

**SERVICE AGREEMENT  
FOR BODY CORPORATE MANAGER**

Body Corporate XXXXXX (to be confirmed)

**COMMERCIAL PROPERTY SOLUTIONS LIMITED**  
("Body Corporate Manager")

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THIS AGREEMENT is made on (to be confirmed)

## PARTIES

1. **BODY CORPORATE XXXX** ("THE BODY CORPORATE")
2. **COMMERCIAL PROPERTY SOLUTIONS LIMITED TRADING AS COLLIERS INTERNATIONAL** ("BODY CORPORATE MANAGER")

## INTRODUCTION

- A. The Body Corporate has resolved to appoint the Body Corporate Manager and to contract the Body Corporate Manager to undertake certain services, duties and functions on behalf of the Body Corporate and the Chairperson of the Body Corporate and/or the Body Corporate Committee that are specified in Schedule 1.
- B. The Body Corporate Manager has agreed to accept such appointment as Body Corporate Manager and to undertake the services, duties and functions of the Body Corporate, and/or Body Corporate Committee and the Chairperson upon and subject to the terms and conditions in this Agreement.

## AGREEMENT

### 1. DEFINITIONS

- 1.1 Terms used in this Agreement shall have the meaning and/or definition ascribed by the Act or as otherwise defined below:

**"Act"** means the Unit Titles Act 2010.

**"Additional Services"** means the services, duties and functions set out in Schedule 2 and requested by the Body Corporate that the Body Corporate Manager carries out.

**"Additional Service Fees"** means the fee payable by the Body Corporate to the Body Corporate Manager for Additional Services as set out in Schedule 2.

**"Administration Fee"** means the fee payable by the Body Corporate in consideration of the Body Corporate Manager carrying out the Base Services as set out in Schedule 1 and as advised to the Body Corporate by way of annual budget and reviewed in accordance with clause 9.

**"Administration Services"** means the services, duties and functions set out in the Schedule 1.

**"Body Corporate Rules"** means the operational rules of the Body Corporate, including and incorporating any amendments made to the operational rules.

**"Business Day"** means any day in New Zealand other than:

- a. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Matariki Day, Waitangi Day and the provincial anniversary of Auckland, New Zealand; and
- b. A day in the period commencing 24 December in any year and ending 5 January in the following year.

**"Chairperson"** means the Chairperson of the Body Corporate.

**"Commencement Date"** means XXXX (to be confirmed)

**"Committee"** means a body corporate committee established under s 112 of the Act.

**"Complex"** means all buildings and structures on the Unit Title Development, including all common property, units and accessory units.

**"Disclosure Statement"** means any statement required under subpart 14 of the Act.

**"Fees"** means the Administration Fee and the Additional Service Fees.

**"Levies and/or Levy"** means any levies/levy payable by Owners under sections 121, 122, 123, 124, 125, 126, 127 and 128 of the Act.

**"Owners"** means the unit owners as is defined in the Act.

**"Regulations"** means the Unit Title Regulations 2011.

**"Services"** means the Administration Services and Additional Services.

**"Term"** means one year commencing on the Commencement Date subject to clause 8.

**"Unit Title Development"** means the individual units and the common property comprising a stratum estate.

## 2. INTERPRETATION

2.1 Headings and sub-headings are included for ease of reference and none of the provisions of this Agreement are to be construed or interpreted by reference to such headings or sub-headings.

2.2 References to:

- a. Statutes, regulations, ordinances, or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing them; and
- b. Money shall be New Zealand dollar money, which shall be the currency of this Agreement.

2.3 Unless the context otherwise requires:

- a. Words importing a particular gender include any other gender or neuter;
- b. The singular shall include the plural and vice versa;
- c. "Person" includes a Body Corporate and vice versa;
- d. Wherever a Body Corporate is a party to this Agreement, the words designating such Body Corporate shall extend to and include such Body Corporate, its successors and (subject to any provision in this Agreement to the contrary) permitted assigns;
- e. Wherever a person is a party to this Agreement, the words designating such a person shall extend to and include that person's executors, and (subject to any provision in this Agreement to the contrary) his or her permitted assigns;
- f. Where two or more parties are bound by a provision, then, whether those parties are referred to individually or together, the provisions shall bind those parties jointly and each of them severally; and
- g. Derivatives of any defined terms have a corresponding meaning to that of the defined term.

### 3. **APPOINTMENT**

#### 3.1 Pursuant to:

resolution of the Body Corporate passed on XXXX (to be confirmed)

the Body Corporate Manager was appointed as manager of the Body Corporate, the terms of this Agreement were approved and entered into by an authorised representative of the Body Corporate.

- #### 3.2
- The Body Corporate warrants that it has sufficient authority to effect the appointment in accordance with clause 3.1, and in addition to the indemnity contained in clause 15.15.1, indemnifies the Body Corporate Manager for all claims, damages, penalties and losses (including costs) incurred by the Body Corporate Manager and arising out of any alleged lack of authority on the part of the Body Corporate or its officers.

### 4. **SERVICES**

#### 4.1 The Body Corporate Manager will perform the Services and must do so:

- a. in a competent and efficient manner to the generally acceptable commercial standards; and
- b. in the best interests of the Body Corporate.

- #### 4.2
- Where the Body Corporate Manager is reasonably requested to perform Additional Services, the Body Corporate Manager will do so with all reasonable diligence at the cost of the Body Corporate PROVIDED THAT any Additional Service is within the scope of the

Body Corporate's authority, duties and powers as specified in the Act and that any necessary authority or instruction of the Body Corporate has been given.

**5. RESPONSIBILITIES AND DUTIES OF BODY CORPORATE MANAGER**

5.1 The Body Corporate Manager will at all times use all reasonable endeavours and act in good faith, exercise due care and diligence, and not make improper use of its role in performing the Services under this Agreement.

5.2 The Body Corporate Manager shall at all times carry out the Services in accordance with the requirements of the Act, Regulations, Body Corporate Rules and terms of this Agreement and must:

- a. abide by the Code of Conduct for Body Corporate Managers as set out in the Regulations; and
- b. report to the Body Corporate on the performance of the Services on an annual basis;
- c. acquire a good understanding of the Act, Regulations, Code of Conduct and other legislation and issues on which it is assisting the Body Corporate, performing the Services and acting on behalf of the Body Corporate and ensure that any person employed or contracted by it to perform the Services does so as well;
- d. as soon as practicable after becoming aware of any conflict of interest, disclose the conflict of interest to the Chairperson and/or Committee;
- e. act independently in relation to the performance of Services for more than one body corporate;
- f. not intermingle money (in relation to the Body Corporate Manager's trust account), records or any other property and information of the Body Corporate;
- g. keep the Body Corporate informed of any significant development or matter relating to the performance of Services;
- h. ensure any goods or Services supplied are done so at competitive prices; and
- i. keep records for the Body Corporate, Committee and itself as Body Corporate Manager.

**6. WARRANTIES BY THE BODY CORPORATE**

6.1 The Body Corporate warrants that it will comply with all applicable statutes, regulations, ordinances or by-laws, including, but not limited to, the Unit Titles Act 2010, the Unit Titles Regulations 2011, the Health and Safety at Work Act 2015, and the Health and Safety at Work (Asbestos) Regulations 2016.

**7. REMUNERATION**

7.1 In consideration of the performance of:

- a. the Administration Services, the Body Corporate shall pay to the Body Corporate Manager the Administration Fee by equal monthly instalments in advance on the first day of each calendar month during the Term; and
- b. the Additional Services, the Body Corporate agrees to pay the Body Corporate Manager the Additional Service Fees upon receipt of an invoice for those Additional Services.

## **8. RENEWAL**

- 8.1 This Agreement shall automatically renew for a further term of 1 (one) year so that the Agreement runs for one (1) year from an annual general meeting to the next annual general meeting (the "Renewal Date") unless terminated by notice in writing by either party at least one month before the end of the term. The renewed term shall be on the same terms and conditions as this Agreement unless otherwise agreed.

## **9. REVIEW OF FEES**

- 9.1 The Fees shall be reviewed on the Renewal Date by the Body Corporate Manager who shall give written notice to the Body Corporate of the reviewed amount.
- 9.2 The new Administration Fee shall be agreed between the parties PROVIDED THAT it shall increase by at least CPI and shall not be reduced.
- 9.3 Upon review and agreement of the Fees a new Schedule 2 shall be approved by the Body Corporate.

## **10. REIMBURSEMENT FOR OUTLAYS**

- 10.1 The Body Corporate shall pay to the Body Corporate Manager for all expenditure incurred or payable by the Body Corporate Manager pursuant to this Agreement and in performance of the Services, including office charges and any payments paid by the Body Corporate Manager on behalf of the Body Corporate.
- 10.2 All payments due to the Body Corporate Manager shall be paid immediately upon invoice or immediately upon any expenditure being incurred by the Body Corporate Manager on behalf of the Body Corporate.

## **11. DISCLOSURE STATEMENT FEES**

- 11.1 The Body Corporate Manager shall be entitled to charge and retain for its own benefit a reasonable fee for the preparation of any Disclosure Statement or provision of any information prepared by the Body Corporate Manager.
- 11.2 An Owner that is selling a unit and has requested the Disclosure Statement (the "seller") shall be charged for the Disclosure Statement and is responsible for payment to the Body Corporate Manager.
- 11.3 The Body Corporate Manager may stipulate any reasonable requirements it has for a valid request to be made by the seller and the seller must complete those requirements prior

to the Body Corporate Manager completing and providing the Disclosure Statement to the seller.

11.4 The seller shall sign the Disclosure Statement as required under the Act.

**12. LEVIES**

12.1 The Body Corporate Manager shall prepare an annual budget for the Body Corporate to be tabled at each AGM for approval by the Body Corporate.

12.2 Levies payable by an Owner shall be determined on the basis of the approved annual budget.

12.3 On behalf of the Body Corporate the Body Corporate Manager shall collect Levies from the Owners and make payments on behalf of the Body Corporate that are provided for in the approved annual budget.

12.4 Subject to authorisation by the Body Corporate, where any Owner fails to pay any Levy or account by the due date their account shall be charged interest on the outstanding balance at 10% and a late payment charge for the Body Corporate Manager's additional administration. The Body Corporate Manager shall collect the overdue account as a debt to the Body Corporate in accordance with s124 of the Act and the debt collection procedures set out in Schedule 3. Until the defaulting Owner has paid all overdue accounts including interest and charges, the Body Corporate will be liable to the Body Corporate Manager for the cost of the Additional Services in recovering the debt. For the avoidance of doubt, the accounts include any outstanding Disclosure Statement Fees.

**13. ACCESS TO COMPLEX**

13.1 The Body Corporate and Owners shall grant the Body Corporate Manager, including its contractors, agents and employees, all reasonable and necessary access to the Complex to perform the Services.

**14. SIGNING OF DOCUMENTS**

14.1 The Body Corporate Manager is authorised to sign and certify the correctness of a Pre-Settlement Disclosure Statement on behalf of the Body Corporate and any other documents that the Body Corporate or the Body Corporate Committee has given express authority in writing for the Body Corporate Manager to sign on its behalf.

14.2 The Chairperson shall make themselves readily available for signing on behalf of the Body Corporate when required.

**15. INDEMNITY**

15.1 The Body Corporate indemnifies the Body Corporate Manager against all claims, damages, penalties and losses (including costs) incurred by the Body Corporate Manager in performing the Services in accordance with this Agreement except in the circumstances set out in clause 15.2.

15.2 The Body Corporate Manager indemnifies the Body Corporate against all claims, damages, penalties and losses (including costs) incurred by the Body Corporate as the result of:

- a. any breach of the Body Corporate Manager's obligations under this Agreement; or
- b. any negligent act or omission by the Body Corporate Manager or any person under the Body Corporate Manager's control.

15.3 The Body Corporate Manager will not be liable to the Body Corporate for:

- a. any claims, damages, penalties or losses (including costs) incurred by the Body Corporate, or
- b. any damage caused to the Complex

resulting from the Body Corporate Manager properly performing the Services in accordance with this Agreement.

## 16. **TERMINATION**

16.1 This Agreement continues until ended:

- a. by expiry of the Term or any renewed term (if applicable); or
- b. by agreement between the parties; or
- c. by the Body Corporate in accordance with clause 16.216.2; or
- d. by the Body Corporate Manager in accordance with clause 16.3.

16.2 The Body Corporate can end this Agreement by notice in writing to the Body Corporate Manager (the "Termination Notice") if the Body Corporate Manager:

- a. does not fulfil any of its obligations under this Agreement and either:
  - i. the default or breach is material and cannot be remedied; or
  - ii. the default can be remedied but has not been 20 Business Days after the Body Corporate Manager receives written notice of the default, but the Body Corporate cannot end this Agreement under this subclause if the default is not material or has been remedied before the Body Corporate Manager receives the Termination Notice;
- b. commits an act of bankruptcy or makes any assignment or composition with its creditors;
- c. becomes liable to be placed in liquidation;
- d. cannot pay its debts when they fall due, or is deemed not to be able to pay them in accordance with section 287 the Companies Act 1993;

- e. suspends payment to its creditors or ceases or threatens to cease operating or convenes a meeting of its creditors to propose a scheme of arrangement with them;
  - f. has a liquidator, receiver, statutory manager or Administrator appointed, or proposes or passes a resolution to appoint a liquidator or Administrator;
  - g. transfers or disposes of a substantial part of its assets for inadequate consideration, or threatens to do so; or
  - h. has a final judgment for more than \$5,000.00 against it which remains unpaid for 10 Business Days.
- 16.3 The Body Corporate Manager may end this Agreement for any reason by giving the Body Corporate 30 Business Days' written notice.
- 16.4 On termination of this Agreement, the Body Corporate Manager will return any records, funds, or other things of or relating to the Body Corporate to the Body Corporate as soon as practicable after the Agreement has ended.
17. **NOTICES**
- 17.1 Any notice or other communication ("notices") given under this Agreement must be in writing.
- 17.2 Notices must be served personally or sent to the relevant party's address for service.
- 17.3 The Body Corporate Manager's address for service shall be:
- a. Commercial Property Solutions Limited, PO Box 19093, Hamilton 3244; and
  - b. Jane.kelly@colliershn.co.nz
- 17.4 The Body Corporate's address for service shall be:
- a. c/o the Body Corporate Chairperson, to their email address held by the Body Corporate Manager; and
  - b. if there is a Body Corporate Committee, to the email address of each committee member held by the Body Corporate Manager.
- 17.5 Each party will notify the other in writing of any changes.
- 17.6 Subject to clause 17.77.7, notices are deemed served at the following times:
- a. when given personally, upon delivery;
  - b. when sent by post (other than airmail) or document exchange, 3 Business Days after posting;
  - c. at the time an email is validly sent.

17.7 Notices served other than on a Business Day shall be deemed to have been served on the first business day after that day.

17.8 A notice may be given by an authorised officer, employee or agent.

17.9 Time is of the essence.

## 18. SEVERANCE

18.1 If any of the provisions in this Agreement becomes legally ineffective, invalid or unenforceable the effectiveness, validity or enforceability of the remainder is not affected.

## 19. GOVERNING LAW

19.1 This Agreement shall be governed and construed in all respects in accordance with the laws of New Zealand and to the extent that the Body Corporate and the Body Corporate Manager are legally able to do so, they hereby irrevocably submit to the exclusive jurisdiction of the Courts of New Zealand in respect of any legal proceedings in connection with this Agreement. The parties unconditionally and irrevocably waive their rights to object that New Zealand courts are not the most suitable forum for all parties' interests in proceedings related to this Agreement.

## 20. ENTIRE AGREEMENT

20.1 This Agreement records the entire agreement and understanding between the parties in relation to the matters contemplated by this Agreement and supersedes any prior agreement, representation, communication, or undertaking made between the parties.

## 21. DISPUTE RESOLUTION

21.1 If:

- a. the Body Corporate has a dispute with an Owner; or
- b. the Body Corporate has a dispute with the Body Corporate Manager; or
- c. an Owner has a dispute with either the Body Corporate Manager or the Body Corporate;

the complaining party will promptly give full written particulars of the dispute to the other and the parties will promptly meet together and in good faith try and resolve the dispute.

21.2 If the dispute is not resolved within 7 Business Days of written particulars being given (or any longer period agreed to by the parties) the dispute may be referred to a solicitor experienced in matters pertaining Act with agreement of the parties, or otherwise a claim lodged by the complainant with the Tenancy Tribunal.

21.3 This clause will not apply to:

- a. a dispute arising in connection with any attempted re-negotiation of this Agreement; or
- b. any application by a party for urgent interlocutory relief.

22. **PRIVACY ACT 2020**

- 22.1 The Manager will manage all personal information received by it in accordance with its obligations under the Privacy Act 2020 and its privacy policy: <https://www.colliers.co.nz/en-nz/privacy-policy>

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Executed by the Chairperson of  
**BODY CORPORATE XXXXXX (tbc)**

\_\_\_\_\_  
Chairperson's signature

\_\_\_\_\_  
Chairperson's full name

Signed by  
**COMMERCIAL PROPERTY SOLUTIONS LIMITED**

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

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## SCHEDULE 1

### BODY CORPORATE MANAGER – ADMINISTRATION SERVICES

The Body Corporate Manager shall cause the following Services to be performed:

- a. Payment of any accounts the Body Corporate has properly incurred.
- b. Prepare an annual budget for the Body Corporate's operating costs and long term maintenance funds for approval by the Body Corporate.
- c. Prepare and distribute to the Owners a budget, a statement of financial performance and a statement of financial position.
- d. Maintain financial accounts and records in relation to the Body Corporate and submit all financial accounts to an auditor if required in accordance with s132 of the Act.
- e. Arrange insurance for all buildings and other improvements on the Unit Title Development as directed by the Body Corporate, to their full insurable value (s135 of the Act) and any other insurances as directed by the Body Corporate. Owners of commercial units will need to arrange their own Business Interruption/Loss of Profits cover.
- f. Lodge insurance claims as required [Note: additional attendance will apply for follow up work].
- g. Keep a register of Owners (to the extent required under r 4 of the Regulations).
- h. Maintain records of the Body Corporate as required by the Act.
- i. Convene one Annual General Meeting per year and complete Body Corporate meeting requirements, (as set out in the Act, Regulations and Body Corporate Rules) including prepare agenda, chair (unless directed otherwise), prepare and distribute minutes, record resolutions, notify Owners, and collect proxies and postal votes as they pertain to the meeting.
- j. Deal with inwards and outwards correspondence.
- k. Invoice Owners for their annual levies and ensure Body Corporate sets levy/levies in accordance with the Act (s 121).
- l. Arrange a valuation for fire insurance purposes where required by the insurance underwriter.
- m. As directed by the Body Corporate (or its Committee), hold and manage funds for operational expenses, the optional contingency fund, the optional capital improvement fund and the long-term maintenance fund if applicable in terms of the Act.
- n. Provide an address for service for the Body Corporate.

- o. Establish and maintain an operating account (s115). If the operating account is outside of the Body Corporate Manager's Trust Account, an additional fee may be charged.
- p. Notify the Committee or Body Corporate of any delegation of duty or power (in accordance with r 22(1)).
- q. Where authorised to do so by the Body Corporate, undertake those costs/expenses that are incurred at least once a year relating to the maintenance of the Complex.

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## SCHEDULE 2

### ADDITIONAL SERVICES AND ADDITIONAL SERVICE FEES

Notes:

- All amounts are GST exclusive.
- Time and attendance charges are based on an hourly rate of \$100 excluding GST and calculated per 15 mins.

Additional Services	Charge/Fee
<b>Additional Administrative Services</b>	
Manage an insurance claim	Time and attendance
Review health and safety and asbestos reports/isolate/minimise or remove identified hazards and updating risk register	Time and attendance
Obtaining more than 2 quotes for work to be completed in line with instructions from Body Corporate	Time and attendance
Insurance risk survey requirements – management of issues raised	Time and attendance
Enforce Body Corporate Rules and the responsibilities of Owners as set out in the Act and Regulations at the cost of the Owner who is in breach of those rules and responsibilities	\$100 per instance
Recover costs (including those of the Body Corporate Manager) in attending to repairs and maintenance from individual Owners that relate to that Unit	Time and attendance
Attendance at meetings (other than AGMs) including Committee meetings and EGMs	\$200 per meeting  Mileage \$1 per km
File returns and information as required with the IRD including GST returns, Income Tax returns	Registration for GST/Income Tax: \$250  Returns: \$250 per return
Disbursements - photocopying, printing, postage, stationery and communication	On a scale based on the number of units
Recovery of expenses on scale, including access fobs/water/power	\$5 per invoice
Recovery of compliance costs relating to Owners and not the Body Corporate	Time and attendance
Compliance/BWOF matters	\$500.00 set up  \$150.00 per annum for review

After hour call outs	\$50 per instance
Obtaining job specifications/quotes/management of repairs and maintenance including large scale/complex property work, one off projects or construction or any other exceptional non-regular repair or maintenance	Time and attendance
Any additional duties or services instructed or authorised by the Body Corporate that are not specified in Schedule 1	Time and attendance
Termination & handover fee, prepare e-file documents for handover.	
<b>Disclosures</b>	
Prepare disclosure statements as required under Regulations 33, and 34 at the request and cost of the Owner selling its unit	
Pre-Contract – s146	POA
Pre-Settlement – s147	POA
<b>Debt Collection</b>	
Levies 24 days over due	\$100
Levies 38 days over due	\$200
Tenancy Tribunal Application and attendances	Time and Attendance

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## SCHEDULE 3

### DEBT COLLECTION PROCEDURE

1. Levies (or a portion thereof) that are 10 days overdue and >\$5.00: First reminder letter sent.
2. Levies (or a portion thereof) that are 24 days overdue and >\$50.00: The following charges will be made to the account - 10% charge on the total outstanding and a debt collection fee of \$100.00 plus GST.
3. Levies (or a portion thereof) that are 38 days overdue and >\$400.00:
  - a. A debt collection fee of \$200.00 plus GST will be added to the account.
  - b. Referral of the matter for recovery, which may be, but not limited to one of the following:
    - i) Solicitors
    - ii) Debt Collectors
    - iii) Tenancy Services
4. Please note that the defaulting Owners shall be responsible for all Body Corporate costs for collection including but not limited to solicitors costs, court filing fees, Tenancy Services filing fees, debt collection fees, time and attendance for the Body Corporate Manager to attend on matters and any other disbursements, incurred in the collection of the outstanding levy or account.
5. At any time, subject to approval of the Body Corporate, an Owner can ask for a repayment plan. There will be a set-up fee of \$50.00 plus GST for this payment arrangement.