

Appointment of Agent for Management/Letting of Marina Berth at Port of Airlie



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Appointment of Agent for Management/Letting of Marina Berth at Port of Airlie

Part 1 Client Details	
To be completed by the client (the person/company who the service will be performed for).	Name/s: <u>Glen & Brenda Finning trustee for The Finning Family Superfund</u> Company Name (If applicable): ACN: _____ Registered for GST: <input type="checkbox"/> Yes <input type="checkbox"/> No ABN: _____ Address: <u>PO Box 980 Yeppoon, QLD 4703</u> Phone: <u>0447632266</u> Fax: _____ Mobile <u>0447632266</u>
Part 2 Agent Details	
	Agent's Name: <u>MERIDIEN MANAGEMENT PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)</u> ACN: <u>147 036 860</u> Registered for GST: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No ABN: <u>50 147 036 860</u> Address: <u>PORT OF AIRLIE MARINA AND INFORMATION CENTRE 13 THE COVE, AIRLIE BEACH QLD 4802</u> Phone: <u>(07) 4948 0643</u> Fax: <u>(07) 4948 0687</u> Mobile _____
Part 3 Berth Details	
Please provide details of the berth to be leased or managed	Berth No: <u>J1</u> Port of Airlie, Queensland Lot: <u>Lots 120 & 123</u> Plan: <u>SP 218220</u> Title Reference: <u>40057710</u> Description of Lease No: <u>STATE LEASEHOLD (BEING PART OF TERM LEASE 0/233003)</u>
Part 4 Appointment of Agent	
4.1 Appointment of Agent If insufficient space, please attach schedule.	The client appoints the agent to perform the following services: <input checked="" type="checkbox"/> Letting/Leasing of berth <input checked="" type="checkbox"/> Collection of Rent <input checked="" type="checkbox"/> Administration <input checked="" type="checkbox"/> Collection of Berth associated expenses (including electricity, water & other charges)

<p>4.2 Assignment clause</p> <p>Mark the box whether you agree or disagree with the assignment. In the absence of a marked box and initials, it is taken that the client does agree to this assignment clause</p>	<p>The client agrees that the agent, may at any stage throughout the appointment, assign the appointment to another managing agent without changing the terms of the appointment.</p> <p><input checked="" type="checkbox"/> I agree with the assignment clause <input type="checkbox"/> I disagree with the assignment clause</p> <p>Client to initial: <u>AM ef</u></p> <p>Note: The client will receive notice of the assignment, including the name and business address of the managing agent being assigned the appointment</p>
<p>Part 5 Performance of Service</p>	
<p>Conditions, limitations or restrictions.</p>	<p>Agent and client to agree on and outline here how the services will be performed and any conditions, limitations or restrictions on the performance of the services:</p> <p><i>The Agent is appointed to manage the day to day operations of the marina berth including but not limited to letting of the berth, collection of rent, repairs & maintenance, payment of accounts relating to the marina berth and inspections.</i></p>
<p>Part 6 Single or Continuing Appointment</p>	
	<p>The appointment is a: <input type="checkbox"/> Single appointment (for a particular service)</p> <p> <input checked="" type="checkbox"/> Continuing appointment (for a number of services over a period)</p> <p>End of continuing appointment: <i>When notice in writing is given by either party</i></p> <p>If the appointment is a continuing appointment, the client may revoke it by giving 90 days notice in writing to the agent, unless the client and the agent agree to a shorter notice period (but it must not be less than 30 days).</p> <p>Agreed notice (if less than 90 days) is: <u>60</u> days</p> <p>The term of the appointment can be renewed by mutual agreement between the agent and client.</p>
<p>Part 7 Leasing or Rental Charge</p>	
	<p>Listed leasing or rental charge (letting and property management):</p> <p><i>(Based on current annual income) Rental is subject to market conditions and negotiation by Agent between Lessor and Lessee for the marina berth.</i></p>
<p>Part 8 Deduction for Sinking Fund, Outgoings and Electricity by the Agent</p>	
	<p>The Agent is hereby authorised to deduct all outgoing, sinking fund and electricity charges imposed by the Port of Airlie from any rental received in relation to the Berth and in the event that sufficient rental is not received to invoice the Berth Owner for such costs on behalf of Port of Airlie.</p>

Part 9	Intentionally Deleted
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Part 10	Commission
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10.1 Agreed Commission

Please note that you (the client) will have to pay Goods and Services Tax (GST) on any commission chargeable under this appointment.

The client and agent agree that the maximum commission (and GST) payable for the service to be performed by the agent is:

You must express the commission in both formats

	Dollar amount	Percentage
Total Commission \$	<i>Refer to percentages noting that Net Berth Rental is not fixed and will fluctuate</i>	15% of Net Berth Rental
GST \$	<i>Refer to percentages noting that Net Berth Rental is not fixed and will fluctuate</i>	10% of Total Commission
Other \$	NIL	NIL

Percentage: Commission expressed as a percentage is worked out only on the amount of rent or leasing fee actually collected.

Amount: Commission expressed as an amount represents the commission payable if the property is rented or leased at the listed charge (see Part 7 above). If the actual amount of rent collected is higher or lower than the listed charge, then the amount of commission payable may vary from the amount stated above.

10.2 When Payable

Agent and client to agree when commission is payable.

Payable each three months or at the conclusion of each individual rental period for the Berth in question, whichever occurs earlier.

Part 11	Fees and Charges
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11.1 Amounts Payable

Please note that fees and charges chargeable under this appointment are inclusive of Goods and Services Tax (GST)

Amounts payable (list fee/charge and amount):

Direct advertising costs associated with the promotion of the specific berth, or in conjunction with other owners on the advertising of a number of berths including the one subject to this agreement.

11.2 When Payable

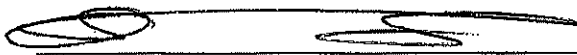
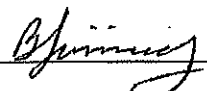
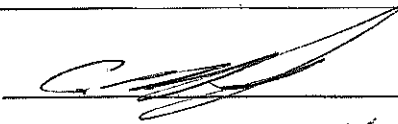
Agent to specify when fees and charges are payable.

Direct cost payable within 7 days to Meridien Management on placement of advertisement, receipt and presentation (by email, fax or mail) of invoice to Client.

11.3 Maximum Value

Letting/leasing management only.

The maximum value of repairs and maintenance to be paid by the agent without prior approval by the client is: \$ 1,000.00

Part 12 Expenses	
12.1 Authorisation to incur expenses Agent is to complete in relation to each service or category of service. Attach schedule if extra space is required. Note: Only the actual amount of any expense can be retained or recovered by the agent, if expenses are authorised.	The client authorises the agent to incur the following expenses in relation to the performance of the service/s: (Agent to complete in relation to each service or category of service) 12.1.1 Advertising/Marketing (if any): <i>At Lessors expense upon written confirmation of expenditure authorised.</i>
Part 13 Signatures	
Client 1:	Signature  Signatory (print name) <u>Glen Finning</u> Date signed <u>22/8/16</u>
Client 2:	Signature  Signatory (print name) <u>Brenda Finning</u> Date signed <u>22/8/16</u>
Agent	Signature  Signatory (print name) <u>G. Matthews</u> Date signed <u>22/8/16</u>
SCHEDULES OR ATTACHMENTS (if applicable)	

Terms and Conditions

1. CLIENT APPOINTS MANAGING AGENT

For the commission and other remuneration payable by the Client, the Managing Agent, agrees to manage the Berth on the terms and conditions contained in this Agreement

2. WHAT MAKES UP THIS AGREEMENT

This Agreement is comprised of:

- (a) the Appointment of Agent;
- (b) the Items Schedule and Instructions; and
- (c) the Terms and Conditions.

3. MEANINGS OF WORDS

"Client" means the Client nominated in Part 1 of the Appointment.

"Commission" means the Commission nominated in Part 10 of the Appointment and which is detailed in Item B of the Items Schedule.

"Items Schedule" means the Items Schedule and Instructions forming part of this Schedule.

"Managing Agent" means the Agent nominated in Part 2 of the Appointment.

"Berth" means the berth nominated in Part 3 of the Appointment.

"Receiver" means, as the context permits or requires, either or both of the joint and several receivers and managers of the Principal, namely:

- (a) Mr Kenneth Michael Whittingham; and
 - (b) Mr David Michael Webb,
- of PPB Advisory (or any other firm).

"Related Person" means:

- (a) each related body corporate of the Agent;
- (b) each agent, director, officer, employee and advisor of the Agent or of a related body corporate of the Agent; and
- (c) the Receiver and each officer, director, partner, employee, agent or advisor of the Receiver or of any firm or company employed by or associated with the Receiver and their respective agents or advisors.

"Schedules" means the Items Schedule, Terms and Conditions and any annexures attached to this Appointment.

4. APPOINTMENT TO LEASE AND MANAGE

The Client appoints the Managing Agent as agent of the Client to let and manage the Berth to the extent authorised by this Agreement.

5. CLIENTS OBLIGATIONS

The Client must:

- 5.1 pay to the Managing Agent the commissions, fees, charges and expenses, set out in this Agreement, including those contained in the Schedule;
- 5.2 pay to the Managing Agent the amount by which any reasonable and proper expenditure incurred exceeds the amount of rents collected, immediately upon receipt of advice from the Managing Agent;
- 5.3 where consent or instructions are sought by the Managing Agent under 8.11 provide such consent or instructions within 5 business days;
- 5.4 make available to the Managing Agent all accounts and notices pertaining to the Berth immediately that these items are available;

6. CLIENTS WARRANTIES

The Client warrants to the managing Agent that:

- 6.1 the Client owns or is in the process of becoming the owner of the Berth described in Part 3 of the Appointment;
- 6.2 all information given to the Managing Agent about the Berth is true and correct in all respects and is neither misleading nor deceptive nor likely to be either; and
- 6.3 the Client has not withheld any information that might have caused the Managing Agent not to enter this Agreement.

7. CLIENTS ACKNOWLEDGEMENTS

The Client acknowledges that:

- 7.1 the Managing Agent is under no obligation to the Client to institute legal proceedings in respect of any unpaid rents or in respect of any other breach of any lease or tenancy of the Property;
- 7.2 the Managing Agent is under no obligation to the Client in respect of any default in payment of rent or any other default on the part of any tenant/lessee of the Property or for any damage done by or any unsatisfactory conduct on the part of any such tenant/lessee;
- 7.3 the Managing Agent is not a licensed engineer, architect, builder or any other type of professional or tradesperson and is only responsible to report to the Client on matters that are readily apparent on a visual inspection or which are reported to the Managing Agent in writing by a third party;
- 7.4 the Managing Agent is authorised to accept service on behalf of the Client of any Payment Claim, as may be produced and served upon the Managing Agent by contractors and the Managing Agent may, subject to the Clauses 8.5 and 8.8, issue a Payment Schedule on behalf of the Client to the contractor.

8. MANAGING AGENTS AUTHORITY

The client authorises the Managing Agent to:

- 8.1 collect rents and other charges payable and issue trust account receipts for money collected;

8.2 receive from rents collected, any commission fees and charges payable to the Managing Agent under Parts 10 and 11 of the Appointment and the Schedule, and to pay any expenditure properly and reasonably incurred in relation to the Berth;

8.3 pay out such rents as and when due the costs and expenses set out in Item A of the Items Schedule if the amount of rent collected is sufficient;

8.4 during the term of the Appointment, including at the termination of each lease/tenancy period, actively seek suitable tenants/lessees for the Berth, bring such tenants or lessees to the attention of the Client and provide the Client with all such information as will allow the Client to make an informed decision as to the suitability and acceptability of the tenants/lessees;

8.5 authorise expenditure of any sum in excess of the maximum amount under Part 11 of the Appointment for such repairs and replacements as are, in the Managing Agents opinion, necessary to maintain the Property as required by the law or for the safety or protection of the occupants, the Berth or its contents;

8.6 incur, if proper and necessary in order to lease the Berth, advertising, marketing, travelling, office and administrative expenditure not exceeding in the amount set out in Part 12 of the Appointment in each case;

8.7 inspect the Berth or any vessels located in the Berth to view the state and condition of the Berth;

8.8 deduct all outgoings, sinking fund and electricity charges imposed by the Port of Airlie from any rental received in relation to the Berth and in the event that sufficient rental is not received to invoice the Berth Owner for such costs on behalf of Port of Airlie.

9. MANAGING AGENTS OBLIGATIONS

The Management Agent must:

9.1 account to the Client by forwarding quarterly statements showing details of income collected, expenditure incurred, any arrears outstanding and any other information as shall be agreed upon between the Client and the Managing Agent;

9.2 maintain a true and correct record of all leases and agreements relating to the Berth and inform the Client promptly of all rent review dates and the dates of option to extend leases and tenancies;

10. RESTRICTIONS ON MANAGING AGENTS AUTHORITY

The Agent must not:

10.1 subject to Clause 8.3 and 8.5, pay out any monies for repairs and replacements in excess of the maximum amount set out in Part 11 of the Appointment without the authority of the Client;

10.2 exercise any one or more of the following functions without first obtaining the Clients written consent or approval in each case

10.2.1 accept any person/persons to be tenants/lessees for berthing periods greater than three (3) months or during owner written requested periods of exclusive use (for purposes of clarity if the berthing period is less than three (3) months and the owner has not requested

in writing that the exclusive use of the berth is to apply during the berthing period, the agent does not need to get written permission and can accept any person/persons to be tenants/lessees);

10.2.2 exercise the Clients right to terminate leases and tenancies;

10.2.3 service notices upon any tenants/lessees;

10.2.4 issue notices to quit to any tenants/lessees;

10.2.5 sue for, and in the name of, the Client to recover sums due by the tenants/lessees;

10.2.6 instruct solicitors or other consultants to act on behalf of the Client;

11. SALE OF PROPERTY

11.1 In the event of a sale of the Property the Clients interest in this agreement shall be assignable to the purchaser or, at the direction of the client, terminated by the Client by notice in writing to the Managing Agent not less than one month prior to completion of such sale.

12. TERMINATION

12.1 The client may terminate this agreement by giving one months notice in writing to the Managing Agent in the event that the Managing Agents is in breach of any of its obligations and fails to take the necessary action to remedy such breach (if such breach is capable of remedy) within seven (7) days of being requested to do so by the Client

12.2 The Managing Agent may terminate this appointment by one month's notice in writing to the Client provided that such termination will be without prejudice to the rights (if any) of either party against the other (including a claim for unpaid remuneration by the Managing Agent against the Client) as at the date of such termination.

12.3 Despite Clauses 12.1, 12.2 and 12.3, if either party wishes to terminate this Agreement, it must be terminated in accordance with Part 6 of the Appointment. If Part 6 is not completed, Part 6 is deemed to provide that this Agreement ends on the date when one of the following happens:

12.3.1 The Client or Managing Agent exercises the option to revoke the Appointment under Section 133(4)(b) of the *Property Agents and Motor Dealers Act 2000* in which case the party exercising the option to revoke must give the other party 90 days notice unless the Client and the Managing Agent agree on some lesser period (but not less than 30 days); or

12.3.2 The Client signs a transfer of, or contract to sell, the Property in which case the Client must give the Managing Agent not less than 30 days notice;

12.4 The Client must pay the Managing Agent all commissions, expenses and fees to which the Managing Agent is entitled during the notice period specified in Part 6 of the Appointment, or if not specified under Part 6 of the Appointment, the notice period given under Clause 12.4.1 or 12.4.2 above;

12.5 Any termination does not effect either party's pre-existing rights and obligations

13. CLIENT INDEMNIFIES MANAGING AGENT

13.1 The Client indemnifies the Managing Agent and therefore must pay the Managing Agent for liability, loss or costs the Managing Agent suffers or incurs from all actions, claims, demands, damages and expenses arising out of or in respect of its capacity as Managing Agent of the Client.

13.2 Without limiting the generality of Clause 13.1, the Client indemnifies the Managing Agent from and against all actions, claims demands, losses, costs, damages and expenses arising out of in respect of:

13.2.1 The Client's failure to give timely, appropriate or sufficient funds to or for the Managing Agent to carry out an instruction or authority;

13.2.2 The Client's failure to give instructions or unreasonably withhold consent in accordance with Clause 5.4

13.2.3 The Client's failure to give timely payments under Clause 5.3.

14. RECEIVERSHIP OF AGENT

14.1 Acknowledgement

The Client acknowledges that:

14.1.1 the Receiver has been appointed as the receiver and manager of the Agent and is entering into this agreement in his, her or their capacity as receiver and manager; and

14.1.2 the Receiver has executed this agreement and will execute documents under or contemplated under this agreement.

14.2 No Claim against the Receiver

The Client agrees that:

14.2.1 It accepts and takes no Objection to this agreement or any other related documentation being executed or given effect to by the Receiver;

14.2.2 the Receiver is not liable personally or in any other capacity for any of the obligations of the Agent under or in respect of this agreement or otherwise;

14.2.3 nothing in this agreement (whether express or implied) will render the Receiver liable in any way (whether in his capacity as receiver and manager, personally or otherwise)

14.2.4 none of the Related Persons will be liable personally or in any other capacity for any of the obligations of the Agent under or in respect of this agreement or otherwise;

14.2.5 nothing in this agreement (whether express or implied) will render the Related Persons liable in any way;

14.2.6 the Client releases the Receiver and each Related Person from any Claim (whether arising prior to or after execution of this agreement) arising out of or in any way related to this agreement;

14.2.7 this document is executed for the benefit of the Receivers in their own right and in their capacity as receivers and managers of the Agent; and

14.2.8 the Client will make no Claim or raise any Objection as to the Receiver's power or capacity to:

14.2.8.1 enter into or cause the Agent to enter into this agreement;

14.2.8.2 execute or cause the Agent to execute any document under or contemplated under this agreement; or

14.2.8.3 complete or perfect or cause the Agent to complete or perfect any obligation under this agreement.

14.3 Benefit to third parties

14.3.1 To the extent that any provision of this deed relates to a promise given to, or for the benefit of, the Receiver or any Related Person as a third party, such provisions are given effect by section 55 of the Property Law Act 1974.

15. ENTIRE AGREEMENT

15.1 This documents constitutes the entire agreement of the parties with respect to the subject matter of this document and supersedes all prior negotiations or expressions of intent or understanding with respect to the appointment of the Managing Agent to the Property.