

**NPT Limited**

**Kiwi Property Group Limited**

**Management Agreement**

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## AGREEMENT

DATE 29 March 2017

## PARTIES

**NPT Limited** (*Company*)

**Kiwi Property Group Limited** (*Manager*)

## BACKGROUND

The Company wishes to appoint the Manager as the exclusive provider to the Company of management services in respect of the Company and the Group and the Manager wishes to accept the appointment, on the terms and conditions set out in this Agreement.

## THE PARTIES AGREE

### 1 INTERPRETATION

#### 1.1 Defined terms

In this Agreement, unless the context requires otherwise:

*Acquisition Fee* means an amount equal to 0.50% of the aggregate of the purchase price plus any other consideration provided or to be provided for any interest in any real property to be acquired by any member of the Group;

*Additional Delegated Authorities* means such additional authorities that may be delegated by the Board in writing to the Manager from time to time. For the avoidance of doubt, Additional Delegated Authorities excludes Delegated Authorities;

*Additional Services* means any service which is not a Service and which the Company has requested in writing and which the Manager has agreed in writing to provide pursuant to this Agreement;

*Additional Services Fee* means the amount payable by the Company to the Manager for an Additional Service, which shall be calculated by the Manager by reference to the Manager's applicable standard hourly rates from time to time;

*Agreed Form* means, in relation to a document, the form of that document which has been initialled as at the date of this Agreement by the Company and the Manager for identification purposes only, in each case, with such amendments agreed in writing by the Company and the Manager;

*Agreement* means this agreement (including all schedules and annexures to this Agreement), as amended from time to time in accordance with its terms;

*Aggregate Percentage Return* has the meaning given to that term in clause 2.3 of Schedule 3;

*Annual Budget* has the meaning given to that term in Schedule 2;

*Board* means the board of directors of the Company;

*Board Vacancy* means the difference between the maximum number of directors permitted by the constitution of the Company and the number of directors of the Company at the time that the Manager exercises its right pursuant to clause 10.6;

*Carried Forward Return* means, in respect of the Quarter in respect of which the Initial Performance Fee is calculated, nil, and in respect of each subsequent Quarter, the return determined in accordance with clause 2.6(a)(ii) of Schedule 3, expressed as a percentage;

*Change of Control Event* means any one or more of the following events occurring (whether by any one transaction or by a series of related transactions):

- (a) the transfer of the legal or beneficial ownership of, or of any interest in, shares which results in one person (together with its associates (as such term is defined in the Takeovers Code made under the Takeovers Code Approval Order 2000)) holding directly or indirectly 50 per cent or more of the shares in the Company; or
- (b) the happening of any other event which has the effect of the event referred to in paragraph (a) above, whether directly or indirectly;

*Closing Share Price* has the meaning given to that term in clause 2.8(b)(i) of Schedule 3;

*Commencement Date* means the date of Settlement;

*Confidential Information* means any and all information and data in any form that is related to the business or financial affairs, operations, methodologies, personnel, suppliers, customers (including Lessees), systems, processes, or plans of a party or any Property or obtained from the Company or any member of the Group and that is a trade secret or is otherwise confidential in nature or is expressed to be confidential, whether obtained before or after the date of this Agreement;

*Conflicts of Interest Policy* means the conflicts of interest policy in Agreed Form;

*Delegated Authorities* means the authorities delegated by the Board to the Manager in Agreed Form;

*Development* means any development, redevelopment, refurbishment, alteration or retrofit to or of the whole or any part or parts of any Property as approved by the Board from time to time if required under the terms of this Agreement, excluding any works which are, or are required to be, undertaken by or on behalf of any vendor under either of the SPAs;

*Development Management Fee* means (a) for any Development, the higher of an amount calculated by the Manager by reference to the Manager's applicable standard hourly rates from time to time (which at the date of this Agreement range from \$100 to \$400 per hour or part thereof) and 3% of the total costs of the relevant Development and (b) for any proposed Development (which includes any, investigative, feasibility and other consulting work undertaken by the Manager for the purpose of assessing the proposed Development), an amount calculated by the Manager by reference to the Manager's applicable standard hourly rates from time to time (which at the date of this Agreement range from \$100 to \$400 per hour or part thereof);

*Disengagement Services* means the services set out in Schedule 1;

*Embedded Electricity Network* means the embedded electricity network at any Property;

*Facilities Management Fee* means an amount calculated by the Manager by reference to the Manager's applicable standard hourly rates from time to time (which at the date of this Agreement range from \$100 to \$200 per hour or part thereof);

*Fair Market Value* means the amount determined in accordance with Schedule 4;

*Fees* means the aggregate of the fees payable by the Company to the Manager in accordance with this Agreement;

*Force Majeure* means, in relation to either party, any event or circumstance which is beyond the reasonable control of that party, including strikes, lockouts or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, fire, flood, war, riot, civil commotion, malicious damage and failure of third party infrastructure, except to the extent that such event or circumstance could have been prevented, overcome or mitigated as a result of exercising reasonable care;

*Fund Manager* means the fund manager of the Company from time to time;

*Fund Management Fee* means an amount equal to the aggregate of (a) 0.50% of the Total Assets less cash (other than insurance proceeds which are included as part of the Total Assets), to the extent that Total Assets is less than or equal to five hundred million dollars plus (b) 0.40% of Total Assets less cash (other than insurance proceeds which are included as part of the Total Assets) thereafter, per Year;

*GAAP* means generally accepted accounting practice in New Zealand as defined in section 8 of the Financial Reporting Act 2013, including the New Zealand equivalents to International Financial Reporting Standards;

*Gross Income* means all income payable to any member of the Group pursuant to the Leases (including marketing levies and operating expenses and outgoings), and all income payable to any member of the Group from the operation of the Embedded Electricity Network including in each case any amount received pursuant to any loss of rent or business interruption insurance policy for any Property

and excluding in each case any receipts of a capital nature, any security deposits and any GST;

*Group* means the Company and every Subsidiary of the Company and also includes a separate reference to any member of the Group, and to two or more members of the Group;

*GST* means goods and services tax charged under the GST Act;

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

*Initial Performance Fee* means the amount, if any, calculated (having regard to clause 2.1 of Schedule 3) as a Performance Fee under clause 2 of Schedule 3 for the period from the Commencement Date to the last day of the relevant Quarter;

*Investment Policy* means the investment policy recommended by the Manager and approved by the Company on or prior to the Commencement Date, as may be amended from time to time in accordance with this Agreement, the initial version of which is in Agreed Form;

*Laws* means any statute, regulation, by law, ordinance or subordinate legislation in force from time to time in New Zealand to which a party is subject, the common law and the law of equity of New Zealand as applicable to the parties from time to time, any binding New Zealand court order, judgment or decree, any applicable industry code, policy or standard enforceable by New Zealand law, or any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental, legal or regulatory body having jurisdiction in New Zealand over a party or any of that party's assets, resources or business;

*Lease* includes any head lease, sub-lease, tenancy, licence or right of occupation, display or advertising, as the case may be, in respect of the whole or any part or parts of any Property and includes any unconditional Agreement in respect of the same;

*Leasing Fee* means an amount equal to 14% of the annual gross rent payable for the first complete Year in which annual gross rent is payable pursuant to the relevant Lease (disregarding any period in which no annual gross rent is payable);

*Legal Administration Fee* means an amount calculated by the Manager by reference to the Manager's applicable standard hourly rates from time to time (which as at the date of this Agreement range from \$100 to \$300 per hour or part thereof) up to a maximum amount of \$1,200 for an agreement to lease or surrender, \$1,200 for a deed of lease or surrender and a fee of not less than \$500 and not more than \$1,200 for a deed of variation, extension, assignment or sublease or a Property Law Act notice;

*Lessee* includes head-lessee, sub-lessee and other occupier of or advertiser at any Property, any guarantor of any such parties, as the case may be, pursuant to or in connection with a Lease;

*Listing Rules* means the listing rules of NZX Limited in relation to the NZX Main Board;

*month* means calendar month;

*On-site Costs* means the aggregate of (a) all remuneration and all other employment costs in respect of those employees of the Manager whose primary workplace is on-site at a Property and includes those employees of the Manager who are employed as a centre manager, assistant centre manager, marketing manager, facilities/operations manager, promotional leasing executive, centre administrator, receptionist and customer service representative in respect of any Property plus (b) a fair and reasonable proportion of the Manager's costs and expenses associated with the employees of the Manager whose primary workplace is on-site at a Property;

*Operating Expenses* means the aggregate of all costs and expenses incurred, paid or payable in the administration, operation, management or Development of any Property pursuant to and in accordance with this Agreement including the On-Site Costs, all other costs, expenses, operating expenses and outgoings which are recoverable from Lessees pursuant to the Leases and the costs and expenses for all third party valuers, solicitors, auditors, accountants, project managers, consultants, contractors and advisers who are instructed by the Manager to provide advice, work or services in relation to the whole or any part or parts of any Property, any Lease or Lessee;

*Performance Fee* means the performance fee to be paid by the Company to the Manager pursuant to clause 2 of Schedule 3;

*Policies and Charters* means the Board policies and charters adopted as at the Commencement Date and as amended from time to time in accordance with clause 5.5(g);

*Properties* means any interest in any real property together with all buildings and improvements thereon from time to time owned or leased by any member of the Group and *Property* means any one of the Properties;

*Property Management Fee* means (a) in respect of any Property designated retail by the Manager, acting reasonably, an amount equal to 4.75% of Gross Income for that Property plus (b) in respect of any Property designated large format retail by the Manager, acting reasonably, an amount equal to 3.00% of Gross Income for that Property plus (c) in respect of any other Property an amount equal to 2.5% of Gross Income for that Property;

*Quarter* means the three-month period ending on the last day of March, June, September and December in each Year, provided that (a) the first Quarter shall be from the Commencement Date to the last day of that Quarter (b) the final Quarter shall be from the first day of that Quarter to the Termination Date (c) the Quarter in respect of which the Initial Performance Fee and the Terminal Performance Fee are calculated may be a shorter period;

*Related Company* has the same meaning given to that term by section 2(1) of the Companies Act 1993;



*Relevant Health and Safety Legislation* means the Health and Safety at Work Act 2015 and any regulations under that Act, rules, standards, approved codes of practice and any other applicable law relating to health and safety;

*Retail Design Management Fee* means an amount calculated by the Manager by reference to the Manager's applicable standard hourly rates from time to time (which as at the date of this Agreement range from \$100 to \$200 per hour or part thereof) up to a maximum amount of \$1,500 for a Lease of a kiosk or similar premises, a maximum of \$2,000 for a Lease of a specialty shop or similar premises and \$3,000 for a Lease of a food court shop or similar premises or any other premises for which a maximum amount has not been specified in this Agreement;

*Sale Fee* means an amount equal to 0.50% of the aggregate of the sale price plus any other consideration provided or to be provided for any interest in any real property to be sold by any member of the Group;

*Settlement* means:

- (a) settlement, in accordance with their terms, of each of the SPAs; or
- (b) in the event that one of SPAs is validly terminated in accordance with clause 35.1 of the relevant SPA, settlement, in accordance with its terms, of the SPA that remains on foot;

*Services* means any service provided by or on behalf of the Manager pursuant to this Agreement including the services set out in Schedule 2;

*Share* means an ordinary share in the Company;

*Shareholder Return* has the meaning given to that term in clause 2.8 of Schedule 3;

*SPAs* means the agreement for sale and purchase between Kiwi Property Holdings Limited (as vendor) and NPT 10 Limited (as purchaser) in respect of the property known as The Majestic Centre, Wellington and the agreement for sale and purchase between Kiwi Property Holdings Limited (as vendor) and NPT 11 Limited (as purchaser) in respect of the property known as North City Shopping Centre, Porirua and "SPA" shall be construed accordingly;

*Subsidiary* has the meaning given to that term in section 5 of the Companies Act 1993;

*Tax Invoice* has the meaning given to that term in the GST Act;

*Tenancy Co-ordination Fee* means an amount calculated by the Manager by reference to the Manager's applicable standard hourly rates from time to time (which as at the date of this Agreement range from \$100 to \$200 per hour or part thereof) up to a maximum amount of \$1,500 for a Lease of a kiosk or similar premises, \$2,000 for a Lease of a specialty shop or similar premises and \$3,000 for a Lease of a food court shop or similar premises or any other premises for which a maximum amount has not been specified in this Agreement;

*Terminal Performance Fee* means the amount, if any, calculated (having regard to clause 2.1 of Schedule 3) as at the Termination Date as a Performance Fee pursuant to clauses 2.1 to 2.10 of Schedule 3 for the period from the first day of the Quarter in which the Termination Date occurs and the Termination Date. If the calculation of the Terminal Performance Fee results in the balance of the Carried Forward Return being positive then, notwithstanding any other clause of this Agreement, the Terminal Performance Fee shall be re-calculated so as to result in the Carried Forward Return being nil and so that the Manager receives the full value of the positive balance of the Carried Forward Return on the Termination Date;

*Termination Date* means the date any termination of this Agreement takes effect in accordance with the terms of this Agreement, including following the expiry of any applicable notice period;

*Termination Fee* means:

- (a) in the case of a Termination Fee payable under clause 13.4, an amount equal to 2.5% of Total Assets; and
- (b) in the case of any other Termination Fee, an amount equal to the higher of Fair Market Value and 2.5% of Total Assets;

*Total Assets* means the total average value of all tangible assets of the Group during all or part of the relevant Year, calculated in accordance with GAAP and the Group's accounting policies;

*Trade Mark* means any name, brand or logo (and all versions and derivations thereof) owned by, or associated with, the Company, the Group or the Group's business in the future and, in each case, includes the Group's intellectual property (if any) in those Trade Marks, but excludes the name, brand or logo of the Manager;

*VWAP* means the volume weighted average price;

*Working Day* means a day on which registered banks are open for general banking business in Auckland excluding Saturday and Sunday; and

*Year* means the twelve month period ending on 31 March in each calendar year provided that the first Year is to be the period beginning on the Commencement Date and ending on the following 31 March and the final Year is to be the period ending on the Termination Date and beginning on the immediately preceding 1 April.

1.2 For the purpose of the interpretation or construction of this Agreement:

- (a) a reference to a clause, schedule or annexure is a reference to a clause of, schedule to, or annexure to this Agreement;
- (b) a reference to this Agreement or another instrument includes any variation, novation, or replacement of either of them;

- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the Commencement Date);
- (d) references to and expressions used in connection with financial calculations, valuations, accounting or financial reporting functions or their description in this Agreement bear the respective meanings ascribed to like expressions or expressions to similar intent under GAAP;
- (e) the singular includes the plural and vice versa;
- (f) including, for example and similar words are illustrative and do not imply any limitations;
- (g) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), in each case, whether or not having a separate legal personality;
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (i) a reference to \$ or dollars is a reference to the lawful currency of New Zealand and, unless otherwise specified, all amounts payable by a party under this Agreement are to be paid in that currency;
- (j) words importing one gender include the other gender; and
- (k) headings are inserted for convenience and do not affect the interpretation of this Agreement.

## 2 APPOINTMENT

### 2.1 On the Commencement Date:

- (a) the Manager shall pay the Company the sum of six million dollars or, where one of the SPAs has been validly terminated in accordance with clause 35.1 of that SPA, the sum of four million dollars; and
- (b) in consideration of the payment of such amount, the Company appoints the Manager as the sole and exclusive provider of the Services on the terms and conditions of this Agreement and the Manager accepts the appointment.

### 2.2 From the Commencement Date, the Company will not appoint, and will procure that no other member of the Group will appoint, any other person to provide any of the Services, or any other services that may be comparable to the Services except:

- (a) if the Manager actually or practically refuses or fails to provide any Service as and when it is required to do so under this Agreement and, following request in writing by the Company to provide the Service, the Manager has not

(without good reason) provided that Service within a reasonable time frame in the circumstances;

- (b) where the Company is entitled to arrange for the alternative provision of Services under clause 13.8;
- (c) as a temporary measure, if there is an emergency or event of Force Majeure which prevents the Manager from providing all or some of the Services but only to the extent that such Services cannot be provided by the Manager;
- (d) where the Company wishes to transition the provision of one or more of the Services from the Manager to the Company or to a third party during the notice period where this Agreement has been validly terminated;
- (e) with the prior written consent of the Manager; or
- (f) as a temporary measure, where it is determined, following the application of the Conflicts of Interest Policy, that the Manager not provide all or some of the Services but only to the extent and for so long as is required pursuant to the Conflicts of Interest Policy.

2.3 If any member of the Group arranges services under and by virtue of the exceptions in clause 2.2, then the reasonable cost of those services will be deducted from the Fees before any further Fees are payable to the Manager provided that, for any period, the amount of the deduction shall not in any case exceed the amount of the Fees for that period and the Manager shall not be liable to make any payment to the Company in respect of services arranged or procured by any member of the Group under and by virtue of the exceptions.

2.4 For the avoidance of doubt, the Board may, at the cost of the Company, at any time, and for any reason, engage consultants or advisors to advise the Board on any matter (which, for the avoidance of doubt, shall not include performing any of the Services).

### **3 TERM**

3.1 Subject to clause 3.2, this Agreement shall commence on the date of this Agreement and will continue until terminated in accordance with the provisions of this Agreement.

3.2 Neither party shall have any right, power, authority, claim, obligation or liability to or in respect of the other arising from this Agreement during the period from and including the date of this Agreement to and excluding the Commencement Date and in the event that both of the SPAs are lawfully cancelled or terminated this Agreement will automatically come to an end.

### **4 FEES & COSTS**

4.1 In consideration of the obligations to be performed by the Manager pursuant to this Agreement and in accordance with Schedule 3, the Company shall pay to the Manager the Fees, costs and all other sums due in each case without deduction or

set off (except and to the extent of any deduction permitted in accordance with clause 2.3).

- 4.2 On behalf of the Company or the relevant member of the Group, the Manager shall re-charge to the Lessees all Operating Expenses, Fees, costs and all other sums paid or reimbursed to the Manager if and to the extent the Leases permit such re-charging.

## **5 SERVICES**

- 5.1 In consideration of the payment by the Company of the Fees, the Manager shall provide the Services in accordance with the terms of this Agreement.

### **Direction and supervision of the Board**

- 5.2 Subject to any other provision of this Agreement, the business and affairs of the Company are to be managed by the Manager in accordance with this Agreement under the direction and supervision of the Board and the Board retains complete discretion to oversee the performance by the Manager of its obligations pursuant to this Agreement, and to direct the Manager to act in relation to the Group as the Board believes is reasonably necessary. The Manager will act in accordance with all such directions from the Board unless they are inconsistent with the rights and obligations of the Manager under this Agreement or a breach of Law.

### **Additional Delegated Authority**

- 5.3 From time to time, the Board may delegate to the Manager as an Additional Delegated Authority any one or more of its powers, other than a power set out in the Second Schedule to the Companies Act 1993. Any Additional Delegated Authority will take effect when conferred on the Manager and may be revoked by notice in writing by the Board to the Manager at any time.

### **Additional Services**

- 5.4 The Company may from time to time request in writing that the Manager provide an Additional Service and the Manager shall consider such request and shall within ten Working Days of such request provide the Company with a scope of services and the Additional Services Fee for such Additional Service. The Manager may from time to time request in writing that the Manager provide an Additional Service (such request shall include a scope of services and the Additional Services Fee for such Additional Service) and the Company shall consider such request. If the parties agree the scope of services and the Additional Services Fee then the Manager shall provide the Additional Service in accordance with the agreed scope of services and otherwise in accordance with this Agreement.

### **Standard of Services**

- 5.5 In providing the Services in accordance with this Agreement, the Manager will:
- (a) provide the Services in a skilled and professional manner consistent with a standard of competence which can reasonably be expected from someone

of good standing engaged by investment vehicles that are listed on the Main Board of NZX Limited and which form part of the S&P/NZX All Real Estate Index (or any successor index) for services of a magnitude and nature similar to those to be provided by the Manager pursuant to this Agreement;

- (b) manage the Group's business in such a way as to seek to maximise the value of the investment of the shareholders in the Company over the medium to long term, provided that, for the avoidance of doubt, the Manager gives no warranties as to the performance, prospects or profitability of the Company and no guarantees that the value of the shareholders' investment will be maintained or increased;
- (c) act at all times in the best interests of the Company and the other members of the Group;
- (d) act in good faith;
- (e) exercise due care in exercising the rights, powers and authorities granted to it under this Agreement;
- (f) act in accordance with the Investment Policy, the Conflicts of Interest Policy and the Delegated Authorities;
- (g) act in accordance with the Policies and Charters, as may be adopted or amended from time to time by agreement between the Manager and the Board;
- (h) ensure the Manager has sufficient resources, experience and expertise so as to provide the Services when and in the way and to the standard required by this Agreement and otherwise to meet its obligations under this Agreement;
- (i) use all reasonable endeavours to comply with, and ensure that each member of the Group complies with:
  - (i) the constitution of each member of the Group;
  - (ii) all Laws;
  - (iii) the Listing Rules (if applicable);in each case to the extent applicable;
- (j) keep and maintain records in relation to the Group and the Manager's performance of the Services under this Agreement in such a form so as to enable the Manager to provide the Company with access to such records in accordance with clause 5.20; and
- (k) provide the Company with access to records held by the Manager in electronic or similar fashion.

### **Employees of the Manager**

- 5.6 The Manager will ensure that all employees and subcontractors involved in the performance of the Services are suitably qualified and have sufficient and appropriate expertise and experience so as to enable the Manager to effectively and efficiently carry out the Services in accordance with this Agreement.
- 5.7 The Manager will ensure that each employee of the Manager engaged by the Manager for the provision of Services always acts consistently with, and so as to give effect to, this Agreement.
- 5.8 The Manager will:
- (a) use all reasonable endeavours to ensure that all employees and permitted subcontractors when performing Services comply with and observe and perform the obligations on the part of the Manager contained or referred to in this Agreement, as if they were parties to it; and
  - (b) be responsible for, and liable to the Group for, the acts and omissions of such employees and any subcontractors.

#### **Health and Safety at Work Act 2015**

- 5.9 The Manager must ensure that:
- (a) it complies with any Relevant Health and Safety Legislation in the performance of the Services;
  - (b) it prepares a health and safety management plan for the Services which will identify how the Manager intends to manage health and safety matters in relation to the Services;
  - (c) it obtains safe work method statements from any contractors performing the Services on behalf of the Manager (where such statements are required) and monitors contractors' compliance with those safe work method statements;
  - (d) it notifies the Company of any notifiable event or notifiable incident;
  - (e) it shall investigate and report such events to the Company in writing;
  - (f) it provides reports on its health and safety performance to the Company prepared in accordance with the Company's instructions and in such form, with such content and at such frequency as may be required by the Company, the Company acting reasonably;
  - (g) it undertakes regular health and safety audits and inspections at a frequency and standard specified by the Company acting reasonably.
- 5.10 In dealing with any Lessees of the Properties, the Manager must comply with any Relevant Health and Safety Legislation in respect of the Properties and the fit-out, fixtures, fittings and chattels, equipment and the use of those in the Properties as part of a workplace.

- 5.11 The Manager must, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with the Lessees of the Properties on health and safety matters relating to the Properties.
- 5.12 Notwithstanding clauses 5.9 and 5.10, the Manager will not be obliged to fund the cost of any works to the Properties that is reasonably required to reduce or eliminate such health and safety risks which costs shall be the responsibility of the Company.

### **Fund Manager**

- 5.13 The employees engaged by the Manager for the provision of the Services will include an employee to fulfil the role of Fund Manager who has the skills, experience and qualifications to represent the interests of the Company at a senior level and engage with the Board and the property and investor markets. The Manager shall consult with and have due regard to the Board prior to:
- (a) the appointment or termination by the Manager of the Fund Manager and the Manager will not appoint a person to hold the role of Fund Manager without the approval of the Board (such approval not to be unreasonably withheld or delayed and which approval shall be limited to whether or not the person has the skills, experience and qualifications to represent the interests of the Company at a senior level and engage with the Board and the property and investor markets);
  - (b) agreeing any employment agreement or amendments to the employment agreement between the Manager and the Fund Manager, which employment agreement must not provide compensation for redundancy of an amount greater than twelve months of the Fund Manager's salary;
  - (c) concluding any review of the performance or the remuneration of the Fund Manager.
- 5.14 The remuneration of the Fund Manager will be determined substantially by reference to the performance of the Company.
- 5.15 The Manager shall ensure that the Fund Manager shall be dedicated to and work exclusively in the provision of the Services unless and to the extent approved by the Board and the Manager.
- 5.16 If the Board considers that the Fund Manager has failed to perform his or her role or there are reasonable grounds to believe that the Fund Manager may no longer be able to perform his or her role, the Board may give written notice to the Manager. Such notice shall include full details of the Board's concerns and what the Board considers necessary to remedy the concerns identified.
- 5.17 The Manager shall consider any written notice received from the Company under clause 5.16. If the Manager:
- (a) agrees with the views of the Board set out in the notice given pursuant to clause 5.16 then the Manager shall (at its sole cost) either replace the Fund Manager or implement a performance management plan to attempt to



remedy the concerns identified, in each case in consultation with and having due regard to the Board;

- (b) does not agree with the views of the Board set out in the notice given pursuant to clause 5.16 then the Manager shall provide written notice to the Board of its decision including full details of the reasons for the Manager's decision.

- 5.18 Any disagreement between the Company and the Manager regarding the Manager's decision under clause 5.17 or the performance of the Fund Manager shall be resolved in accordance with clause 22. The parties will be bound by any determination made in accordance with clause 22.
- 5.19 Notwithstanding clauses 5.16 and 5.18, the Manager agrees that it will, upon the request in writing of the Board for reasons other than that the Fund Manager has failed to perform his or her role or there are reasonable grounds to believe that the Fund Manager may no longer be able to perform his or her role, replace the Fund Manager. The Company will be liable for all costs and expenses incurred by the Manager (including all costs and expenses in connection with any personal grievance raised by the Fund Manager in connection with their termination and/or replacement) in connection with any recruitment of a replacement Fund Manager, termination of the Fund Manager's employment and redeployment of the Fund Manager provided that the Manager consults with the Company in relation to the implementation of any of these options.

#### **Access to documents**

- 5.20 The Manager will provide the Company with:
- (a) access (either in electronic or physical form, as requested by the Company) to the Manager's documents, records and other information relating to the Company, the Group, the business of the Company or the Group, this Agreement and the Services at any time during business hours upon reasonable notice; and
  - (b) reasonable assistance for the purposes of enabling the Company and/or its advisers, auditors or agents (other than, in each case, any competitor of the Company or the Manager) to monitor the Manager's compliance with the terms of this Agreement, including by:
    - (i) allowing any of those persons to inspect such documents, records and other information on the Manager's premises; and
    - (ii) allowing those persons to take accurate and complete copies of such documents, records and other information.
- 5.21 The Manager will retain, in addition to the records it is required to retain under the Companies Act 1993, all documents, records or other information of the kind referred to in clause 5.20(a) for a period of seven years or for such shorter period as the Board decides.

## **Manager's costs and expenses**

5.22 The Manager will be responsible for:

- (a) all of its normal day-to-day operating expenses (excluding all On-Site Costs), such as the compensation of its employees involved in the performance of the Services and, if applicable, the cost of office space, office equipment, communications, utility and other overhead expenses; and
- (b) third party costs directly related to the provision of the Services, except and to the extent that those third party services are typically outside of the usual skills and expertise of an experienced manager engaged by companies in the property investment sector for services similar to those to be provided by the Manager pursuant to this Agreement.

## **Review of Performance**

5.23 On an annual basis, whether separately or as part of the annual review of the performance of the Company and its strategy, the parties will meet to carry out a joint review of the Manager's performance of its obligations under this Agreement, the delivery of Services, general performance by the Manager and the Fund Manager, the Conflicts of Interest Policy and any matters arising from it and any other matter that either of them wish to include as part of that review. It is agreed that:

- (a) the review will not give rise to any additional rights of termination of the Manager and Fund Manager under this Agreement; and
- (b) no changes to this Agreement, the Services or the Fees will be deemed to occur or arise as a consequence or outcome of any such performance review unless the Manager and the Company agree to any such change in writing.

5.24 At least once every Year, the Board and the Manager will carry out a joint review of the Investment Policy, the Delegated Authorities and the Policies and Charters, provided that no changes to the Investment Policy, the Delegated Authorities or the Policies and Charters will be deemed to occur or arise as a consequence of any such review unless the Board and the Manager consent in writing to any such change, such consent shall not be unreasonably withheld or delayed.

## **6 INVESTMENT POLICY**

6.1 The Company and the Manager agree that the business and affairs of the Group must be undertaken and managed in accordance with the Investment Policy, as may be amended from time to time by written agreement of the Board and the Manager.

## **7 CONFLICTS OF INTEREST**

7.1 Each party agrees to comply with the obligations on their part contained or referred to in the Conflicts of Interest Policy.

## 8 POWERS OF THE MANAGER

### 8.1 The Manager will not:

- (a) have any authority to act or to assume any obligations on behalf of the Company or any other member of the Group; or
- (b) represent by act or omission that it is the agent of the Company or any other member of the Group,

except where in accordance with, and subject to the conditions of, this Agreement, the Delegated Authorities and any Additional Delegated Authorities.

### 8.2 On the Commencement Date the Company appoints the Manager as agent of the Company and each member of the Group and exclusively grants to the Manager the general power to do all things lawfully and properly necessary to perform the Services in accordance with this Agreement.

### 8.3 The Manager shall in carrying out its obligations under this Agreement be subject to the direction of the Board (acting reasonably) in respect of the incurring of any cost, disbursement, expense or other amount as agent and on behalf of the Company or the relevant member of the Group where such cost, disbursement, expense or other amount will exceed that permitted by the Delegated Authorities or any Additional Delegated Authorities or provided for in the Annual Budget.

### 8.4 The Manager shall not incur on behalf of the Company or the relevant member of the Group any costs, charges, expenses or liabilities (including in respect of any Development or proposed Development) except to the extent:

- (a) provided for in the Annual Budget; or
- (b) authorised pursuant to any Delegated Authorities, Additional Delegated Authorities or the terms of this Agreement; or
- (c) otherwise approved in writing by the Board.

### 8.5 The Company acknowledges that the Manager:

- (a) may determine all matters relating to its organisational structure in its sole discretion; and
- (b) is free to organise itself and put in place its own arrangements as it determines is necessary to allow it to deliver the Services,

provided that the Manager consults with the Board regarding all material matters affecting the Manager's ability to deliver the Services in accordance with this Agreement.

### 8.6 Notwithstanding clause 8.5, the Manager remains responsible for providing access to, or otherwise employing, all staff necessary to perform the Manager's obligations under this Agreement.

- 8.7 The Manager shall be entitled to indicate, in such manner and place as the Manager reasonably considers appropriate, that each Property is being managed by the Manager.
- 8.8 The Manager may, at the expense of the Company or the relevant member of the Group, appoint advisers to act for the Company, or any other member of the Group, in respect of accounting, insurance, tax and audit matters, legal matters and other external consulting matters. The Manager shall obtain the prior written approval of the Board for the appointment of an auditor, valuer or an investment bank. Where required by the Company or the relevant member of the Group, each such adviser appointed by the Manager must agree and acknowledge that:
- (a) it owes a duty of care to, and contractual responsibilities to, the Company or the relevant member of the Group in respect of its advice; and
  - (b) any warranties or guarantees given in respect of its advice are given to, or for the benefit of, the Company or the relevant member of the Group.
- 8.9 The Company acknowledges that any such advisers appointed by the Manager will be appointed on market standard terms and will be providing the relevant advice to the Company or any member of the Group and that, in the absence of gross negligence or wilful default by the Manager, the Manager will not be responsible for any loss incurred arising out of or in connection with any advice provided to the Company or any member of the Group by an adviser engaged by the Manager under this Agreement.
- 8.10 The Manager will ensure that all Properties, assets, rights and other property of the Company and other members of the Group are held in the name of the Company or the relevant Group member. Such Properties, assets, rights and other property include:
- (a) anything which is, or should be, included in the Company's or a Group member's statement of financial position or statement of financial performance;
  - (b) all consents, warranties, titles, patents, Trade Marks and design rights; and
  - (c) all intellectual property purchased by or developed exclusively for and at the expense of the Company or the Group (whether before or after the Commencement Date) or used exclusively for the provision of the Services or in the operations and/or management of the Company or the Group's business, transactions or affairs.

## **9 DUTIES OF THE COMPANY**

- 9.1 The Company will provide, and the Company will procure that any other member of the Group provides, to the Manager for the purposes of allowing the Manager to meet its obligations under this Agreement access to the entity's documents, records, IT hardware, systems and software and other information relating to the Group, access to the entity's directors and such other reasonable assistance as is necessary. However, the Board retains the discretion to restrict the Manager's access to

confidential materials of the Board that relate to the performance of the Manager, the termination of this Agreement by the Company, or the terms of this Agreement, where the Manager could reasonably be expected to have a conflict of interest in each case.

- 9.2 Subject to clause 9.3, the Company will ensure that at all times there are sufficient monies in its bank accounts to enable the Manager to pay the expenses of the Company and any member of the Group.
- 9.3 The Manager is to use reasonable endeavours to ensure the Company is able to comply with 9.2 and will notify the Board immediately if it considers the Company and any member of the Group may be unable to meet its budgeted expenses.
- 9.4 The Company grants the Manager the authority to draw on the Company's bank accounts for the purpose of making payments on behalf of the Company to cover properly incurred Operating Expenses, costs, disbursements and expenses, including the payment of Fees, costs and other sums due to the Manager.
- 9.5 The Company and the Manager will ensure that all of the Company's income and expenditure (whether relating to the Properties or otherwise) is paid into and from the Company's bank accounts.
- 9.6 The Company:
  - (a) grants to the Manager and all persons authorised by the Manager all necessary rights of access to any Property at all times and from time to time subject to the rights of Lessees pursuant to the Leases;
  - (b) shall execute all notices and documents required to enable the Manager to perform its obligations pursuant to this Agreement;
  - (c) shall observe and perform all covenants on its part to be performed pursuant to this Agreement and shall do all acts and things necessary to enable the Manager to observe and perform its obligations pursuant to this Agreement.

## 10 **BOARD APPOINTMENT RIGHTS**

- 10.1 Subject to the Listing Rules and the requirements of any waiver of the Listing Rules granted by NZX from time to time (if applicable), from the Commencement Date and during the term of this Agreement, the Company shall, if requested in writing by the Manager from time to time, call and hold a meeting of shareholders for the purpose of approving an amendment to the constitution of the Company to enable the Manager to appoint:
  - (a) One director to the Board where the total number of directors (inclusive of the director appointed by the Manager) is five or less (and to substitute or remove such director by notice in writing to the Company).
  - (b) Two directors to the Board where the total number of directors (inclusive of the directors appointed by the Manager) is six (and to substitute or remove such directors by notice in writing to the Company).

- (c) Such number of directors to the Board as is equal to one-third of the total number of directors, rounded to the nearest whole number of directors, where the total number of directors (inclusive of the directors appointed by the Manager) is more than six (and to substitute or remove such directors by notice in writing to the Company).
- 10.2 The Company will take all reasonable steps to obtain all necessary consents and waivers to maintain and give effect to the rights of the Manager under clause 10.1.
- 10.3 The Company will, to the extent necessary, take all reasonable steps to maintain the currency of any waiver or ruling by NZX which will entitle the Manager to exercise its rights in accordance with clause 10.1.
- 10.4 The Company will consult with the Manager regarding any communications with NZX regarding any such waiver or any relevant provisions of the Listing Rules.
- 10.5 The Manager will consult with the Board prior to exercising any right to appoint a director to the Board.
- 10.6 To the extent permitted by the Listing Rules and applicable law, unless and until the constitution of the Company has been amended as referred to in clause 10.1, when requested in writing by the Manager the Company shall procure that the Board undertakes to exercise its power to appoint any director nominated by the Manager to fill any Board Vacancy, provided that the Manager may not appoint a greater number of directors to the Board at any one time than it would be entitled to appoint if the amendments to the constitution referred to in clause 10.1 were in effect.
- 10.7 If the Board includes one or more directors appointed by the Manager in accordance with its rights under the constitution of the Company (as amended pursuant to clause 10.1), then the Manager will not, and will use its best endeavours to procure that its Associated Persons do not, vote on any resolutions to appoint or remove any other director of the Board. If the Board does not include one or more directors appointed by the Manager under the constitution of the Company (as amended pursuant to clause 10.1), then the Manager may vote on any such resolutions.
- 10.8 One or more representatives of the Manager shall be entitled to attend all meetings of the Board, the committees of the Board, shareholders of the Company and all meetings of the board, the committees of such boards and the shareholder of each member of the Group.

## 11 **INSURANCE**

- 11.1 The Manager will ensure that:
  - (a) it has in place, at all times from the Commencement Date, such professional indemnity insurance and other insurance as is reasonable for a service provider providing services in the nature of the Services and as is consistent with any relevant good industry practice; and

- (b) the extent of coverage for such insurance, including excess or a deductible, as is reasonable for a service provider providing services in the nature of the Services and as is consistent with any relevant good industry practice, with a minimum insured sum of \$20,000,000.

## 12 INDEMNITIES & LIABILITY

12.1 Subject to clause 12.4, the Manager will indemnify and hold each member of the Group or their directors indemnified from and against any losses, liabilities, costs, claims, demands and expenses whatsoever which are made against or incurred by any member of the Group or their directors as a result of:

- (a) material unauthorised acts of the Manager, fraud, dishonesty, gross negligence, wilful default or wilful breach of the terms of this Agreement by the Manager; or
- (b) any claim made or threatened against the Company or any member of the Group by any employee or subcontractor engaged, or formerly engaged, by the Manager in providing the Services,

except to the extent that any such losses, liabilities, costs, claims, demands and expenses were caused directly by an act or omission of any member of the Group (other than due to any default or failure of the Manager to comply with its obligations under this Agreement).

12.2 If any claims or demands are brought or threatened to be brought against the Company in respect of which indemnification may be sought from the Manager pursuant to this Agreement, the Company is to notify the Manager in writing as soon as practicable after the Company becomes aware of such matters, and will fully consult with the Manager on the steps to be taken, if any, in defending any such action, proceeding, claim or demand.

12.3 The Company will not admit liability in respect of all or part of, settle or compromise or consent to the entry of judgment in, or incur any costs in relation to, any pending or threatened action, proceedings, claims or demands brought or threatened against it in respect of which the Company is, or may be, entitled to indemnification pursuant to this indemnity, without first consulting with and discussing such action with the Manager or where it would be unreasonable to do so.

12.4 The Manager shall not incur any liability, or be responsible under any indemnity, to the Company in respect of:

- (a) any action taken or thing suffered by the Manager in reasonable reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties;
- (b) any failure to perform or do any act or thing which, by reason of any Law or any decree, order or judgment of any competent court, the Manager is hindered, prevented or forbidden from so doing or performing;

- (c) any payments made by the Manager in good faith notwithstanding that it may be determined by any court or similar body that any such payment need not have been made;
  - (d) any action taken or not taken by the Manager in accordance with a request or direction of the Board or any member of the Group; or
  - (e) actions taken or not taken by the Manager on the opinion or advice of or a certificate obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere in their field of expertise (which may not be a Related Company of the Manager) and the Manager shall not be responsible for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic and the Manager has not acted fraudulently, dishonestly, negligently, in wilful default or in wilful breach of the terms of this Agreement.
- 12.5 In carrying out its obligations under this Agreement, the Manager acts as agent for each member of the Group to the extent of authorities and powers conferred under this Agreement and the Company will indemnify and hold the Manager and its directors indemnified from and against any losses, liabilities, costs, claims, demands and expenses whatsoever suffered which are made against or incurred by the Manager, its directors, employees or contractors that arise as a result of the Manager carrying out its obligations under and in accordance with the terms of this Agreement, other than in the case of unauthorised acts of the Manager, fraud, dishonesty, gross negligence, wilful default or wilful breach of the terms of this Agreement by the Manager, its directors, employees or contractors.
- 12.6 If any claims or demands are brought or threatened to be brought against the Manager in respect of which indemnification may be sought from the Company pursuant to this Agreement, the Manager is to notify the Company in writing as soon as practicable after the Manager becomes aware of such matters, and will fully consult with the Company on the steps to be taken, if any, in defending any such action, proceeding, claim or demand.
- 12.7 The Manager will not admit liability in respect of all or part of, settle or compromise or consent to the entry of judgment in, or incur any costs in relation to, any pending or threatened action, proceedings, claims or demands brought or threatened against it in respect of which the Manager is, or may be, entitled to indemnification pursuant to this indemnity, without first consulting with and discussing such action with the Company or where it would be unreasonable to do so.
- 12.8 Each party will take reasonable steps to mitigate any claim, liabilities, costs, expenses, losses or damage sustained or incurred as a result of any act or omission (including any breach or default) of the other party (regardless of whether or not covered by any indemnity).

## 13 **TERMINATION**

### **Without cause**



- 13.1 Subject to clause 13.2, at any time after the fifth anniversary of the Commencement Date the Company may terminate this Agreement by giving the Manager not less than six months' written notice (or as otherwise agreed between the parties in writing).
- 13.2 Termination pursuant to clause 13.1 shall only take effect if the termination has, prior to the expiry of the notice period under clause 13.1, been approved by an ordinary resolution of shareholders of the Company (excluding the Manager or Associated Persons (as such term is defined in the Listing Rules) of the Manager), at a properly called, quorate meeting of the Company. The Manager will not, and will use its reasonable endeavours to procure that its Associated Persons do not, vote on any such ordinary resolution. The Manager shall do all things necessary to call a meeting of the Company as soon as possible if requested by the Board and not unnecessarily delay the holding of that meeting.
- 13.3 If this Agreement is terminated by the Company pursuant to clause 13.1 and subject to approval of the termination by ordinary resolution under clause 13.2, on or before the Termination Date the Company shall pay to the Manager an amount equal to all accrued and unpaid Fees, costs and other sums up to the Termination Date due to the Manager pursuant to this Agreement plus the Termination Fee.
- 13.4 At any time after the fifth anniversary of the Commencement Date the Manager may terminate this Agreement by giving the Company not less than six months' written notice (or as otherwise agreed between the parties in writing). If this Agreement is terminated by the Manager pursuant to this clause, on or before the Termination Date the Company shall pay to the Manager an amount equal to all accrued and unpaid Fees, costs and other sums up to the Termination Date due to the Manager pursuant to this Agreement plus the Termination Fee.

#### **With cause**

- 13.5 Subject to clause 13.6 in the case of the Company but otherwise notwithstanding any other provision of this Agreement, either the Manager or the Company (the *Non-Defaulting Party*) may terminate this Agreement at any time by giving the other party written notice and in the case of an event described in (g) not less than six months' notice (or as otherwise agreed between the parties in writing), if the other party (the *Defaulting Party*) commits or is or becomes subject to any of the following events:
- (a) the Defaulting Party goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved in writing by the Non-Defaulting Party) or voluntary administration;
  - (b) a receiver, receiver and manager or administrator is appointed in respect of all or substantially all of the assets of the Defaulting Party;
  - (c) an application is made to the Court or a meeting is called for any of those purposes in (a) and (b) above (unless the Defaulting Party satisfies the Non-Defaulting Party in its reasonable opinion that the application or call for meeting is frivolous or vexatious);

- (d) the Defaulting Party is unable to pay its debts as they become due;
- (e) the Defaulting Party enters into any arrangement or composition with its creditors generally (other than with the prior consent of the Non-Defaulting Party which is not to be unreasonably withheld);
- (f) a statutory manager of the Defaulting Party is appointed under the Corporations (Investigation and Management) Act 1989; or
- (g) the Defaulting Party commits a material breach of a material provision of this Agreement (which, in the case of the Manager, must be a breach specified in clause 13.7) and (if the breach is capable of remedy) fails to remedy the breach within twenty Working Days (or where the breach is remediable in a longer period, such longer period as the Non-Defaulting Party agrees, acting reasonably) after receipt of written notice from the Non-Defaulting Party requiring it to remedy the breach.

In each case on or before the Termination Date the Company shall pay to the Manager an amount equal to all accrued and unpaid Fees, costs and other sums up to the Termination Date due to the Manager pursuant to this Agreement but where the Company is the Non-Defaulting Party and the Manager is the Defaulting Party no Termination Fee is payable by the Company to the Manager but where the Manager is the Non-Defaulting Party and the Company is the Defaulting Party then a Termination Fee is payable by the Company to the Manager.

- 13.6 The Company may only exercise the right of termination pursuant to clause 13.5(g) if the termination has previously been approved by an ordinary resolution of shareholders of the Company (excluding the Manager or Associated Persons (as such term is defined in the Listing Rules) of the Manager), at a properly called, quorate meeting of the Company. The Manager will not, and will use its reasonable endeavours to procure that its Associated Persons do not, vote on any such ordinary resolution.

#### **Material breach by the Manager**

- 13.7 The Manager will be deemed to have committed a material breach of a material provision of this Agreement if:
- (a) it commits a breach or a series of related breaches of this Agreement which, in aggregate, have a material and adverse effect on the Company's financial performance, business or assets which shall include (without limitation) (i) any act of fraud by or on behalf of the Manager in connection with this Agreement which has a material and adverse effect on the Company's financial performance, business or assets which is not able to be compensated or remedied by a payment by the Manager (ii) any assignment or deemed assignment of this Agreement without the prior written consent of the Company in breach of clause 16; and
  - (b) the Board provides a certificate to the Manager signed by two directors:

- (i) specifying the nature and characteristics of each of the breaches in reasonable detail;
  - (ii) describing the effect on the Company's financial performance, business or assets; and
  - (iii) certifying that the breaches have had, in aggregate, a material and adverse effect on the Company's financial performance, business or assets; and
- (c) the Manager has not:
- (i) remedied those breaches, or such of those breaches so that the remaining breaches cease to have a material and adverse effect on the Company's financial performance, business or assets, or compensated the Company for those breaches, to the satisfaction of the Board acting reasonably; or
  - (ii) if the breaches cannot be remedied, compensated the Company for any such breaches (to the satisfaction of the Board acting reasonably) and taken steps to ensure that the breaches do not happen again (to the satisfaction of the Board acting reasonably),

in each case within forty Working Days of receiving the certificate issued by the Board pursuant to clause 13.7(b) (or where the breach is remediable in a longer period, such longer period as the Company agrees, acting reasonably).

- 13.8 If the Manager has committed a material breach of a material provision of this Agreement within the meaning of clause 13.7, the Company may arrange for some or all of the Services to be provided by an alternative manager until the Manager has remedied the material breach to the Company's reasonable satisfaction or, if the breach is not capable of remedy, taken steps to ensure it does not happen again to the Company's reasonable satisfaction. If an alternative manager is appointed under this clause, the fees payable to such alternative manager may be deducted from the Fees payable to the Manager.

#### **Termination obligations**

- 13.9 On the Termination Date the Manager will, at its own cost and expense:
- (a) deliver, or cause to be delivered, to the Company all property of the Company or of any other member of the Group, including all certificates, accounting records, correspondence, and all other electronic records relating to the affairs of the Company or of any other member of the Group in the possession or under the control of the Manager or any subcontractor of the Manager;
  - (b) deliver to the Company all forms of proxy, letters of authority, mandates or powers of attorney which may have been issued to it by the Company or by any other member of the Group;

- (c) not hold itself out as having authority to negotiate, contract or take any other action on behalf of, or as agent for, the Company or any other member of the Group;
- (d) if so requested by the Company, procure the resignation as a director of any Group member of any person nominated by the Manager (in its capacity as Manager and not in its capacity as a shareholder of the Company) as a director of such Group member;
- (e) promptly cease to use, and not thereafter use either directly or indirectly in any manner any Trade Mark or any sign, word, brand or symbol which is confusingly similar to it;
- (f) not do, or omit to do, any act or thing which may cause or tend to cause a third party to believe that the Manager is associated with, or connected with, the Company or the Group;
- (g) promptly deliver to the Company (or dispose of or otherwise deal with as directed by the Company) any material incorporating a Trade Mark or to which a Trade Mark may have been applied; and
- (h) ensure that its agents, employees and contractors comply with these provisions.

13.10 The Manager acknowledges that, as between it and the Company, if it has any rights in or to the Group's intellectual property (including a Trade Mark) or the goodwill in the Group's intellectual property (including a Trade Mark), those rights will automatically vest exclusively in the Company (if necessary, for the Group) on the Termination Date and it will, at the Company's request, execute all documents and instruments and do all things reasonably required by the Company to give effect to this clause.

13.11 Any termination of this Agreement shall be without prejudice to any rights and liabilities which accrued prior to such termination including liability to pay any amount owing but unpaid up to the Termination Date.

13.12 A party shall consult with the other party prior to serving a termination notice in accordance with this Agreement.

13.13 Clauses 12, 19 and 22 shall survive the termination of this Agreement.

## 14 **DISENGAGEMENT SERVICES**

14.1 If requested by the Company in writing following the service of a termination notice under clause 13.1 or 13.4, the Manager will provide Disengagement Services to the Company to the same standards as those required for the provision of Services for a period until the Company is satisfied (acting reasonably) that the Services have been fully transitioned to the person to assume responsibility for those services, provided that such period will not exceed six months following receipt of the Company's written request to provide such services (the *Disengagement Period*).

- 14.2 In addition to the Disengagement Services, during the Disengagement Period the Manager will continue to supply such Services as are requested by the Company and the Company will continue to pay the Fees, costs and expenses for such Services during the Disengagement Period.
- 14.3 During the Disengagement Period this Agreement will remain in force and, if purportedly terminated earlier, will only terminate at the end of the Disengagement Period.

## 15 CHANGE OF CONTROL OF THE COMPANY

- 15.1 If a Change of Control Event occurs in respect of the Company then the Company shall immediately give written notice to the Manager of that event occurring.
- 15.2 Within six months of receiving from the Company written notice of a Change of Control Event the Manager may by written notice to the Company elect to novate this Agreement to the Company, or to any nominee advised by the Company to the Manager, on the date specified in the notice given by the Manager to the Company and on such date the Company shall pay to the Manager an amount equal to all accrued and unpaid Fees, costs and other amounts due to the Manager pursuant to this Agreement plus the Termination Fee.
- 15.3 A disposal of all or substantially all of the assets of the Group in a transaction or series of transactions is deemed to be a Change of Control Event for the purposes of this clause.

## 16 ASSIGNMENT

- 16.1 A party will not be entitled to assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement except with the prior written consent of the other party, provided that the consent of the Company will not be required to:
- (a) the novation of this Agreement by the Manager pursuant to clause 15.2;
  - (b) subject to clause 16.2, an assignment of this Agreement by the Manager ("**Assignor**"):
    - (i) to a Related Company that is a wholly owned subsidiary of Kiwi Property Group Limited; or
    - (ii) to an entity ("**A**") in which one or more equity securities of A are stapled to one or more equity securities of Kiwi Property Group Limited, such that a person may not be registered as the holder of an equity security or securities in Kiwi Property Group Limited or A without also being registered as the holder of one or more equity securities in A or Kiwi Property Group Limited, as the case may be, and the only shareholders of A are shareholders of Kiwi Property Group Limited (the stapling of Kiwi Property Group Limited and A being referred to as being **Stapled**),

and in each case where the relevant entity has been appointed as manager of Kiwi Property Group Limited and substantially all of its and its subsidiaries' properties and businesses (other than the Assignor's management business);

- (c) any subcontracting by the Manager but only to the extent permitted in accordance with clause 17; and
- (d) an assignment of the benefit of this Agreement by the Manager by way of security as part of any bona fide funding arrangement with a party whose business is primarily the provision of funding and related financial services,

provided that consent of the Company to an assignment will be required where, at the time of such assignment:

- (i) the Manager has been advised in writing by the Company of any default by the Manager of this Agreement; and
- (ii) such default is material to the Services, the Company or the benefit to the Company of this Agreement taken as a whole; and
- (iii) such default remains unremedied by the time of assignment; and
- (iv) the matter of whether there is such a default is not, as at the date of assignment, subject to the dispute resolution process under clause 22.

16.2 In the event of an assignment in accordance with clause 16.1(b):

- (a) any change of control in the Related Company that is an assignee under clause 16.1(b)(i) such that the Related Company is no longer a wholly-owned subsidiary of Kiwi Property Group Limited; or
- (b) if the Related Company or entity that is an assignee under clause 16.1(b)(i) or 16.1(b)(ii) (respectively) ceases to manage Kiwi Property Group Limited and substantially all of its and its subsidiaries' properties and businesses (other than the Assignor's management business) or ceases to be Stapled,

it will be deemed to be an assignment of this Agreement which requires the prior written consent of the Company.

16.3 In the event of an assignment in accordance with clause 16.1(b), where the Assignor provides information to the Company which demonstrates to the satisfaction of the Company (acting reasonably) that the assignee has the financial, technical and other resources (including staff and systems) to perform the obligations under this Agreement (which information the Company shall consider, and which decision the Company shall make, without delay), then the Assignor shall be released from all future obligations under this Agreement from the date of such assignment.

16.4 Any assignee (other than an assignee permitted under clause 16.1(a), 16.1(c) or 16.1(d)) must enter into a deed of covenant in favour of the Company in the form attached at Schedule 6.

## **17 SUBCONTRACTING**

- 17.1 The Manager may perform one or more (but not a majority) of the Services by and through subcontractors only in accordance with this clause 17. Any subcontracting of Services is to be on arm's-length commercial terms with parties who have the financial, technical and other resources (including staff and systems) to perform the subcontracted services and where all costs associated with the subcontracting of Services (including amounts payable to the subcontractors) are the sole responsibility of the Manager and are to be paid by the Manager out of its own funds. Services that may be performed by subcontractors are the Services listed in Schedule 2 other than the Services listed in Schedule 5, at the sole discretion of the Manager.
- 17.2 Notwithstanding clause 17.1, but subject to clause 21, if the Manager is prevented in the performance of the Services by reason of Force Majeure, the Manager may, to the extent required by the Force Majeure and only while the Force Majeure event continues, perform any of the Services through subcontractors (which subcontracting of Services is to be on the terms specified in clause 17.1). The Manager will promptly advise the Board if it undertakes any subcontracting under this clause 17.2
- 17.3 No subcontract will relieve the Manager from its responsibility to the Company to deliver and perform the Services or other obligations of the Manager under this Agreement. It will be the Manager's responsibility to ensure any subcontractors comply with any applicable terms and conditions of this Agreement.

## **18 INTELLECTUAL PROPERTY**

- 18.1 The Manager acknowledges and agrees that all intellectual property owned by the Company or a member of the Group shall remain at all times the absolute property of that party.
- 18.2 The Company acknowledges and agrees that all intellectual property owned by the Manager or a Related Company of the Manager shall remain at all times the absolute property of the Manager or a Related Company of the Manager and any intellectual property developed by the Manager in the course of providing the Services under this Agreement shall be the absolute property of the Manager.

## **19 CONFIDENTIALITY**

- 19.1 Except to the extent set out in this clause or otherwise expressly permitted in this Agreement, each party:
- (a) will only disclose that party's Confidential Information to the other party as necessary for the purposes of this Agreement;
  - (b) will only use Confidential Information for the purposes of this Agreement, (or its enforcement, including in relation to proceedings for that purpose) or otherwise for the purpose for which it was disclosed by the other party;

- (c) will keep Confidential Information confidential and not disclose any Confidential Information to any third party or in the presence of any person other than as permitted under clauses 19.1(d) to 19.1(f) (inclusive), without first obtaining the written consent of the other party;
- (d) may disclose Confidential Information to its personnel and its consultants and contractors, to the extent they need to know the Confidential Information in the ordinary course of their work and activities or for a particular purpose, provided that such personnel have first been made aware of their obligations to keep such information confidential and of the obligations in this clause, and it ensures that such personnel comply with those obligations;
- (e) may disclose Confidential Information if required by any applicable law or regulation or authority (including any stock exchange to which it is subject);
- (f) may only disclose Confidential Information to its professional advisers and funders if such disclosure is necessary for the purposes of receiving professional advice in relation to this Agreement or a bona fide funding arrangement and those parties are subject to a duty of confidentiality in relation to that information; and
- (g) will take all action reasonably necessary to secure the Confidential Information against theft, loss or unauthorised disclosure.

19.2 Following termination of this Agreement, each party will immediately deliver to the other parties all such Confidential Information (including all copies or reproductions of the same and all material referring to any such Confidential Information) within that party's possession or control together with a certificate signed by an authorised signatory of the relevant party confirming that the information returned comprises all such Confidential Information held by that party.

## 20 NOTICE

- 20.1 Any notice or other communication to be given pursuant to the terms of this Agreement shall be in writing addressed to the party to whom it is given and may be:
- (a) delivered to or sent by post to the registered office or address for service of such party and any such notice shall be deemed to be served in the case of personal delivery when delivered and, if posted, two Working Days after it was posted; or
  - (b) sent by email to such e-mail address provided from time to time by such party and shall be deemed to be served on the Working Day on which it is sent or, if sent after 5pm on a Working Day or, if sent on a day that is not a Working Day, on the next Working Day.

## 21 FORCE MAJEURE

- 21.1 If either party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, that party will immediately serve notice in



writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure, and will, subject to service of such notice and to this clause, have no liability in respect of the performance of such of its obligations as are prevented or delayed by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations in accordance with this Agreement.

- 21.2 The party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure (the FM Affected Party) will use reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure event, unless the Force Majeure event continues for more than 3 consecutive months in which case the party that is not the FM Affected Party may terminate the Agreement and the Company shall pay to the Manager an amount equal to all accrued and unpaid Fees, costs and other sums up to the Termination Date due to the Manager pursuant to this Agreement plus the Termination Fee. Without extending this obligation to use reasonable endeavours, the Manager acknowledges that the provision of the Services to the Company and the Group is crucially important to the proper operation of the Company and the Group's business and the Manager is committed to, and will make available such resources as are necessary for, such proper operation.

## 22 DISPUTE RESOLUTION

- 22.1 No party may commence any proceedings relating to any dispute between the parties (except where the party seeks urgent interlocutory relief) unless the party has taken all reasonable steps to comply with this clause.
- 22.2 If a party believes that there is a dispute between the parties concerning this Agreement, then that party will give written notice to the other party setting out the details of the dispute. If a notice of dispute is given:
- (a) then the Company will request the Chairperson of the Company, and the Manager will request the Chairperson of the Manager, to use their reasonable endeavours to resolve the dispute within ten Working Days (or such other time as the parties agree);
  - (b) if the dispute is not resolved under clause 22.2(a), then either party may, by written notice to the other party, require the dispute to be determined by an arbitrator to be appointed by the parties. Failing agreement of parties to the appointment of the arbitrator within five Working Days after the date of giving the notice, the arbitrator will be appointed at the request of either party by the president or the vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president. The arbitrator will determine the dispute and will deliver to each party a written decision. The decision must specify the reasons for the decision. The Arbitration Act 1996 will apply to the determination of such dispute.
- 22.3 In the event of a dispute between the parties concerning this Agreement, the Manager will continue to provide the Services and the Company will continue to

pay the Fees, costs and other sums due in accordance with this Agreement, pending resolution of the dispute.

## **23 GST**

- 23.1 Any consideration payable for a supply made under or in connection with this Agreement is expressed on a GST exclusive basis, unless expressly stated otherwise in this Agreement.
- 23.2 If GST is payable on a supply made by the Manager under or in connection with this Agreement (other than a supply the consideration for which is expressly described in this Agreement as including GST), then:
- (a) in addition to the consideration payable or to be provided for that supply but for the application of this clause (GST exclusive consideration), the Company must pay to the Manager an amount (GST Amount) equal to the GST payable on the supply; and
  - (b) the Company must pay the GST Amount in the same manner as the GST exclusive consideration and by the later of:
    - (i) the date the GST exclusive consideration is payable or to be provided; and
    - (ii) the date the Manager issues the Company a Tax Invoice in respect of the supply.

## **24 TAX**

- 24.1 The Company shall have the overriding right to determine and file its tax return in the first financial year after the Commencement Date and all costs associated with such tax return shall lie with the Company.

## **25 OWNERSHIP OF INFORMATION**

- 25.1 The Manager acknowledges that all records, documents and information held by the Manager or prepared by or on behalf of the Manager exclusively for the purposes of, or in connection with, the provision of the Services under this Agreement are the property of the Company or another Group member, and the Manager has no right to use, disclose or retain those records, documents and information except in accordance with and for the purposes of this Agreement.
- 25.2 If, following return by the Manager of any such records, documents and information, the Manager requires access to such records, documents and information for the purposes of either conducting or defending any litigation or other proceedings to which the Manager is a party or dealing with any tax or other statutory related matters arising as a consequence of the provision of the Services, the Company will, and the Company will procure that any other member of the Group will, following receipt of a written request from the Manager to that effect, permit the Manager such access to such records, documents and information, during normal business hours, as the Manager may reasonably require (and having

regard always to any obligations of confidentiality to which the Company or relevant Group member may be subject and, for the avoidance of doubt, the obligations in clause 19 will apply to such records, documents and information), provided that:

- (a) the rules of discovery will apply in respect of any proceedings by the Manager against the Company or any member of the Group to the exclusion of the remainder of this clause; and
- (b) if the Company determines in good faith that the Company or any member of the Group may be entitled to claim client legal privilege in respect of a document, or any part of a document, and the loss of the right to claim such privilege could result in material damage to the Company or any member of the Group, whether at that time or at any time in the future, then the Company may impose such conditions on the Manager's access to the relevant document (including refusing to allow access) as the Company determines, in good faith, are appropriate to ensure that the right to claim privilege cannot be jeopardised by such access.

## 26 GENERAL


- 26.1 If any money owing to either of the parties under this Agreement is in arrear and unpaid for fourteen days after the due date for payment, and whether or not any formal or legal demand for payment has been made, the other party shall pay default interest on the amount unpaid at the default interest rate of 10% per annum computed on a daily basis from the due date until the overdue amount and all accrued default interest is paid in full. The recovery of or right to recover default interest by either party shall be without prejudice to that party's other rights powers and remedies.
- 26.2 Nothing in this Agreement shall be deemed or construed to constitute either party a partner of the other party or to create any trust. No party shall have the authority to act for or to incur any obligation on behalf of any other party except as expressly provided in this Agreement or any agreement entered into pursuant to this Agreement.
- 26.3 No failure to exercise and no delay in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy or any other right or remedy.
- 26.4 No waiver by any party of any breach of this Agreement shall operate as a waiver of any right or remedy of that party in respect of any further or other breach of this Agreement.
- 26.5 Any waiver by a party shall be limited to the specific right, event, matter or circumstances to which that waiver relates.
- 26.6 No single or partial exercise of any right or remedy shall preclude any other or further exercise of such right or remedy or the exercise of any other right or remedy.

- 26.7 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights and remedies provided by law.
- 26.8 If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision will be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision will be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.
- 26.9 No amendment to this Agreement shall be effective unless it is in writing and signed by the parties.
- 26.10 This Agreement constitutes the entire understanding and Agreement of the parties relating to the subject matter of this Agreement and supersedes and extinguishes all prior agreements and understandings between the parties relating to such subject matter.
- 26.11 Each party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this Agreement.
- 26.12 Nothing in this Agreement is intended to confer any benefit on, or be enforceable by, any person who is not a party to this Agreement.
- 26.13 This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any party may enter into this Agreement by signing any such counterpart. Any facsimile or PDF copy of this Agreement (including any facsimile or PDF copy of any document evidencing either party's signature to this Agreement) may be relied on by any other party as though it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.
- 26.14 This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand.
- 26.15 The Company and the Manager each unconditionally and irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of this Agreement and waive any right they may have to object to an action being brought in those courts, to claim that an action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- 26.16 Each party shall pay its own costs incurred in the preparation and execution of this Agreement.

**EXECUTION**

Signed as an agreement.

**SIGNED** for and on behalf of  
**NPT LIMITED**  
as the Company

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)  
)  Carol Anne Campbell  
) Signature of Full name of  
Authorized Signatory Authorized Signatory

**SIGNED** for and on behalf of  
**KIWI PROPERTY GROUP LIMITED** as the  
Manager

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) Signature of Full name of  
Authorized Signatory Authorized Signatory

**EXECUTION**

Signed as an agreement.

**SIGNED** for and on behalf of  
**NPT LIMITED**  
as the Company

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Signature of  
Authorised Signatory

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Full name of  
Authorised Signatory

**SIGNED** for and on behalf of  
**KIWI PROPERTY GROUP LIMITED** as the  
Manager

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**Christopher Wayth Gudgeon**

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Signature of  
Authorised Signatory

\_\_\_\_\_  
Full name of  
Authorised Signatory

## **SCHEDULE 1 – DISENGAGEMENT SERVICES**

- 1 Transferring, relocating or (with the Board's prior written consent) disposing of equipment and tangible property owned by the Group from the Manager's sites to the locations designated by the Company.
- 2 Providing reasonable access to premises, staff and information relevant to the Services.
- 3 Assisting with the transfer of relevant contracts (including sub-contracts and third party software licences) relating exclusively or primarily to the provision of the Services to the Group or to a third party designated by the Company as a successor manager.
- 4 Migrating relevant software owned by the Group, together with the Group's data, to the relevant Group member or to a third party designated by the Company as a successor manager.
- 5 Consultancy services required to assist with the seamless migration of the Services to the Group or to a third party designated by the Company as a successor manager.
- 6 Such other services as the Company may reasonably require to ensure an orderly and timely migration of the Services from the Manager to the Group or to a third party designated by the Company as a successor manager.

## SCHEDULE 2 – SERVICES

### 1 Corporate

- 1.1 Prepare or procure the preparation of:
  - (a) such reports and other information and material as the Board may require in connection with the annual and interim reports and audited annual accounts of the Group; and
  - (b) any other report as may be required from time to time by the Board. The Manager will promptly after request by the Board at any time provide the Company with any information the Board may require in respect of the Group's operations or the performance by the Manager of its duties and obligations under this Agreement.
- 1.2 Keep, or cause to be kept, such business and accounting records in relation to the Group, the Manager and this Agreement as are required by law or otherwise necessary for the proper conduct of the affairs of the Group and the discharge of the Manager's obligations under this Agreement.
- 1.3 Open accounts with such authorised bank as the Company may from time to time appoint as its bankers in the Company's name, into which all moneys coming into the hands of the Manager on behalf of the Group will be paid, and operate such bank accounts, authorise the making of withdrawals from such bank accounts (including electronic payments), and sign cheques or authorise the signing of cheques drawn on such bank accounts, in accordance with any authority given by the Board from time to time in relation to such bank accounts.
- 1.4 As soon as practicable, on receipt of any moneys received on behalf of the Group, pay such moneys into a bank account held in the name of the Company.
- 1.5 Subject to any direction of the Board, hold or arrange the holding of all certificates or other documents of title received in respect of the Group safe and secure on behalf of the Group.
- 1.6 Subject to there being sufficient funds available to the Manager in the Company's bank accounts, meet all liabilities of the Group incurred in connection with the performance of this Agreement as and when such liabilities become due and payable.
- 1.7 Use its best endeavours to collect all outstanding moneys owing by debtors of the Group (including any moneys due to the Group by Lessees) and if necessary the Manager will, if required by the Board, commence litigation in the name of the Group which may reasonably be considered necessary for the Group to collect any outstanding debts, subject to any directions which may from time to time be given to the Manager by the Board.
- 1.8 Advise the Board on risk management matters.



- 1.9 Engage an expert to advise on insurance for the Company and present an insurance plan to the Board for consideration and, to the extent approved, implementation by the Manager. Such insurance plan should contemplate all corporate and business related insurances as would be required in the normal course of business and include recommendations from the Manager and the expert as to how best to manage the Company's insurances.
- 1.10 Procure and manage legal, accounting and other professional service providers engaged to assist the Group.
- 1.11 Provide all necessary assistance as required by the Company for any debt or equity capital raising or other financing.
- 1.12 Conduct any litigation in respect of which the Group has any interest either as plaintiff, defendant or third party subject to any directions which may from time to time be given to the Manager by the Board.
- 1.13 Arrange for the annual financial statements of the Group to be prepared for Board review (and if thought fit, approval) and audited by the Group's auditor including the audit of the calculation of the Fees and other costs under this Agreement in respect of the accounting period concerned and the interim financial statements of the Group to be prepared for Board review (and if thought fit, approval) and, if required by Law or by the Board, reviewed by the Group's auditor including the review of the calculation of the Fees and other costs under this Agreement in respect of the accounting period concerned.
- 1.14 Prepare all reports and announcements required by the Listing Rules, and otherwise assist the Company to comply with the Listing Rules. The Manager shall also make continuous disclosure releases in accordance with the Company's policy and procedure for continuous disclosure.
- 1.15 Prepare and file all returns and notices required to be filed by the Group under any Laws.
- 1.16 Give to the Group all such assistance as the Company may reasonably require in connection with the preparation and filing of all tax returns (including GST returns) required to be filed by the Group.
- 1.17 Implement the Company's financial and treasury management policies adopted by the Board, including:
  - (a) the negotiation and supervision of all financial indebtedness of the Group that may from time to time be incurred or desired to be incurred by the Group;
  - (b) ensuring compliance with borrowing obligations and related security arrangements.
- 1.18 At all times keep comprehensive and up to date records of all transactions entered into by the Manager relating to the Services, and retain copies of such records for

at least such periods as are required by law or for so long as the Manager provides the Services until they are delivered up to the Company.

- 1.19 Ensure that should the administrative duties be subcontracted, that such subcontractor will undertake to at all times maintain in full force a professional indemnity insurance policy which covers all duties such subcontractor so performs.
- 1.20 Ensure compliance by the Group with all relevant Laws, including the Companies Act 1993, the Financial Markets Conduct Act 2013, the Financial Reporting Act 2013 and the Privacy Act 1993.
- 1.21 Liaise with the Group's share registrar to ensure that the register of shareholders is adequately maintained.
- 1.22 Arrange with the share registrar to pay any dividends or interim dividends declared by the Board.
- 1.23 Prepare and circulate notices, agendas and board papers for meetings of the Board.
- 1.24 Attend meetings of the Group, the Board and shareholders, and report to the Board at each meeting of the Board and otherwise when and as reasonably requested, on:
  - (a) the Group's financial performance;
  - (b) any major maintenance, refurbishment or other work required to be carried out in respect of any Property or any issues or potential issues regarding any Property's compliance with any applicable statutory or regulatory regime;
  - (c) past or upcoming events, actions or occurrences of a material nature;
  - (d) any actual or potential threats to or opportunities for the Group, or the Group's business, including any actual or threatened litigation against the Group (including in respect of any Property) or any actual, threatened or proposed regulatory or legislative proposal or action;
  - (e) any matters which the Manager believes should be brought to the Board's attention; and
  - (f) such other matters as the Board reasonably requires.
- 1.25 Arrange the Group's shareholder meetings and give notices of any such meeting to all shareholders in accordance with the relevant constitution, and otherwise undertake all required shareholder communications.
- 1.26 Keep minutes of all Board meetings, Board committee meetings and shareholder meetings.
- 1.27 Otherwise assist each member of the Group to comply with its constitution and the Policies and Charters.

1.28 Prepare a draft annual budget for the Group and present the budget to the Board for consideration, and if thought fit, approval (the approved budget being the Annual Budget). The Manager shall manage the Company in accordance with the Annual Budget and report against the Annual Budget on a quarterly or other basis, as agreed between the Manager and Board. The Annual Budget must provide details, each to a level of detail reasonably required by the Board, relating to each Property, including details of:

- (a) income (rental revenue, operating expense recoveries, other revenue);
- (b) expenses (property operating costs, outgoings and other expenses);
- (c) capital expenditure;

and for the Company as a whole:

- (d) loan to value ratio targets; and
- (e) targeted dividends.

1.29 Prepare reports for presentation at each scheduled Board meeting. Each report must include, as a minimum, the following information:

- (a) comparisons between budgeted and actual year-to-date financial information for the Group;
- (b) operational successes, challenges, failures and emerging issues;
- (c) property market activity;
- (d) risk management, including identification of all material risks, risk status level and management mitigation plans;
- (e) identification and assessment of financial opportunities external to budget assumptions;
- (f) details of any property valuations carried out pursuant to any relevant regulations and policies; and
- (g) level of compliance with applicable regulations and legislation.

## **2 Development Management**

2.1 Plan, arrange and manage each Development in accordance with the budget, scope and programme for that Development. Such Development to be approved in writing by the Board where the cost of that Development is outside of any Delegated Authorities or Additional Delegated Authorities.

2.2 Provide investigative, feasibility and other associated services in respect of any proposed Development. Such proposed Development to be approved in writing by the Board where the cost of the work to be undertaken by the Manager in

respect of that proposed Development is outside of any Delegated Authorities or Additional Delegated Authorities.

- 2.3 Undertake reasonable supervision of all Development consultants and contractors.
- 2.4 Provide a monthly Development report including details of the original timetable, progress to date and projected completion date, the approved budget, expenditure to date and the forecast cost to complete the Development.
- 2.5 Notify the Company of any material Development issues.

### **3 Facilities Management**

- 3.1 Plan, arrange and manage the Group's plant, equipment and other facilities in relation to each Property in accordance with the budget, scope and programme for such plant, equipment and other facilities, approved in writing by the Board.
- 3.2 Undertake reasonable supervision of any consultants and contractors engaged in respect of any plant, equipment and other facilities for each Property.
- 3.3 Notify the Company of any material issues in connection with the plant, equipment and other facilities at each Property.

### **4 Leasing**

- 4.1 Take all reasonable steps to optimise the occupancy of all lettable areas of any Property including instructing the Manager's internal leasing team or external real estate agents (as appropriate) to arrange the leasing of any part of the lettable area of any Property which is or may become vacant.
- 4.2 Evaluate and qualify the suitability of proposed Lessees.
- 4.3 Take all reasonable steps to ensure that new Leases are consistent with any budget for the relevant Property.
- 4.4 Arrange, negotiate and supervise the implementation of each Lease and any consent to assignment or subletting and all renewals, replacements and terminations of any Lease.
- 4.5 Pay any leasing incentives that are within any approved budget for the relevant Property or that have otherwise been approved in writing by the Company.

### **5 Legal administration**

- 5.1 Either prepare Lease documentation using either the form of the document required by the Company or, if no particular form is required, the form being currently used by the Manager for premises of a similar nature and arrange for the execution of such Lease documentation by the relevant Lessee and the Company, or instruct solicitors to do the same.

- 5.2 Either prepare and arrange for the service of notices, institute and take all reasonable steps to commence and conclude legal proceedings, initiate such other action as may from time to time be necessary to recover any moneys owed by Lessees, recovering possession of any premises comprising part or the whole of any Property and enforcing the rights of the Company under any Lease or otherwise, or instruct solicitors to do the same.
- 5.3 Take all reasonable steps to resolve any claim, action or proceeding against any Lessee or brought by any Lessee against the Company provided that any claim or proceeding against the Company may only be settled with the prior written consent of the Board.
- 5.4 Either prepare service and other contracts in connection with any Property using either the form of the documents required by the Company or, if no particular form is required, the form being currently used by the Manager for similar types of contracts and arrange for the execution of such contracts by the Company and the other party, or instruct solicitors to do the same.
- 5.5 Provide legal administration services on Leases and other contracts in connection with any Property.

## **6 Property Management**

- 6.1 Carry out and perform the functions of the Company as lessor in relation to each Lease and lessee in respect of any ground lease of any Property if and to the extent that such functions are capable of being performed by a manager on behalf of the Company. The Manager shall not breach the terms of each Lease or any ground lease of any Property.
- 6.2 Promptly collect all Gross Income (together with the GST relating to such Gross Income), security deposits, bank guarantees and contributions to operating expenses, marketing fund and maintenance fund payable by Lessees pursuant to the Leases including taking reasonable steps to recover any arrears owed by Lessees (including any GST payable thereon), and pay from the Company's bank accounts all operating expenses (together with the GST relating to such operating expenses).
- 6.3 Where Gross Income relates to a percentage of the Lessee's gross sales receipts, income or other formula, collect and take reasonable steps to verify such statements or records or such figures as the Company may be entitled to require and, if considered necessary or desirable by the Manager, require such checks or audits as may be allowed for under the Leases.
- 6.4 Obtain from every Lessee such information regarding the conduct or performance of the Lessee's business as the Company is entitled to receive under the terms of the relevant Lease.
- 6.5 Take all reasonable steps to ensure compliance by the Lessees with the terms of their Leases and report to the Company and take appropriate action where any breach of any such Lease has occurred or where the Manager is of the opinion such a breach is contemplated or likely to occur.

- 6.6 Except where such obligations are imposed on Lessees, take all reasonable steps to arrange, maintain and supervise satisfactory service contracts and other arrangements for the routine maintenance, cleaning and security of any Property, its plant, equipment, fixtures and fittings, yards, terraces, carparks and landscaped areas, including all utilities, services and amenities.
- 6.7 Take all reasonable steps to ensure compliance with the Resource Management Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015 and the Fire Safety and Evacuation of Building Regulations 2006 and all other laws, ordinances, regulations, by-laws or other lawful requirements imposed on the Company and which affects or relates to the Company, its business, its Lessees, its suppliers or any Property or the use or occupation of any Property and take all reasonable steps to ensure compliance with all licences, requisitions, notices or orders made or given by any governmental, local or other lawful authority in respect of any Property or the use and occupation of any Property, in particular take all reasonable steps to ensure that:
- (a) any incidents relating to matters covered by those laws, ordinances, regulations, by-laws or other lawful requirements (such as health and safety incidents) are included in reports to the Board; and
  - (b) all prospective contractors or other persons providing services to the Group (including pursuant to paragraph 6.7(a) above) are appropriately qualified and that the terms of any contract with those service providers adequately addresses health and safety matters in a manner consistent with the procedures approved by the Board.
- 6.8 Inspect the Properties at regular intervals to assess the need for any repairs to or maintenance of any Property.
- 6.9 Arrange or carry out all repairs, maintenance and improvements of and to any Property.
- 6.10 Notify the Company of any material damage to any Property. Liaise with the Company, and if required by the Company, the Company's insurers in relation to any loss or damage to any Property or the plant, equipment, fixtures or fittings and in relation to any other insured liability relating to any Property and to provide all details available to the Manager to assist in making any claim against the insurers.
- 6.11 Receive all communications and notices from Lessees, local authorities and other relevant authorities in connection with any Property and either respond to such matters on behalf of the Company where it is within the Delegated Authorities or the powers granted pursuant to this Agreement to do so or refer the matter to the Board.
- 6.12 Undertake rent reviews required under the terms of the Leases (in each case to achieve the best rents reasonably obtainable) and, where necessary, commence and conclude proceedings in fulfilment of any such rent review under the terms of any Lease, provided that the Manager shall consult with the Board in all material matters in relation to any material rent review.

- 6.13 Provide property management advice on Leases, insurance, valuations, rating valuations, town planning, zonings and other like matters arising in connection with any Property.
- 6.14 Arrange for valuers to undertake an annual valuation of any Property. The Board has the right to nominate the registered valuer to be instructed for these purposes.
- 6.15 Pay out of money received and held on behalf of the Company, all costs and expenses payable to third parties which relate to the management of any Property.
- 6.16 Perform all acts reasonably necessary in connection with the operation or the affairs of any Property in a proper and efficient manner.
- 6.17 Undertake all such actions and things as a prudent lessor would normally do or undertake in the interests of good management of premises of a like nature in respect of each of the premises comprising any Property and take all reasonable steps to ensure that each of the buildings comprising any Property operates on an efficient basis and operating expenses are minimised.
- 6.18 Generally manage any Property with a view to optimising returns and preserving and enhancing the investment value of any Property.
- 6.19 Take all reasonable steps to market, advertise and promote any Property including determining whether or not to constitute or arrange a merchants' association, promotion fund or marketing fund, manage and administer any such association or fund, and represent the Company at any meeting of any such association or fund.
- 6.20 Employ and direct appropriate members of its staff to enable it to properly perform its obligations under the Agreement.
- 6.21 Maintain complete and accurate records in connection with the management of any Property including as-built drawings, manuals, guarantees, warranties and lease and tenancy documentation.
- 6.22 Ensure any Property complies with all applicable law (including any requirements of any regulatory authority or the Company's insurers relating to any Property).
- 6.23 Undertake all day-to-day matters relating to the management and control of any Property.
- 6.24 Provide an annual report to the Board of any Property that should be considered for sale in the forthcoming year.
- 6.25 Advise the Board of any acquisition and/or realisation opportunities as they arise.

## **7 Retail Design Management**

- 7.1 Manage and supervise the retail design of each tenancy fitout, refurbishment or reconfiguration carried out by or on behalf of any Lessee.

## 8 **Tenancy Co-ordination Management**

- 8.1 Manage and supervise the co-ordination of each tenancy fitout, refurbishment, stripout or reconfiguration carried out by or on behalf of any Lessee.



### SCHEDULE 3 – FEES & COSTS

#### 1 Fees

1.1 The Company shall pay the Manager the following Fees:

- (a) an Acquisition Fee shall be payable on settlement of every acquisition of a Property by any member of the Group;
- (b) an Additional Services Fee shall be payable for each Additional Service at such times, such amount and for such period as the Board and the Manager have agreed in writing;
- (c) a Development Management Fee shall be payable for:
  - (i) each Development, by instalments each month in arrears in respect of the period from and including the date that the relevant Development commences until and including the date the certificate of practical completion has been issued in respect of such Development or, where any Development involves separable portions, the date of the certificate of practical completion in respect of the last separable portion;
  - (ii) each Development proposed by the Manager to the Company, by instalments each month in arrears in respect of the period from and including the date that Manager commences providing services in respect of the proposed Development until and including the date the Board either approves or rejects the proposed Development or requests that the Manager cease providing such services in respect of the proposed Development where the Manager is required to obtain the approval of the Board to such proposed Development in accordance with the terms of this Agreement;
- (d) a Facilities Management Fee shall be payable each month in arrears for facilities management Services provided by the Manager;
- (e) a Fund Management Fee shall be payable by instalments each Quarter in arrears;
- (f) a Leasing Fee shall be payable for each new unconditional agreement to Lease or unconditional deed of Lease that was negotiated by the Manager or for which the Manager introduced the Lessee to any Property or to any member of the Group (excluding the exercise by any Lessee of any right of renewal of a Lease but including any new Lease to an existing Lessee). A Leasing Fee shall be due and payable on execution of an unconditional agreement to Lease or deed of Lease (or upon a conditional agreement to Lease or deed of Lease becoming unconditional). No Leasing Fee shall be payable to the Manager where the relevant member of the Group has paid a commission or fee to a licensed real estate agent for a new unconditional agreement to Lease or unconditional deed of Lease that was negotiated by

that agent or where that agent introduced the Lessee to the Property or the relevant member of the Group;

- (g) a Legal Administration Fee shall be payable for each agreement to lease, agreement to surrender, deed of lease, deed of surrender, deed of variation, deed of extension, deed of assignment, deed of sublease, Property Law Act or other legal notice, service contract or other contract prepared by the Manager;
- (h) a Performance Fee (which shall include any Initial Performance and Terminal Performance Fee) shall be payable by instalments each Quarter in arrears;
- (i) a Property Management Fee shall be payable by instalments each month in advance;
- (j) a Retail Design Management Fee shall be payable for each tenancy fitout, refurbishment or reconfiguration carried out by or on behalf of any Lessee during the term of this Agreement;
- (k) a Sale Fee shall be payable on settlement of the sale of any Property by any member of the Group; and
- (l) a Tenancy Co-ordination Fee shall be payable for each tenancy fitout, refurbishment, stripout or reconfiguration carried out by or on behalf of any Lessee during the term of this Agreement.

## **2 Performance Fee**

### **Performance Fee accrual**

- 2.1 In the case of the calculation of the Initial Performance Fee, if the Commencement Date occurs on a date that is not the same date as the start of a Quarter or, in the case of the calculation of the Terminal Performance Fee, the Termination Date occurs on a date that is not the same date as the end of a Quarter, then the percentages against which the Aggregate Percentage Return is to be measured and the Carried Forward Return is to be determined will be adjusted on a pro rata basis.

### **Requirement to provide calculations**

- 2.2 As soon as reasonably practicable following the end of each Quarter, the Manager will calculate and determine for that Quarter:
- (a) the Shareholder Return;
  - (b) the Carried Forward Return;
  - (c) the Aggregate Percentage Return; and
  - (d) the Performance Fee (if any),

and will, if requested by the Board, promptly provide each of those determinations and any reasonable supporting material used in their calculation, to the Board. This clause also applies, amended as necessary, in connection with the calculation of the Initial Performance Fee and the Terminal Performance Fee.

#### **Aggregate Percentage Return calculation**

2.3 The Aggregate Percentage Return for a Quarter is the aggregate of:

- (a) the Shareholder Return for that Quarter; and
- (b) the Carried Forward Return from the previous Quarter (if any), adjusted pursuant to clause 2.4 of this Schedule,

in each case expressed as a percentage.

2.4 For the purposes of clause 2.3(b) of this Schedule, in respect of the eighth and each subsequent Quarter following (and excluding) the Performance Fee Commencement Date Quarter (the *Performance Fee Calculation Quarter*), the Carried Forward Return from the previous Quarter is to be adjusted as follows:

- (a) if the Shareholder Return for the eighth Quarter preceding (and excluding) the Performance Fee Calculation Quarter (the *Expired Quarter*) was less than 2.5%, the Carried Forward Return for the Performance Fee Calculation Quarter is to be adjusted by the amount of the difference between 2.5% and that Shareholder Return (expressed as a positive percentage, so that the Carried Forward Return is increased by the amount of the difference);
- (b) if the Shareholder Return for the Expired Quarter was equal to or greater than 2.5%, but not more than 3.75%, no adjustment is to be made to the Carried Forward Return for the Performance Fee Calculation Quarter; and
- (c) if the Shareholder Return for the Expired Quarter was greater than 3.75%, the Carried Forward Return for the Performance Fee Calculation Quarter is to be adjusted by the amount of the difference between 3.75% and that Shareholder Return (expressed as a negative percentage, so that the Carried Forward Return is decreased by the amount of the difference).

2.5 The parties agree and record that the arrangements in this clause 2 of this Schedule are intended to operate such that Shareholder Return for a Quarter will cease to be taken into account when calculating the Performance Fee for a subsequent Quarter after the expiry of two years from the last day of that Quarter. To the extent that any provision of clause 2 of this Schedule is inconsistent with the intention stated in this clause, each of the parties is to take all actions necessary or desirable to amend this Agreement to remove such inconsistency or conflict with the intention.

#### **Performance Fee calculation**

2.6 Subject to clause 2.10, the Performance Fee for a Quarter is to be calculated as follows:

- (a) if the Aggregate Percentage Return for the Quarter is less than 2.5%:
  - (i) no Performance Fee will be payable for that Quarter; and
  - (ii) the Carried Forward Return for that Quarter will be the difference between 2.5% and the Aggregate Percentage Return for the Quarter (expressed as a negative percentage);
- (b) if the Aggregate Percentage Return for the Quarter is equal to or greater than 2.5%, but is equal to or less than 3.75%:
  - (i) a Performance Fee is payable equal to 10% of the amount by which the Aggregate Percentage Return for that Quarter exceeds 2.5% (expressed as a percentage), multiplied by the weighted average number of shares in the Company on issue during the Quarter, multiplied by the Opening Share Price; and
  - (ii) the amount of the Carried Forward Return for that Quarter will be nil; and
- (c) if the Aggregate Percentage Return for the Quarter is greater than 3.75%:
  - (i) a Performance Fee is payable equal to 10% of 1.25%, multiplied by the weighted average number of shares in the Company on issue during the Quarter, multiplied by the Opening Share Price; and
  - (ii) the amount of the Carried Forward Return for that Quarter will be the difference between the Aggregate Percentage Return for the Quarter and 3.75% (expressed as a positive percentage).

### **Rounding**

2.7 For the purposes of clauses 2.2 to 2.6:

- (a) except where clause 2.7(b) applies, returns and amounts will be calculated to as many decimal places as the computation system used for the purpose permits but, in any event, to at least four decimal places; and
- (b) in respect of an amount to be paid as a Performance Fee, the amount will be rounded using Swedish rounding.

### **Shareholder Return calculation**

2.8 The Shareholder Return for a Quarter is the percentage change in the price of a Share on the NZX Main Board over that Quarter, taking any dividends into account, calculated on the basis of the percentage change between:

- (a) the opening price of a Share for a Quarter, being the Closing Share Price for the previous Quarter, or in the case of the calculation of the Initial Performance Fee (if any), the VWAP of the Shares traded on the NZX Main Board during normal market trading hours on the last five trading days before

the Commencement Date (or, if there are no trades on any one of those days, then the VWAP of trades during normal market trading hours on the last five trading days before the Commencement Date on which trades occurred) (the *Opening Share Price*); and

(b) the aggregate of:

- (i) the closing price of a Share for a Quarter, being the VWAP of the Shares traded on the NZX Main Board during normal market trading hours on the last five trading days of the Quarter (or, if there are no trades on any one of those days, then the VWAP of trades during normal market trading hours on the last five trading days of that Quarter on which trades occurred) (the *Closing Share Price*); and
- (ii) in respect of any Quarter in which the Ex Date for a dividend falls, the amount of that dividend per Share. In this clause, Ex Date has the meaning given to that term in the Listing Rules.

2.9 Adjustments will be made by the Manager to the calculation of the Opening Share Price to take into account the effect of rights issues and other changes in capital structure that occur in the relevant Quarter. The Manager will ensure that the method of calculation that it uses is approved by a suitably qualified independent accountant as being fair and reasonable in the circumstances.

2.10 The Performance Fee will, following the Commencement Date, be calculated for each Quarter in accordance with clause 2.6 and each such calculation will, unless the Board agrees otherwise, be verified by the Company's auditors. Following verification of the calculation by the Company's auditors, the Performance Fee will be put to the independent directors on the Board for approval to be paid to the Manager by the 20th day of the month following the receipt of such verification or, if the parties agree to a different checking and authorisation process, the completion of such process.

#### **Illustrative Performance Fee example**

2.11 An illustrative example of the calculation of the Performance Fee using hypothetical figures is set out below. In the event of any conflict, the illustrative example set out below is subject in all respects to the provisions of clause 2 of this Schedule.

#### **Assumptions**

|   |        |        |        |
|---|--------|--------|--------|
| A. Shareholder Return for Quarter                 | 2.00%  | 2.75%  | 4.00%  |
| B. Carried Forward Return (from previous Quarter) | 0.15%  | 0.15%  | 0.15%  |
| C. Lower Shareholder Return threshold             | 2.50%  | 2.50%  | 2.50%  |
| D. Upper Shareholder Return limit                 | 3.75%  | 3.75%  | 3.75%  |
| E. Performance Fee on assessable return           | 10.00% | 10.00% | 10.00% |

|   |           |           |           |
|---|-----------|-----------|-----------|
| F. Market capitalisation (at Quarter start)(\$000s) | \$250,000 | \$250,000 | \$250,000 |
|---|-----------|-----------|-----------|

#### Calculation

|                                 |       |       |       |
|---------------------------------|-------|-------|-------|
| G. Aggregate Percentage Return: | 2.15% | 2.90% | 4.15% |
|---------------------------------|-------|-------|-------|

$$G = A + B$$

|                            |         |     |       |
|----------------------------|---------|-----|-------|
| H. Carried Forward Return: | (0.35)% | Nil | 0.40% |
|----------------------------|---------|-----|-------|

$$H = \text{If } G \leq C \text{ then } G - C$$

$$= \text{If } G > C \text{ but } \leq D \text{ then nil}$$

$$= \text{If } G > D \text{ then } G - D$$

|   |     |       |       |
|---|-----|-------|-------|
| I. Assessable return for Performance Fee: | Nil | 0.40% | 1.25% |
|---|-----|-------|-------|

$$I = \text{If } G \leq C \text{ then nil}$$

$$= \text{If } G > C \text{ but } \leq D \text{ then } G - C$$

$$= \text{If } G > D \text{ then } D - C$$

|  |     |         |         |
|--|-----|---------|---------|
| J. Assessable return for Performance Fee (\$000s): | Nil | \$1,000 | \$3,125 |
|--|-----|---------|---------|

$$J = I \times F$$

|                              |     |       |         |
|------------------------------|-----|-------|---------|
| K. Performance Fee (\$000s): | Nil | \$100 | \$312.5 |
|------------------------------|-----|-------|---------|

$$K = J \times 10\%$$

### 3 Payment of Fees

- 3.1 The Manager shall provide to the Company a Tax Invoice in respect of all Fees to be paid to the Manager. The Fees shall be paid by the Company by way of deduction from the Company's bank accounts by the Manager pursuant to the authority delegated to the Manager by this Agreement for the purpose of making payments on behalf of the Company to cover properly incurred costs, disbursements and expenses, including the payment of Fees, costs and other sums due to the Manager.

- 4 Within twenty Working Days following the end of each Quarter, the Manager shall prepare a statement showing the amount of Fees paid in that Quarter and the amount of Fees payable in that Quarter. If that statement shows that an adjustment payment is necessary then such payment shall be made by the Manager or the Company (as applicable) within one month of the date of the statement.

5 **Costs**

- 5.1 All Operating Expenses incurred by or on behalf of the Manager in the performance of its obligations under this Agreement in its capacity as manager and agent for the Company and each member of the Group, shall be the costs of the Company. To the extent these costs are paid by the Manager, the Company will reimburse the Manager.

- 5.2 All third party costs, disbursements and expenses properly and reasonably incurred by or on behalf of the Manager in the performance of its obligations under this Agreement in its capacity as manager and agent for the Company and each member of the Group, shall be the costs of the Company. To the extent these costs are paid by the Manager, the Company will reimburse the Manager.

- 5.3 The third party costs, disbursements and expenses properly and reasonably incurred by or on behalf of the Manager that the Company is to bear in accordance with clause 5.1 of this Schedule include, without limitation, the following third party costs to the extent they are properly and reasonably incurred:

- (a) costs incurred in connection with maintaining the listing of the Company on the NZX Main Board;
- (b) legal fees and expenses incurred by the Manager in respect of the Group's business (excluding any legal fees incurred by the Manager in connection with a dispute with the Group under this Agreement);
- (c) all costs and expenses incurred in connection with the acquisition, disposal, development, financing, leasing and any other dealing with any Property or other asset of the Group;
- (d) all fees and expenses relating to advice in respect of the Group or its assets payable to valuers and professional advisers (including accounting and taxation advisers) whether or not they are associates of the Manager (provided that any fees and expenses payable to associates of the Manager that exceed amounts calculated on an arm's-length basis or which are not at least as favourable to the Company as could have been obtained elsewhere at the same time as the Manager entered into the relevant agreement, shall not be borne by the Group);
- (e) all taxes, fees or other governmental charges levied against the Company and all expenses incurred in connection with any tax audit, investigation, settlement or review of the Group;
- (f) all costs of prosecuting or defending any legal action by a third party for or against any member of the Group, the Manager or their affiliates (except to

the extent that the person incurring the expense is grossly negligent or to have wilfully defaulted, in which case those expenses paid or reimbursed must be repaid) and provided that any such legal action against the Manager or its affiliates relates to the role of the Manager pursuant to this Agreement;

- (g) all other expenses of the Group's operations, including costs and fees of trustees, custodians, insurance coverage (including directors and officers and professional indemnity insurance) and insurance of the assets of the Group, and any bank charges;
- (h) all auditing fees in relation to the Group;
- (i) all costs associated with raising or attempting to raise new equity, debt or other funding for the Group;
  - (i) the costs of the Company incurred in connection with the listing or quotation of any Company securities;
  - (ii) the costs payable to third parties for establishing and maintaining securities registers;
  - (iii) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to an investor;
  - (iv) the costs of dealings with NZX Limited or any other body in respect of the listing or quotation of any Company securities;
  - (v) the costs of dealing with investor enquiries and complaints;
  - (vi) the costs of investor communications and public relations advisers; and
  - (vii) the costs associated with publications and other marketing and promotional costs, including roadshows and presentations;
- (j) the fees payable to any regulatory, industry or other similar body in relation to the Company or any member of the Group;
- (k) the costs associated with the assigning or maintenance of a credit rating to the Company, the Group or any of its assets;
- (l) the costs of convening and holding meetings of holders of securities of the Company and the implementation of any resolutions; and
- (m) the costs associated with the termination, winding up or liquidation of the Company, any member of the Group or the retirement or removal of the Manager (other than fees paid for Disengagement Services under clause 14 which, for the avoidance of doubt, will not be payable twice by the Company).



## **6 Payment of costs**

- 6.1 The Manager shall provide to the Company a Tax Invoice in respect of any Operating Expenses and third party costs, disbursements and expenses that are to be reimbursed to the Manager pursuant to clause 5 of this Schedule. Such sums shall be paid by the Company by way of deduction from the Company's bank accounts by the Manager pursuant to the authority delegated to the Manager by this Agreement for the purpose of making payments on behalf of the Company to cover properly incurred costs, disbursements and expenses, including the payment of Fees, costs, disbursements and expenses sums due to the Manager.

## SCHEDULE 4 – FAIR MARKET VALUE

### 1 Determination of Fair Market Value

- 1.1 The Fair Market Value shall be the price for which the Manager's interest in this Agreement could reasonably be expected to be obtained in the open market by a willing but not anxious vendor and a willing but not anxious purchaser, on the assumption that the Company and the Manager have fully complied with the obligations on their part contained in this Agreement and disregarding any notice to terminate this Agreement and disregarding any notice to novate this Agreement given by the Manager to the Company pursuant to clause 15.2.
- 1.2 Subject to clause 1.1 of this Schedule, in determining the Fair Market Value under clause 2 of this Schedule, each Valuer and the Third Expert is to conduct the valuation in accordance with valuation standards, practices and principles generally accepted in New Zealand.

### 2 Valuation process

- 2.1 The Fair Market Value may be agreed between the Board and the Manager at any time before it is determined by the Third Expert in accordance with this Schedule.
- 2.2 Subject to clause 2.1 of this Schedule, the Fair Market Value will be determined as follows:
- (a) within five Working Days of the relevant termination notice, the Company and the Manager shall each appoint in writing an expert with experience in the valuation of management contracts and having not less than 5 years' experience in valuation generally (each a *Valuer*). Within five Working Days of the Valuers' appointment, the Manager will provide all information to each Valuer that would be reasonably required by a Valuer to determine Fair Market Value. The Manager will also provide all such other information as a Valuer may request for the purposes of its valuation promptly upon request by either Valuer and in a timely way so that the Valuers can issue their certificates within the time required by clause 2.2(c) of this Schedule 5. The information provided by the Manager, whether upon appointment of the Valuers or upon request by a Valuer, shall be provided at the same time to both Valuers;
  - (b) each of the Valuers will, before commencing their determination and within five Working Days of their appointment, appoint a third expert, who must also be an expert with experience in the valuation of management contracts and having not less than 5 years' experience in valuation generally (*Third Expert*). The Third Expert is to be instructed on its appointment to provide its determination of Fair Market Value within 20 Working Days of the issue to it of both certificates of the Valuers. If the Valuers cannot agree on the Third Expert, the appointment shall be made, on the application of either Valuer, by the President or Vice President for the time being of Chartered Accountants Australia New Zealand;

- (c) as soon as practicable and in any event within twenty Working Days after its appointment, each of the Valuers is to issue a certificate to the Company and the Manager specifying the Fair Market Value as determined by that Valuer. The Fair Market Value shall be expressed as a definitive amount in New Zealand dollars and not a range;
- (d) if the Valuers fail to agree on the Fair Market Value determined by each of them under clause 2.2(c) of this Schedule then the Fair Market Value shall be determined by the Third Expert;
- (e) the Third Expert will have regard to the Valuers' certificates provided under clause 2.2(c) of this Schedule and any written or oral representations provided by the Company and the Manager, but will not be bound by them;
- (f) the Valuers will procure the Third Expert, as soon as practicable and in any event within ten Working Days after the referral to it under clause 2.2(d) of this Schedule, to issue a certificate to the Company and the Manager specifying the Fair Market Value as determined by the Third Expert on the basis set out in clause 2.2(b) of this Schedule, subject to clause 2.2(g) of this Schedule;
- (g) the Fair Market Value determined by the Third Expert must be expressed as a definitive amount in New Zealand dollars and not a range and shall be no less than the lowest Fair Market Value determined by a Valuer in accordance with clause 2.2(c) of this Schedule and no more than the highest fair market value determined by a Valuer in accordance with clause 2.2(c) of this Schedule; and
- (h) the Valuers and the Third Expert are to act as experts and not as arbitrators in conducting the valuation.

### **3 Valuation binding**

- 3.1 The Company and the Manager agree that the Fair Market Value as agreed by the Valuers under clause 2.2(c) of this Schedule or determined by the Third Expert under clause 2.2(f) of this Schedule is final and binding on each of them in the absence of fraud or manifest error.

### **4 Costs of Valuers and Third Expert**

- 4.1 The costs of each party's Valuer in connection with the valuation are to be borne by the party that appointed that Valuer.
- 4.2 The Company and the Manager must jointly and severally indemnify the Third Expert for its costs. As between the parties, they will share the costs of the Third Expert equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.

## SCHEDULE 5 – SERVICES WHICH CANNOT BE SUBCONTRACTED

### Corporate

- 1.3 Open accounts with such authorised bank as the Company may from time to time appoint as its bankers in the Company's name, into which all moneys coming into the hands of the Manager on behalf of the Group will be paid, and operate such bank accounts, authorise the making of withdrawals from such bank accounts (including electronic payments), and sign cheques or authorise the signing of cheques drawn on such bank accounts, in accordance with any authority given by the Board from time to time in relation to such bank accounts.
- 1.4 As soon as practicable, on receipt of any moneys received on behalf of the Group, pay such moneys into a bank account held in the name of the Company.
- 1.11 Provide all necessary assistance as required by the Company for any debt or equity capital raising or other financing.
- 1.12 Conduct any litigation in respect of which the Group has any interest either as plaintiff, defendant or third party subject to any directions which may from time to time be given to the Manager by the Board.
- 1.13 Arrange for the annual financial statements of the Group to be prepared for Board review (and if thought fit, approval) and audited by the Group's auditor including the audit of the calculation of the Fees and other costs under this Agreement in respect of the accounting period concerned and the interim financial statements of the Group to be prepared for Board review (and if thought fit, approval) and, if required by Law or by the Board, reviewed by the Group's auditor including the review of the calculation of the Fees and other costs under this Agreement in respect of the accounting period concerned.
- 1.14 Prepare all reports and announcements required by the Listing Rules, and otherwise assist the Company to comply with the Listing Rules. The Manager shall also make continuous disclosure releases in accordance with the Company's policy and procedure for continuous disclosure.
- 1.16 Give to the Group all such assistance as the Company may reasonably require in connection with the preparation and filing of all tax returns (including GST returns) required to be filed by the Group.
- 1.17 Implement the Company's financial and treasury management policies adopted by the Board, including:
  - (a) the negotiation and supervision of all financial indebtedness of the Group that may from time to time be incurred or desired to be incurred by the Group;
  - (b) ensuring compliance with borrowing obligations and related security arrangements.

- 1.21 Liaise with the Group's share registrar to ensure that the register of shareholders is adequately maintained.
- 1.22 Arrange with the share registrar to pay any dividends or interim dividends declared by the Board.
- 1.23 Prepare and circulate notices, agendas and board papers for meetings of the Board.
- 1.24 Attend meetings of the Group, the Board and shareholders, and report to the Board at each meeting of the Board and otherwise when and as reasonably requested, on:
- (a) the Group's financial performance;
  - (b) any major maintenance, refurbishment or other work required to be carried out in respect of any Property or any issues or potential issues regarding any Property's compliance with any applicable statutory or regulatory regime;
  - (c) past or upcoming events, actions or occurrences of a material nature;
  - (d) any actual or potential threats to or opportunities for the Group, or the Group's business, including any actual or threatened litigation against the Group (including in respect of any Property) or any actual, threatened or proposed regulatory or legislative proposal or action;
  - (e) any matters which the Manager believes should be brought to the Board's attention; and
  - (f) such other matters as the Board reasonably requires.
- 1.25 Arrange the Group's shareholder meetings and give notices of any such meeting to all shareholders in accordance with the relevant constitution, and otherwise undertake all required shareholder communications.
- 1.26 Keep minutes of all Board meetings, Board committee meetings and shareholder meetings.
- 1.28 Prepare a draft annual budget for the Group and present the budget to the Board for consideration, and if thought fit, approval (the approved budget being the Annual Budget). The Manager shall manage the Company in accordance with the Annual Budget and report against the Annual Budget on a quarterly or other basis, as agreed between the Manager and Board. The Annual Budget must provide details, each to a level of detail reasonably required by the Board, relating to each Property, including details of:
- (a) income (rental revenue, operating expense recoveries, other revenue);
  - (b) expenses (property operating costs, outgoings and other expenses);
  - (c) capital expenditure;

and for the Company as a whole:

(d) loan to value ratio targets; and

(e) targeted dividends.

1.29 Prepare reports for presentation at each scheduled Board meeting. Each report must include, as a minimum, the following information:

(a) comparisons between budgeted and actual year-to-date financial information for the Group;

(b) operational successes, challenges, failures and emerging issues;

(c) property market activity;

(d) risk management, including identification of all material risks, risk status level and management mitigation plans;

(e) identification and assessment of financial opportunities external to budget assumptions;

(f) details of any property valuations carried out pursuant to any relevant regulations and policies; and

(g) level of compliance with applicable regulations and legislation.

## SCHEDULE 6 – DEED OF COVENANT

**NPT Limited**  
**Company**  
**[Kiwi Property Group Limited]**  
**Manager**  
**[ ]**  
**Covenantor**

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**DEED OF COVENANT**

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**RUSSELL McVEAGH**



## PARTIES

**NPT LIMITED ("Company")**

**[KIWI PROPERTY GROUP LIMITED] ("Manager")**

**[ ] ("Covenantor")**

## INTRODUCTION

- A. Pursuant to a management agreement dated [ ] ("**Agreement**") the Company appointed the Manager to provide exclusive management services to the Company and the Manager accepted such appointment on the terms and conditions as set out in the Agreement.
- B. The Manager has advised that it has assigned its rights and obligations as manager under the Agreement to the Covenantor.
- C. In accordance with clause 16.4 of the Agreement, the Covenantor must enter into this deed of covenant in favour of the Company under which the Covenantor agrees to be bound by the Agreement.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

- 1.1 In this deed, unless the context otherwise requires:
  - (a) "Company" and "Covenantor" include their respective successors, permitted assigns, executors and administrators.
  - (b) Words denoting the singular shall include the plural and vice versa.
  - (c) One gender shall include all the other genders.
  - (d) Words denoting persons shall include any firm, company or other body whether incorporated or not.
  - (e) Where any party comprises more than one person, each person shall be deemed to have entered into this deed jointly and severally, and the provisions of this deed shall bind such persons jointly and each of them severally.

### 2. COVENANTS

- 2.1 The Covenantor covenants and agrees with the Company that from the date of this deed the Covenantor shall observe, perform and comply with all of the obligations of the Manager set out in the Agreement.

### 3. CONFIRMATION

- 3.1 The Manager confirms to the Company that its assignment of its obligations under the Agreement to the Assignor was properly undertaken in accordance with clause [16.1(b)(i)(A)][16.1(b)(i)(B)].

**[Note: Delete as appropriate]**

### 4. COUNTERPARTS

- 4.1 This deed may be signed in any number of counterparts all of which, when taken together will constitute one and the same instrument. A party may enter into this deed by signing a counterpart copy and sending it to the other party, including by or e-mail.

### 5. FURTHER ASSURANCES

- 5.1 Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party or parties to obtain the full benefit of this deed according to its true intent.

### SIGNED AND DELIVERED AS A DEED

**NPT LIMITED** by:

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

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

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

**[KIWI PROPERTY GROUP LIMITED]** by:

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

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

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

**[ ]** by:

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

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

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director