

Rental Guarantee Agreement

Schedule A

Date	
Owner	[Purchaser Name] of [Property Address] Email: [###]
Land	Lot [#insert relevant Lot to be acquired by Investor] in the Subdivision
Property Manager	Open Agency Pty Ltd of Suite 2, Level 4, North Tower, 1-5 Railway Street, Chatswood NSW 2067 Email: admin@openagency.com.au
Fixed Weekly Guarantee Amount (FWGA)	[Attachment shown] of the Total Development Cost of the Land / 52 weeks
Rental Guarantee Period	60 months (5 years)
Guaranteed Rental	FWGA x 260 weeks less 105 days vacancy as allowance within the Rental Guarantee Period.
Rental Guarantee Commencement Date	The Rental Guarantee Period will commence from the later of: a) [Date/Mon/Year]; or b) 2 weeks' after the Property Manager is supplied with a copy of the occupation certificate, together with this signed Rental Guarantee Agreement, and settlement of the property.
Background	<p>A The Property Manager is a licensed real estate agent holding corporation licence, certificate number 10064944 issued by the NSW Office of Fair Trading.</p> <p>B The Owner warrants that s/he is the Owner of the Property.</p> <p>C Subject to the terms of this Agreement, and in consideration of the Owner's promise to appoint the Property Manager as managing agent of the Property for a period not shorter than the Rental Guarantee Period, the Property Manager agrees to guarantee and pay to the Owner the Guaranteed Amount during the currency of the Rental Guarantee Period.</p> <p>D The Property Manager and the Owner enter into this Agreement to document and give effect to the terms which the parties have discussed and agreed.</p>

Each Party agrees to be bound by and comply with the terms of this document.

Executed as an agreement:

Owner

.....
Signature of Owner

.....
Signature of witness

.....
Name of Owner (block letters)

.....
Name of witness

Property Manager

EXECUTED by **OPEN AGENCY PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

.....
Signature of director/company
secretary

.....
Name of director (block letters)

.....
Name of director/company secretary
(block letters)

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1 Rental Guarantee

1.1 Guarantee Schedule

Subject to the terms in the Agreement and during the Rental Guarantee Period, the Property Manager agrees to pay the Owner in accordance with Schedule A.

1.2 Minimum Guarantee Amount

The Property Manager guarantees to the Owner that during the currency of the Rental Guarantee Period, the Property Manager will pay to the Owner's nominated account the FWGA by monthly instalments, less Rates & Levies, insurances, disbursements, rental on days vacant if any and the fees payable by the Owner to the Property Manager (less any tax required to be withheld) pursuant to this Agreement and the Management Agreement, continuously even where:

- (a) the actual rental payable by the tenant from time to time under the lease is less or more than the FWGA; and
- (b) the Property is vacant for any reason other than attributable to any damage of or to the Property which is not caused by the Property Manager and which makes the Property not leasable or tenantable.

The Owner acknowledges that where at any time during the Rental Guarantee Period, the rental payable by the tenant exceeds the rate of the FWGA and the rental moneys collected exceeds the FWGA, the Property Manager is only required to account in accordance with clause above, and the excess difference shall become and be deemed additional Management Agency Fee payable to the Property Manager.

2 Management Agreement

2.1 Agreement Form and Payment of Fees

- (a) The Management Agreement will be in the form of the management agreement issued by the Real Estate Institute of NSW with such amendment and additional conditions as the Property Manager and the Owner may agree in writing.
- (b) Where there is any term or provision (other than terms that any applicable legislation or regulation says cannot be excluded or modified) in the Management Agreement that is inconsistent to this Agreement, then to the extent of the inconsistency, the term or provision in this Agreement shall prevail.
- (c) The Owner must pay to the Property Manager such fees which the Owner has agreed to pay to Property Manager under or pursuant to the Management Agreement and this in Agreement and the Owner authorises the Property Manager to deduct its fees and GST from the rental moneys collected.

2.2 Authorisation to the Property Manager

- (a) The Owner agrees to notify the Property Manager, at least 3 months in advance, of the estimated settlement date of the Property to allow the Property Manager to commence the leasing campaign.
- (b) The Owner authorises the Property Manager to automatically pay or deduct from the rental moneys collected all Rates & Levies, Management Agency Fee and other fees or disbursements and GST payable under or pursuant to this Agreement and the Management Agreement.
- (c) The Owner requests and authorises the Property Manager to effect Owner insurance and/or Owner /occupier liability (with cover not less than \$1million on each claim) (if applicable) and contents insurance (if applicable) for the Property, with such or

through such insurance broker that the Property Manager in its discretion select. The Owners Insurance must provide cover for at least (but not limited to) the following events:

absconding tenant; defaulting tenant (by court order); defaulting tenant (by termination notice); failure to give vacant possession; death of tenant; hardship; untenable (building); untenable (contents); prevention of access

2.3 Tenants

- (a) The Owner requests the Property Manager to present all qualified tenants, pursuant to clause 2.4(b), and will make every reasonable effort to promptly advise the Property Manager of their preferred tenant from the selection of possibilities presented.
- (b) The Property Manager shall under the Management Agreement and also pursuant to this Agreement be entitled to deem an application from a prospective tenant to be an acceptable tenant where the following criteria are met -
 - (i) Provision of steady employment/income confirmation
 - (ii) Positive tenant reference
 - (iii) Positive results of a Tenant Reference Australia (TRA) check
 - (iv) Confirmation of 100 points of identification
- (c) The Property Manager will endeavour to find tenants that are preferred by the Owner; however, Property Manager reserves the right to have the final decision should the tenant be qualified. The Owner cannot refuse the qualified tenant (under this clause) and tenant to move in as long as the property is liveable after the interim/official occupation certificate has been granted by the relevant party. Should the Owner insist to refuse the qualified tenant, Property Manager has the right to cancel the Rental Guarantee Agreement with immediate effect. And the Owner will have to bear the cost for the loss of compensation from the Property Manager, if applicable.
- (d) The Owner requests and authorises the Property Manager to alter the property where the Property Manager believe the alteration will enhance the rent of the property.

3 Residential Leasing

3.1 Exclusive leasing agent

- (a) The Owner appoints the Property Manager as the exclusive leasing agent as well as managing agent of the Property, by the signing of the Management Agreement. The Owner authorises and empowers the Property Manager to find and select tenants for the Property and to sign for and on behalf of the Owner a residential tenancy agreement for the Property, from time to time. Each residential tenancy agreement which the Property Manager signs shall be for a fixed term for not less than three months.
- (b) The Owner will do all things and sign all documents as may be necessary to confirm or ratify the residential tenancy agreement signed by the Property Manager on the Owner's behalf where required.

4 Termination

4.1 Termination of Rental Guarantee Period

The Rental Guarantee Period terminates on the earlier of:

- (a) the natural end of the Rental Guarantee Period; or
- (b) the day the Owner serves upon the Property Manager notice of termination of the Management Agreement must be not earlier than 12 months after the Rental Guarantee Agreement signed; or
- (c) the Owner exercises its rights under clause 2.3(c); or
- (d) the Owner chooses to give the tenant notice to vacate, or any intension/decision such as sell of premise may cause the tenant to vacate in accordance to the Residential Tenancy Agreement, the Rental Guarantee will cease on the date stipulated on the notice or, on the day the tenant moves out, whichever comes first; or
- (e) the Property is uninhabitable condition or not tenantable which not caused by the Property Manager.

4.2 Where clause 4.1(a) applies, 3 months prior to the expiration date of the Rental Guarantee, the Property Manager shall notify the Owner in writing of the expiration date and seek instructions from the Owner. The Owner must notify the Property Manager in writing of their intention in regard to the property (vacation possession).

4.3 Where clause 4.1(b), (c) & (d) applies for any reason excepting where the Property Manager has ceased to hold a real estate agent licence, and the Property Manager had not had the benefit of the full five years management term, then the Owner shall account to and pay back to the Property Manager such amount equating to guarantee rental amount which the Property Manager had paid to the Owner for any vacant period, as well as the difference (if any) in the amount of the weekly rental guarantee over the actual weekly rental received by the Property Manager for the period up to and inclusive of the termination date.

4.4 Upon the termination of this Rental Guarantee Agreement, the Owner acknowledges that the management agreement and a tenancy agreement may exist and agrees not to do anything to breach the terms of the agreements.

5 Confidentiality

Except to the extent that a party may be required by law or in the performance of its duties to divulge information concerning this Agreement, each party shall keep confidential all information concerning this Agreement and shall ensure that its personnel and employees do likewise.

6 Intellectual Property

Any Intellectual Property created in relation to the Property by or on behalf of Property Manager will vest in the Owner only to the extent that Property Manager has been reimbursed for the costs and expenses incurred by Property Manager in the creation of the Intellectual Property, or to the extent that the Owner has paid for the creation of the Intellectual Property.

7 GST

7.1 Consideration GST exclusive

Unless expressly stated otherwise in this document, all amounts payable or consideration to be provided under this document are exclusive of GST.

7.2 Payment of GST

If GST is payable on any supply made under this document, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 7.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

7.3 Reimbursements

If a party is required under this document to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

7.4 Calculation of payments

If an amount payable under this document is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

7.5 Interpretation

For the purposes of this clause 7:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 26;
- (b) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

8 Notices and other communications

Notices and other communications in connection with this document must be in writing. They must be sent to the address, fax number or email address referred to in Schedule A and (except in the case of email) marked for the attention of the person referred to in Schedule A. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

9 Miscellaneous

9.1 Waiver and Variation

A provision of or a right created under this document may not be waived or varied except in writing signed by the party or parties to be bound.

9.2 Supervening Legislation

Any present or future legislation which operates to vary the obligations of either party in connection with this document with the result that either party's rights, powers or remedies are adversely affected (including, without limitation, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

9.3 Remedies Cumulative

The rights, powers and remedies provided in this document are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this document.

9.4 Independent Advice

The parties agree that they have had the opportunity to obtain their own independent legal and financial advice prior to executing this Agreement.

9.5 Ownership of Records

The parties agree that all books of account relating to the Property, all information relating to Tenancy Agreements, legal documents created in relation to tenancies, all computer generated information relating to the operation of the Property, and all marketing and promotional plans are the Property of the Owner and that in respect of any other intellectual Property created or acquired in connection with the management of the Property to the extent that it is the Property of the Property Manager, the Owner shall have the right to use such Property solely in connection with the Property. The licence granted by this clause shall be assignable and shall continue for the useful life of the Property even after termination of this Agreement.

9.6 Disputes

In the event that a dispute arises as to whether there is sufficient ground for terminating the Agreement or in the event of any other dispute regarding the terms and conditions of this Agreement, then the parties will request the President for the time being of the Property Council of Australia to appoint, within seven days, an arbitrator to consider the dispute. After hearing both parties the arbitrator shall decide within a further period of fourteen (14) days whether sufficient grounds exist for the termination of this Agreement (or shall give his ruling regarding the terms or conditions of this Agreement which are in dispute) and the parties hereby agree to abide by this decision of the arbitrator.

The appointment of such arbitrator and the termination of this Agreement pursuant to this decision shall not preclude either party from exercising its rights in law and suing the other party for any damage resulting from an antecedent breach of the Agreement.

9.7 Indemnity

The Owner hereby indemnifies Property Manager from and against all actions, claims, suits, demands, losses, liabilities, costs (including legal costs and expenses), expenses, outgoings or payments which the Property Manager suffers, incurs or to which the Property Manager shall or may become liable in respect of or arising from any breach by the Owner of its obligations under this Agreement or the breach by the Owner of any law or statute.

9.8 Execution by an Attorney

Any attorney who executes this Deed on behalf of a party declares that the attorney is the true and lawful attorney and has no notice of revocation of power of attorney under the authority of which the attorney executes this Deed and no notice of the death of the grantor.

10 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

11 Governing Law

This document is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

12 Definitions and interpretation

12.1 Definitions

The following words have these meanings in this document unless the contrary intention appears:

Advertisement Fee means a minimum fee of \$250.00.

Agreement means this Rental Guarantee Agreement.

Approvals means each approval, consent, licence, permit or authority from any statutory or other authorities required for the development or occupation of the Development including the Development Consent.

Covenants means the restrictions on the use of land which are or will be registered upon the title of the Lots.

Fixed Guarantee Amount has the meaning in clause 1.2.

GST means the goods and services tax payable from 1st July 2000 referable to the Commonwealth legislation "A New Tax System (Goods & Services Tax) Act" and related legislation.

Letting Fee means the equivalent of 1 week's rent, Advertisement Fee, and \$30.00 for the residential lease agreement purchase and documentation cost, payable to the Property Manager for each letting of the Property for a period of not less than six months. The first Letting Fee shall be paid by the Owner regardless of when the completion of contracts for the purchase of the Property takes place. After the initial Letting Fee, consecutive Letting Fees, for the Five-Year Rental Guarantee Agreement, will not exceed more than five payments during the Rental Guarantee Period.

Management Agreement means the management agreement between the Owner and Property Manager, on the appointment of Property Manager as the Owner's exclusive leasing and managing agent for the Property.

Management Agency Fee means 5% of the Rental Guarantee Amount + \$5.00 per month towards administrative charges during the currency of the Rental Guarantee Period.

Obligations means all the obligations of the builder relating to the design and construction of the residential dwellings as contained in the Sale Contract, the Covenants, this Agreement and any design guidelines.

Rates & Levies mean all rates and all levies relating to, imposed or levied against or on the Property by all and any competent bodies or authorities, including the Local Council, Sydney Water and the Owner s Corporation.

Rental Guarantee Period means one continuous period as outlined in the Guarantee schedule.

Sale Contract means the contract for sale of land to be entered into by the Owner in relation to the acquisition of the Land.

Schedule means the Schedule herein under relating to the guarantee, subject to the terms in this Agreement.

Total Development Cost means the costs in relation to the acquisition and development of the Land, which include:

- (a) Land acquisition price under the Sale Contract;
- (b) civil works; and
- (c) construction of a residential dwelling in accordance with design guidelines,

but excluding any:

- (d) expenses incurred before the date of this document that are not expressly included above;
- (e) any other expenses incurred by the Investor in connection with acquisition or its ownership in the Land that are not expressly included above.

12.2 Interpretation

In this document unless the contrary intention appears:

- (a) the use of small case, capitals or different fonts does not affect the meaning of words or any terms defined in this Agreement;
- (b) a reference to this document or another instrument includes any variation or replacement of either of them;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) a reference to “dollars” or to “\$” is to Australian currency;
- (f) if any term in this Agreement is vague or ambiguous, it may not be construed to the disadvantage of the Property Manager;
- (g) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (h) a reference to a person includes a reference to a person’s executors, administrators, successors, substitutes (including but not limited to, persons taking by novation) and assigns;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;

- (j) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (k) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; and
- (l) if an event must occur on a stipulated day which is not a business day then the stipulated day will be taken to be the next business day.

12.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this document.