

Management rights deed

Aspect Property Group Aust. Pty Ltd A.C.N. 099
103 161 as trustee for The Larkin Family Trust

Savvi Properties Pty Ltd A.C.N. 612 728 748

Brisbane Office
Level 18
167 Eagle Street
Brisbane Qld 4000

GPO Box 3311
Brisbane Qld 4001

p 07 3007 3777
f 07 3007 3778

Gold Coast Office
Level 2
235 Varsity Parade
Varsity Lakes Qld 4230

PO Box 482
Varsity Lakes Qld 4227

p 07 5562 2959
f 07 5575 7803

info@mahoneys.com.au
www.mahoneys.com.au

ABN 99 349 703 654

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Details

This management rights deed is dated: 14 NOVEMBER 2016

Parties

ASPECT PROPERTY GROUP AUST. PTY LTD A.C.N. 099 103 161 AS TRUSTEE FOR THE LARKIN FAMILY TRUST (Owner)

SAVVI PROPERTIES PTY LTD A.C.N. 612 728 748 (Manager)

Background

- A The Owner is to be a party to the Agreements under which the Owner is to provide management, caretaking and letting services.
- B The Owner wishes to allow the Manager carry out the management, caretaking and letting services and perform the Owner's duties under the Agreements and for that purpose will allow to the Manager to operate under the Agreements.
- C The Manager agrees to carry out such management, caretaking and letting services and perform the Owner's duties under the Agreements agrees to the delegation to it of the right to operate and obligations under the Agreements.

Operative part

1 Definitions

1.1 In this Deed unless the context otherwise requires:

- (a) terms defined in the Agreements have the same meaning when used in this Deed; and
- (b) the following terms have the following meanings:

Agreements: the Caretaker's Agreement and the Letting Agents Agreement;

Body Corporate: the Body Corporate for Centra on Archer Community Titles Scheme to be formed when the Complex is developed and relevant plan and community management statement are registered in the titles office;

Business: the business of the Manager which includes the performance of the Duties and Obligations;

Business Day: a day when banks are open for business in Brisbane, Queensland;

Complex: the complex to be known as "Centra on Archer", 37 Archer Street, Toowong, Queensland;

Commencement Date: the date of commencement of the Agreements;

Caretaker's Agreement: a certain caretaker's agreement to be entered into pursuant to a resolution of the Body Corporate at the EGM between the Body Corporate and the Owner whereby the Body Corporate will appoint the Owner as caretaker of Centra on Archer for a term of 25 years;

Duties and Obligations: the Caretaking Duties, the Letting Agent Business and the Letting Services and any other duties and obligations of the Owner under the Agreements necessary to allow the Manager to operate under the Agreements except those which because of their nature and the Owner's continued ownership of the Management Rights cannot be delegated to the Manager but can only be performed by the Owner;

EGM: the inaugural general meeting of the Body Corporate;

Letting Agents Agreement: a certain letting agents agreement to be entered into pursuant to a resolution of the Body Corporate at the EGM between the Body Corporate and the Owner whereby the Body Corporate will appoint the Owner as letting agent of Centra on Archer for a term of 25 years;

Letting Appointment: A letting appointment in the form of a Property Occupations Act Form 6 letting appointment given by any owner of a lot in the Scheme appointing the Manager as the owner's agent to let out the owner's lot;

Management Rights: the management rights to the Scheme which will exist as a consequence of and pursuant to the Agreements;

Rights: all of the rights (including without limitation any common property occupation authority rights) of the Owner under the Agreements necessary to allow the Manager to operate under the Agreements except those which because of their nature and the Owner's continued ownership of the Management Rights the Manager cannot be allowed to exercise but can only be exercised by the Owner; and

Term: from the Commencement Date until determined in accordance with clause 6.

2 Interpretation

2.1 In the interpretation of this Deed unless the context otherwise requires:

- (a) words denoting any gender include all other genders;
- (b) words denoting persons include all bodies, associations, trusts, partnerships, instrumentalities and entities corporate or unincorporate, and vice versa;
- (c) references to any of the parties include in the case of a person, their personal representatives and permitted assigns, and in other cases their successors and permitted assigns;
- (d) any obligation on the part of two or more persons is deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally;
- (e) words expressing the singular include the plural and vice versa;
- (f) headings are included for convenience only and do not affect the interpretation of this Deed;

- (g) references to sections, clauses, Recitals, Schedules and Annexures are to sections and clauses of and Recitals, Schedules and Annexures to this Deed;
- (h) references to this Deed are to this Deed as amended supplemented or varied from time to time;
- (i) references to any document or agreement includes all references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) expressions cognate with expressions defined in clause 1 are to be construed accordingly;
- (k) references to dates and times are to Brisbane time;
- (l) references to "\$" and "dollars" are to Australian dollars;
- (m) recitals to this Deed are to be read as and form part of this Deed;
- (n) references to writing include typing, facsimile and all other means of reproducing words in a permanent and visible form;
- (o) references to any legislation includes any legislative provision which amends, extends, consolidates or replaces it and any orders, regulations, instruments, proclamations or other subordinate legislation made under it;
- (p) references to institutes, associations, bodies and authorities whether statutory or otherwise will, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to refer to the institute, association, body or authority established or constituted in its place or which substantially succeeds to its powers or functions;
- (q) no rule of construction will apply to the disadvantage of a party because that party was responsible for the drafting of this Deed or any part of it; and
- (r) unless application is mandatory by law, any legislation present or future will not apply to this Deed so as to abrogate, extinguish, impair, delay or otherwise prejudicially affect the exercise or enjoyment of any rights given or accruing to any party.

3 *Delegation and duties*

3.1 The Owner must:

- (a) cause the Body Corporate to:
 - (i) hold the EGM as soon as practical after the Scheme is established;
 - (ii) resolve at the EGM to enter into the Agreements which must be substantially the same as those in the disclosure statement given to the Manager prior to entering into this Deed;
 - (iii) execute the Agreements;

- (b) ensure that the Agreements commence from or immediately after the date of the EGM;
- (c) itself execute the Agreements;
- (d) cause the Body Corporate to resolve at the EGM to approve the Owner allowing the Manager to provide Duties and Obligations, delegating to the Manager the Duties and Obligations and allowing the Manager to exercise the Rights.

3.2 The Owner from the Commencement Date:

- (a) allows the Manager to:
 - (i) operate as caretaker and letting agent in, to and under the Agreements;
 - (ii) exercise the Rights; and
 - (iii) perform the Duties and Obligations; and
- (b) to the extent that it may be necessary to do so, delegates to the Manager responsibility for performance of the Duties and Obligations.

3.3 The Manager:

- (a) agrees to perform all of the Duties and Obligations as if the Manager was named as the caretaker and the letting agent in the Agreements;
- (b) must carry out the Duties and Obligations, and conduct the Business, honestly, competently and diligently;
- (c) must attend the Complex for such hours as the Manager deems reasonably necessary to perform the Duties and Obligations;
- (d) must not do anything which places the Owner in breach of either of the Agreements or which might lead to their termination;
- (e) will engage at its expense and supervise such personnel as are necessary to perform the Duties and Obligations;
- (f) must ensure its personnel wear clothing of a quality and standard appropriate to an accommodation complex of the nature as the Complex;
- (g) must in accordance with the Property Occupations Act 2014 or any other law, apply for and hold a resident letting agent's licence or such other form of licence as prescribed by law;
- (h) will be responsible to procure and operate as agent under any Letting Appointments for any owners of lots in the Scheme who wish to appoint the Manager to do so;
- (i) if at the end of the Term the Manager holds any Letting Appointments, transfers and assigns to the Owner or its nominee from the end of the Term the Manager's rights in, to and under those Letting Appointments;

- (j) may engage in such other business activities as the Manager is reasonably able to carry on without adversely impacting on the Manager's duties under this Deed; and
- (k) must take out and maintain at all times such public liability and professional indemnity insurances relevant to the Business as a prudent operator would maintain and provide the Owner with copies of the insurance policies and certificates of currencies for the insurances if requested by the Owner.

4 Consideration

- 4.1 In consideration of the Manager entering into this Deed and fulfilling its obligations under it, the Manager:
- (a) will be entitled to receive all remuneration payable by the Body Corporate to the caretaker under the Caretaker's Agreement; and
 - (b) will be entitled to receive and retain all commission, fees, charges and other amounts payable to it under any Letting Appointment.

5 Independence of parties

- 5.1 The parties acknowledges that the Manager has the Rights, performs the Duties and Obligations and operates the Business independently of the Owner and in no circumstances will the Manager be treated as a partner, contractor, employee, agent or servant of the Owner.
- 5.2 The Owner and the Manager acknowledge and agree that:
- (a) neither the Agreements nor the Owner's interest in the Agreements are being assigned to the Manager;
 - (b) the Owner will own the Management Rights when the Agreements are entered into; and
 - (c) the Owner will throughout the Term continue to own the Management Rights.

6 Term

- 6.1 The authority to act commences on the Commencement Date and subject to this clause 6.2 lasts for the period of 5 years.
- 6.2 The Manager has 3 options to extend or renew the term of this Deed, each for a period of 5 years (so that the total potential Term is 20 years), subject to clause 6.3. To exercise the option the Manager must give to the Owner written notice of its intention to do so (**Option Notice**) at least 3 months before the end of the then current 5 year term.
- 6.3 If within 1 month of receiving an Option Notice the Owner:
- (a) gives written notice to the Manager that the Owner does not accept the Option Notice and does not wish to extend the Term (**Rejection Notice**) then the Term will end at the expiration of the then current 5 year term subject to clause 6.4; or

- (b) gives written notice to the Manager that the Owner accepts the Option Notice or does not give any Rejection Notice, then the Term will be extended or renewed for the further 5 year period.
- 6.4 If the Owner gives a Rejection Notice the Owner must at the same time give the Manager a Transfer Notice in accordance with clause 7 in which the Transfer Price must be a fair and reasonable estimation of the value of the Management Rights. If the Manager:
- (a) does not by the Closing Date give written notice of the acceptance of the offer in the Transfer Notice, the Term will end at the expiration of the then current 5 year term; or
 - (b) does give written notice of the acceptance of the offer in the Transfer Notice, the Term will end when the Sale Contract settles or is terminated.
- 6.5 The Owner may terminate this Deed by written notice to the Manager if the Manager:
- (a) breaches any of its terms and fails to remedy that breach within 14 days of receiving written notice from the Owner specifying such breach and requesting its rectification;
 - (b) is given by the Owner within any 6 month period 3 or more notices under subclause (a) with respect to demonstrable breaches;
 - (c) seeks to charge the Owner under any Letting Appointment for a lot owned by the Owner commission on rent of more than 4.4% including GST;
 - (d) is for any reason unable to carry out its duties under this Deed;
 - (e) becomes insolvent;
 - (f) makes an assignment for the benefit of or any composition with any of its creditors;
 - (g) has a voluntary administrator appointed;
 - (h) has proceedings for voluntary or involuntary liquidation commenced in respect of it; or
 - (i) has a receiver or trustee of the whole or any part of its property appointed.
- 6.6 Subject to clause 7, the Owner may terminate this Deed by at least 1 months written notice to the Manager if the Owner has entered into a contract to sell the Management Rights and that sale contract becomes unconditional. However in such circumstances the termination will only be effective upon the settlement of that sale contract. The Manager will be at liberty to negotiate with any proposed transferee about entering into a deed similar to this Deed.
- 6.7 The Manager may terminate this Deed by written notice of termination to the Owner:
- (a) at any time by giving at least 3 months' notice; or

- (b) if the Owner is in breach of any of its terms or conditions and fails to remedy that breach within 14 days of receiving written notice from the Manager specifying such breach and requesting its rectification.

6.8 The Manager appoints the Owner, upon the termination or expiration of this Deed, as the Manager's attorney for the purpose of signing and giving to the Body Corporate notice of such termination or expiration.

7 First right of refusal

7.1 The Owner agrees that it will not during the Term enter into any agreement, contract or the like relating to the sale or transfer the Management Rights without giving to the Manager a notice (**Transfer Notice**) offering to sell the Management Rights to the Manager, subject to the consent of the Body Corporate, and specifying:

- (a) the price for which it wishes to sell the Management Rights (**Transfer Price**); and
- (b) the date by which the Manager may accept the Owner's offer which date (**Closing Date**) must be between 20 and 30 business days from when the Transfer Notice is given.

7.2 The Owner may not withdraw a Transfer Notice.

7.3 If the Manager does not deliver to the Owner by the Closing Date notice of acceptance of the offer made in the Transfer Notice, the Manager will be deemed to have rejected the offer.

7.4 If the Manager delivers to the Owner by the Closing Date notice of acceptance of the offer made in the Transfer Notice then:

- (a) the parties must as soon as practicable enter into a contract:
 - (i) in the form of the then current REIQ management rights sale contract (**Sale Contract**);
 - (ii) containing the details from the Transfer Notice;
 - (iii) providing for a deposit equal to 5% of the Transfer Price payable within 2 Business Days of the signing of the Sale Contract by both parties;
 - (iv) containing and such usual and reasonable terms and conditions applicable to such contracts;
 - (v) providing for settlement 30 Business Days after it is entered into; and
 - (vi) including a condition that the contract is conditional on the Body Corporate consenting to the assignment of the Owner's interest in the Agreements and the extension of the settlement date for 20 Business Days beyond the original settlement date if such consent is not obtained by that date;
- (b) if the parties cannot agree on the terms and conditions of the Sale Contract they will be determined:

- (i) by a lawyer experienced in management rights appointed by the parties;
or
- (ii) if they cannot agree on such appointee then as appointed by the president for the time being of the Queensland Law Society Incorporated;

whose costs will be met equally by the parties and whose decision will be final and binding on the parties.

7.5 If clause 7.3 applies or the Sale Contract does not settle for any reason other than the Owner's default, the Owner may transfer the Management Rights to a third party:

(a) at whatever price and on whatever conditions the Owner negotiates where the Sale Contract does not settle due to:

- (i) the Body Corporate not consenting to the assignment of the Owner's interest in the Agreements; or
- (ii) the Manager's default under the Sale Contract;

but otherwise:

(b) on terms and conditions no less favourable than those in and at a price no less than that in the Sale Notice.

8 Indemnities

8.1 The Manager will indemnify and keep indemnified the Owner against any claim, liability, action, loss or damage which may be made against the Owner or which the Owner may incur as a result of any breach by the Manager of any term or condition of this Deed.

8.2 The Owner will indemnify and keep indemnified the Manager against any claim, liability, action, loss or damage which may be made against the Manager or which the Manager may incur as a result of any breach by the Owner of any term or condition of this Deed.

9 Miscellaneous

9.1 Assignment

Neither party may assign its rights or obligations under this Deed without the express written approval of the other which may be given or refused in their absolute discretion.

9.2 Costs

Whether or not any of the transactions contemplated by this Deed are completed, each party will be responsible for its own costs of and incidental to the negotiation, preparation and execution of this Deed, including their lawyers and accountants costs.

9.3 Further assurance

The parties agree and agree to procure every other person as required to sign all documents and otherwise do all such acts, matters and things as may be necessary or desirable to give full force and effect to this Deed.

9.4 Governing law

This Deed will be construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Queensland Courts notwithstanding the domicile or residence of any party or the occurrence of any act, matter or thing outside of Queensland.

9.5 Severance

If any provision of this Deed is, for any reason, considered or found by a Court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of this Deed and will be deemed never to have been part of this Deed. The remainder of the provisions of this Deed will remain in full force and effect unless the basic purposes of this Deed are defeated.

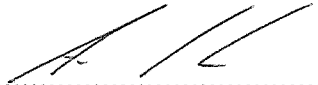
9.6 Notices

- (a) All notices and other communications between the parties may be sent by prepaid express or registered post, by hand delivery or by facsimile or email transmission to the addressees contained in this Deed or to such other address or person as a party may specify by notice in writing to the other. All notices will be treated as being delivered immediately if personally delivered, left at the address contained in this Deed or, subject to subclause (b), sent by facsimile or email transmission.
- (b) For the purposes of email correspondence between the parties to this Deed:
 - (i) a typed name at the bottom of an email will satisfy any requirement that the correspondence be "signed" by a particular party;
 - (ii) an email will be deemed to be received by its intended recipient when:
 - A if sent to an electronic address designated by the intended recipient, it becomes capable of being retrieved by that person at that electronic address; or
 - B if sent to an electronic address other than one designated by the intended recipient, it becomes capable of being received by that person at that electronic address, and the intended recipient is made aware that the email was sent to that particular electronic address;
 - (iii) a read receipt provides evidence of effective service of a notice given under this Deed, but is not a prerequisite for service to be validly effected by email; and
 - (iv) an undeliverable receipt received by the sender of an email in respect of a notice given under this Deed renders the service of that notice ineffective.

Execution page

Executed as a deed

EXECUTED by ASPECT PROPERTY GROUP)
AUST. PTY LTD A.C.N. 099 103 161 AS)
TRUSTEE FOR THE LARKIN FAMILY TRUST)
in accordance with the Corporations Act by)



.....

Signature of Sole Director

Allan Edward Larkin

Name of Director (block letters)

EXECUTED by SAVVI PROPERTIES PTY LTD)
A.C.N. 612 728 748 in accordance with the)
Corporations Act by authority of its director(s))



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Signature of Sole Director

Geoffrey John Shortland

Name of Director (block letters)