Commercial management agreement

BUPE

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) Management Fees

The Landlord hereby agrees to pay the base management fee of ______ % to Residential RE Limited (Trading as BUPE)

F) Property

Building name:

Address:

Legal description:

Does the Building have/require a Building Warrant of Fitness (BWOF): ☐ Yes ☐ No

G) Owner Contact Details

Name/business/trust:

Contact Name:

Bus: Mob: PO Box:

Email:

Contact address:

Statement email (if different from above):

Commercial management agreement

H) Terms and Conditions

I) Owner Nominated Bank Account

Bank: Account number: – – –

Payment date:

Disbursements to owners are paid monthly Disbursement dates: 6th & 20th of each month.

J) Execution

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

Signature Owner(s):

Print name(s):

Date:

Signed by BUPE:

Print name:

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: Rent Start Date: Lease Term:

Right Of Renewal: Notice Period: Final Expiry:

Lease Type: Gross Net Annual Rent: Annual OPEX:

Default Interest: Bank Guarantee: OPEX Percentage:

OPEX instructions:

Management Fee to be paid by OPEX: Yes No Rent Payment Date:

Next Rent Review Date: Last Rent Review Date:

Rent Review Structure:

Cap/Collars on the Lease: Yes No Details:

Make Good: Yes No Existing Arrears: Yes No

Tenancy Schedule Clauses/Other Details:

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, council 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 and arrange maintenance and repairs required to the Property.

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 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. Inspections ☐

Carry out annual inspections of the Property, and report the outcomes of inspections in a timely manner.

10. Emergency services and evacuation procedures ☐

Arrange and manage the emergency evacuation services contract when required.

11. Assignment, sub-letting or early termination ☐

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

12. Rent reviews ☐

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

13. 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.

14. 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.

15. Insurance ☐

At the Owner's request and expense, to arrange and manage the building as well as any other such insurance cover that may be required. Assist in any insurance claims in respect of the Property pursuant to such policies. Where required, obtain a valuation from a registered valuer to assess the appropriate cover.

16. Compliance and BWOF ☐

Arrange and coordinate all Building Warrant of Fitness (BWOF) requirements engaging qualified contractors to manage inspections and maintenance of the specified systems.

Managers Duties

17. Health and Safety

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.

18. 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.

19. Monthly statements

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

20. 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 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.

21. 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

Owners Duties

The Owner shall ensure the Property complies with all applicable legislation, including but not limited to:

- Health and Safety at Work Act 2015
- Building Act 2004
- Fire and Emergency New Zealand Act 2017
- Resource Management Act 1991
- Local authority by-laws, consents, and zoning requirements

1. Compliance with Laws and Regulations

1.1 The owner confirms that all building work complies with the Building Act 2004 and the Building Code, ensuring buildings are safe, healthy, and durable. This includes obtaining necessary building consents for construction, alteration, or demolition activities.

1.2 Before commencing any building work, a building consent must be obtained from the local Building Consent Authority (BCA).

1.3 Owners of commercial buildings with specified systems (e.g., fire alarms, lifts) must have a compliance schedule and provide an annual BWOF (Building Warrant of Fitness)

1.4 Owners are responsible for maintaining their buildings in a safe and sanitary condition. If a building is altered, it may need to be upgraded to meet current Building Code requirements, especially concerning fire safety and access for people with disabilities.v

2. Health and Safety

2.1 Ensure the property is safe and maintain a safe environment for tenants, contractors and visitors.

2.2 The Owner acknowledges their obligation under the Fire and Emergency New Zealand Act 2017 and any applicable fire safety regulations to ensure that an appropriate emergency evacuation procedure is established and maintained for the Property and the appropriate fire systems are in place.

2.3 The Owner acknowledges and agrees that, in accordance with the Health and Safety at Work Regulations 2016, they are responsible for ensuring that any asbestos or asbestos-containing materials (ACMs) identified or reasonably suspected to be present on the Property are appropriately managed. The Owner shall, at their sole cost and expense, engage suitably qualified professionals to conduct an asbestos survey (if required) and obtain and implement an Asbestos Management Plan where asbestos is identified or assumed.

3. Insurance

3.1 The Owner is responsible for maintaining appropriate insurance coverage on the property including public liability, building and landlord insurance including loss of rent cover.

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

3.3 The Owner will notify the Manager immediately of any insurance claims or incidents.

4. Repairs and Maintenance

4.1 Maintain structural integrity, building envelop, and common areas and approve and fund capital repairs and major maintenance works.

4.2 Fund operating expenses not recoverable from tenants, including non-reimbursable compliance items.

4.3 Approve budgets and expenditure thresholds as agreed with the Property Manager.

5. Property Information

5.1 The Owner agrees to provide the Manager with all relevant information necessary for effective management. This includes (but is not limited to) copies of leases, compliance schedules, building plans, body corporate details, warranties, service contracts, health and safety records, and any existing maintenance or inspection reports.

5.2 The Owner must also disclose any know defects, hazards, or legal obligations affecting the property.

5.3 The Owner must promptly notify the Property Manager of any changes in ownership, insurance, mortgagee instructions, or material risks, and collaborate on decisions impacting the property's strategic or legal management.

5.4 Notify the Manager of any change in contact details, circumstances, ownership or otherwise that will affect the management of the property.

6. Contractual Obligations

6.1 Honour any contractual commitments related to the property (e.g., service provider contracts or third-party agreements).

6.2 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.

Schedule 4

Managers Fees

1. Property management fees

1.1. The Manager will be entitled to a minimum 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. Notwithstanding any percentage-based fee structure agreed herein, the Manager shall be entitled to a minimum monthly management fee of $350 (plus GST if applicable) per tenancy. This minimum fee shall apply regardless of the actual rent collected and shall be payable for each tenancy managed under this agreement.

1.3. In the event that the calculated percentage-based fee is less than the minimum fee, the minimum fee shall prevail.

2. Maintenance Coordination Fees

2.1. The Manager shall, on behalf of the Owner, arrange for and coordinate necessary maintenance and repair works for the Property, in accordance with the terms of this Agreement and subject to any pre-approved expenditure limits.

2.2. For any maintenance or repair work exceeding $1,000 + GST, the Manager shall first obtain the Owner’s written approval unless the work is urgent or of an emergency nature (in which case, the Manager shall notify the Owner as soon as practicable).

2.3. In consideration for coordinating maintenance and repair works, the Manager shall be entitled to a coordination fee equal to 7.5% of the total cost of the works (excluding GST). This fee shall cover arranging tradespeople, obtaining quotes, supervising works where required, verifying completion, and processing invoices.

3. Vacancy fee

3.1. In the event that any tenancy within the Property becomes vacant, the Manager shall continue to provide essential property management services including, but not limited to, property inspections, securing and maintaining the premises, attending to compliance matters, coordinating repairs and maintenance, and facilitating new leasing activities.

3.2. To compensate the Manager for these continued responsibilities during vacancy periods, the Owner agrees to pay a vacancy fee of $200 + GST per month per vacant tenancy. The vacancy fee shall cease upon commencement of a new lease agreement for the relevant space.

3.3. In the event that the manager will not continue to provide essential management services during the vacant period, then the management fee will be waived during this period.

4. Project management fees

4.1. 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.

4.2. 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

4.3. 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.

5. Lease facilitation fees

5.1. 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.

5.2. The Manager will be entitled to a facilitation fee of 0.5% of the annual net rental for any new Agreement to Lease, extension, variation or renewal of a current Agreement to Lease for part or all of the Property (“Lease Facilitation Fee”).

5.3. The Manager may engage the services of a preferred real estate agency and legal advisor to facilitate any change or new lease.

6. Dispute Coordination Fee

6.1. In the event that any dispute, legal action, arbitration matter, or other proceeding arises in relation to the Property, the tenancy, or any matter arising from this Agreement, and the Manager is required to provide assistance, the Manager shall be entitled to charge a Dispute Coordination Fee.

6.2. This fee shall be calculated at the rate of $80 + GST per hour, for time spent on preparing documentation, attending meetings or hearings, liaising with legal representatives, and providing evidence or reports.

6.3. This fee shall be payable in addition to any third-party legal or court costs incurred and may be invoiced monthly or as otherwise agreed.

6.4. In the event that the Manager needs to serve a Property Law Act Notice to a tenant, this will be a one-off fee of $350 plus GST. Property Law Act Notices must be served in person according to the PLA Act 2007.

7. Additional services

7.1. 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.

7.2. Where additional inspections are required outside of the agreed routine schedule - such as re-inspections following remedial work, tenant vacate inspections, insurance inspections, or inspections initiated at the Owner's request - an additional fee of $200 plus GST per inspection shall apply.

All amounts are exclusive of GST unless otherwise stated.

Schedule 5

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 term of (2) years commencing on the current term expiry date.

3. Subcontracting

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

4. Legal proceedings

4.1. 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.

5. Sale of the Property

5.1. 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.

5.2. 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.

6. Vacancies

6.1 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.

6.2 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.

7. Termination

7.1. 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).

7.2. 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.

8. Consequences of Termination

8.1. Upon termination of this Agreement or immediately upon its expiry:

(a) the Manager shall return to the Owner keys, and copies 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.

8.2. 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.

9. Urgent Repairs

9.1. 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.

10. Non-Solicitation

10.1. 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).

11. Fees

11.1. The Owner shall pay to the Manager the Managers Fees set out in the First Schedule to this Agreement.

11.2 The Manager shall be entitled to review the Manager Fees at the end of each Term.

11.3 All overdue amounts owed to the Manager by the Owner shall accrue interest at the rate of 2.5% per calendar month.

Terms and Conditions

12. Indemnities

12.1. 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.

12.2. 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.

12.3. 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.

12.4. 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.

13. Assignment

13.1. 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.

14. Confidential Information

14.1. 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.

14.2. 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

15. Dispute Resolution

15.1. 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.

15.2. 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.

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