 2.1 The Owner appoints the Manager, to manage the Property during the Term in accordance with the terms and condition of this Agreement. The Manager accepts such appointment.

3 Term and Further Terms

- 3.1 The Agreement shall commence on the Commencement Date and shall continue in force for the Term unless terminated earlier in accordance with this Agreement.
- 3.2 If the Owner wishes to renew this Agreement for a Further Term, the Owner must give the Manager at least six calendar months written notice before the end of the Term and, as at the date of the giving of the notice, the Owner must not be in breach of this Agreement.
- 3.3 This Agreement is binding on all successors of the Owner during the Term.
- 3.4 In the event that the Owner at any time during the Term sells or otherwise disposes of its interest in the Property, the Owner must prior to settlement:
- (a) procure the purchaser of the Property to enter into a deed of assignment (in the form attached as Schedule 4) providing for this Agreement to be assigned from the Owner to the purchaser with effect from the settlement date; and
 - (b) provide a copy of the deed of assignment signed by the Owner and the purchaser to the Manager.
- 3.5 If the Owner is in breach of clause 3.4, the Manager shall (without prejudice to the Manager's other rights and remedies under this Agreement and/or at law) be entitled to the equivalent of six months value of:

- (a) Management Fees (calculated on the basis of the Management Fees payable for the six month period immediately prior to the date the Property is transferred from the Owner to the purchaser of the Property (**Transfer Date**)); and
- (b) all other fees that are payable under this Agreement (calculated on the basis of those fees payable for the six month period immediately prior to the Transfer Date).

The Manager shall deduct the fees referred to subclauses (a) and (b) above from the Property Trust Account on or before the Transfer Date. If there are insufficient funds in the Property Trust Account to deduct those fees, the party who was the Owner prior to the Transfer Date shall pay to the Manager the fees (or any shortfall) within five Working Days of receipt of a tax invoice for the same.

4 Monies paid and received and Fees

- 4.1 The Owner agrees that the Property Income shall be paid directly to the Manager and held in the Property Trust Account.
- 4.2 In accordance with Schedule 2:
 - (a) the Manager shall deduct from the Property Trust Account the following fees for the relevant month on the last Working Day of that month:
 - (i) the Management Fee; and
 - (ii) any other fees or charges payable by the Owner in accordance with Schedule 2 or this Agreement; and
 - (b) the Letting Fee shall be payable by the Tenant to the Manager.
- 4.3 The Owner agrees that it is liable for the fees referred to in clause 4.2(a) and if at any time there are insufficient funds in the Property Trust Account for the Manager to deduct those fees, the Owner shall pay to the Manager the shortfall within five Working Days of receipt of a tax invoice for the same.
- 4.4 The Manager shall pay to the Owner the balance of the Property Income, after all outgoings have been paid and fees have been deducted in accordance with this Agreement, on the last Working Day of that month.

5 Duties

- 5.1 The Manager shall:
 - (a) carry out the duties and responsibilities specified in Schedule 1; and
 - (b) use reasonable endeavours to promote the Owner's interest in respect of the Property.
- 5.2 The Manager warrants that it has the necessary expertise, experience and facilities required to properly carry out the duties and responsibilities specified in Schedule 1.

- 5.3 The Owner shall respond promptly to all requests made to it by the Manager for instructions.

6 Manager's authority to incur expense

- 6.1 The Manager shall, in carrying out its obligations under this Agreement, be subject to the direction and control of the Owner in respect of incurring any financial liability on behalf of the Owner.
- 6.2 Subject to clause 6.1, the owner authorises the Manager to incur financial liability on behalf of the Owner, without the prior approval of the Owner, in the following circumstances:
- (a) where such financial liability does not exceed \$500 plus GST in respect of any one item;
 - (b) where such financial liability is incurred as part of the expenditure in a budget for the Property approved by the Owner; and
 - (c) where such financial liability relates to a repair to the Property that in the opinion of the Manager must be carried out without any delay to protect the Property from damage or from further damage, or to maintain essential services to the occupants, or to prevent harm or danger to people. In such case the Manager shall notify the Owner as soon as possible of any such repair costing more than \$500 plus GST.

7 Reporting

- 7.1 Correspondence shall be submitted by the Manager to the Owner on all matters that require the Owner's instructions under this Agreement. Copies of any correspondence entered into between the Manager and any person with regard to the Property shall be forwarded to the Owner upon the Owner's request to the Manager to do so.
- 7.2 In accordance with clause 2(f) of Schedule 1, the Manager shall report to the Owner on the last Working Day of each month providing details of all Property Income collected and outgoings disbursed during that month.
- 7.3 Each quarter (including for any broken period from the Commencement Date) the Manager shall report to the Owner in order to summarise all management activities which occurred in or with regard to the Property during the preceding quarter under the following headings:
- (a) Account Management;
 - (b) Tenancy Management;
 - (c) Building Management; and
 - (d) General comments.
- 7.4 The Manager shall prepare annual budget reports. Such reports shall comprise income and outgoings budgets for the next Year and shall be submitted to the Owner for approval.

- 7.5 The Manager may make reasonable variations to the methods or reporting contained in this section 7 and the Manager shall comply with such variations.

8 Indemnities

- 8.1 The Owner shall indemnify and keep indemnified the Manager from and against any action, claim, demand, loss, damage, cost, expense and liability for which the Manager in the due and proper course of management, may render itself legally liable on behalf of the Owner.
- 8.2 The Manager shall not be responsible for any loss or damage caused to the Owner or the Property by the exercise of any discretion or authority conferred on the Manager pursuant to this Agreement.
- 8.3 Neither the indemnity contained in clause 8.1 nor the release contained in clause 8.2 shall apply to any action, claim, demand, loss, damage, cost, expense or liability incurred or suffered because of any default by the Manager in complying with the provision of this Agreement or by reason of any negligence on the part of the Manager.

9 Termination

- 9.1 This Agreement may be terminated in any of the following circumstances:
- (a) the Owner may elect to terminate this Agreement (without cause) on 90 days' written notice to the Manager, without being required to first refer the dispute for resolution in accordance with clause 11;
 - (b) if a party to this Agreement (**Defaulting Party**) fails to comply with any obligation imposed on it under this Agreement and such failure continues for 20 Working Days after the date written notice (**Default Notice**) has been given by the other party (**Complaining Party**) to the Defaulting Party requiring the failure to be remedied, then, on the expiry of such 20 Working Day period as specified in the Default Notice the Complaining Party may elect to serve a further notice terminating this Agreement with effect on and from the date of service of such notice;
 - (c) the Manager:
 - (i) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation);
 - (ii) is wound up or dissolved;
 - (iii) makes or attempts to make any composition, assignment or other arrangement with, or for the benefit of the Manager's creditors or any class thereof; or
 - (iv) has a receiver or manager appointed in respect of any of its assets;in which case the Owner may elect to terminate this Agreement by notice in writing to the Manager and upon service of such notice this Agreement shall

be deemed terminated with effect on and from the date that is 20 Working Days after the date of service of such notice;

- (d) the Owner disposes of its interest in the Property in breach of clause 3.4 in which case the Manager may (without prejudice to the Manager's rights under clause 3.5 or at law) elect to terminate this Agreement by notice in writing to the Owner and upon service of such notice this Agreement shall be deemed terminated with effect on and from the date of service of such notice; or
 - (e) if during the Term the building on the Property is destroyed or damaged to the extent of being incapable of repair or reinstatement and is rendered unable to be tenanted, the Term shall at once cease and terminate. Notwithstanding the foregoing, if at the request of the Owner the Manager continues to perform management services for the Property following the date upon which the Property becomes unable to be tenanted, the Manager shall be entitled to be paid a reasonable fee by the Owner for the provision of such management services.
- 9.2 Upon termination of this Agreement, the Manager shall deduct from the Property Trust Account all unpaid fees and costs due and payable under this Agreement to the Manager. If there are insufficient funds in the Property Trust Account for the Manager to deduct the unpaid fees and costs, the Owner shall pay the same (or any shortfall) to the Manager within five Working Days of receipt of a tax invoice for the same.
- 9.3 Following the deduction or receipt of payment in accordance with clause 9.2, the Manager shall:
- (a) promptly deliver to the Owner all contracts, documents and records pertaining to the Property; and
 - (b) take such action as the Manager considers necessary in order to ensure an orderly termination of the Manager's duties under this Agreement.
- 9.4 Any termination of this Agreement shall be without prejudice to the rights of either party against the other in respect of any antecedent breach of any of the provisions contained or implied in this Agreement.

10 General

Notices

- 10.1 Any notice permitted or required to be given under this Agreement shall be in writing and shall either be:
- (a) delivered personally; or
 - (b) mailed by pre-paid registered mail,
- to the addressee at the addressee's last known address in New Zealand, or in the case of a corporation, to its registered office.
- 10.2 Any notice sent by registered mail shall be deemed to have been received on the third Working Day following the date of mailing. Any notice served after 5pm a Working Day, or on a day which is not a Working Day, shall be deemed to be served on the next succeeding Working Day.
- 10.3 The Owner shall provide its address for service and contact details, or the address for service and contact details of the person authorised by the Owner to act on the Owner's behalf in respect of this Agreement, on execution of this Agreement. If any such details change the Owner shall immediately notify the Manager of the new details.
- 10.4 Where the Property is part of a unit title development and the Owner is absent from New Zealand for longer than three consecutive weeks, the Owner shall advise the body corporate (as required by the Unit Titles Act 2010) and the Manager of the person appointed to act as the Owner's agent and that person's name, address for service and contact details. The Owner shall also comply with all of its obligations under the Unit Titles Act 2010 and the body corporate rules.

Failure or delay in the performance of obligations

- 10.5 The Manager shall not be liable to the Owner for any failure or delay in the performance of any of its obligations under this Agreement if, and only to the extent that, such failure or delay is because of any matter or thing beyond the reasonable control of the Manager.

Confidential Information

- 10.6 Neither party shall at any time (whether during or after the termination of this Agreement), either directly or indirectly, use or divulge to any person any knowledge or information which it may acquire during the Term, or may have already acquired, concerning the other party, its operations, affairs, property, Tenants, or principals (**Confidential Information**) except:
- (a) with the consent of the other party;
 - (b) in respect of Confidential Information which has become public knowledge other than as a result of unauthorised disclosure by either of the parties or their directors, officers, employees, agents, contractors or representatives; and/or

- (c) Confidential Information that is required to be disclosed to the auditors of either party or to any governmental agency or otherwise as required by law.
- 10.7 Each party shall use reasonable endeavours to ensure that its director, officers, employees, agents, contractors or representatives who are at any time in possession of Confidential Information do not disclose or permit the disclosure or use of such Confidential information except as specifically provided in clause 10.6.

Assignment

- 10.8 This Agreement may be assigned by the Manager with the consent of the Owner (which consent shall not be unreasonably withheld) where the Manager establishes to the reasonable satisfaction of the Owner that the assignee is in all respects a suitable person capable of undertaking the obligations of the Manager under this Agreement and the assignee enters into an agreement with the Owner under which the assignee agrees to be bound by the terms of this Agreement.
- 10.9 If the Manager is a company not listed on the New Zealand Stock exchange, any change in the legal or beneficial ownership of any of the shares in the Manager or in any of the rights attached to the shares in the Manager which have the effect of altering the effected management or control of the Manager shall be deemed to be an assignment of this Agreement and shall in all respects be subject to the provisions of clause 10.8.

Other

- 10.10 Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. The waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.
- 10.11 If at any time any provision of this Agreement is held by a court of competent jurisdiction to be unreasonable, illegal, invalid or unenforceable for any reason whatsoever, that unreasonableness, illegality or unenforceability shall not affect the ability of the Owner or Manager to enforce any other provision of this Agreement and such provision shall be modified only to the extent necessary to give effect to the ruling of the court.
- 10.12 Subject to section 11, this Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Agreement.
- 10.13 Each party shall pay its own costs of and incidental to the negotiation, preparation and signing of this Agreement. Subject to clause 11.1(e), the Owner shall pay the Manager's legal costs (as between lawyer and client) of an incidental to the enforcement, or attempted enforcement, of the Manager's rights, remedies and powers under this Agreement.
- 10.14 The Manager is an agent of the Owner for the purposes of this Agreement, not an employee of the Owner and nothing in this Agreement shall create a partnership between the Owner and the Manager.

- 10.15 The Manager may at any time require an encumbrance or other instrument to be registered on the computer freehold register for the Property recording the existence of this Agreement and the Owner shall promptly do all acts or things, obtain all consents and sign all documents necessary to enable such registration.
- 10.16 The Owner undertakes to notify any financier, mortgagee or chargeholder taking a charge over the Property of the existence of this Agreement.

11 Dispute resolution

- 11.1 The Owner agrees that the Manager may (at its sole discretion) refer any dispute that may arise between the parties out of or in connection with this Agreement, including any dispute as to its existence or validity, (**Dispute**) to the arbitration of a single arbitrator. If the Manager elects to refer the Dispute to arbitration:
- (a) the Manager shall serve written notice on the Owner stating the subject matter and details of the Dispute and requiring the Dispute to be referred to arbitration.
 - (b) The arbitrator shall be appointed by the parties, or failing agreement within 10 Working Days after, and exclusive of, the date of service of the written notice, shall be appointed at the request of a party by the president or vice president for the time being of the New Zealand Law Society or the nominee of such president or vice president.
 - (c) The arbitration shall be conducted as soon as possible in accordance with the provisions of the arbitration statutes for the time being in force in New Zealand.
 - (d) The award of the arbitrator shall be an award with reasons, which reasons shall form part of the award.
 - (e) The parties shall bear their own costs and an equal share of the costs of the award in relation to any arbitration, unless the arbitrator determines that a party shall bear some proportion of, or all of, the costs of any other party because of impropriety, lack of co-operation or unreasonable conduct by that party.

12 Insurance

- 12.1 The Owner shall at its cost (or where the Property is part of a unit title development, the Owner shall procure that the body corporate shall at its cost):
- (a) keep and maintain the Property fully insured for the full replacement value of the Property; and
 - (b) promptly upon request provide the Manager with a copy of the Owner's insurance policy, a certificate of currency and confirmation that all premiums due have been paid.

The Owner shall also pay all excesses in respect of any insurance claims made when due.

- 12.2 The Owner hereby authorises the Manager to act as the Owner's agent in respect of the insurance held for the Property and shall advise the Owner's insurance company of such authorisation.
- 12.3 The Manager shall advise the Owner of any insurance claims it considers should be made in respect of the Property promptly upon becoming aware of the circumstances surrounding the need for such claim, initiate such claims and report in writing to the Owner on the completion of all such claims.

Execution

**Signed by and on behalf of Henderson
Residences Limited**

Director/authorised signatory

Print Name

**Signed by and on behalf of Clarke Group
Management Limited**

Director/authorised signatory

Print Name

Schedule 1: Duties of Manager

Tenancy Management

- 1 The Manager shall carry out the following Tenancy Management duties:
 - (a) formulate and implement a strategy to maximise the level of income and security of income to be derived from the Property during the Term;
 - (b) establish a liaison with Tenants at the appropriate levels to ensure proper communication and to promote goodwill and co-operation between the Manager and the Tenants;
 - (c) promptly attend to complaints made by Tenants;
 - (d) prepare and maintain a current record of all Tenants and advise the Owner of any copies of executed Leases not held. The Manager shall hold copies of executed Leases only and the Owner or its solicitors shall hold the original executed Leases. The Owner shall provide the Manager with copies of the executed Leases;
 - (e) prepare and maintain a current schedule of Tenants including a summary of the principal terms and conditions of all Leases;
 - (f) administer all of the terms and conditions of the Leases and use reasonable endeavours to ensure compliance by the Tenants with the terms and conditions of their Leases;
 - (g) serve notices terminating tenancies when required and allowed by the Residential Tenancies Act 1986;
 - (h) negotiate all rent reviews, variations, extensions and termination of Leases and the terms and conditions of new Leases (subject to the Owner's prior written approval of the principal terms and conditions), and where necessary obtain appraisals for rent purposes from a valuer approved by the Owner;
 - (i) avoid, where reasonably possible, any period of vacancy of any part of the Property and instruct any real estate agent approved by the Owner to obtain a tenant for any such vacancy when agreed.

Account Management

- 2 The Manager shall carry out the following Account Management duties:
 - (a) prepare a budget of income and outgoings for the Property prior to the commencement of each Year;
 - (b) collect all rents, outgoings and other charges due in accordance with the terms and conditions of the Leases and deposit them in the Property Trust Account;
 - (c) regularly review arrears of rent, outgoings and other charges and take action to recover such arrears with the minimum of delay;

- (d) ensure payment of all outgoings incurred in relation to the Property from income collected from the Property in accordance with the budget and the instructions of the Owner;
- (e) obtain all bonds and deposits from Tenants when appropriate, deposit such money in the Property Trust Account and ensure disbursement of such monies and bonds as appropriate including as required in accordance with the Residential Tenancies Act 1986;
- (f) report to the Owner on the last Working Day of each month providing details of all Property Income collected and outgoings disbursed during that month.

Building Management

- 3 The Manager shall carry out the following Building Management duties:
- (a) manage the operation of the Property including the building services, common and public areas and perimeter of the Property subject to the terms and conditions of the relevant Leases;
 - (b) appoint and supervise all maintenance and service contractors as may be required (in the Manager's reasonable opinion) to maintain the Property and services to an appropriate standard (in the Manager's reasonable opinion). If required by the Owner, to tender and regularly review the performance of the maintenance and service contractors and the costs involved and to re-let or re-tender such contracts as appropriate. Contracts may be signed by the Manager on behalf of the Owner as agent of the Owner subject to prior approval of the Owner;
 - (c) maintain a current schedule of contracts relating to the Property and include a summary of the principal terms and conditions of all such contracts;
 - (d) carry out regular inspections of all parts of the Property in order to ensure a satisfactory standard of repair and maintenance;
 - (e) initiate and supervise any preventative or breakdown maintenance works required (where such works are the responsibility of the Owner and are not subject to a maintenance contract) within the cost limits given in the outgoings budget approved by the Owner, and refer to the Owner any such works in excess of the approved budget cost limit or not included in the budget for its instructions;
 - (f) take whatever measures without reference to the Owner to eliminate the 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;
 - (g) periodically review the amount of the outgoings of the Property and endeavour to minimise the same by revising operating procedures, reviewing contracts and where necessary re-tendering contracts;
 - (h) periodically review the potential for refurbishment or upgrading of the Property to maximise income and minimise outgoings and to report to the Owner for its instructions;

- (i) where a compliance schedule is required for any building on the Property: obtain a compliance schedule, and if not already issued:
 - (i) ensure that the inspection, maintenance and reporting procedures specified in the compliance schedule are undertaken in accordance with the requirements of the compliance schedule; and
 - (ii) comply with all other obligations imposed on building owners under the Building Act 2004.
- (j) take all reasonably practicable steps to ensure that people in the buildings on the Property are not Harmed by any Hazard that is in or arises in any building on the Property;
- (k) obtain (subject to the prior written approval of the Owner) the advice and assistance of architects, engineers and other consultants as deemed necessary by the Manager in order to properly carry out the above duties and responsibilities.

Risk Management

- 4 The Manager shall carry out the following Risk Management duties:
 - (a) regularly review (in conjunction when necessary with any person qualified to advise) and report to the Owner and seek instructions on any additional measures considered necessary in respect of the following:
 - (i) the standard of fire safety in the Property;
 - (ii) evacuation procedures from the Property; and
 - (iii) health standards in the Property, with particular regard to any potentially hazardous substances or situations.
 - (b) implement an education programme for Tenants with regard to fire safety, bomb threat and emergency evacuation procedures and conduct regular evacuation drills.

Unit Title

- 5 Where the Property is part of a unit title development, the Manager shall carry out the following Unit Title duties:
 - (a) use reasonable endeavours to ensure that Tenants comply with all laws and legal requirements relating to the use, occupation, or enjoyment of the unit;
 - (b) at the Manager's option, carry out on the Owner's behalf (at the Owner's cost) all work that may be ordered by a territorial authority or public body in respect of the unit to the satisfaction of that authority or body;
 - (c) use reasonable endeavours to ensure that Tenants comply with the body corporate operational rules; and
 - (d) use reasonable endeavours to ensure that Tenants do not do anything that breaches or in any way undermines any policy of insurance in the name of the

body corporate provided the Manager has been provided with a copy of the policy of insurance.

Schedule 2: Fees

Management Fee

- 1 The Owner shall pay the Manager a Management Fee equivalent to 8% plus GST of the Property Income.
- 2 The Management Fee shall be deducted from the Property Trust Account monthly (on a pro rata basis) on the last Working Day of each month for that month, along with all other costs and fees incurred by the Manager as the Owner's agent. If at any time there are insufficient funds in the Property Trust Account for the Manager to deduct the Management Fees (and/or any other fees payable under this Agreement), the Owner shall pay to the Manager the shortfall within 5 Working Days of receipt of a tax invoice for the same.

Letting Fee

- 3 The Letting Fee shall be the equivalent of one week's rent under a new Lease to a new Tenant, including any parking charges, under the Lease (plus GST if any).
- 4 The Tenant shall pay such Letting Fee directly to the Manager and the Manager shall be entitled to take such measures as the Manager deems fit to recover any unpaid Letting Fees.
- 5 The Manager may elect to have the Leases negotiated by external Real Estate Agents, in which case such services shall be at the cost of the Owner.
- 6 Rent free, rental discounts or other incentives shall be excluded from any calculation of the Letting Fee or any charges or commissions payable to any external real Estate Agent.

Additional Fees

- 7 The Manager shall be entitled to charge fees in addition to the fees described in clauses 1 to 6 above at a rate of \$50 per hour (or such other amount as the Manager determines reasonable) for additional services as may from time to time be negotiated with the Owner at the time of instruction by the Owner.
- 8 The additional fees shall be payable by the Owner on the last Working Day for each month for the additional services undertaken by the Manager during that month.
- 9 Should the Owner instruct the Manager to explore or carry out any expansion or development opportunities then the Owner shall advance to the Manager such sums as the Manager deems necessary to cover all costs of such agreed endeavours prior to the Manager incurring such costs including but not limited to Council fees, consultant fees, financing fees, legal fees and construction costs.
- 10 The parties shall agree any project management fees payable to the Manager (if any) in respect of any such approved project prior to proceeding with that project.
- 11 The Owner agrees that the Manager is an agent of the Owner in all such cases and further agrees to fully indemnify the Manager against all costs incurred in any such approved project.

Schedule 3: Description of the Land and Buildings on the Property

Physical Address

[insert address]

Legal Description

Lot []

DP []

CT []

Land area []

Schedule 4: Form of deed of assignment

Attached.

Deed of assignment^{dated}

Parties

[Owner] (Assignor)

[Purchaser] (Assignee)

Clarke Group Management Limited (Manager)

Introduction

- A The Assignor and the Manager are party to the Property Management Agreement.
- B The Assignor has agreed to transfer and the Assignee has agreed to accept the transfer of the Property to the Assignee on the Settlement Date subject to the Property Management Agreement.
- C The Assignor has agreed to assign and the Assignee has agreed to accept the assignment of the Property Management Agreement with effect from the Settlement Date on the terms set out in this deed.

Covenants

1 Interpretation

- 1.1 In this deed, unless inconsistent with the context, the following definitions apply:
- (a) **Commencement Date** has the same meaning as that term is defined in the Property Management Agreement.
 - (b) **Property** has the same meaning as that term is defined in the Property Management Agreement.
 - (c) **Property Management Agreement** means the agreement dated [] a copy of which is attached as an appendix to this deed.
 - (d) **Settlement Date** means [] (which is the date the Property is scheduled to be transferred from the Assignor to the Assignee) or such other date as the Property is in fact transferred from the Assignor to the Assignee.
 - (e) All other terms which are defined in the Property Management Agreement shall have the same meaning in this deed unless otherwise specified.
 - (f) The expressions the **Assignor**, the **Assignee**, and the **Manager** include their respective executors, administrators, successors and assigns.
 - (g) Where any party comprises more than one person, such persons shall be deemed to have entered into this deed both joint and severally.

2 Assignment

- 2.1 The Assignor assigns to the Assignee all the Assignor's rights and obligations under the Property Management Agreement with effect from the Settlement Date.
- 2.2 The Assignee agrees with the Assignor and the Manager to observe and perform all and singular the covenants, conditions and provisions in the Property Management Agreement contained or implied and on the part of the owner thereunder to be observed or performed with effect from the Settlement Date.
- 2.3 The Manager consents to the assignment but without prejudice to the Manager's rights, powers and remedies under the Property Management Agreement.

3 Warranties and Indemnities

- 3.1 The Assignor warrants that all the provisions of the Property Management Agreement have been performed up to the Settlement Date.
- 3.2 The Assignor acknowledges to the Manager that the covenants of the Assignee are not in substitution for and do not alter the liability of the Assignor under the Property Management Agreement.
- 3.3 The Assignee indemnifies the Assignor against all liability arising out of any default by the Assignee in the performance of the provisions of the Property Management Agreement with effect from the Settlement Date.

Execution

Signed for and on behalf of **[Owner]** by:

Director

If not signed by two directors then
witnessed by:

Director/authorised signatory

Signature of witness

Name of witness

Occupation

City/town of residence

Signed for and on behalf of [Purchaser] by:

Director

If not signed by two directors then
witnessed by:

Director/authorised signatory

Signature of witness

Name of witness

Occupation

City/town of residence

**Signed for and on behalf of Clarke Group
Management Limited by:**

Director

If not signed by two directors then
witnessed by:

Director/authorised signatory

Signature of witness

Name of witness

Occupation

City/town of residence

Appendix: Property Management Agreement