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Unit Holders' Agreement for the Unit Holders  
of the Meridiem Trust

Stadium Drive Pty Ltd ACN 162 845 981

The Initial Unit Holders

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## Parties

**Stadium Drive Pty Ltd ACN 162 845 981** of Suite 1, 2 Downey Drive, Como, Western Australia (**Trustee**)

The **Initial Unit Holders** detailed in Schedule 1 (**Initial Unit Holders**)

## Background

- A The Trust has been created to purchase the Property and construct the Project.
- B This is an agreement between the Unit Holders who together own all of the Units in the Trust. It sets out how Units are to be redeemed, profits are to be distributed and also records certain refinements to the arrangements recorded in the Trust Deed.

## Operative provisions

### 1 Definitions and interpretation

#### Definitions

1.1 In this agreement:

**Apartment Revenue** means the revenue achieved from settlement of the sale of all Residential Lots.

**Application Date** means 7 May 2014 or, if the Trustee determines (in its discretion), such later date on which the relevant Unit Holder makes the payment referred to in clause 4.

**Commercial Lots** means any Lots that are not Residential Lots.

**Commercial Lots Value** means:

- (a) the average of the two valuations obtained by the Trustee for the Commercial Lots in accordance with clause 7.1; less
- (b) an allowance for all anticipated costs associated with selling the Commercial Lots as determined by the Trustee, including, without limitation, marketing and advertising costs, selling agency fees and settlement agent fees.

**Development Completion Date** means the date that each of the following has occurred:

- (a) settlement of the sales of all of the Residential Lots;

- (b) practical completion of the apartment building constructed by the Trustee on the Property; and
- (c) the Commercial Lots Value has been determined.

**Development Costs** means the total Project Costs, as defined by the Trust Deed, and excludes any entitlement that the Development Manager may have to share in the profit of the Project under the Development Management Agreement.

**Development Manager** means Inspire Enterprises Pty Ltd ACN 155 331 801 trading as Motus Property.

**Development Management Agreement** means a development management agreement to be entered into between the Trustee and the Development Manager on the terms contained in Schedule 2.

**Development Profit** means the amount determined by the following calculation:

*Apartment Revenue + Commercial Lots Value – Development Costs*

**Distribution Date** means the date on which the Trustee makes the payments referred to in clause 8.2.

**Funds Invested** means \$50,000 multiplied by the total number of Units.

**Holding Unit** means a Unit that has the rights and entitlements of a “Holding Unit” as detailed in this agreement.

**Holding Unit Holder** means a Unit Holder that holds a Holding Unit.

**Holding Unit Holder Distribution** means the amount determined by the following calculation:

*(Funds Invested + Primary Profit + Super Profit – Reinvestment Amount) x Unit Holder's Percentage*

**Holding Unit Holder's Loan** means a Unit Holder Loan advanced by a Holding Unit Holder.

**Initial Unit Holders** means the Unit Holders detailed in Item 5 of Schedule 1 of the Trust Deed and Schedule 1 of this agreement.

**Licensed Valuer** means a valuer licenced in Western Australia and appointed to the valuation panel of at least two of the major banks.

**Loan Principal Payment Amount** means:

- (a) if the Development Profit is less than zero, such amount which is less than \$49,999 as the Trustee may equitably determine based on each Unit Holder's Percentage; or

- (b) if the Development Profit is greater than or equal to zero, \$49,999 multiplied by the number of Units held by the Unit Holder.

**Lots** means the strata lots created from the development of the Property.

**Primary Profit** means the lesser of the Development Profit or the amount determined by the following calculation:

*Funds Invested x 20% x (X/365)*, where

X = the total number of days from (and including) the Application Date to (but excluding) the Distribution Date.

**Primary Profit Entitlement** means the Primary Profit multiplied by the Unit Holder's Percentage.

**Redemption Unit** means a Unit that has the rights and entitlements of a "Redemption Unit" as detailed in this agreement.

**Redemption Unit Holder** means a Unit Holder that holds a Redemption Unit.

**Redemption Unit Holder's Loan** means a Unit Holder Loan advanced by a Redemption Unit Holder.

**Reinvestment Amount** means the amount required to be retained in the Trust as equity for the purposes of obtaining the finance referred to in clause 8.4.

**Residential Lots** means Lots that are residential apartments.

**Sunset Date** means 31 May 2014.

**Super Profit** means the amount by which the Development Profit exceeds the sum of:

- (a) the Primary Profit; and
- (b) any profit entitlement of the development manager under the Development Management Agreement.

**Super Profit Entitlement** means the Super Profit multiplied by the Unit Holder's Percentage.

**Trust Deed** means the Meridien Trust Unit Trust Deed between the Trustee and the Initial Unit Holders.

**Unit Holder's Percentage** means the percentage that the number of Units held by the relevant Unit Holder bears to the total number of Units in the Trust.

**Unit Holder Loan** means the loan advanced by a Unit Holder as detailed in clause 4.1.2.

## Interpretation

- 1.2 In this agreement, unless the context otherwise requires:
- 1.2.1 Words that are defined in the Trust Deed have the same meaning when used in this agreement unless specifically provided otherwise;
  - 1.2.2 Headings or subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of this agreement.
  - 1.2.3 Words expressed in the singular include the plural and vice versa.
  - 1.2.4 Words expressed in one gender include the other gender.
  - 1.2.5 A 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate.
  - 1.2.6 References to parts, clauses, parties, schedules and annexures are references to parts and clauses of and parties, schedules and annexures to this agreement.
  - 1.2.7 A reference to a party to this agreement includes that party's successors and permitted assigns and, in the case of a natural person, also includes that person's personal representatives and administrators.
  - 1.2.8 Where a day, which is not a Business Day, is specified by or on which a thing must be done, that thing that must be done by or on the next succeeding Business Day.
  - 1.2.9 A covenant or agreement made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.
  - 1.2.10 No rule of construction will apply to the disadvantage of a party because that party was responsible for drafting this agreement or any of the provisions of this agreement.
  - 1.2.11 A reference to any law contained in this agreement shall be deemed to include any amendment, re-enactment or consolidation of the law.
  - 1.2.12 A reference to 'dollars' or '\$' is a reference to the currency of Australia.

## 2 Election by Initial Unit Holders

- 2.1 Each Initial Unit Holder has elected for its Units to be either Holding Units or Redemption Units as detailed in Schedule 1.

- 2.2 From the date of this agreement, the Trustee must modify the Application Form (or take other steps it considers appropriate) to ensure that a person applying for Units confirms whether it is applying for Holding Units or Redemption Units.
- 2.3 A person that acquires less than 4 Units may not elect for any of these Units to be Holding Units unless the Trustee determines otherwise (in its absolute discretion).
- 2.4 A Holding Unit Holder cannot convert its Holding Units to Redemption Units without the written consent of all Holding Unit Holders.
- 2.5 A Redemption Unit Holder cannot convert its Redemption Units to Holding Units without the written consent of the Trustee (which may be withheld in its absolute discretion).

### **3 Condition Precedent**

- 3.1 Unless:
- 3.1.1 the Trustee has issued at least 20 Holding Units on or before the Sunset Date; or
  - 3.1.2 the Holding Unit Holders have unanimously agreed to proceed as Holding Unit Holders, despite less than 20 Holding Units having been issued by the Trustee, and have advised the Trustee of this in writing on or before the Sunset Date,
- all Units will be Redemption Units despite any election made by an Initial Unit Holder under clause 2.1 or any other Unit Holder under clause 2.2.
- 3.2 If all Units will be Redemption Units under clause 3.1:
- 3.2.1 the Trustee must notify all Unit Holders in writing of this;
  - 3.2.2 clauses 7, 8.4 - 8.7 and 9 will not apply;
  - 3.2.3 the Trustee must seek to sell the Commercial Lots (in addition to the Residential Lots);
  - 3.2.4 the Development Completion Date will not occur until settlement of the sale of all of the Commercial Lots has occurred (in addition to the Residential Lots); and
  - 3.2.5 the Trust will be wound up as soon as practicable after redemption of all of the Redemption Units in accordance with clause 8.2.2.
- 3.3 The Trustee is authorised to issue new Units without any requirement to comply with clause 4 of the Trust Deed until the Sunset Date.



## **4 Payment for Unit**

4.1 Each Unit Holder acknowledges and agrees that each payment of \$50,000 that it has advanced to the Trustee has been for the following:

4.1.1 \$1 has been paid to the Trustee to acquire a Unit; and

4.1.2 \$49,999 has been paid to the Trustee as a loan on the terms set out in this agreement.

## **5 Types of Unit and Unit Holder Loan**

5.1 Each Unit must be a Redemption Unit or a Holding Unit.

5.2 Except as detailed in this agreement:

5.2.1 the rights and entitlements attaching to a Redemption Unit and a Holding Unit are the same; and

5.2.2 the terms and conditions of a Redemption Unit Holder's Loan and a Holding Unit Holder's Loan are the same.

## **6 Transfer and Redemption of Units**

### **Transfer of Units**

6.1 In addition to the requirements in clause 9.15 of the Trust Deed, the Trustee may refuse to consent to the transfer of a Unit unless:

6.1.1 the Unit Holder Loan advanced by the transferring Unit Holder to the Trustee is assigned to the incoming Unit Holder on terms acceptable to the Trustee (in its discretion); and

6.1.2 the transferee enters into a written agreement with the other parties to this agreement to comply with this agreement as if it were a party.

### **Redemption of Units**

6.2 Clause 8 of the Trust Deed does not apply while this agreement is in force and the parties acknowledge and agree that:

6.2.1 a Redemption Unit will not be redeemed, and a Redemption Unit Holder's Loan will not be repaid, except as detailed in clauses 8.2 or 8.8 (unless otherwise agreed by all Unit Holders); and

6.2.2 a Holding Unit will not be redeemed, and a Holding Unit Holder's Loan will not be repaid, except as detailed in this agreement (unless otherwise agreed by all Unit Holders).

## **7 Commercial Lots**

### **Valuation**

- 7.1 Subject to clause 3.2, within 5 Business Days after settlement of the sale of all of the Residential Lots, the Trustee must appoint two Licenced Valuers to each independently prepare a valuation of the Commercial Lots.
- 7.2 As soon as practicable after the Trustee receives each Licenced Valuer's determination of the value of the Commercial Lots, the Trustee must notify each of the Unit Holders of the Commercial Lots Value.
- 7.3 The Unit Holder's acknowledge and agree that the determination of the Commercial Lots Value will be final and binding on the Unit Holders.

### **Sale**

- 7.4 The Trustee must not seek to sell the Commercial Lots unless:
- 7.4.1 clause 3.2 applies such that all of the Units are Redemption Units;
- 7.4.2 the Trust is to be wound up; or
- 7.4.3 the Unit Holders agree to this unanimously.

## **8 Repayment of Unit Holder Loans and Distributions of Profit at Development Completion**

### **Calculation**

- 8.1 At the Development Completion Date:
- 8.1.1 the Trustee will calculate the Development Profit, which will be divided into Primary Profit and Super Profit (if applicable); and
- 8.1.2 each Unit Holder will be allocated in the accounts for the Trust Fund the following for each Unit that they hold:
- (a) the Loan Principal Payout Amount;
- (b) the Primary Profit Entitlement; and
- (c) the Super Profit Entitlement.

### **Distribution to Redemption Unit Holders**

- 8.2 Within 30 days of the Development Completion Date, the Trustee must pay to each Redemption Unit Holder for each Redemption Unit that they hold:
- 8.2.1 firstly, in full satisfaction of the Unit Holder's rights under the Unit Holder Loan:

- (a) the Loan Principal Payment Amount; and then
- (b) the Primary Profit Entitlement as the return on the Unit Holder Loan,

8.2.2 secondly, any Super Profit Entitlement in consideration for the redemption of the Unit (which includes, for the avoidance of any doubt, payment of the \$1 initially paid for the Unit). For the avoidance of doubt, if the Super Profit Entitlement is nil, the Unit is still redeemed on the date that the Trustee makes the payments referred to in clause 8.2.1 (notwithstanding that the \$1 initially paid for the Unit is not repaid) .

8.3 For the avoidance of doubt, when the amounts referred to in clause 8.2 have been paid to a Redemption Unit Holder, that Redemption Unit Holder will have no rights or obligations under this agreement or any right or entitlement under, or in respect of, the Trust.

### **Financing Arrangements**

8.4 The Trustee is authorised to:

- 8.4.1 enter into a loan agreement for the purpose of financing payment of the amounts referred to in clause 8.2; and
- 8.4.2 grant security over the remaining assets of the Trust (including the Commercial Lots) for the purposes of obtaining the loan.

### **Distribution to Holding Unit Holders**

8.5 As soon as practicable after the Development Completion Date (and in any event within 30 days of the Development Completion Date), the Trustee must give each Holding Unit Holder a written notice detailing:

- 8.5.1 the amounts to which they are entitled under clause 8.1.2;
- 8.5.2 the terms of the finance facility referred to in clause 8.4, including the Reinvestment Amount; and
- 8.5.3 details of the Holding Unit Holder Distribution.

8.6 Within 30 days of the Trustee obtaining the proceeds of the finance referred to in clause 8.4, the Trustee must pay to each Holding Unit Holder the Holding Unit Holder Distribution.

8.7 The Holding Unit Holder Distribution will be applied in the following manner for each Holding Unit in satisfaction of the Unit Holder's rights under the Unit Holder Loan:

- (a) Firstly, the Loan Principal Payment Amount;
- (b) Secondly, the Primary Profit Entitlement as the return on the Unit Holder Loan;

- (c) Thirdly, any Super Profit Entitlement.

### **Termination Prior to Development Completion Date**

- 8.8 If the Trust is terminated prior to the Development Completion Date in accordance with the terms of the Trust Deed, then all Unit Holders will be entitled to be distributed the amounts referred to in clause 8.2 after the Trustee has attended to the matters detailed in clauses 30.5.1 and 30.5.2 of the Trust Deed.

## **9 Holding Units**

- 9.1 Without limiting clauses 30.1 – 30.4 of the Trust Deed, the Holding Unit Holders acknowledge and agree that they intend for the Trust to operate a leasing enterprise in relation to the Commercial Lots after the Development Completion Date.

## **10 General nature of agreement**

### **Way Trust to be administered**

- 10.1 The Trust must be administered in accordance with this agreement and the Trust Deed. This agreement will continue until the Unit Holders unanimously determine that this agreement should end.

### **Good faith**

- 10.2 The Unit Holders must at all times act in good faith and in the best interests of the Trust. The Unit Holders must direct the Trustee to comply with its obligations under the terms of the Trust Deed and this agreement.

### **Exercise of voting rights**

- 10.3 Each of the Unit Holders must exercise its voting rights (if any) and powers of control in relation to the Trust in such a way as to promote the purposes of this agreement. This includes doing each of the following:
- 10.3.1 Ensuring that the Unit Holders and other representatives will support and vote for any reasonable proposal put forward at a meeting of the Unit Holders of the Trust which is appropriate for the Project.
  - 10.3.2 Ensuring that all employees, representatives, and other persons under its direct or indirect control do nothing to hinder or prevent the Trust from completing the development of the Property as soon as reasonably practicable and from carrying on the Project in a proper and business-like way.
  - 10.3.3 Doing its best to promote the Project and the interests of the Trust.

### **This agreement takes precedence over other constituent documents**

- 10.4 Unless stated otherwise, the provisions of this agreement take precedence over any contrary provisions in the Trust Deed.

- 10.5 Clause 24.6 of the Trust Deed does not apply whilst this agreement is in force.
- 10.6 The Trustee must ensure that any person to whom Units are issued after the date of this agreement agrees to be bound by, and comply with, the terms of this agreement as a condition to the issue of Units to that person.

## **11 Confidentiality**

### **Confidentiality**

- 11.1 A Unit Holder must not disclose to any person a term of this agreement or any information relating to another Unit Holder that it obtains as a result of this agreement or anything done under it. This does not apply in any of the following circumstances:
- 11.1.1 The disclosure is required by law. If the Unit Holder decides that disclosure is required by law, it must immediately notify the other Unit Holders of the requirement for the information to be disclosed. If the other Unit Holders object to the disclosure on the basis that it is not required by law, the Unit Holder must reconsider its decision.
- 11.1.2 The disclosure is to an officer or employee of the Unit Holder, to the extent that he or she needs to know the confidential information. The disclosure must only be made on the express condition that the officer or employee is subject to the same obligation of confidentiality as the Unit Holder.
- 11.1.3 The disclosure is reasonably made to a professional legal adviser.
- 11.1.4 The disclosure is made to a person to whom units in the Trust are offered under this agreement.
- 11.1.5 The matter disclosed is already in the public domain, except as a result of an earlier breach of confidentiality by a Unit Holder.
- 11.1.6 The other Unit Holders consent in writing to the disclosure. The consent may be subject to the condition that the third party enter into a separate confidentiality agreement with the provider.

## **12 Notices**

- 12.1 A notice, consent, information or request that must or may be given or made to a party under this agreement must be made in accordance with the terms of the Trust Deed.

## **13 General**

### **Warranty**

- 13.1 Each party which is a company warrants that it is duly incorporated and has the power to bind itself in the manner contemplated by this agreement.

**No representations etc**

- 13.2 Each party enters into this agreement on the basis of its own investigations and not in reliance on anything done or said by or on behalf of any of the others.

**Joint and several liability etc**

- 13.3 If a party is more than one person, each reference in this agreement to that party is to be treated as a reference to each of those persons individually, and to each of them jointly with any one or more of the others.

**Relationship of the parties**

- 13.4 This agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties. No party is liable for an act or omission of another party, except to the extent set out in this agreement. No party has power to pledge the credit of another party.

**Liability for costs**

- 13.5 Each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to the transaction it contemplates.

**Time for action**

- 13.6 If the day on or by which something is required to be done or may be done is not a Business Day, that thing must be done on or by the next Business Day.

**Variation**

- 13.7 This agreement including the schedules can only be varied by the parties in writing.

**Waiver**

- 13.8 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of that party's right to do it. A waiver by a party is only effective if it is in writing.
- 13.9 A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach; or as an implied waiver of that obligation or breach in relation to any other occasion.

**Further co-operation**

- 13.10 Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this agreement and the transactions it contemplates.

**Severability**

- 13.11 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

- 13.12 If the removal of a clause or part of a clause under clause 13.11 materially alters the commercial allocation of benefit and risk (or management of risk) under this agreement, the parties agree to negotiate in good faith to amend or modify the terms of this agreement as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

### **Entire agreement**

- 13.13 This agreement and the Trust Deed contain everything the parties have agreed on in relation to this transaction. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before these agreements were executed.

### **Execution of separate documents**

- 13.14 This agreement is properly executed if each party executes either this agreement or an identical document. In the latter case, this agreement takes effect when the last of the identical documents is executed.

### **Governing law and jurisdiction**

- 13.15 This agreement is governed by the law of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts, on any basis.

**Execution**

**Executed as a deed**

**Date:** 7<sup>th</sup> MAY 2014

**Initial Unit Holders**

Signed by  
**Katherine Nancy Whitton**  
in the presence of:

)  
)   
)

**Witness:**

Signature:



Full Name:

PETER DAVID JODRELL

Address:

2/27 CLYDESDALE ST, COMO 6152

Occupation:

ARCHITECT

Signed by  
**Cameron John Dominic Whitton**  
in the presence of:

)  
)   
)

**Witness:**

Signature:



Full Name:

PETER DAVID JODRELL

Address:

2/27 CLYDESDALE ST, COMO 6152

Occupation:

ARCHITECT .



Signed by  
**Simon Daniel Jodrell**  
in the presence of:

)  
) *S.D. Jodrell*  
)

Witness:

Signature:

*Nicholas Silich*

Full Name:

NICHOLAS SILICH

Address:

9C JOHN ST MIDLAND

Occupation:

ARCHITECT

Signed by  
**Katie Helen Jodrell**  
in the presence of:

)  
) *Katie Jodrell*  
)

Witness:

Signature:

*Nicholas Silich*

Full Name:

NICHOLAS SILICH

Address:

9C JOHN ST MIDLAND

Occupation:

ARCHITECT.

Signed by  
**Adriano Pivali**  
in the presence of:



Witness:

Signature:



Full Name:

STEFANO PIVALI

Address:

1/307 ROCKINGHAM RD, SPEARWOOD, WA 6163

Occupation:

CONSULTANT

Signed by  
**Andrina Pivali**  
in the presence of:



Witness:

Signature:



Full Name:

STEFANO PIVALI


Address:

1/307 ROCKINGHAM RD, SPEARWOOD, WA 6163

Occupation:

CONSULTANT

Signed by  
**Stefano Pivali**  
in the presence of:

 )  
 )  
 )

Witness:

Signature:



Full Name: ADRIANO PIVALI

Address: 1/307 ROCKINGHAM RD, SPEARWOOD, WA

Occupation: ARCHITECT

Signed by  
**Helen Pivali**  
in the presence of:

 )  
 )  
 )

Witness:

Signature:



Full Name: ADRIANO PIVALI

Address: 1/307 ROCKINGHAM RD, SPEARWOOD, WA

Occupation: ARCHITECT

Signed by )  
**Peter David Jodrell** )  
in the presence of: )

Witness:


Signature:

Full Name:

Address:

Occupation:

**Executed by Toque Nominees Pty  
Ltd ACN 008 971 177 in accordance  
with section 127 of the Corporations  
Act by authority of its directors**

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


  
\_\_\_\_\_  
Signature of director/company secretary

(Please delete as applicable)


**PETER DAVID JODRELL**  
\_\_\_\_\_  
Name of director (print)

**KERRY LORRAINE JODRELL**  
\_\_\_\_\_  
Name of director/company secretary (print)

Witness:

Signature:   
Full Name: Katherine Whitton  
Address: 9 Woodhouse Rd  
East Fremantle WA  
Occupation: Development  
Manager

Witness:

Signature:   
Full Name: Katherine Whitton  
Address: 9 Woodhouse Rd  
East Fremantle WA  
Occupation: Development  
Manager

Signed by  
**Aniket Maroo**  
in the presence of:



Witness:



Signature:

Full Name: Shannon Castensen

Address: 24 Dalrymple View, Alexander Heights

Occupation: Tax Agent

Signed by  
**Sadhna Maroo**  
in the presence of:



Witness:



Signature:

Full Name: Shannon Castensen

Address: 24 Dalrymple View, Alexander Heights

Occupation: Tax Agent

Signed by  
**Nicholas James Silich**  
in the presence of:

)  
)  
) 

Witness:

Signature:



Full Name:

EULA YINGYING HERSHENG LIN

Address:

115 GLEN IRIS DRIVE, JANDAKOT

Occupation:

ARCHITECT

Signed by  
**Stephen Silich**  
in the presence of:

)  
)  
) 

Witness:

Signature:

 IS

Full Name:

KIM LEEN TAN

Address:

15 WHOLLEY ST, BAYSWATER WA 6053

Occupation:

ENGINEER.

## Schedule 1 - Initial Unit Holder Details

Unit Holder	No of Unit Held	Date of Acquisition	Holding or Redemption Units	Contact Details
Katherine & Cameron Whitton ATF the Jonette Trust	8	01-Sep-13		17 View Terrace, East Fremantle WA 6158
Simon & Katie Jodrell ATF the Oliver Trust	2	01-Sep-13		77A Basinghall St, Victoria Park WA 6101
Adriano & Andrina Piviali ATF the Miya Trust	8	01-Sep-13		1/307 Rockingham Rd, Spearwood WA 6163
Helen & Stefano Piviali ATF the Piviali Discretionary Unit Trust	4	01-Sep-13		2/307 Rockingham Rd, Spearwood WA 6163
Toque Nominees Pty Ltd ATF the Jodrell Family Trust	10	01-Sep-13		2/27 Clydesdale St, Como WA 6152
Aniket & Sadhna Maroo ATF the Maroo Superannuation Fund	10	01-Sep-13		6 Oakdale St, Floreat Park WA 6014
Nicholas James Silich	3	01-Sep-13		9C Johns St, Midland WA 6056
Nicholas Silich & Stephen Silich ATF Silich Superannuation Fund	5	01-Sep-13		PO Box 412, Greenwood WA 6924

## **Schedule 2 - Development Management Agreement**



**STADIUM DRIVE PTY LTD  
(ACN 162 845 981)**

**AND**

**INSPIRE ENTERPRISES PTY LTD  
(ACN 155 331 801)**

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**DEVELOPMENT MANAGEMENT AGREEMENT**

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THIS DEVELOPMENT MANAGEMENT AGREEMENT is made the 1<sup>st</sup> day of March 2014

**BETWEEN:**

**STADIUM DRIVE PTY LTD (ACN 162 845 981)** as trustee for the Meridiem Trust of Suite 1, 2 Downey Drive Como, Western Australia 6152 ("the Owner");

**AND**

**INSPIRE ENTERPRISES PTY LTD (ACN 155 331 801)** trading as Motus Property of Suite 11, 25 Foss St, Palmyra, Western Australia ("the Development Manager").

**RECITALS**

- A The Owner has determined to carry out the Project.
- B The Owner has agreed to appoint the Development Manager to manage the Project in accordance with the agreed budget and timeline
- C The Development Manager has agreed to accept that appointment on the terms and conditions set out in this Agreement.

**NOW THIS DEVELOPMENT MANAGEMENT AGREEMENT WITNESSES**

**1. DEFINED TERMS & INTERPRETATION**

**1.1 Definitions**

The following terms used in this Agreement will have the same meanings unless the context requires otherwise and in this Agreement:

**"Agreement"** means this Development Management Agreement and any schedules and / or annexures hereto;

**"Claim"** includes any claim, proceedings, cause of action, action, demand or suit (including by way of contribution or indemnity);

**"Commencement Date"** means 1<sup>st</sup> March 2014

**"Consultant"** means any consultant engaged by the Owner in relation to the Project;

**"Contract"** means any contract between the Owner and a Contractor or Consultant with respect to the Works in relation to which the Development Manager is given functions or is to provide any of the Services;

**"Contractor"** means any contractor engaged by the Owner to carry out the Works or any part of the Works;

**"Data"** means drawings, designs, sketches, specifications, reports, digital records and computer software, disks and all other data and information provided by either party for or created under this Agreement or a Contract;

**“Date for Practical Completion”** means on or before the 31<sup>st</sup>31st December 2017 \*;

**“Day”** means a calendar day;

**“Land”** means the land situated at 19 Douro Road, South Fremantle , Western Australia and being Lot 1 on Diagram 42785 Certificate of Title Volume 597 Folio 72A;

**“Owner's Representative”** means the representative referred to in clause 9.1(a);

**“Project”** means all activities associated with the acquisition, development, leasing out, occupation, modification, maintenance and (where relevant) sales and marketing in accordance with this document.

**“Project Costs”** means all of the costs necessary to carry out the project including but not limited to:

- (a) the costs associated with the evaluation of the Project. This includes costs in respect of the investigation of the Project, consultants’ fees and any costs relating to due diligence enquiries;
- (b) fees payable to professional consultants including engineers, surveyors and architects
- (c) all costs associated with any construction contract required to complete the Project, including builders progress claims, quantity surveyors certificates and contract administration;
- (d) fees payable to any Authority;
- (e) insurance costs;
- (f) legal fees;
- (g) professional costs for valuations of the Property;
- (h) accounting fees;
- (i) professional costs associated with management of the Project other than the Development Manager’s fees;
- (j) fees payable to financial institutions;
- (k) maintenance of the Property;
- (l) improvements or alterations to the Property;
- (m) any fees paid to the Owner in consideration of the provision of a personal guarantee in relation to some or all of the Project finance; and
- (n) such other costs that the Owners agree should be included as a Project Cost.

and excluding:

- (o) the purchase price of the Land;
- (p) duty under the Duties Act 2008;
- (q) GST under the GST Act payable on the purchase price;
- (r) Holding costs related to the Land, including rates, taxes and other outgoings;

- (s) Interest
- (t) Repayments of principle or equity.

“**Project Account**” means the bank account or bank accounts maintained by the Development Manager;

“**Related Entity**” of an entity means an entity which is related to the first entity under section 50 of the *Corporations Act 2001* or which under Australian Accounting Standards is part of the economic entity which includes the first entity;

“**Services**” means the services to be provided by the Development Manager as stated in Schedule 1, and any additional services requested (in writing) by the Owner; and

“**Works**” means the works for the Project described in a Contract.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a Agreement or instrument includes the Agreement or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Perth, Western Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a Agreement includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any Agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- (m) any Agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

## **2. ENGAGEMENT OF DEVELOPMENT MANAGER**

### **2.1 Services**

Subject to clause 2.2, the Development Manager shall perform the Services for the Project, including any additional services required by the Owner.

### **2.2 Scope of Services**

Subject to any discretionary limits set by the Owner from time to time, the Development Manager acknowledges that:

- (a) Schedule 1 sets out the scope of services which may be required by the Owner in relation to the Project (but may be expanded by any request for additional services by the Owner);
- (b) at the date of this Agreement, the scope of the Services identified in Schedule 1 are instructed to proceed; and
- (c) the Development Manager shall have no entitlement to payment for any costs or expenses incurred or to any compensation whatsoever (whether under this Agreement or otherwise, including under common law, in equity or under statute) for services which have not been requested in accordance with this clause 2.2.

### **2.3 Term**

The Development Manager shall perform the Services commencing on the Commencement Date and ending on the first to occur of:

- (a) completion of the Project; or
- (b) earlier termination of this Agreement.

## **3. DEVELOPMENT MANAGER'S OBLIGATIONS**

### **3.1 Information**

The Development Manager shall:

- (a) take all necessary steps to define, clarify and confirm the Owners' requirements for the Services and the purposes for which the Services are required;
- (b) examine all Data relating to the Project provided by the Owner and consultants and satisfy itself of the sufficiency of all such Data; and

- (c) immediately advise the Owner or relevant consultant in writing if the Data made available is not sufficient to enable the Development Manager to provide the Services in accordance with this Agreement. With such notice the Development Manager shall specify the further information, Agreements or other particulars it requires.

### **3.2 Authorities and Approvals**

The Development Manager shall:

- (a) liaise with all relevant authorities;
- (b) ascertain the lawful requirements for the Project and the Services;
- (c) comply with those requirements, or negotiate those requirements as required by the Owner;
- (d) obtain all necessary approvals, licences and permits as required by Schedule 1;
- (e) at all times be appropriately licensed as necessary to undertake the Services; and
- (f) take reasonable steps to ensure that all Contractors and Consultants are appropriately licensed at all times.

### **3.3 Co-Ordination, management and entry into of contracts**

The Development Manager shall:

- (a) make recommendations to the Owner as to the engagement of Consultants and Contractors;
- (b) enter into the Contracts as undisclosed agent of the Owner; and
- (c) monitor and manage the performance of Consultants and Contractors.

### **3.4 Contracts with related parties**

The Development Manager may not enter into any contract with respect to the Project with a Related Entity, unless that contract is entered into on arms length commercial terms and with the Owner's agreement.

## **4. RESPONSIBILITY TO CLIENT**

### **4.1 Good faith and compliance with laws**

- (a) The Development Manager shall act at all times in good faith and perform the Services so as to promote the best interests of the Owner.
- (b) The Development Manager will comply with and act at all times in accordance with all laws and statutes, including any environmental laws, government consents, government requisitions and other laws applicable to the Project.

### **4.2 Authority and consultation**

The Development Manager shall, in undertaking the Services:

- (a) act at all times within the authority given by the Owner;
- (b) consult with the Owner and take into account any submissions or information provided by the Owner;
- (c) comply with all reasonable instructions and directions of the Owner;

- (d) owe to the Owner a duty of care in relation to any act or omission by the Development Manager in the exercise of its functions.

#### **4.3 Time and cost**

Subject to any discretionary limits set by the Owner from time to time, the Development Manager acknowledges and agrees that it shall not (without the prior written approval of the Owner):

- (a) authorise any alteration, addition, omission or give any other direction which may increase or decrease the amount payable by the Owner under any Contract;
- (b) cause any extension of time; or
- (c) instruct any design change to a previously Owner approved drawing or specification that alters the quality, the appearance, the performance or incurs an additional cost without the written approval by the Owner or Owners Representative.

#### **4.4 Emergency**

Nothing in this clause 4 shall prevent the Development Manager from taking any action necessary for the urgent protection of the Project, any property on the Land or any adjoining property, or for the protection or safety of persons.

#### **4.5 Breach of Obligations**

The Development Manager must not do or omit to do anything to cause the Owner to be in breach of any of its obligations as a result of it entering into this Agreement.

### **5. REPORTING**

#### **5.1 Form of Reports**

The Development Manager will provide monthly reports to the Owner in relation to the Project. The Development Manager acknowledges that the Owner will rely on the monthly reports from the Development Manager as a primary vehicle for communicating progress, issues and status of all components of the Project.

#### **5.2 Additional reporting**

In addition, the Development Manager will immediately report to the Owner if:

- (a) any inspection reveals work which is not in compliance with a Contract or the Owner's requirements;
- (b) any loss or damage occurs to the Project or any property of the Owner;
- (c) any order which affects the Project is issued by an authority or made by any court;
- (d) the Development Manager becomes aware of any matter which:
  - (i) has changed or may change the scope, cost or timing of the Services or of the services of Consultants; or
  - (ii) may affect any aspect of the Project, including the scope of work under any Contract, the quality of any work or the time program for the work under any Contract.



### **5.3 Detail and recommendations**

A report under clause 5.2 shall contain:

- (a) detailed particulars of the relevant matter; and
- (b) recommendations to avoid or minimise any adverse effect on the Project.

## **6. PROGRAMME**

### **6.1 Works to be carried out in accordance with the programme**

The Development Manager shall proceed regularly and diligently to carry out the Services in accordance with the Development Programme approved by the Owner pursuant to clause 6.2 (subject to any amendments to the Development Programme required and approved by the Owner).

### **6.2 Preparation of Development Programme**

- (a) The Development Manager shall prepare and submit to the Owner for its review within four (4) weeks of being appointed a development programme based for the Project. The development programme is to show every significant activity necessary to carry out and complete the Project and in any event every activity exceeding a period of fourteen (14) days. Upon review of the development programme and notification in writing from the Owner to the Contractor that the Owner has no objection to the development programme, the development programme shall be the Development Programme for the purposes of this Agreement.
- (b) The Development Programme shall:
  - (i) be drawn as critical path networks analysed (either manually or by computer) to show the earliest and latest start and finish times for each activity;
  - (ii) show the preparation timeframe, lodgement dates and anticipated approval dates for statutory authority and local council permits;
  - (iii) show the supply and delivery of essential Works;
  - (iv) be based on a five (5) calendar day working week;
  - (v) show the orderly completion of the Project on (and not before) the Date for Practical Completion for the Stages of the Project; and
  - (vi) show a means of relating start and finish times to calendar dates after taking account of holidays and working days per week as set out in the Project calendar.

### **6.3 Execution in accordance with Development Programme**

The Development Manager shall ensure that the execution of the Project is conducted in accordance with the Development Programme.

### **6.4 Time contingency allowances**

The Development Manager will itemise time contingency allowances as appropriate in the Development Programme

## **7. WARRANTY**

### **7.1 Generally**

The Development Manager:

- (a) acknowledges that the Owner has entered into this Agreement in full reliance upon the particular skill, experience and ability of the Development Manager to provide the Services;
- (b) shall perform the Services with such high degree of professional skill, care and diligence expected of a professional consultant experienced in providing Development Management services of the type set out in Schedule 1 for projects of the type and scale of the Project;
- (c) will ensure that the Works when completed will be suitable in all respects for their intended purpose; and
- (d) is solely responsible for the performance of the Services, notwithstanding any instructions or approval given or review made by the Owner.

### **7.2 Inspections**

If the Services require the Development Manager to carry out inspections of the Project, the Development Manager must visit the Project and undertake any necessary physical inspections of the Project in order to:

- (a) give advice to the Owner in relation to the Project; and
- (b) be able to attest adequately to the correctness of any advice provided,

The Development Manager acknowledges that the Owner relies upon any inspections undertaken by the Development Manager and any advice or certification given under this Agreement in order to determine whether the Project is built by the Contractor in accordance with the relevant design documentation and other requirements of any Contract.

### **7.3 Development Manager includes**

In this clause 7, references to the Development Manager include references to the servants, employees and subcontractors of the Development Manager.

## **8. THE CLIENT'S ROLE**

### **8.1 Information and Access**

- (a) The Owner has provided the Development Manager with adequate Data defining the Owner's requirements for the Project. The Owner shall provide further available Data if reasonably requested by the Development Manager.
- (b) If required in order to allow the Development Manager to provide the Services, the Owner shall provide the Development Manager access to the Project and other places (if any) required to carry out the Services.

### **8.2 Instructions**

- (a) The Owner's Representative may give instructions (either directly or through a delegate appointed under clause 9.1(b)) to the Development Manager in connection with the Services. Subject to clause 8.1(b) and clause 8.3(c), the Development Manager shall comply with such instructions.

- (b) If the Development Manager considers that any instruction (whether by the Owner, the Owner's Representative or any delegate) may result in a claim by the Development Manager for additional costs or cause any delay to the Services, the Development Manager must:
  - (i) immediately provide details of the cost and time implications of the instruction; and
  - (ii) obtain written confirmation of the instruction from the Owner's Representative before proceeding.
- (c) Unless expressly stated, confirmation under clause 8.2(b)(ii) shall not be approval of any claim for additional costs or delay.

### **8.3 Changes to the Services**

- (a) The Owner may instruct the Development Manager to make changes to the Services or to carry out additional Services or reduced Services. No change or variation to the Services shall vitiate this Agreement.
- (b) The Development Manager shall comply with any instructions under clause 8.3(a) and the Owner shall allow a reasonable adjustment to the fee, where appropriate.
- (c) Without limiting clause 8.2(b), the Development Manager shall not carry out any change or variation to the Services without a prior written instruction authorised by the Owner's Representative. The Owner shall not be liable to make any payment to the Development Manager in respect of any variation to the Services claimed by the Development Manager whether in contract, tort, restitution or otherwise unless the Owner's Representative has authorised the variation in writing.

## **9. PERSONNEL AND REPRESENTATIVES**

### **9.1 The Owner's Representative**

- (a) The person referred to in Item 1 of Schedule 3 to this Agreement is the Owner's Representative who is authorised to act for the Owner under this Agreement. The Owner may by written notice to the Development Manager change its Representative.
- (b) The Owner's Representative may appoint delegates with authority to act on its behalf (including, but not limited to, the appointment of the Development Manager as a delegate), and such delegates shall have the functions, powers and authorities as notified to the Development Manager.

### **9.2 Development Manager's Representative**

The person referred to in Item 2 of Schedule 3 is the Development Manager's authorised representative for all of the purposes of this Agreement. The Development Manager shall ensure that any such person is contactable by mobile telephone, email and facsimile and that any change to the relevant numbers or email address is promptly notified to the Owner's Representative.

### 9.3 Nominated personnel

- (a) The Development Manager shall ensure that the personnel listed in Item 3 of Schedule 3 are made available at all reasonable times and are actively involved in performing the Services.
- (b) The Owner may make reasonable objection at any time to any of the personnel listed in Item 3 of Schedule 3 and to any replacement personnel. Upon receipt of a written objection from the Owner, the Development Manager shall immediately replace the relevant person or persons with a person or persons acceptable to the Owner.

## 10. DATA

### 10.1 Ownership of and copyright in Agreements

- (a) Ownership of and copyright in all Data prepared by the Development Manager pursuant to this Agreement (in this clause 10 referred to as the **Development Manager's Documentation**) shall be upon its creation vested in the Owner.
- (b) The Owner shall retain copyright in all Data provided by or on behalf of the Owner to the Development Manager in connection with the Project. The Owner authorises the Development Manager to copy and use the Data in connection with the Services only.
- (c) Upon completion of the Services or earlier termination of the Agreement or otherwise upon written demand to do so, the Development Manager shall deliver or return all Data to the Owner's Representative. The Development Manager may retain, at its own cost, one copy of the Development Manager's Documentation for its records.

### 10.2 Error by Development Manager

Without prejudice to any other remedies under this Agreement or at law, where errors or omissions are found in any Data prepared by the Development Manager, the Development Manager shall promptly remedy such errors or omissions at its own cost and re-issue amended Data.

### 10.3 Confidentiality

- (a) The Development Manager shall not and shall ensure that any employee sub-consultant or adviser engaged by it does not:
  - (i) divulge for any purpose other than execution of Services in accordance with the Agreement to any third party or divulge to any other person any information regarding the nature or progress of the Services or the Project or contained in any design Agreements (prepared by the Development Manager or not) without the prior written approval of the Owner; or
  - (ii) without the prior written consent of the Owner, publish, either alone or in conjunction with another, articles, photographs and other illustrations relating to the Project.
- (b) The Development Manager may only communicate information referred to in clause 10.3(a) if:
  - (i) disclosure is required by law;

- (ii) it is in the public domain other than by reason of breach of clause 10.3(a);  
or
  - (iii) disclosure is to any adviser, consultant, expert, contractor or subcontractor employed or retained by the Development Manager who has a need to know (and only to the extent that each has a need to know) and who has been made aware that the information must be kept confidential.
- (c) This clause 10.3 survives the termination or expiry of this Agreement.

## **11. PAYMENT**

### **11.1 Fee**

Subject to the proper performance of the Services, the Owner shall pay the Development Manager the fee as set out in Schedule 2 payable for each stage or stages of the Services authorised to be carried out under the Agreement. The parties acknowledge that the fee is deemed to include all costs and expenses (including without limitation all incidental disbursements and expenses) of providing the Services and complying with all of the terms of this Agreement.

### **11.2 Invoices**

Invoices for services provided shall be submitted at the times stated in Schedule 2. Each invoice shall be for the percentage of the total fees representing the Services completed (taking into account the remaining work and services for the relevant stage of the Services) and shall be accompanied by:

- (a) information sufficient to allow the Owner to verify each invoice to its satisfaction;  
and
- (b) details of the time and fees remaining for completion of the relevant stage of the Services.

### **11.3 Payment**

The Owner shall pay the amount invoiced within the time specified in Schedule 2 provided that if any amount in an invoice is disputed, the Owner shall pay the amount not in dispute and provided further that the Owner may set off any amount due to the Owner by the Development Manager.

### **11.4 Goods and Services Tax**

- (a) The Owner will pay to the Development Manager any amount (**GST Amount**) which is payable by the Development Manager on account of goods and services tax, value added tax or any other like tax (**GST**) on any services provided under this Agreement.
- (b) If, at or about the time of introduction of any GST, any other tax or charge is abolished, modified or affected in any other way such that the direct or indirect costs of the Development Manager in providing the Services are reduced, the fees payable under this Agreement must be reduced by an amount equal to such reduction. The Development Manager will give the Owner reasonable access to its records for the purposes of ascertaining the extent of any such reduction. The **GST Amount** must be calculated on the fees as reduced under this paragraph (b).

- (c) If at any time an adjustment is made as between the Development Manager and the relevant taxing authority of an amount paid on account of GST on any supply made or deemed to be made to the Owner under this Agreement, a corresponding adjustment will be made as between the Owner and the Development Manager and any payments required to give effect to the adjustment will be made. If the Development Manager is entitled to an adjustment by way of refund, the Development Manager must apply for the refund if requested to do so by the Owner.
- (d) At least 14 days before the date for payment of any GST Amount the Development Manager must provide to the Owner a tax invoice complying with any legislation under which GST is imposed. Compliance by the Development Manager with this clause 11.4(d) is a precondition for payment of any GST Amount. The Development Manager must do all other things reasonably requested by the Owner to enable the Owner to obtain any input tax credit to which the Owner is entitled.
- (e) Nothing in this clause requires the Owner to pay any amount on account of a fine, penalty, interest or other amount for which the Development Manager is liable as a consequence of a default of the Development Manager.
- (f) If the Owner makes any supply to the Development Manager as a consequence of any matter arising under or in connection with this Agreement including without limitation by reason of a release of a claim arising under this Agreement, the Development Manager must pay to the Owner an amount equal to any GST payable by the Owner in relation to that supply.

## **12. SAFETY AND ENVIRONMENTAL**

### **12.1 Safety**

- (a) The Development Manager shall be responsible as part of the Services for ensuring on behalf of the Owner the management and implementation of safety practices in relation to the Project, including without limitation:
  - (i) taking all action necessary to ensure that proper safety procedures are implemented to satisfy the Owner's obligations under any law (including without limitation all occupational health and safety legislation);
  - (ii) monitoring and managing the safety performance of all Contractors;
  - (iii) undertaking all necessary action to remedy any known and material breach of safety performance by a Contractor; and
  - (iv) reporting to the Owner regarding material safety issues and all follow up action taken by the Development Manager and Contractors.
- (b) The Development Manager shall notify the Owner promptly of any accident in the performance of any work or services in relation to the Project which may give rise to a Claim being made against the Owner.
- (c) If any accident or safety issue arises which may give rise to a Claim being made against the Owner, the Development Manager shall promptly provide details of measures which have been taken to remove the safety risk and shall, if requested

by the Owner, provide assistance to the Owner in liaising with the relevant authority in relation to the issue.

## **12.2 Environmental Protection**

- (a) The Development Manager acknowledges the Owner's commitment to develop the Project in a manner which not only complies with all relevant environmental protection and pollution control legislation but also so that the Project does not cause environmental damage or pollution, except for any works already completed as at the date of this Agreement.
- (b) In recognition of this commitment, the Development Manager shall perform the Services in full awareness of all aspects of the environment within which the Services are being carried out and shall monitor and manage the performance of Consultants and Contractors to ensure that clause 12.2(a) is satisfied.

## **12.3 General**

If during the performance of the Services, the Owner is of the reasonable opinion that the Development Manager is either not ensuring compliance with all applicable safety and environmental protection laws, rules, regulations, approvals, authorisations and conditions or is performing the Services in a way which may result in the environment or the safety of any person being endangered, the Owner may without prejudice to any other remedy, notify the Development Manager of the breach involved and require it to be immediately remedied.

## **13. LIABILITY, INDEMNITIES AND INSURANCE**

### **13.1 Data**

The Development Manager shall:

- (a) be liable for the care of all Data prepared by the Development Manager or entrusted to it by the Owner until handed over or returned to the Owner;
- (b) take adequate steps to protect such Data, including, without limitation, using its best endeavours to ensure that:
  - (i) all Data stored by electronic means is protected from corruption or loss; and
  - (ii) backup copies of such Data are created at least daily and securely stored;
- (c) indemnify and keep indemnified the Owner in relation to any liability, loss, damage, cost or expense suffered or incurred by the Owner:
  - (i) because any Agreement provided by the Development Manager for the purpose of the Project breaches any copyright or other protected right; or
  - (ii) by reason of errors or omissions in any Data prepared by the Development Manager.

### **13.2 Other Liabilities**

The Development Manager shall be liable for and shall indemnify and keep indemnified the Owner against any claim, liability, loss, injury or damage arising out of or in connection with the Services, in respect of:

- (a) personal injury (including death) of any person or damage to any property, or any other liability arising out of or in connection with the Project to the extent that the same is due to the act, negligence, omission or default of the Development Manager, its employees, subcontractors or agents;
- (b) any failure by the Development Manager in giving any advice or taking any action in relation to any Contract or any other act or omission by the Development Manager that results in the Owner being in breach of any Contract; and
- (c) any other breach of this Agreement by the Development Manager.

### **13.3 No liability**

Subject to clauses 13.1(c) and 13.2 the Development Manager is not responsible to the Owner for any liability, loss, harm, damage, cost or expense (including legal fees) that:

- (a) the Owner may suffer, incur or sustain; and
- (b) arises out of the activities of the Development Manager in performing its duties or obligations under this Agreement or breach of this Agreement by the Development Manager;

except to the extent that that liability, loss, harm, damage, cost or expense arises from the Development Manager's wilful misconduct, bad faith or negligence.

### **13.4 Indemnity**

Subject to clauses 13.1(c) and 13.2, the Owner indemnifies on a joint and several basis in proportion to their respective Interests from time to time, the Development Manager against any liability, loss, harm, damage, cost or expense (including legal fees), that the Development Manager may suffer, incur or sustain:

- (a) as a result of any Claim brought or made against the Development Manager; and
- (b) arising out of the activities of the Development Manager in performing its duties or obligations under this Agreement or breach of this Agreement by the Development Manager;

except to the extent that that liability, loss, harm, damage, cost or expense arises from the Development Manager's wilful misconduct, bad faith or negligence.

### **13.5 Insurance**

- (a) Before commencing the Services the Development Manager shall ensure that appropriate public risk insurance is in effect to cover its liabilities under clauses 13.1 and 13.2 in an amount not less than the amount specified in Schedule 4.
- (b) The Development Manager shall effect and maintain insurance against such liability as may arise at common law or by virtue of any relevant workers or accident compensation legislation in respect of any person employed by the Development Manager in connection with the Services.
- (c) Without prejudice to its obligations under this Agreement, the Development Manager shall ensure that professional indemnity insurance is in effect with a limit of indemnity of not less than the amount stated in Schedule 4 in respect of any claim arising out of or incidental to any negligent act, error or omission by the Development Manager or its employees, subcontractors or agents in the design, specification or carrying out of any professional duties under this Agreement.



- (d) The Development Manager shall ensure the maintenance of the professional indemnity insurance referred to in clause 13.5(c) from the date upon which the Development Manager commences the Services for the period stated in Schedule 4.
- (e) The Development Manager shall provide to the Owner, upon request, from time to time, evidence that all insurances specified herein have been effected and are current and:
  - (i) names the Owner (or its directors, officers, employees and agents) as co-insured persons on the policy; and
  - (ii) a cross liability clause enabling one insured person to claim against the insurer even if the party making the claim against that insured person is also insured under the policy, is included in the policy.
  - (iii) the policy operates so that all insuring Agreements and endorsements, with the exception of limits of liability, operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured;
  - (iv) a waiver of all express and implied rights of subrogation against the Owner, its officers, employees and agents comprising the insured is included in the policy;
  - (v) provides that acts, omissions, non disclosures or misrepresentations by an insured shall not affect or prejudice the insurance in regard to any other insured; and
  - (vi) requires the insurer to obtain written consent from the Owner to any change in the conditions set out in (i) to (v) above.
- (f) The Development Manager shall ensure that all Consultants and Contractors effect and maintain workers compensation insurance required by statute and common law, professional indemnity insurance and all other insurances as are appropriate to the work or services being undertaken by the Consultant or Contractor.

## **14. TERMINATION**

### **14.1 Termination on Breach**

If the Development Manager breaches this Agreement then, without prejudice to any other rights or remedies, the Owner may:

- (a) give written notice specifying the breach and, if capable of remedy, specifying the action required to remedy the breach;
- (b) following such notice, immediately terminate this Agreement if the breach is not rectified within 14 days, or such shorter period as may be reasonably specified in the Owner's notice; and
- (c) terminate this Agreement without having given prior notice under clause 14.1(a) if the breach involves fraud or dishonesty or cannot be remedied, or if the Development Manager is insolvent.

## 14.2 Consequences of discretionary termination

If this Agreement is terminated pursuant to clause 14.1, the Owner shall, subject to proper verification, pay the Development Manager:

- (a) all fees certified by the Owner's Representative as properly due for the Services performed to the date of termination in accordance with Schedule 2; and
- (b) if the Development Manager is not in breach of any of its obligations under the Agreement:
  - (i) any expense necessarily and unavoidably incurred as a result of the termination; and
  - (ii) any expense reasonably incurred by the Development Manager prior to date of receipt of the notice of termination in contemplation of it providing the balance of the Services.

## 14.3 Deduction and Set off

From any amounts otherwise payable under this clause 14, the Owner may deduct or set off any amount which the Owner is entitled to claim from the Development Manager, whether under this Agreement or otherwise, including, without limitation, all costs, losses and expenses which the Owner suffers or incurs as a result of any breach by or insolvency of the Development Manager.

## 15. DISPUTES

### 15.1 Resolution of disputes

In the event of a dispute, difference or claim (**Dispute**) arising out of the Services or this Agreement, the parties shall comply with this clause 15 to resolve the Dispute:

- (a) Either the Owner or the Development Manager may give to the other notice in writing (a **Notice of Dispute**) specifying detailed particulars of the Dispute;
- (b) Following the service of a Notice of Dispute the parties shall confer at least once and use their best endeavours to resolve the Dispute;
- (c) If the Dispute is not resolved within 28 days (or within such further period as the parties may agree) of giving a Notice of Dispute the Dispute shall be determined by an independent expert in accordance with the Expert Determination Agreement in Schedule 5;
- (d) The identity of the independent expert shall be agreed by both parties or failing Agreement, then nominated, upon the application of either party, by the President of the Division of the Institution of Engineers, Australia referred to in Schedule 4;
- (e) The decision of the independent expert shall be final and binding if either:
  - (i) the dispute involves less than the amount stated in Schedule 4; or
  - (ii) the dispute involves more than that amount (or no amount is specified) and neither party commences further proceedings on the Dispute within 28 days after the independent expert's decision is given to both parties; and

- (f) Unless a party has complied with the dispute resolution procedures in this clause 15.1 that party may not commence court proceedings relating to the dispute except for an urgent injunction.

## **15.2 Continued performance**

Notwithstanding the existence of a Dispute, the Development Manager shall continue to perform the Services and, in so doing, shall comply with all reasonable instructions of the Owner.

## **16. GENERAL**

### **16.1 Assignment and subcontracting**

- (a) The Development Manager may not without the prior approval of the Owner (which approval must not be unreasonably withheld), assign or otherwise transfer any right or obligation under this Agreement. Unless specific written consent is given by both parties, no assignment shall release or discharge the Development Manager from any obligation under this Agreement.
- (b) The Development Manager may employ (within the scope of the Development Manager's fee) any person to which the Owner has no reasonable objection to perform any part (but not the whole) of the Services. The Owner's approval to such an engagement may be subject to reasonable requirements to ensure compliance with this Agreement.
- (c) This Agreement shall bind the Development Manager's successors, permitted assigns and personal representatives.

### **16.2 Entire Agreement**

This Agreement is the entire Agreement between the parties for the Services and supersedes all previous Agreements, proposals, representations, correspondence and discussions in connection with the Services.

### **16.3 Notices**

Any notice given pursuant to this Agreement shall be properly given if delivered by hand or sent by certified mail or facsimile to the address of the party to receive the notice stated in Schedule 4 hereto (or such other address as may be notified by a party to the other).

### **16.4 Governing law**

This Agreement, and any proceedings arising out of this Agreement, shall be governed by the laws of the State specified in Schedule 4 and the parties submit to the jurisdiction of the courts of that State.

### **16.5 Retrospectivity**

This Agreement shall apply retrospectively for the benefit of the Owner in relation to any part of the Services undertaken by the Development Manager prior to the date of this Agreement.

## Schedule 1 – The Development Manager’s Role

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The Development Manager’s primary role is to ensure all matters in relation to the development of the project are undertaken and executed on behalf of the owner. The Development Manager is responsible for specific tasks relating to:

1. Representing the Owner with respect to the day to day dealings with Consultants, Contractors and other persons engaged to effect the development and construction of the Project;
2. Providing all administrative services required by the Owner ; and
3. Liaison with the Owner.

The Development Manager’s specific tasks include, but are not limited to:

### 1. Owner Representation Tasks and Responsibilities

- Negotiate and manage on behalf of the Owner, in accordance with the Owner’s directions, the following Consultants:
  - Design Consultants
  - Surveyors
  - Town Planners
  - Insurance Brokers
  - Civil and Engineering Contractors
  - Construction Contractors
  - Marketing and Sales Agents
  - Financial Brokers and Institutions
  - Legal Consultants
  - Accounting Firms
- Represent the Owner in all dealings with the local authority, and all other statutory authorities with respect to the Project.

### 2. Administrative Services Tasks and Responsibilities

- Plan strategies and budgets for each stage of the Project;
- Arrange and coordinate the preparation of, and make recommendations in relation to, the overall development programmes and budgets for the Project;
- Arrange and coordinate development funding;
- Establish and maintain proper records and procedures for recording and reporting Project revenue expenditure;
- Prepare and lodge the BAS by the due date;
- Receive from Contractors progress claims, review all claims and make recommendations to the Owner for payment;

- Arrange and co-ordinate all statutory approvals;
- Commission and retain all market research and feasibilities relating to the Project;
- Maintain all insurance policies as may be necessary;
- Co-ordinate and manage the role of the Consultants in the construction Contracts for the Project;
- Oversee the preparation of a Project plan to the Owner for approval;
- Continually review the Project plan to ensure that the maximum return and quality of the Project is always enhanced.

### **3. Owner Liaison tasks and responsibilities**

- Keep the Owner apprised of all material developments and the progress of the Project;
- Provide regular monthly status reports;
- Notify the Owner of any anticipated delays, budget variances or other problems relating to the Project;
- Present to the Owner regular cash flow reports and forecasts of expenditure for the Project, including required forecasts for 30, 60 and 90 days;
- Report on expenditure over a 12 month period and also long term capital commitments;
- Prepare discussion papers, recommendations and reports in relation to major Project issues that are required.

## Schedule 2– Fees and payment

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- (a) Acquisition Fee  
2.5% of the purchase price (ex GST) of the Land, of 19 Douro Road, South Fremantle, Western Australia
- (b) Development Management Fees:  
3% of Project Costs plus applicable GST.
- (c) Development Management Fee Invoices:  
No more than one invoice to be submitted each calendar month, not earlier than the 21st day of the month, and equal to 3% of Project Costs incurred since the previous Invoice plus applicable GST
- (d) Times for Payment:  
On or before the last day of the calendar month following receipt of a valid invoice.
- (e) Performance Fee  
The development manager will be entitled to a success based Performance Fee as defined by the Offer Document (Information Memorandum):

The Development Profit will be divided into two segments - Primary Investor Return and Super Profit.

### PRIMARY INVESTOR RETURN

This will be calculated at 20% per annum on funds invested. For example, 1 unit invested for 3 years will be entitled to  $\$50,000 \times 20\% \times 3 = \$30,000$  Primary Profit.

- In the event that the Development Profit is less than the total Primary Investor Return, there will be no Super Profit distribution;
- The 20% per annum is not a guaranteed return. Rather, it is a guarantee that the first 20% per annum of profit will be paid out to investors. All profit above this will be classed as Super Profit.

### SUPER PROFIT

In the event that the total Development Profit is greater than the Primary Investor Return, the difference will be classed as Super Profit. The Development Manager will be entitled to 50% of the Super Profit as a Performance Fee, and the remaining 50% will be distributed amongst the unit holders in accordance with their unit holdings.

### Schedule 3 - Personnel

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The Owner's Representative is (9.1):

Peter Jodrell

The Development Manager's Representative is (9.2):

Katherine Whitton

The Development Manager's personnel are (Clause 9.3):

Simon Jodrell

Adriano Piviali

1. **Licensing or Certification Details** (if applicable) (Clause 3.2(e))

Licence/Certificate Category:

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Number:

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Expiry:

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2. **Public Liability Insurance** (Clause 13.5(a))

Amount of Cover:

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3.

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4. **Professional Indemnity Insurance** (Clause 13.5(c))

Amount of Cover:

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Expiry:

The earlier of 12 months after completion of the Project or termination of the appointment as Development Manager.

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Insurance to be maintained for

(if nothing stated then 10 years from completion of the Services)



5. **Division of Institute of Engineers to nominate expert (Clause 15.1(c))**

\_\_\_\_\_  
(if nothing stated, then the State in which the Project is located)

6. **Expert Determination binding if value of dispute is less than (Clause 15.1(d))**

\_\_\_\_\_  
(if nothing stated, then unlimited)

7. **Address for service of notices (16.3)**

**Owner**

The Trustee of the Meridiem Trust

Address: Suite 1, 2 Downey Drive

\_\_\_\_\_  
COMO WA 6152

Attention: Peter Jodrell

Email: peter@motusarchitecture.com.au

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Development Manager**

Motus Property

Address: Suite 1, 2 Downey Drive

\_\_\_\_\_  
COMO WA 6152

Attention: Katherine Whitton

Email: kate@motusproperty.com.au

\_\_\_\_\_

8. **Governing law (clause 16.4)**

Western Australia

\_\_\_\_\_  
(If nothing stated then the State in which the Project is located)

(Clause 15.1(b))

WHEREAS:

- A By Development Management Agreement made on [*insert date*] between [ ] and [ ] (**Development Manager**) the Owner engaged the Development Manager to provide consultancy services in connection with the Project (as defined in the Development Management Agreement).
- B Disputes have arisen between the parties as to certain matters relating to the Agreement and its performance.

Agreed terms

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1. The parties hereby request [*insert name*] (**Expert**) to determine the matters in dispute outlined in the Notice of Dispute dated [*insert date*] annexed to this Agreement by issuing a certificate stating his/her determination, and the Expert by signing his/her acceptance of this Agreement agrees to comply with such request in accordance with the terms of this Agreement.

The Expert in so determining and certifying:

- will act as an expert and not as an arbitrator;
- will proceed in such manner as he/she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- will take into consideration all Agreements, information and other written and oral material that the parties place before him/her including Agreements, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
- will not be expected or required to obtain or refer to any other Agreements, information or material but may do so if he/she so desires;
- will without giving reasons issue a certificate in such form as he/she considers appropriate stating his/her determination of the matters in dispute;
- will act with expedition with a view to such certificate being issued as soon as practicable.

The Expert may if he/she so desires arrange to meet with the parties to discuss the dispute. At and in connection with any such meeting:

- either party may be accompanied by a legal representative or other advisers;
- the parties agree to be bound by such procedural directions as may be given by the Expert both in preparation for and during the course of the meeting.

The parties agree that any such meeting shall be deemed not to be a hearing such as to import any colour of the proceedings under this Agreement being considered to be an arbitration.

The Expert shall not be liable to the parties or either of them or to any third party or stranger for anything done or omitted by him/her pursuant to this Agreement and the parties release and indemnify him/her from and against any claims for negligence, bias or other misconduct other than actual fraud.

The parties shall share equally in paying the costs and expenses of the determination as previously agreed with the Expert or, in the absence of previous Agreement, as certified by the Expert.

SIGNED by [Owner]

on.....(date) (Signature)

SIGNED by the Development Manager

on.....(date) (Signature)

ACCEPTED by the Expert

on.....(date) (Signature)

**EXECUTED as an Agreement**

SIGNED by )  
STADIUM DRIVE PTY LTD )  
(ACN 162 845 981) )  
in accordance with s127 of the )  
Corporations Act and in accordance )  
with its Constitution by: )



\_\_\_\_\_  
Director

Peter Jodrell

\_\_\_\_\_  
Print Name



\_\_\_\_\_  
Director / Secretary

Katherine Whitton

\_\_\_\_\_  
Print Name

SIGNED by )  
INSPIRE ENTERPRISES PTY LTD )  
(ACN 155 331 801) )  
in accordance with s127 of the )  
Corporations Act and in accordance )  
with its Constitution by: )



\_\_\_\_\_  
Director

Peter Jodrell

\_\_\_\_\_  
Print Name



\_\_\_\_\_  
Director / Secretary

Katherine Whitton

\_\_\_\_\_  
Print Name