

BLUE TOWER
ASSET MANAGEMENT AGREEMENT

(Consolidated as at June 2006 and incorporates:

- *Deed of Variation dated 28 November 2003; and*
- *Deed of Variation dated 6 June 2006)*

LEYSHON CORPORATION LIMITED ACN 090 257 480

And

AUSTRALIAN AND ASIA/PACIFIC INSTITUTE OF PROPERTY AUDITORS PTY LTD
ACN 083 601 110

And

LEYSHON OPERATIONS PTY LTD ACN 074 603 580

ASSET MANAGEMENT AGREEMENT

Made on

2003

BETWEEN **LEYSHON CORPORATION LIMITED ACN 090 257 480 AS TRUSTEE OF BLUE TOWER TRUST ARSN 109 093 852** of Level 1, 295 Elizabeth Street, Brisbane, Queensland

(‘Trustee’)

AND **LEYSHON OPERATIONS PTY LTD ACN 074 603 580** of Level 1, 295 Elizabeth Street, Brisbane, Queensland

(‘Leyshon’)

AND **AUSTRALIAN AND ASIA/PACIFIC INSTITUTE OF PROPERTY AUDITORS PTY LTD ACN 083 601 110** of Level 20, 307 Queen Street, Brisbane, Queensland

(‘AAPIPA’)

BACKGROUND

- A. The parties have been negotiating to acquire the Property, with the aim of refurbishing, leasing and ultimately selling the Property, when determined appropriate (‘Investment’).
- B. Leyshon and AAPIPA have agreed to source equity and debt funding for the Investment.
- C. Leyshon and AAPIPA have agreed to act as the Asset Manager to manage the Property on behalf of the Trustee and Equity Investors.
- D. The parties have agreed to record the terms of their agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

In this Agreement, except to the extent the context otherwise requires:

‘**Agreement**’ means this Agreement;

‘**Asset Manager**’ means Leyshon and AAPIPA jointly and severally, unless otherwise specified;

‘**Building**’ means the building on the Property;

‘**Business Day**’ means a day other than a Saturday, Sunday, a public holiday or other holiday appointed pursuant to the *Holidays Act 1983 (Qld)* in Brisbane;

‘**Completion Date**’ means the date of settlement of the acquisition of the Property;

‘**Cumulative Return**’ to a relevant time means, in respect of Equity Investors generally or an individual Equity Investor, an amount equal to the total of the Return for each year or part year from the Completion Date until that relevant time;

‘Cut-Off Date’ means 31 December 2003 or such later date agreed between the Trustee and the Asset Manager;

‘Debt Facility’ means the amount of approximately \$96.5 million to be provided by third party financiers to the Trustee on behalf of the Equity Investors on terms negotiated by the Asset Manager, to partially fund the Investment;

‘Equity Investors’ means together those parties who submit funds for investment in the Investment and become the unitholders in the Blue Tower Trust;

‘Financier’ means the providers of the Debt Facility;

‘Gross Effective Rental’ means the gross face annual rental rate less all rental incentives including rent free periods, fitout allowance or fitout contribution;

‘Information Memorandum’ means the document to be issued by the Trustee and the Asset Manager seeking approximately \$30 million from Equity Investors to carry out the Investment;

‘Investment’ means the acquisition of the Property as agreed between the parties and includes the refurbishment, leasing and the ultimate sale of the Property, when determined appropriate, pursuant to the terms of this Agreement;

‘Investment Expenses’ means in respect of any accounting period or financial year the total of all costs, expenses, charges, fees and outgoings whatsoever properly incurred in that period or year on behalf of the parties in relation to the Investment and/or the management or administration thereof including but without limiting the generality of the foregoing:

- (a) all auditing and legal costs and expenses;
- (b) all other reasonable costs and expenses incurred in and about the administration of the Investment;
- (c) the cost of any valuation or feasibility or marketing project carried out; and
- (d) all proper costs, charges, fees, expenses and disbursements incurred by or on behalf of the parties in and about the acquisition, refurbishment, leasing and/or ultimate sale of the Property including but without limiting the generality of the foregoing:
 - (i) all statutory (whether Federal State or Local Government) and other charges and imposts imposed or levied on or in respect of the Property or any part thereof including all rates, taxes, levies, encroachment fees, fire brigade charges and all other charges and imposts of any kind whether now payable or at any future time becoming payable;
 - (ii) all insurance premiums properly payable in respect of the Property or any part thereof and/or the ownership or occupation thereof and directors’ and officers’ liability cover;
 - (iii) all costs and charges for waste removal and cleaning;
 - (iv) all repairs and maintenance of and to the Property;
 - (v) all fees and charges for signs;
 - (vi) all charges for the installation and use of water, sewer, telephone, drainage, electricity, gas, oil and/or other like utility services properly payable in respect of the Property;
 - (vii) all proper caretaking and/or security charges incurred in connection with the Property;
 - (viii) all costs and expenses of and incidental to the execution of the refurbishment works and/or any other works to the Property required or deemed necessary by the parties;
 - (ix) all costs, fees, charges and other moneys paid to any statutory or other authority in connection with the obtaining of any consent, approval, permit or authority required for the Investment in the manner herein contemplated;

- (x) all professional and/or other fees, costs and other charges payable to any professional adviser, consultant, contractor, sub-contractor, supplier or tradesman in connection with the execution of the Investment or any other works on or to the Property including the costs and expenses of any surveyor, engineer, quantity surveyor, architect, designer or other specialist consultant, builder, developer and/or construction manager;
- (xi) all costs and disbursements of any solicitor, land broker or other professional consultant engaged by or on behalf of the parties in relation to the acquisition, leasing, refurbishment, ultimate sale and/or management of the Property;
- (xii) all goods and services tax, stamp duty, registration fees and other government fees and charges payable on or in respect of the acquisition, ownership, refurbishment management and leasing of the Property;
- (xiii) all accrued interest or other charges of a like nature (including the costs incurred in providing money or the Property as security, if required and proper legal costs in connection with any security given);
- (xiv) the fees payable to the Asset Manager under clause 5.7 except 5.7(d);
- (xv) all costs associated with the promotion and leasing of the Property including payment of any rental incentives generally in accordance with the Investment Feasibility;
- (xvi) all acquisition costs including costs associated with the acquisition, due diligence and the debt and equity raising for the Investment;

less any costs, fees, charges, expenses, outgoings, input tax credits and disbursements recovered or reimbursed to the parties by any other person but not including any tax on return or capital gains;

‘Investment Feasibility’ means the projected statements of financial position, financial performance and cashflow of the Investment, a copy of which is set out in Schedule A, as varied in writing from time to time;

‘Investment Return’ means the projected total of all income received, including rental income, for the duration of the Investment and the net amount received on the ultimate sale of the Investment less all Investment Expenses and the 6% pa return to Equity Investors;

‘Market Value’ means the market value of the Property as determined by an independent, registered valuer with at least 5 years experience in Brisbane central business district commercial property valuation as approved by the parties and where the parties cannot agree on a valuer, an independent valuer appointed by the Queensland Division of the Australian Property Institute. Such market value is to be the price which the Property might reasonably be expected to be sold at the date of valuation assuming:

- (e) a willing, but not anxious, buyer and seller; and
- (f) a reasonable period within which to negotiate the sale, having regard to the nature and situation of the Property and the state of the market for properties of the same kind; and
- (g) that the Property was reasonably exposed to that market; and
- (h) that no account is taken of the value or other advantage or benefit, additional to market value, to the buyer incidental to ownership of the Property being valued; and
- (i) that the owners have sufficient resources to allow a reasonable period for the exposure of the properties for sale; and
- (j) that the owners have sufficient resources to negotiate an agreement for the sale of the Property.

‘person’ and **‘persons’** include individuals, firms, partnerships, bodies corporate, associations and governments and governmental, semi-governmental and local authorities and agencies;

‘Property’ means the land and improvements thereon described as lot 4 on RP173778 county of Stanley, parish of North Brisbane, title reference 16824076 and a two third interest in lot 1 on RP143070, title reference 15448202;

‘Refurbishment Plan’ means the work required to refurbish the Property and implement the scope of works and plans prepared by the Asset Manager in consultation with project consultants, being approximately an initial \$5 million upgrade of air conditioning, electrical, fire services, lifts and other building services and general maintenance program and a further \$5 million for refurbishment immediately prior to the sale of the Property;

‘Return’ for a period means, in respect of Equity Investors generally or an individual Equity Investor, an amount calculated at a rate of 6% per annum on the initial amount invested, disregarding any partial capital repayments of that initial amount invested, calculated and credited quarterly in arrears;

‘Trust’ means the Blue Tower Trust to be established by the Trustee through which part of the Property will be purchased; and

‘Trustee’ means Leyshon Corporation Limited ACN 090 257 480) the trustee of the Trust and any other trustee from time to time appointed and in default of appointment means the Equity Investors.

2. AGREEMENT

2.1 Agreement

In consideration of each party entering into this Agreement and of the mutual confidence of the parties in one another, each of them covenants with the other in accordance with this Agreement.

2.2 Conditions precedent

Acquisition of the Property and commencement of the Investment is conditional on satisfaction of the following conditions on or before the Cut-Off Date:

- (a) the Trustee receiving applications for approximately \$30 million in equity from Equity Investors, all of which is to be available prior to the Completion Date;
- (b) the Asset Manager securing the Debt Facility on terms acceptable to the Asset Manager;
- (c) the Financier obtaining or otherwise being provided with a formal valuation of the Property on terms, and to a value, acceptable to the Asset Manager and the Financier;
- (d) the Asset Manager and its advisers conducting, and being satisfied (to the Trustee’s and the Asset Manager’s complete satisfaction) with the results of due diligence enquiries in relation to the Property;
- (e) Leyshon and AAPIPA or associated entities nominated by them submitting an application for \$3 million as an Equity Investor;
- (f) the Trustee arranging insurance for the Property in the names of the Trust, the Asset Manager and the Financier to take effect from the date on which risk passes under the contract for the acquisition of the Property for no less than the coverage required by the Financier.

The Trustee and the Asset Manager will use their respective best endeavours to satisfy the conditions precedent referred to in Clause 2.2 on or before the Cut-Off Date.

2.3 Satisfaction of conditions precedent

Upon the Asset Manager being satisfied that the conditions precedent set out in clause 2.2 have been satisfied, it will proceed to cause the Trustee to settle the acquisition of the Property, on a date nominated in the contract for the acquisition of the Property, in conjunction with the Trustee.

3. ASSET MANAGEMENT – GENERAL OBLIGATIONS

Each party must:

- (a) be just and faithful and provide full information to the other in relation to the Investment;
- (b) do or cause to be done all things necessary or desirable to carry out this Agreement;
- (c) exercise all powers as are available to it, do all such acts matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of this Agreement; and
- (d) not unreasonably delay any action, approval, direction, determination or decision required under this Agreement.

4. OBLIGATIONS OF TRUSTEE

4.1 Establish Trust and raise funds

The Trustee agrees to establish the Trust and raise approximately \$30 million from Equity Investors, to partially fund the Investment.

5. OBLIGATIONS OF ASSET MANAGER

5.1 Asset Manager to manage Investment

The planning, direction, execution and carrying out of the Investment including the coordination of all Investment consultants shall be managed by the Asset Manager generally in accordance with the Investment Feasibility.

5.2 Interaction with Equity Investors

The Asset Manager will be solely responsible for the relationship with the Equity Investors and must use its best endeavours to make any necessary contact with the Equity Investors.

5.3 Negotiate Debt Facility

The Asset Manager agrees to negotiate with third party financiers to obtain the Debt Facility to partially fund the Investment.

5.4 Limit of authority

- (a) The Asset Manager may execute leases for the Property on behalf of the Equity Investors provided either of the following criteria are met:
 - (i) face rentals and incentives are generally in accordance with the Investment Feasibility for the relevant floor of the building; or
 - (ii) the Gross Effective Rental is not less than \$276 per m² (\$290 per m² x 95%) over the term of the lease.
- (b) The Asset Manager may incur costs in the performance of its duties only to the extent those costs are:
 - (i) allowed for in the Investment Feasibility and only to the maximum amount provided for in the Investment Feasibility including any contingencies; or
 - (ii) additionally up to \$5,000 per month in incidentals provided however that these costs are directly attributable to the Investment and invoices are presented prior to these expenses being reimbursed.

5.5 Specific obligations

The Asset Manager must use its reasonable endeavours to:

- (a) arrange for the acquisition of the Property;
- (b) in particular on the part of Leyshon:
 - (i) cause the refurbishment works to be completed in accordance with the Refurbishment Plan and Investment Feasibility;
 - (ii) engage, on behalf of the Equity Investors, a registered builder to carry out the construction of the refurbishment works in accordance with the Refurbishment Plan and Investment Feasibility;
 - (iii) prepare and obtain all necessary applications for development approvals and building approvals for the Investment;
 - (iv) manage and direct the consultants and builder in the design and refurbishment of the building on the Property;
 - (v) engage external consultants and manage/co-ordinate, design and document all aspects of the Investment;
 - (vi) report progress with respect to the Investment to the Equity Investors on a quarterly basis;
 - (vii) arrange and procure plant, materials, supplies or services required for the refurbishment of the Building which are not the responsibility of a builder under a construction contract;
 - (viii) manage the Debt Facility and funds invested by the Equity Investors;
 - (ix) provide a corporate guarantee in the sum of \$10 million to the Financier;
 - (x) collect and bank all monies received in relation to the leases and the Investment and to pay all expenses and outgoings and thereafter distribute these monies pursuant to this Agreement; and
 - (xi) prepare and maintain all accounting and taxation records and reports in relation to the Investment;
- (c) in particular, on the part of AAPIPA:
 - (i) promote, advertise and use its best endeavours to lease the Property;
 - (ii) represent the parties in negotiations with current and prospective tenants of the Property and any matter directly relating thereto;
 - (iii) report progress on the promotion and leasing of the Property to the Equity Investors on a quarterly basis;
 - (iv) arrange for the appointment of and thereafter co-ordinate an external property manager (at the expense of the Investment) to manage and collect all rentals from tenants; and
 - (v) when determined appropriate arrange for the ultimate sale of the Property, co-ordinate selling efforts and any consultants engaged for such purpose, represent the parties in negotiations with prospective purchasers of the Property and any matter directly related thereto.

5.6 Reporting

- (a) By the 21st day of the month following the end of each calendar quarter the Asset Manager must provide a written report to the Trustee and the Equity Investors in a format acceptable to the Trustee comparing actual results to date against the Investment Feasibility.
- (b) Each quarterly report must address in detail progress for each of:
 - (i) the Refurbishment Plan;

- (ii) the leasing program; and
- (iii) management accounts.

5.7 Asset Manager's fees

In consideration for carrying out its obligations under this Agreement:-

- (a) the Asset Manager will receive an Investment acquisition fee of 2% of the Property's purchase price paid on the latter of the Completion Date and the raising of \$30 million in equity, in the event that the \$30 million in equity has not been raised by the Completion Date an additional Investment acquisition fee calculated as 6% per annum of the 2% of the Property's purchase price will also form part of the Investment acquisition fee, the total to be divided equally between Leyshon and AAPIPA;
- (b) the Asset Manager will receive an asset management fee of 0.5% pa of the Property's annually assessed capital value payable in monthly instalments commencing on the Completion Date and to be divided equally between Leyshon and AAPIPA;
- (c) if any monthly instalments payable under clause 5.7(a) remain unpaid upon the sale of the Property, or termination of this Agreement, they shall be paid upon the date of settlement of the sale of the Property by the Equity Investors or the date of termination of this Agreement, whichever is the earlier;
- (d) the Asset Manager will also receive a fee of 30% of the Investment Return, to be distributed evenly between Leyshon and AAPIPA;
- (e) Leyshon Group will receive a guarantee fee of 1% pa of \$10 million payable monthly in arrears for the provision of a \$10 million corporate guarantee to the Financier;
- (f) AAPIPA will be provided with a management office in the Building for the purpose of performing duties for the Investment, at no cost to the Asset Manager.

5.8 Limitation on liability and indemnity

- (a) Subject to clause 5.8(b), the Asset Manager will not be liable for acts or defaults of any of the consultants or contractors engaged in respect of the Investment.
- (b) The Asset Manager will be liable for loss or damage caused by any fraudulent or dishonest act on its part.

5.9 Reimbursement of expenses

The Trustee must on the Completion Date reimburse the Asset Manager for any Investment Expenses that have been incurred and paid by the Asset Manager prior to the Completion Date.

6. OWNERSHIP OF LAND

- (a) The rights, powers and privileges of the Asset Manager will rest in contract only and will not create or be deemed to create any estate or interest in the Property.
- (b) The Asset Manager will not seek to grant any encumbrance over the Property without the written consent of the Trustee. For the avoidance of doubt, for the purpose of this Agreement, a lease or licence in respect of part of the Property is not an encumbrance over the Property.

7. POWERS OF THE PARTIES

7.1 Asset Manager

The Asset Manager shall have full power to make decisions on:

- (a) the preparation and planning of all capital raising for the Investment;
- (b) which financiers or banks will be used to provide the Debt Facility for the Investment;
- (c) the planning, timing and co-ordination of the raising of approximately \$30 million from the Equity Investors;
- (d) the Equity Investors from whom to seek investment in the Investment;
- (e) the appointment of experts to assist the Asset Manager;
- (f) the style/type of information to be provided to potential Equity Investors;
- (g) the structuring of the capital raising to raise funds to acquire the Property;
- (h) refurbishment of the Property;
- (i) leasing of the Property;
- (j) when determined appropriate the ultimate sale of the Property at Market Value; and
- (k) payment of Returns pursuant to clause 9.

7.2 Ultimate sale

- (a) Subject to clause 7.2(b) the Property may not be sold at a price below Market Value.
- (b) Sale of the Property below Market Value must be approved by the holders of 50% or more of the Units in the Trust.

7.3 Sale by way of Takeover or other Merger Transaction

- (a) Despite any other provision of this Agreement and for the avoidance of any doubt, the Asset Manager may consider offers and bids from interested parties to acquire the unitholdings of the Trust by way of takeover or other merger transactions and has the authority to make recommendations to the unitholders in the Trust to accept or reject any such takeover or merger offers and bids.
- (b) If substantially all of the unitholdings of the Trust (being not less than 90% of all units of the Trust) are sold or transferred by way of takeover or other merger transaction then the following provisions of this Agreement are taken to have application as set out in the table below:

Clause 1 - Definitions	
The definition of ' Investment ' in clause 1 of this Agreement is substituted with the definition shown opposite	' Investment ' means the acquisition of the Property as agreed between the parties and includes the refurbishment, leasing and the transfer of at least 90% of the units of the Trust having been transferred by way of takeover or other merger transaction (and the date of the sale will be taken to have occurred on the date that such transfer occurs) pursuant to the terms of this Agreement.

The definition for ' Investment Return ' in clause 1 of this Agreement is substituted with the definition shown opposite	'Investment Return' means the projected total of all income received, including rental income, for the duration of the Investment and the Market Value (on or about the date that at least 90% of the units of the Trust have been transferred by way of takeover or other merger transaction) less all Investment Expenses and the 6% pa return to Equity Investors.
The definition of ' Market Value ' in clause 1 of this Agreement is modified as shown opposite	<p>'Market Value' has the same meaning as given in clause 1, except that a further assumption (k) is added to that definition as follows:</p> <p>(k) takes into account that the sale may be achieved as a result of a takeover or other merger transaction.</p>
Clause 8 – Investment Return	
Clause 8.3(b) is substituted with the clause shown opposite	(b) 70% to the Equity Investors to be received in the form of cash and/or scrip in the event of a takeover or other merger transaction.
Clause 8.4	Clause 8.4 does not apply in the event of takeover or other merger transaction.
Clause 17 – Termination	
A new clause 17.3 'Takeover or other Merger Transaction' is included as shown opposite.	<p>17.3 Takeover or other Merger Transaction</p> <p>In the event of the transfer of at least 90% of the units of the Trust by way of takeover or other merger transaction and provided that the Asset Manager has been paid its fee under clause 5.7(d) then this Agreement will terminate.</p>

- (c) Without limiting the generality of this clause 7.3, the Asset Manager may negotiate and make agreements on matters that contemplate the Asset Manager's fee (in the event of a takeover or other merger transaction) being paid to the Asset Manager other than directly by the Trustee, including the following possibilities:
- (i) fees are paid directly to the Asset Manager by the bidder under any takeover or other merger transaction; or
 - (ii) fees are paid directly by Unit Holders to the Asset Manager,
provided that:
 - (iii) the Asset Manager has determined that the chosen payment method provides the best overall outcome for Unit Holders; and
 - (iv) that any such payment will be taken to have satisfied the Asset Manager's entitlement to that relevant fee under clause 5.7(d).

8. INVESTMENT RETURN

8.1 Allocation of Investment Return

The parties agree that the Investment Return of the Investment will be apportioned between the Equity Investors and the Asset Manager, in accordance with this clause 8.

8.2 Repayment of payments prior to ultimate sale

The amounts paid to Equity Investors quarterly in arrears under clause 9, are subject to repayment if those quarterly payments are in excess of the sum of actual Investment Return entitlements calculated under this clause 8 and the initial capital amounts invested.

8.3 Investment Return at time of ultimate sale

The overall Investment Return is to be allocated as follows:

- (a) 30% to the Asset Manager as the fee under clause 5.7(d);
- (b) 70% to the Equity Investors where the actual payment to Equity Investors will be decreased for total payments made to Equity Investors under clause 9 in excess of the Cumulative Return.

8.4 Distribution of proceeds of the Investment

The parties agree that the proceeds of the ultimate sale of the Property will be distributed in the following order:

- (a) firstly, in payment of any amounts due and payable to discharge any mortgages or encumbrances which affect the whole of the title of the Property or any property of the Trust and which secure borrowings (if any);
- (b) secondly, in payment of Investment Expenses including outstanding Asset Manager's fees and the costs of sale;
- (c) thirdly, in repayment of outstanding Equity Investors' initial investment;
- (d) finally, in payment to the Asset Manager and the Equity Investors of the Investment Return calculated in accordance with clause 8.1 and allocated in accordance with 8.3.

9. RETURN AND OTHER CASH DISTRIBUTIONS

9.1 Timing of payments of Return

Subject to sufficient cash being deemed to be available as determined under this clause and the financier's approval being obtained, the Return will be paid quarterly in arrears by the 21st day of the month following the end of each calendar quarter until the ultimate sale of the Property.

9.2 Additional cash distributions

Subject to sufficient cash being deemed to be available as determined under this clause, distributions in excess of the Return will be paid for 48.5% of the excess of an Equity Investor's share of profits over the Return to the extent that the excess is taxable income, and other amounts may be paid at the discretion of the Asset Manager.

9.3 Determination of cash availability

Subject to the Trustee being required by the Financier to withhold money, for the purposes of this clause, the Asset Manager is solely responsible and has sole discretion for deeming whether sufficient cash is available for the payment of the Return for any period.

9.4 Later payment of unpaid Return

In the event that the Return for any quarter is not paid, the unpaid amount of the Return will be paid in subsequent quarters as additional payments over the Return for those subsequent quarters, so as to ensure to the maximum extent possible that the cumulative total of returns paid (from any source), less cumulative returns paid under clause 9.1, equals the Cumulative Return to the end of each quarter.

9.5 Character of quarterly returns paid

The character of the quarterly returns paid under this clause will be determined at the end of each income year so that the cash distributions paid during that year will be taken to be:

- (a) firstly, payment of profits that have been taxable income in any income year and which have not been paid in a prior income year;
- (b) secondly, payment of profits that have been in excess of taxable income and which were unpaid at the commencement of the income year; and
- (c) thirdly, partial capital repayments of the initial amount invested by the Equity Investors.

10. POWERS OF ATTORNEY

10.1 AAPIPA and Leyshon power of attorney

The parties agree that to enable the Asset Manager to fulfil its obligations under this Agreement, the Trustee will appoint the directors of AAPIPA and Leyshon, for so long as they remain a director of AAPIPA or Leyshon and AAPIPA and Leyshon are the Asset Managers, as their attorneys to approve and sign documents with respect to all aspects of the management of the Investment.

11. UNDERTAKINGS OF THE PARTIES

11.1 Undertaking

- (a) Each party will duly perform and observe all of the terms and conditions to be performed and observed on its part under this Agreement and will arrange for its directors, servants and agents to ensure that it does so perform and observe this Agreement.
- (b) Each party will exercise all of its rights and powers and generally use its best endeavours to ensure that it carries on business so as to give full effect to the intentions of this Agreement.
- (c) Each party will ensure that during the term of this Agreement that no material arrangement, contract or agreement will be entered into by it which would have a material effect and result in a material deterioration in the Investment Feasibility and in the performance or completion of the Investment to be undertaken pursuant to this Agreement, without the prior approval of the other parties.
- (d) No party is obliged to do anything with this Agreement if to do so would constitute an event of default or potential event of default under the terms of the Debt Facility.

11.2 Limitations

Other than as contemplated in this Agreement a party cannot without the prior approval of the other parties:

- (a) draw, accept or sign a cheque, bill of exchange or promissory note or contract a debt on account of the Investment or of the other parties except in the approved course of the Investment;

- (b) assign, mortgage, transfer or charge its share in the assets or liabilities of the Investment or introduce any other person as a participant;
- (c) compromise or compound or (except upon payment in full) release or discharge any debt due or owing to the parties in relation to the Investment;
- (d) employ any money or property of the Investment or engage its credit except upon the account or for the benefit of the Investment;
- (e) knowingly do or suffer to be done anything whereby the money or property of the Investment may be taken in execution.

A party which breaches any of the provisions of clause 11.2 will indemnify the other parties from all losses and expenses suffered by the others as a result of the breach.

12. GST

12.1 Definitions

‘**GST**’ has the same meaning as in the GST Act;

‘**GST Act**’ means *A New Tax System (Goods and Services Tax) Act 1999* as amended;

‘**Registered**’ has the same meaning as in the GST Act;

‘**Supply**’ has the same meaning as in the GST Act;

‘**Taxable Supply**’ has the same meaning as in the GST Act;

‘**Tax Invoice**’ has the same meaning as in the GST Act;

‘**Value**’ has the same meaning as in the GST Act.

12.2 GST

The parties agree that all fees payable under this Agreement are exclusive of GST. If any Supply made under or in connection with this Agreement to the Asset Manager is a Taxable Supply then the GST in respect of that Supply shall be payable by the Trust to the Asset Manager, where the GST is calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this Agreement is the Value of the Taxable Supply.

12.3 Provision of tax invoice

The Asset Manager must provide a Tax Invoice prior to the payment of any fees payable pursuant to this Agreement.

13. NO ASSIGNMENT

A party will not assign its interest or its obligations pursuant to this Agreement to any person without the prior approval of the other parties.

14. CONFIDENTIALITY

14.1 Confidential information

The parties acknowledge that the Investment will be known and marketed as a ‘Leyshon Group project’ and no party is to disclose any information about this Agreement, the Investment or the identity of any Equity Investor to any third party unless:

- (a) it is obliged to do so by law; or
- (b) the other party agrees; or

- (c) the disclosure is to any contractor, consultant, adviser or other third party involved in the Investment; or
- (d) the information is lawfully available publicly anyway.

14.2 Confidentiality

Subject to clause 16 the parties agree that all information about the Investment including information provided under clause 5.5 is confidential and each party must:

- (a) keep confidential the information;
- (b) use the information solely in relation to or in the best interests of the Investment; and
- (c) disclose the information only to the Equity Investors and those of its employees, advisors, financiers, related bodies corporate and shareholders who have a need to know (and only to the extent each has a need to know) and who are aware and agree that the information must be kept confidential.

This clause will not apply to information which is, or becomes, in the public domain otherwise than in breach of this Agreement

15. EXECUTION OF DOCUMENTS

Each party agrees to execute any contracts or other documentation necessary to give effect to this Asset Management Agreement.

16. PUBLICITY

Except for announcements to be made by the Asset Manager with respect to the acquisition, promotion, leasing, refurbishment and ultimate sale of the Investment, no public announcement or communication relating to the Investment or the terms of this Agreement may be made or authorised by or on behalf of any party without the prior written approval of the Asset Manager.

17. TERMINATION

17.1 Termination

This Agreement will terminate by mutual agreement of all parties or where there is an event of default as provided in clause 18.

17.2 Without prejudice

Termination of this Agreement under clause 17.1 will be without prejudice to any accrued rights of the parties, in particular the Asset Manager's rights to a share in the Investment Return will survive the termination of this Agreement. If this Agreement is terminated as a result of the default of the Asset Manager, then the Trustee may continue with the performance of the obligations of the Asset Manager and the reasonable costs and expenses incurred by the Trustee in performing obligations of the Asset Manager, together with any damages arising out of the default of the Asset Manager, will be deducted from the Asset Manager's share of the Investment Return.

18. DEFAULT

18.1 Events of default

An event of default occurs in relation to a party if:

- (a) the party breaches, any provision of this Agreement which would have a material effect and result in a material deterioration in the Investment Feasibility:
 - (i) does not remedy that breach within 30 Business Days after receiving a notice of that breach from another party requesting the breach to be remedied; or
 - (ii) the breach is incapable of being remedied; or
- (b) the party has:
 - (i) a receiver appointed over its assets or undertaking or any part of them;
 - (ii) an execution of any judgment debt obtained against it, levied upon any of its assets in any amount in excess of \$500,000 and that execution or process is not discharged or withdrawn within 60 Business Days of the date of issue;
 - (iii) ceased to pay its debts or suspended payment generally or would cease or threaten to cease to carry on its business or become insolvent or become or be unable to pay its debts within the meaning of the *Corporations Act 2001*, as and when they become due;
 - (iv) an official manager, trustee, voluntary administrator, liquidator or provisional liquidator appointed for all or any part of its assets or undertaking;
 - (v) entered into or resolved to enter into an arrangement, composition or compromise with or assignment for the benefit of its creditors generally or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation; or
- (c) the party being a trust is terminated or its beneficiaries otherwise become presently entitled to the trust assets, without the prior consent of the other parties which consent will not be unreasonably withheld.

19. INVESTMENT EXPENSES

19.1 Reimbursement of Investment Expenses

- (a) All parties must keep accurate records of all expenditure that is referable to the Investment.
- (b) The Asset Manager and the Trustee are entitled at regular intervals during the course of the Investment and, in any case before any distribution to Equity Investors or the Asset Manager, to be reimbursed for any Investment Expenses reasonably incurred in performance of their responsibilities and obligations under this Agreement.

19.2 Establishment of account for Investment Expenses

- (a) The Trustee must establish an account in the name of Leyshon Corporation Limited ACN 090 257 480) as trustee for the Blue Tower Trust over which the Financier will hold a registered charge, through which as far as practicable will pass all Investment income and Investment Expenses.
- (b) All cheques drawn from the account must be signed jointly by two representatives appointed by the Asset Manager.

20. RESOLUTION OF DISPUTES

20.1 No proceedings

A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement ('**Dispute**') unless it has complied with this clause.

20.2 Notification of dispute

A party claiming that a Dispute has arisen must notify each other party to the Dispute giving details of the Dispute in writing.

20.3 Best efforts to resolve dispute

During the five Business Days period after a notice is given under clause 20.2 (or longer period unanimously agreed in writing by the parties to the Dispute) ('**Initial Period**') each party to the Dispute ('**Disputant**') must use its best efforts to resolve the Dispute.

20.2 Referral to chief operating officers

If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred at the request of any Disputant, to the respective chief operating officers of the Disputants who shall have five Business Days after the Initial Period (or longer period unanimously agreed in writing by the parties to the Dispute) ('**Second Period**') during which to use their best efforts to resolve the Dispute.

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20.3 Termination of dispute resolution process

After the Second Period, a Disputant which has complied with clause 20.1 to 20.4 may terminate the dispute resolution process by giving notice to each other Disputant.

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20.4 Dispute resolution

In the event that a Dispute cannot be resolved under clause 20.1 to 20.5, it will be referred to the President for the time being of the Queensland Law Society who will appoint a party to act as mediator, the decision of the mediator will not be final and binding unless otherwise agreed by the parties and if the Dispute remains unresolved the parties are at liberty to seek to resolve the issue in the courts or otherwise.

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21. MUTUAL COVENANTS

21.1 Promises

Each of the parties covenants and agrees as follows:

- (a) to be just and faithful to the other in all matters relating to the Investment;
- (b) subject to clause 21.1(a) to inform the other of all material matters and things affecting the Investment or likely to affect the Investment of which they become aware;
- (c) to punctually pay and discharge their respective present and future debts and engagements in respect of the Investment;
- (d) to comply with all laws, regulations and other statutory obligations in respect of the Investment.

22. NOTICES

22.1 Notices

- (a) Notices must be given in English and be in writing.
- (b) Notices must be given to the address as set out in this Agreement or any other address a party provides.
- (c) Notices can be given by hand delivery, posting or by facsimile.

- (d) Notices given after 5 o'clock local time on a Business Day are deemed to be given on the next Business Day.
- (e) Notices given by post are deemed to be given on the second day after the notice is posted.
- (f) Notices given by facsimile transmission are deemed to be given when an acknowledgment of transmission report is received on the sending machine indicating that the facsimile transmission has been sent and received.
- (g) Notices or documents given by a party's solicitor are taken to have been given with the authority of the party.

23. WARRANTIES

23.1 Warranties by parties

Each party warrants that:

- (a) it has the power to execute and deliver this Agreement;
- (b) it has the power to perform all obligations under this Agreement; and
- (c) in performing its obligations under this Agreement, each party will use its best endeavours to ensure that its directors, officers, employees, agents and contractors and subcontractors will conduct themselves so as not to adversely affect the image or reputation of the other party.

24. GENERAL

24.1 Governing law

This agreement is to be governed and construed in accordance with the laws of Queensland, and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

24.2 Severance

If any provision of this agreement is or becomes illegal, invalid, unenforceable or void in any respect then that provision is to be ignored, read down or severed so as to uphold the legality, validity and enforceability of the remaining provisions of this Agreement.

24.3 Further assurance

Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Agreement.

24.4 Costs and duty

Any costs and stamp duty associated with this Agreement will be a Investment Expense.

24.5 Entire agreement

This Agreement is the whole of the agreement between the parties. It supersedes and takes the place of any prior written or oral agreement or discussion between the parties. Any variations to the Agreement must be in writing to be effective.

24.6 Conflict or inconsistency

In the event of a conflict or inconsistency between this Agreement, the Information Memorandum and the deed establishing the Trust, the provisions of this Agreement will prevail.

24.7 Counterparts

This Agreement is validly executed if executed in 1 or more counterparts.

25. INTERPRETATION

In this Agreement, except to the extent the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to a party to this Agreement;
- (c) a reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns;
- (d) a reference to an item in the Background, clause, schedule, annexure or appendix is a reference to an item in the Background, clause or schedule, annexure or appendix to this Agreement and references to this Agreement include its schedules and any annexures;
- (e) a reference to 'month' means calendar month;
- (f) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (g) a reference to a document or agreement including this Agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) in the interpretation of this Agreement, headings are to be disregarded.

SCHEDULE A
Investment Feasibility

EXECUTED as an agreement in Queensland.

EXECUTED for and on behalf of)
B LUE TOWER BRISBANE PTY LTD)
ACN 105 735 126 (*subsequently retired and*)
replaced by Leyshon Corporation Limited)
ACN 090 257 480) by authority of the directors in)
the presence of:)

▲ _____
Director

▲ _____
Director/Secretary

▲ _____
Full name of director

▲ _____
Full name of director/secretary

EXECUTED for and on behalf of)
LEYSHON OPERATIONS PTY LTD)
ACN 074 603 580 by authority of the directors in)
the presence of:)

▲ _____
Director

▲ _____
Director/Secretary

▲ _____
Full name of director

▲ _____
Full name of director/secretary

EXECUTED for and on behalf of)
AUSTRALIAN AND ASIA/PACIFIC)
INSTITUTE OF PROPERTY AUDITORS)
PTY LTD ACN 083 601 110 by authority of the)
directors in the presence of:)

^ _____
Director

^ _____
Director/Secretary

^ _____
Full name of director

^ _____
Full name of director/secretary

TABLE OF CONTENTS

BACKGROUND.....	1
1. DEFINITIONS	1
2. AGREEMENT	4
2.1 Agreement.....	4
2.2 Conditions precedent.....	4
2.3 Satisfaction of conditions precedent	4
3. ASSET MANAGEMENT – GENERAL OBLIGATIONS.....	5
4. OBLIGATIONS OF TRUSTEE.....	5
4.1 Establish Trust and raise funds	5
5. OBLIGATIONS OF ASSET MANAGER.....	5
5.1 Asset Manager to manage Investment.....	5
5.2 Interaction with Equity Investors.....	5
5.3 Negotiate Debt Facility	5
5.4 Limit of authority	5
5.5 Specific obligations.....	6
5.6 Reporting.....	6
5.7 Asset Manager's fees.....	7
5.8 Limitation on liability and indemnity	7
5.9 Reimbursement of expenses.....	7
6. OWNERSHIP OF LAND.....	7
7. POWERS OF THE PARTIES.....	7
7.1 Asset Manager	7
7.2 Ultimate sale.....	8
7.3 Sale by way of Takeover or other Merger Transaction	8
8. INVESTMENT RETURN.....	10
8.1 Allocation of Investment Return.....	10
8.2 Repayment of payments prior to ultimate sale	10
8.3 Investment Return at time of ultimate sale	10
8.4 Distribution of proceeds of the Investment	10
9. RETURN AND OTHER CASH DISTRIBUTIONS	10
9.1 Timing of payments of Return	10
9.2 Additional cash distributions	10
9.3 Determination of cash availability	10
9.4 Later payment of unpaid Return	11

9.5	Character of quarterly returns paid.....	11
10.	POWERS OF ATTORNEY	11
10.1	AAPIPA and Leyshon power of attorney	11
11.	UNDERTAKINGS OF THE PARTIES	11
11.1	Undertaking	11
11.2	Limitations	11
12.	GST	12
12.1	Definitions.....	12
12.2	GST	12
12.3	Provision of tax invoice.....	12
13.	NO ASSIGNMENT.....	12
14.	CONFIDENTIALITY	12
14.1	Confidential information.....	12
14.2	Confidentiality.....	13
15.	EXECUTION OF DOCUMENTS	13
16.	PUBLICITY	13
17.	TERMINATION	13
17.1	Termination	13
17.2	Without prejudice.....	13
18.	DEFAULT	13
18.1	Events of default.....	13
19.	INVESTMENT EXPENSES	14
19.1	Reimbursement of Investment Expenses	14
19.2	Establishment of account for Investment Expenses	14
20.	RESOLUTION OF DISPUTES	14
20.1	No proceedings	14
20.2	Notification of dispute	15
20.3	Best efforts to resolve dispute	15
20.4	Referral to chief operating officers.....	15
20.5	Termination of dispute resolution process.....	15
20.6	Dispute resolution.....	15
21.	MUTUAL COVENANTS.....	15
21.1	Promises	15
22.	NOTICES	15
22.1	Notices	15

23.	WARRANTIES	16
23.1	Warranties by parties.....	16
24.	GENERAL	16
24.1	Governing law	16
24.2	Severance	16
24.3	Further assurance	16
24.4	Costs and duty	16
24.5	Entire agreement.....	16
24.6	Conflict or inconsistency.....	16
24.7	Counterparts.....	17
25.	INTERPRETATION	17
	SCHEDULE A	18
	Investment Feasibility	18