

Deed of Assignment  
and Consent

**“TRICKETT GARDENS”  
COMMUNITY TITLES SCHEME 11794**



Short Punch & Greatorix

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THIS DEED is made this 5 day of DECEMBER 2016

**BETWEEN:** **E MORAND PTY LTD A.C.N 000 831 176** care of Mahoneys Lawyers GPO Box 3311 Brisbane QLD 4000  
(the Outgoing Manager)

**AND:** **JKM SYNERGY PTY LTD A.C.N 613 467 913 AS TRUSTEE FOR JJ INVESTMENT TRUST** care of Short Punch & Greatorix Lawyers PO Box 5164 Gold Coast MC QLD 9726  
(the Incoming Manager)

**AND:** **BODY CORPORATE FOR "TRICKETT GARDENS" COMMUNITY TITLES SCHEME 11794** care of Archers Body Corporate Management PO BOX 10664 Southport BC QLD 4215  
(the Body Corporate)

**AND:** **KAI SHI & XIAO YI HUANG** care of Short Punch & Greatorix Lawyers PO Box 5164 Gold Coast MC QLD 9726  
(the Guarantors)

**WHEREAS**

- A. The Body Corporate and the Outgoing Manager are parties to the Agreements.
- B. By a contract dated 11 August 2016 the Outgoing Manager has agreed to assign its interest in the Agreements to the Incoming Manager.
- C. The Body Corporate has consented to the assignment of the Agreements and the Outgoing Manager and the Incoming Manager wish to record the assignment of the Agreements.

**IT IS AGREED BY THE PARTIES**

**1. Definitions and Interpretation**

1.1 In the interpretation of this Deed, unless inconsistent with the subject or context each of the expressions defined in Part 1 of Schedule 1 shall have the meaning there assigned to it and the provisions of Part 2 of Schedule 1 shall apply.

**2. Assignment and Warranties of the Outgoing Manager**

2.1 The Outgoing Manager assigns to the Incoming Manager all of its rights and obligations under and interest in the Agreements as the Manager and Agent on and from the assignment date subject to the terms of this Deed.



Client No:	<u>4 2 0 7 1 2 3</u>	<small>Duties Act 2001</small>
Transaction No:	<u>5 1 3 - 0 2 0 - 7 6 8</u>	
Duty Paid \$	<u>39,163.75</u>	<input type="checkbox"/> Exempt
UTI \$	<u>NIL</u>	<u>3.30 APPLIED</u>
Date:	<u>5 / 12 / 16</u>	Signed: <u>[Signature]</u>

2.2 The Outgoing Manager warrants to the Incoming Manager that:-

- (1) to the best of its knowledge the Agreements:-
  - (a) are valid and subsisting;
  - (b) have not been forfeited or surrendered; and
  - (c) have not become void or voidable.
- (2) it will not be in breach of the Agreements at the Assignment Date.
- (3) all of the Outgoing Manager's obligations under the Agreements have been and will be performed up to and including the Assignment Date.

2.3 The Outgoing Manager releases the Body Corporate from all claims arising from or under the Agreement with respect to anything that occurs after the Assignment Date.

### **3. Acceptance, Covenants and Indemnity of the Incoming Manager**

3.1 The Incoming Manager accepts the assignment referred to in Clause 2.1 subject to the terms of this Deed.

3.2 The Incoming Manager covenants and agrees with the Outgoing Manager and the Body Corporate separately:-

- (1) to observe and perform all of the Manager's and Agent's obligations under the Agreements from the Assignment Date; and
- (2) to attend to the payment of the Queensland Government Duty in respect of any dutiable transaction evidenced by the contents of this Deed and to the production to the Outgoing Manager and the Body Corporate of a copy of this Deed stamped with evidence of payment of such duty.

3.3 The Incoming Manager indemnifies and shall keep the Outgoing Manager and the Body Corporate indemnified from and against any loss suffered by the Outgoing Manager because of a breach of the Agreements by the Incoming Manager from the Assignment Date.

### **4 Consent and Warranties of the Body Corporate**

4.1 The Body Corporate:-

- (1) subject to the payment of the costs in accordance with clause 8, payment of the transfer fee (as calculated in accordance with the legislation) and the contemporaneous transfer of Caretaker's Lot, consents to the assignment of the Agreements referred to in Clause 2.1 provided that any conditions required by the Body Corporate notified in writing to the other parties or their solicitors and



stipulated in the resolution of the Body Corporate committee consenting to the assignment or relating to the assignment have been fulfilled; and

- (2) to the best of its knowledge warrants that:-
- it was empowered to enter into the Agreements and its seal was lawfully affixed to them;
  - there are no existing breaches of the Agreements;
  - the Outgoing Manager's rights under and interest in the Agreements are not liable to forfeiture or surrender; and
  - the Remuneration is payable by the Body Corporate under the Agreements.
- (3) releases from the Assignment Date the Outgoing Manager and any person or entity who guaranteed the performance of the Outgoing Manager's obligations under the Agreements, in respect of any thing that occurs after the Assignment Date.
- (4) consents to Kai Shi and Xiao Yi Huang being the nominee of the Incoming Manager in accordance with clause 7(f) of the Deed of Engagement (Caretaking Agreement) Trickett Gardens CTS 11794 dated 14 November 2013.
- (5) consents to Kai Shi being the nominee of the Incoming Manager in accordance with clause 5(f) of the Deed of Authorisation (Letting Agreement) Trickett Gardens CTS 11794 dated 14 November 2013.

4.2 Where the consent of the Body Corporate to the assignment is given pursuant to a resolution of the committee of the Body Corporate, the committee of the Body Corporate and the Body Corporate warrant that the committee has the power and authority to give such consent on behalf of the Body Corporate and to cause this Deed to be entered into and executed.

## **5 Waiver of termination rights**

5.1 The Body Corporate acknowledges and agrees that:-

- (1) The Incoming Manager is obtaining finance from the Financier to complete the assignment such that the Agreements will become financed contracts as that term is defined in the Act;
- (2) If the Incoming Manager defaults under the Agreements then, subject to the fulfilment of the other requirements of that section, the Financier may choose to act under section 126(2) of the Act; and

- (3) In the event of and for the duration of a Receivership the Body Corporate waives and will not in any way exercise any of the rights the Body Corporate has to terminate the Agreements under the Specific Termination Provisions.

5.2 The parties agree that:-

- (1) such waiver applies only in the circumstances described and only whilst the Incoming Manager is a party to the Agreements;
- (2) nothing in this clause prevents the Body Corporate terminating the Agreements in accordance with the Act or applicable Regulation Module or any other provision of the Agreements; and
- (3) the Body Corporate grants this temporary and conditional waiver for its own, as well as the other parties benefit, as it facilitates the completion of the assignment and the commencement of the Incoming Manager as the party to the Agreements.

## 6 Execution by the Body Corporate

- 6.1 The provisions of this Deed so far as they relate to covenants or agreements between the Outgoing Manager and the Incoming Manager are binding on the Outgoing Manager and the Incoming Manager if the Body Corporate consents to the assignment referred to in Clause 2.1 but does not execute this Deed.

## 7 Guarantee

- 7.1 In consideration of the Body Corporate, at the request of the Guarantors, consenting to the assignment referred to in Clause 2.1, the Guarantors hereby agree with the Body Corporate as follows:-

- (1) the Guarantors guarantee:-
  - the performance by the Incoming Manager of its obligations under this Deed and the Agreements; and
  - the payment of all loss and damage recoverable by the Body Corporate from the Incoming Manager.
- (2) this Guarantee extends to claims by the Body Corporate payable in the terms of the Agreements:-
  - for damages for breach; and
  - for the Body Corporate's reasonable legal and other expenses of seeking to enforce the obligations of the Incoming Manager and the Guarantors,

on a full indemnity basis.

- (3) where more than one person executes this Guarantee:-
- the term Guarantors in this clause refers to each of the Guarantors and to all of them;
  - their obligations as Guarantors are joint and several;
  - the Body Corporate may enforce this Guarantee against all or any of them;
  - any notice or demand may be served on all of them by serving any one of them;
  - this Guarantee remains binding on the other Guarantors even if:-
    - (i) any Guarantor fails to execute this Deed or enter into this Deed;
    - (ii) this Guarantee is not binding on any Guarantor;
    - (iii) the Body Corporate shall release any Guarantor from liability under this Guarantee;
- (4) This Guarantee is not discharged and the Body Corporate's rights against the Guarantors is not affected by any of the following:-
- the granting of any indulgence or extension of time by the Body Corporate to the Incoming Manager or to the Guarantors;
  - the Body Corporate's failure to enforce covenants under the Agreements against the Incoming Manager;
  - the total or partial release of liability of the Incoming Manager or of one of the Guarantors by the Body Corporate;
  - the variation of any provision of the Agreements between the Body Corporate and the Incoming Manager without the Guarantors' consent;
  - the death, bankruptcy or winding up of the Incoming Manager or one of the Guarantors; and
  - the disclaimer of the Agreements following the Incoming Manager's insolvency.
  - In respect of any payment made by or on behalf of the Incoming Manager under the Agreements which is void or is voided for any reason, the Guarantors shall remain liable under the Guarantee as if that payment had not been made.

- 7.2 The Body Corporate is entitled to require the Guarantors to pay to the Body Corporate any outstanding money or other amount to compensate the Body Corporate for any loss or damage without the Body Corporate having made any claim or instituted any proceedings against the Incoming Manager in respect of such monies.
- 7.3 As a separate and independent obligation and for the consideration referred to the Guarantors hereby agree to indemnify the Body Corporate from all claims suffered or incurred by the Body Corporate by reason of the Incoming Manager's default in observing or performing the Incoming Manager's obligations under this Deed or the Agreements and the preceding provisions of this Guarantee will apply to this indemnity.
- 7.4 The obligations of the Guarantors will not merge or be deemed to merge in any judgment obtained by the Body Corporate against the Incoming Manager.
- 7.5 If any term of the Agreements is not enforceable against the Incoming Manager as principal (whether by reason of any legal limitation, disability or incapacity or otherwise) the Guarantors will be responsible under this Guarantee as though the Guarantors were solely or principally liable as the Manager under the Agreements.
- 7.6 The Guarantors waive (in favour of the Body Corporate) any right to or interest in the estate or assets of the Incoming Manager and any other person's estate or assets so far as necessary to give effect to anything contained in this Guarantee.
- 7.7 The obligations of the Manager the performance of which are hereby guaranteed, include any obligations arising during any extension or renewal of the Agreements for as long as the Incoming Manager remains the Manager.

## **8 Costs**

- 8.1 The Outgoing Manager must pay the Body Corporate's reasonable legal and administrative costs (which the Body Corporate is lawfully entitled to claim) in relation to the Body Corporate's consent to the assignment of the Agreements and execution of this Deed.
- 8.2 Subject to Clause 8.1, the Outgoing Manager and Incoming Manager will pay their own costs in relation to this Deed and any other document except that the Incoming Manager must pay all stamp duty in respect of this Deed.

## **9 Governing Law**

- 9.1 This Deed is governed by and is construed in accordance with the laws of the State of Queensland.

## **10 Counterparts**

- 10.1 This Deed may be signed in any number of counterparts and by different persons or separate counterparts. All those counterparts will together constitute the one Deed.



## SCHEDULE 1

### Part 1 - Definitions

In this Deed, unless the subject or context is inconsistent, each of the following expressions shall have the meaning assigned to it below:-

<b>Act</b>	means the Body Corporate and Community Management Act 1997, as amended.
<b>Agreements</b>	mean the following agreements collectively:- <ul style="list-style-type: none"><li>• the Deed of Engagement (Caretaking Agreement) Trickett Gardens CTS 11794 and Deed of Authorisation (Letting Agreement) Trickett Gardens CTS 11794 both dated 14<sup>th</sup> November 2013 between the Body Corporate and Devita Managements Pty Ltd A.C.N 154 565 563 ATF The Devita Family Trust in respect of the Scheme;</li><li>• as assigned by a Transfer Deed dated 6 October 2015 between the Body Corporate and Devita Managements Pty Ltd A.C.N 154 565 563 ATF The Devita Family Trust and the Outgoing Manager.</li></ul> with a current term of twenty-five (25) years commencing on 1 November 2013 and expiring on 31 October 2038..
<b>Assignment Date</b>	means the <u>5<sup>th</sup></u> day of <u>December</u> 2016
<b>Caretaker's Lot</b>	means Lot 1 on BUP 3366.
<b>Deed</b>	means this deed of assignment and consent.
<b>Financier</b>	means a financier as that term is defined in the Act from which the Incoming Manager obtains finance to enable the Incoming Manager to complete the assignment and includes any replacement financier.
<b>Receivership</b>	means where the Financier is acting in place of the Incoming Manager or the Financier has appointed or receiver and manager for the Agreements.
<b>Remuneration</b>	means the sum of \$34,089.00 exclusive of GST currently payable by the Body Corporate to the Manager pursuant to the Agreements under which remuneration is payable.
<b>Scheme</b>	means the Community Titles Scheme administered by the Body Corporate.



**Specific Termination Provisions**

means the following clauses in the Agreements:

- Clause 8 (d) of the Deed of Engagement (Caretaking Agreement) Trickett Gardens CTS 11794 dated 14 November 2013; and
- Clause 6(d) of the Deed of Authorisation (Letting Agreement) Trickett Gardens CTS 11794 dated 14<sup>th</sup> November 2013.

## Part 2 - Interpretation

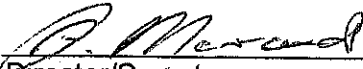
In this Deed, headings are for convenience only and shall not affect its interpretation. Except to the extent that the context otherwise requires:-

- (a) reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (d) words denoting any gender shall include all genders;
- (e) any obligation on the part of or for the benefit of two or more persons will be deemed to bind or benefit as the case may be, any one or more of them jointly and each of them severally;
- (f) references to Parties, Parts, Clauses, Annexures and Schedules are references to Parties, Parts, Clauses, Annexures and Schedules to this Deed as modified or varied from time to time;
- (g) references to any document, deed or agreement shall include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) references to any party to this Deed or any other document, deed or agreement shall, include in the case of a company, its administrators, successors and/or assigns and, in the case of a natural person, his personal representatives and permitted assigns;
- (i) all references to "\$" and "dollars" are to the lawful currency of Australia.


Executed as a Deed

The Parties have executed and delivered this Deed on the date previously appearing in this Deed.

EXECUTED by )  
E MORAND PTY LTD A.C.N 000 831 )  
176 As Outgoing Manager in )  
accordance with Section 127 of the )  
Corporations Act 2001 (Cwlth) )  
)

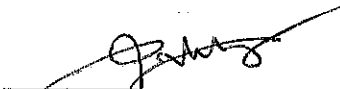
  
\_\_\_\_\_  
Director/Secretary

Anthony Hugh Morand  
Print Full Name


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

Eugene Harold Morand  
Print Full Name

EXECUTED by )  
JKM SYNERGY PTY LTD A.C.N 613 )  
467 913 AS TRUSTEE FOR JJ )  
INVESTMENT TRUST As Incoming )  
Manager in accordance with Section )  
127 of the Corporations Act 2001 )  
(Cwlth) )

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

KAI SHI  
Print Full Name

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

XIAO YI HUANG  
Print Full Name



EXECUTED by the BODY )  
CORPORATE FOR "TRICKETT )  
GARDENS" COMMUNITY TITLES )  
SCHEME 11794 in accordance with )  
the provisions of the Body )  
Corporate and Community )  
Management Act 1997.

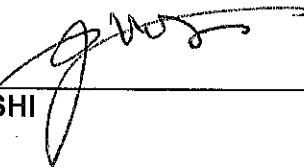
  
\_\_\_\_\_  
Authorised Signatory

  
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Authorised Signatory



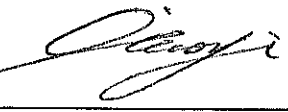
SIGNED SEALED & DELIVERED by )  
KAI SHI As Guarantor )  
in the presence of: )

  
\_\_\_\_\_  
An Independent Witness

  
\_\_\_\_\_  
KAI SHI

SIGNED SEALED & DELIVERED by )  
XIAO YI HUANG As Guarantor )  
in the presence of: )

  
\_\_\_\_\_  
An Independent Witness

  
\_\_\_\_\_  
XIAO YI HUANG

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