

A thick, vibrant pink line starts from the top left, curves down and around to form a large, open loop on the left side of the page. It then continues to curve upwards and to the right, ending near the top right corner, creating a second, smaller loop.

Commercial management agreement

Commercial management agreement

A) Parties

1. ("the Manager")
 2. ("the Owner")
-

B) Appointment

The Owner hereby appoints the Manager as the manager of the Property and the Manager accepts the appointment from the Commencement Date for the Term upon and subject to the terms and conditions contained in this Agreement and annexed Schedules.

C) Commencement Date

D) Term

The term of this Agreement shall be for two (2) years from the Commencement Date (Term).

E) Property

Building name:

Address:

Legal description:

F) Contact details

Name/business/trust:

Bus:

Mob:

PO Box:

Email:

Contact address:

Statement email (if different from above):

G) Owner Nominated Bank Account

Bank:

Account number:

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Payment date:

(Disbursements to owners are paid monthly)

Commercial management agreement

H) Execution

To be executed by: Directors, trustees, general partners.

This management is arranged by BUPE.

Address:

Email:

Mob:

Signature Owner(s): _____

Signed by BUPE: _____

Print name(s):

Print name:

Date:

Date:

Schedule 1

Tenancy Schedule

Occupancy

Is the property currently tenanted: Yes No
(If 'Yes', please provide a copy of the ADLS Lease Agreement).

How many separate lease agreements are in the property:

Lessee

(If there is more than one lease in place, we will require the details for each lease.)

Name/business on lease:

Type of business:

Contact name:

Bus:

Mob:

PO Box:

Email:

Agreement Details

Lease start date:

Lease term:

Right of renewal:

Last rent review:

Next rent review:

Annual rent:

Annual OPEX:

OPEX instructions:

Does the OPEX include Managers' Fees:

Yes

No

Lease commencement date:

Lease final expiry date:

Make good:

Yes

No

Schedule 2

Managers Duties

1. Collection of all income

Collect all rental income, contributions to operating expenses, and other monies due from all Lessee of the Property as and when they fall due (Property Income). These funds are to be paid into the BUPE Client Account.

2. Payments to owner

Arrange for all amounts held in the BUPE Client Account which are payable to the Owner (being the Property Income less the Property Expenses), to be paid directly into the Owner Nominated Bank Account on the Owner Payment Date.

3. Payment of expenses

Pay all expenses relating to the Property as and when they fall due, including without limitation, general rates, special rates, water rates, utility charges, maintenance, BUPE management fees, and any other items of expenditure which relate to the ownership and upkeep of the Property (Property Expenses). These funds are to be paid from the BUPE Client Account.

4. Ongoing repairs and maintenance

Manage all maintenance and repairs required to the Property for which the Owner is responsible for under the terms of any Lease.

5. File maintenance

Maintain files and information and provide a copy of those files to the Owner (as requested).

6. Maintenance service contracts

Arrange and manage all service contracts for building services (including but not limited to, cleaning and caretaking contracts) to ensure that the Property is kept in a proper clean and tidy condition. If any Lease provides that these are the responsibility of the Lessee, the Manager will obtain confirmation that suitable arrangements are in place in compliance with the Lease.

7. Preventative repairs and maintenance

Prepare and maintain a preventative maintenance works program and agree with the Owner on the delivery and management of the program.

8. Major event

Immediately notify the Owner on becoming aware of any serious damage to the Property, or any other matter or thing which may or is likely to seriously affect the occupancy of the Property.

9. Building alterations and additions

Control and approve any building alteration or addition pursuant to the terms of any Lease.

10. Security contracts

Arrange and manage the building security service contract (if any and where not otherwise the responsibility of the Lessee) to ensure that the Property shall be kept properly secured.

11. Site visits

Carry out a physical inspection of the Property at a frequency agreed to with the Owner, and report the outcomes of such inspection in a timely manner.

12. Emergency services and evacuation procedures

Arrange and manage the emergency evacuation services contract.

13. Assignment, sub-letting or early termination

Control and approve any assignment, subletting or early termination of any Lease in consultation with the Owner.

14. Rent reviews

Implement all rent reviews in accordance with the terms of any Lease. Where necessary, obtain a valuation by a registered valuer in respect of any such rental review.

15. Lease renewals

Co-ordinate and complete the renewals of any Lease. Where necessary (but prior to the renewal date of any Lease) obtain a valuation by a registered valuer to assess the market rent on renewal. In consultation with the Owner, appoint a specialised real estate agent to facilitate any Lease renewal.

16. Leasing

Arrange and manage the process to lease any current or upcoming vacancy of the Property, including appointing a real estate agent on market terms and providing the Owner's solicitor with the necessary documentation to review and execute.

17. Insurance

Arrange and manage building insurance (including replacement fire cover, public liability cover, plate glass cover) as well as any other such insurance cover that may be required (including loss of rentals cover). Manage any insurance claims in respect of the Property pursuant to such policies. Where required, obtain a valuation by a registered valuer to assess the appropriate cover.

Managers Duties

18. Compliance with regulations and statutory requirements

In conjunction with the Owner, manage compliance with current regulations and statutory requirements (including arranging for IQP certification and annual building warrants of fitness).

19. Health and safety and OSH requirements

The Manager will take all reasonable steps to ensure that where the Property or part thereof is leased by a person conducting a business or undertaking (PCBU), the PCBU fully complies with applicable health or safety requirements detailed in the Health & Safety at Work Act 2015. Where hazards or potential hazards are notified to the Manager by the Lessee, the Manager will assess the hazard and provide appropriate recommendations for how to mitigate or remedy the hazard risk. As part of the assessment process and where required, the Manager will engage the services of suitable. Recommendations or required actions will be provided to the Owner for approval.

20. Income recovery

The Manager will pursue and recover any outstanding Property Income owed by any Lessee. In consultation with the Owner, the Manager will take such necessary action (including legal action and any other remedy as stipulated under the Lease) to recover such amounts.

21. Reporting

The Manager will provide a monthly report to the Owner on the operation of the Property.

22. Financial reporting duties

Complete all day-to-day transaction functions including invoicing for rent and outgoings, receipting of rent and operating expenses, authorization or work orders and contract services, and payment of all accounts. The Manager will maintain accurate cash flow projections and budgets, including debtor and creditor management. Where appropriate, the Manager will report in a timely manner on all major issues that require the Owner to resolve.

23. Body corporate representation

As and when required, the Manager will represent the Owner as Proxy (or agent) at all Body Corporate meetings (such as Annual or Extraordinary General meetings) and do all things reasonably necessary (that are within its power) to ensure that the Property complies with the Body Corporate Rules (which the Owner shall provide to the Manager in accordance with this Agreement).

Schedule 3

Managers Fees

1. Property management fees

- 1.1. The Manager will be entitled to a fee of 7.5% of the monthly 'net' rental collected from each Lessee occupying the Property under an Agreement to Lease ("Property Management Fee").
- 1.2. Management Fees due will be invoiced monthly to the Owner and paid by the Owner by way of a deduction from the net rent paid to the Owner each month (unless recovered under any Agreement to Lease as part of the operating expenses of the Property).

2. Project management fees

- 2.1. The Manager will be entitled to a fee for managing any make-good works at the expiry or termination of a tenancy, reinstatement works as a result of damage beyond normal wear and tear, and any other work of a capital nature carried out to the Property at one time, or concurrently over a period of time, as approved by the Owner under a capital expenditure budget ("Project Management Fee"). For clarity, Project Management Fees are not charged for the management of repair and maintenance work that the Owner is obligated to undertake under any existing Agreement to Lease.
- 2.2. For project management work, a fee shall be payable by the Owner to the Manager as follows (in addition to any out-of-pocket costs incurred as a direct result of the capital works such as travel and accommodation):
 - 7% for work costing up to \$100,000: thereafter.
 - 3% for additional costs between \$100,001 and \$500,000: and thereafter
 - 1.5% for additional costs over \$500,001

- 2.3. No project management work will be undertaken without the Owner's express agreement, with such agreement to be confirmed in writing before the same begins.

3. Lease facilitation fees

- 1.1. The Manager will obtain the Owner's express agreement in writing prior to making any changes to or extending any existing Agreements to Lease, or before entering into any new Agreements to Lease in order to mitigate vacancies and lost income.
- 1.2. The Manager will be entitled to a facilitation fee for any new Agreement to Lease, or the extension or renewal of a current Agreement to Lease for part or all of the Property ("Lease Facilitation Fee").
- 1.3. The Manager may engage the services of a preferred real estate agency and legal advisor to facilitate any change or new lease.

4. Additional services

- 4.1. Where the Owner requests advice or consultancy services from the Manager on any aspect outside the duties and responsibilities set out in the Second Schedule of this Agreement (including but not limited to premise condition reports and seismic assessment reports), the Manager shall submit a letter of engagement to the Owner for pre-approval detailing the services to be provided and the ("Additional Service Fee") for such services.

All amounts are exclusive of GST unless otherwise stated.

Schedule 4

Terms and Conditions

1. Appointment

- 1.1. The Owner hereby appoints the Manager as the manager of the Property and the Manager accepts the appointment from the Commencement Date for the Term upon and subject to the terms and conditions contained in this Agreement and annexed Schedules.

2. Term Renewal

- 2.1. The term of this Agreement shall be for two (2) years from the Commencement Date (Term).
- 2.2. Unless the Owner provides the Manager with two (2) months prior written notice of their intention not to renew this Agreement at the end of the current Term, the Agreement will renew for a further two (2) years commencing on the expiry of the current Term.

3. Manager duties

- 3.1. The Manager agrees that it shall carry out the Managers Duties as set out in the Second Schedule.
- 3.2. In addition to the standard duties and functions set out in the Second Schedule, the Manager may also carry out any other work which the Manager and Owner may agree (having regard to the expertise of the Manager) on such terms and conditions as the parties shall agree to in writing.

4. Owner duties

- 4.1. In consideration of the Manager performing its obligations under this Agreement, the Owner agrees:
 - a) to grant the Manager access to the Property, subject to the terms and conditions of any Lease;
 - b) to cooperate with the Manager where required to enable the Manager to effectively comply with its obligations as set out in this Agreement;
 - c) to comply with the provisions of all statutes (including the HSWA), ordinances, regulations and by-laws relating to the Property;
 - d) to comply with all service contracts, the Lease and other agreements approved by the Owner and made pursuant to this Agreement;
 - e) not to do anything in relation to the Property that the Manager is required to do pursuant to this Agreement (except through the Manager as its agent);
 - f) not to do anything which directly or indirectly interferes with or obstructs the Manager from doing anything that the Manager is required to do under this Agreement;
 - g) not to put the Manager in a position where the Manager is in breach of any laws; and
 - h) to pay the Manager all costs and expenses incurred in respect of the Property (including but not limited to any costs of complying with relevant legislation of territorial authority requirements) which are not payable from an operating expense account or for which there are insufficient funds in the operating expense account at the time such expenses or costs fall due; and
 - i) to provide the Manager with all required approvals or instructions within a reasonable time to enable the Manager to perform its duties.
- 4.2. The Owner shall indemnify the Manager in respect of all costs, damages, losses and expenses incurred or suffered by the Manager (or any subcontracted party) as a result of the performance of the Manager's obligations under this Agreement, except to the extent that such costs, damages, losses or expenses are as a result of a wilful or negligent breach of the Manager's duties set out in this Agreement.

5. Subcontracting

- 5.1. The Manager may subcontract any of its obligations under this Agreement.

6. Legal proceedings

- 6.1. The Manager shall not issue or commence, or threaten to issue or commence, any legal action in the name of, or on behalf of the Owner, or otherwise under any Lease or other contract or arrangement without first conferring with the Owner and obtaining the Owner's approval for such action. The Manager shall also consult with the Owner and comply with any directions of the Owner regarding the conduct of any such action.

7. Sale of the Property

- 7.1. Should the Owner decide to market the Property for sale, the Owner agrees that the Manager shall be responsible for managing the process to sell the Property, including appointing a real estate agent on market terms and providing the Owner's solicitor with the necessary documentation to affect such a sale.
- 7.2. Prior to accepting an offer to sell the Property, the Owner shall use its reasonable endeavours to ensure that the purchaser of the Property enters into a management agreement with the Manager on the same or similar terms and conditions as are contained in this Agreement.

8. Vacancies

- 8.1. The Owner acknowledges that the Property (or part thereof) may be vacant from time to time. Under such circumstances, the Property Income may be insufficient to meet the Property Expenses (Expense Shortfall). The Owner agrees to pay the Expense Shortfall amount into the BUPE Client Account within five (5) working days of receiving a written notice from the Manager to call for Owner funds to be made available.
- 8.2. The Manager shall be responsible for managing the process to lease any current or upcoming vacancy of the Property, including appointing a real estate agent on market terms and providing the Owner's solicitor with the necessary documentation to review and execute.

9. Termination

- 9.1. This Agreement may be terminated by either Party with immediate effect in any of the following circumstances:
 - (a) if one Party (Defaulting Party) fails to comply with any obligation imposed on it under this Agreement and such default continues for twenty (20) working days after the date that a written notice (Default Notice) has been received from the other Party (Non-Defaulting Party) requiring the failure to be remedied and the Defaulting Party either (i) has not commenced remediation or (2) has not notified the Non-Defaulting Party that it disputes the Default Notice;
 - (b) if the Property is destroyed or damaged to the extent of being incapable of repair or reinstatement or is rendered unable to be occupied;
 - (c) if a Party is placed into liquidation or receivership (except for the purposes of restructuring or amalgamation).
- 9.2. Deemed Termination: If the Owner agrees to sell the Property and is unable to procure the purchaser to enter into a management agreement in accordance with clause 7.2, the Owner will have deemed to have terminated this Agreement on the settlement date of the sale of the Property and will pay the Manager a termination fee equating to the management fees that the Manager would otherwise have collected during the unexpired portion of the Term.

10. Consequences of Termination

- 10.1. Upon termination of this Agreement or immediately upon its expiry:
 - (a) the Manager shall return to the Owner keys, and copies

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of all contracts, documents and records specific to the Property;

- (b) the Owner shall pay all fees and costs due and payable under this Agreement to the Manager;
- (c) the Manager will take such reasonable steps to ensure an orderly handover of the Manager's duties to the Owner during the termination notice period (if any). Following termination of this Agreement, if the Manager is requested to complete further duties and attendances in respect of the Property by the Owner, the Manager shall be entitled to charge appropriate fees.

10.2. Any termination of this Agreement shall be without prejudice to the rights of either Party against the other in respect of any antecedent breach of any of the provisions contained in this Agreement.

11. Urgent Repairs

11.1. The Manager is authorised to spend the Emergency Repair Budget on any unbudgeted urgent repair without reference to the Owner where the failure to complete such repair to the Property is likely to endanger the health and safety of the public or any Lessee or, if not addressed, would cause significant and costly damage to the Property. In such circumstances, the Manager shall notify the Owner as soon as practicable.

12. Property Information

- 12.1. The Manager is authorised to provide real estate agents with sufficient information and details to accurately advertise and market the Property for lease or sale.
- 12.2. The Manager agrees to take all reasonable steps to prevent the unauthorized disclosure of private or commercially sensitive information.
- 12.3. The Owner agrees to provide the Manager with all body corporate documentation (if any) applicable to the Property.

13. Non-Solicitation

13.1. The Owner agrees that during the Term and for the period twelve (12) months from the time that this Agreement expires or is terminated, it will not whether directly or indirectly, solicit or entice, or endeavour to solicit or entice, away any of the Manager's directors, officers, employees, or contractors or any person who is a related party of the Manager (as that term is defined under section 291A (1) of the Companies Act 1993).

14. Fees

- 14.1. The Owner shall pay to the Manager the Managers Fees set out in the First Schedule to this Agreement.
- 14.2. The Manager shall be entitled to review the Manager Fees at the end of each Term.
- 14.3. All overdue amounts owed to the Manager by the Owner shall accrue interest at the rate of 2.5% per calendar month.

15. Health and Safety

- 15.1. As the appointed manager of the Property, the Manager is required under the Health & Safety at Work Act 2015 (HSWA) to take all reasonable steps to ensure the health and safety of its personnel and contractors while at the Property, and that any work carried out by them at the Property does not put the health and safety of any other person at risk. To comply with this requirement, the Manager will:
 - (a) prepare, in consultation with the Owner, a health and safety program in relation to the Property;
 - (b) monitor the Manager's personnel and contractors' compliance with the program;
 - (c) operate a system auditing such a program; and
 - (b) keep the Owner reasonably informed in relation to the Manager's management of health and safety at the Property.

16. Indemnities

- 16.1. The Manager agrees to indemnify the Owner for all claims, demands, suits, proceedings, costs and expenses suffered or incurred by the Owner as a direct consequence of a failure by the Manager to observe or otherwise comply with clause 3, provided that the indemnity:
 - (a) shall not apply if the loss or damage caused to the Owner or the Property is as a result of the exercise of any right, obligation or authority conferred on the Manager pursuant to this Agreement; and
 - (b) shall not apply due to any default by the Manager in complying with the provisions of this Agreement or by reason of any negligence on the part of the Owner.
- 16.2. The Owner indemnifies the Manager against all claims, demands, suits, proceedings, costs and expenses suffered or incurred by the Manager arising out of or in connection with any negligent or wilful act or omission of the Owner, or any act or omission of the Owner arising out of or in connection with this Agreement, to the full extent permitted by law provided that the indemnity shall not apply due to any default by the Manager in complying with the provisions of this Agreement or by reason of any negligence on the part of the Manager.
- 16.3. In the event of any claim, demand, suit or proceeding (Cause of Action) in respect of which a party is entitled to be indemnified pursuant to clauses 15.1 and 15.3 (Indemnified Party), the following provisions shall apply:
 - (a) the Indemnified Party must immediately, upon becoming aware of the Cause of Action, give notice of the Cause of Action to the other party and must not make any payment or admission of liability in respect of the Cause of Action, or take any other steps that may, in any way, prejudice the defence of the Cause of Action without first obtaining the written consent of the other party, which consent shall not be unreasonably or arbitrarily withheld or delayed; and
 - (b) if the other party notifies the Indemnified Party that, as between the parties, it accepts full and unqualified responsibility for the Cause of Action, the Indemnified Party must (at the cost and expense of the other party):
 - (i) use its reasonable endeavours to ensure that the other party may prosecute, defend, or negotiate in respect of the Cause of Action; and
 - (ii) provide all such other reasonable assistance to the other party as they may reasonably require in relation to the Cause of Action,
 - (c) provided that nothing in this clause 15.4 limits or otherwise affects the indemnification of the Indemnified Party pursuant to this clause 15.
- 16.4. Despite any other terms of this Agreement, to the maximum extent permitted by law and whether arising in contract, tort, under indemnity or otherwise (including as a result of negligence or breach), the maximum aggregate liability of the Manager to the Owner for any claim, damage, loss or expense (including in respect of legal fees and expenses) shall be limited to \$100,000.00.
- 16.5. This clause 15 (except for clause 15.5) does not merge on the expiry or sooner termination of this Agreement.

17. Insurance

- 17.1. The Owner shall note the Manager as an insured party on all insurance policies in relation to the Property.

18. Warranties

- 18.1. The Owner hereby warrants that:
 - (a) They have the authority to enter into this Agreement as the legal owner of the Property;
 - (b) The Property complies with the Building Act 2004 and the building code;

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- (c) All operating expenses relating to the Property have been recovered from the Lessees (where applicable);
- (d) There are no claims, disputes or actions being taken against the Owner in relation to the Property by any Party;
- (c) All Property hazards have been disclosed to the Manager at the commencement of this Agreement including, but not limited to, health and safety hazards, contamination hazards, and the presence (if any) of asbestos; and
- (d) The Property is fully insured at the commencement of this Agreement.

19. Assignment

- 19.1. The Manager may assign or transfer its interest under this Agreement to any assignee capable of undertaking the obligations of the Manager under this Agreement.

20. Confidential Information

- 20.1. Neither party shall either directly or indirectly, use or divulge to any person any knowledge or information concerning the other party, the other party's operations, business affairs and property (Confidential Information) except:
- (a) in carrying out its obligations under this Agreement; or
 - (b) with the consent of the other party; or
 - (c) in respect of Confidential Information that has become public knowledge, other than as a result of unauthorised disclosure by either of the parties or their directors, officers, employees, agents, contractors, or representatives; or

- (d) confidential Information that is required to be disclosed to the auditors of either party or to any governmental agency or otherwise as required by law.

- 20.2. Each party shall use its reasonable endeavours to ensure that its directors, officers, employees, agents, contractors, or representatives who are, at any time, in possession of Confidential Information do not disclose or permit the disclosure or use of such Confidential Information except as specifically provided in clause 17.1

21. Dispute Resolution

- 21.1. In the spirit of mutual goodwill and cooperation, the parties shall, from time to time, meet with each other, as necessary, to discuss, in good faith, any differences or difficulties that may arise in relation to this Agreement and each party shall use its reasonable endeavours to resolve the matter before recourse to arbitration or other legal process.
- 21.2. In the event of any dispute or difference between the parties as to the construction of this Agreement or as to any matter or thing arising out of this Agreement that is not resolved under clause 18.1, such dispute or difference shall be referred to the arbitration of one arbitrator (agreed upon by the parties or, if they are unable to agree within 14 days, appointed by the President of the Auckland District Law Society) in accordance with the Arbitration Act 1996. The award of such arbitrator shall be final and binding upon the parties. The parties shall bear an equal share of the costs of the arbitration unless the arbitrator determines that one party shall bear a proportion of the costs of the other party.



Get in touch with BUPE

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