

# Deed of variation of Management Agreement

Dated 18 February 2010

Challenger Management Services Limited (ABN 29 092 382 842)  
("Manager")

Challenger Listed Investments Limited (ABN 94 055 293 644) as  
responsible entity for the Challenger Diversified Property Trust 1 and the  
Challenger Diversified Property Trust 2 ("Principal")

# Deed of variation of Management Agreement

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# Deed of variation of Management Agreement

## Details

<b>Parties</b>	<b>Manager and Principal</b>	
<b>Manager</b>	Name	<b>Challenger Management Services Limited</b>
	ABN	29 092 382 842
	Address	Level 15, 255 Pitt Street, Sydney NSW 2000
	Telephone	02 9994 7000
	Fax	02 9994 7777
	Attention	Company Secretary
<b>Principal</b>	Name	<b>Challenger Listed Investments Limited as responsible entity of the Challenger Diversified Property Trust 1 and the Challenger Diversified Property Trust 2</b>
	ABN	94 055 293 644
	Address	Level 15, 255 Pitt Street, Sydney NSW 2000
	Telephone	02 9994 7000
	Fax	02 9994 7777
	Attention	Company Secretary
<b>Recitals</b>	<b>A</b>	The Principal and the Manager are parties to the Management Agreement.
	<b>B</b>	Pursuant to the Management Agreement, the Principal appointed the Manager to provide or procure the provision of the Services and the Manager accepted the appointment and agreed to provide the Services on the terms and conditions set out in the Management Agreement
	<b>C</b>	The Principal and the Manager wish to vary the Management Agreement as set out in this deed.
<b>Governing law</b>	New South Wales	
<b>Date of deed</b>	See Signing page	
<b>Variation Date</b>	1 January 2010	

# Deed of variation of Management Agreement

## General terms

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### 1 Interpretation

#### 1.1 Definitions

In this deed unless the context requires another meaning, terms that are defined in the Management Agreement shall have the same meaning in this agreement and:

**Details** means the section of this deed entitled "Details".

**Management Agreement** means the management agreement between the Principal and the Manager dated 11 September 2006.

**Variation Date** means the date specified as the variation date in the Details date of this deed.

#### 1.2 Rules for interpreting this deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this deed or to any other document or deed includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning

- (e) An agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation or warranty on the part of two or more persons binds them jointly and severally.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) This deed cannot be interpreted against a party only because that party was responsible for preparing it.

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## 2 Variation of Management Agreement

As from the Variation Date, the Management Agreement is varied as follows:

- (a) Amend **Clause 1.1** (*Definitions*) by adding the following definitions:
  - (i) **Development Management Fees** means the development management fees payable to the Manager under paragraph 4A of **Schedule 2**.
  - (ii) **Development Management Services** means the services described in paragraph 7 of **Schedule 1**.
  - (iii) **Leasing Fees** means the leasing fees payable to the Manager under paragraph 4B of **Schedule 2** and includes leasing fees payable in respect of an agreement for lease, a new lease, lease renewals, exercise of options and licence agreements.
  - (iv) **Leasing Services** means the services described in paragraph 8 of **Schedule 1**.
- (b) **Clause 2.2** (*Development and construction services*) is deleted in its entirety.
- (c) Amend **Schedule 1** (*Services*) by:
  - (i) Replacing the words “and Property Services” at the end of the introductory paragraph appearing immediately above paragraph 1 (*Management Services*) of Schedule 1 with the words “, Property Services, Development Management Services and Leasing Services”;
  - (ii) adding a new paragraph 7 as follows:
    - “7 Development Management Services
    - The Development Management Services comprise:

1. submitting recommendations, with reasons (including a cost – benefit analysis) to the Principal for the refurbishment, re-development and fit-out of the Assets;
2. where the Principal approves a recommendation of the Manager, subject to the Principal's requirements and instructions, making all necessary and appropriate arrangements for the refurbishment, re-development and fit-out of the Assets;
3. making recommendations to the Principal for the engagement of agents, contractors, consultants and other necessary parties by the Principal for the purposes referred to in subparagraph 2 above;
4. managing, monitoring, supervising and directing the agents, contractors, consultants and other parties appointed in connection with the refurbishment, re-development and fit-out of the Assets;
5. giving all due attention to complaints received by it or any agent in relation to the refurbishment, re-development and fit-out of the Assets from tenants, licensees and other persons;
6. attending site meetings, where necessary; and
7. performing any additional services reasonably requested by the Principal in relation to the refurbishment, re-development and fit-out of the Assets and agreed to by the Manager.

(iii) adding a new paragraph 8 as follows:

“8 Leasing Services

The Leasing Services comprise:

1. making all necessary and appropriate arrangements for the Assets to be leased, advertised and marketed;
2. making recommendations to the Principal for the engagement of leasing agents, contractors and other necessary parties for the purposes referred to in subparagraph 1. In this regard, the Principal agrees that the Manager may recommend itself for the role of leasing agent in respect of particular tenancies but may only assume the leasing role with the

approval of the Principal (which the Principal is not required to give);

3. managing, monitoring, directing and reporting on the performance of such parties referred to in subparagraph 2 to the Principal and resolving issues as they arise;
4. not continuing to use a leasing agent or other party beyond their existing contractual term if the Principal has notified the Manager in writing that the leasing agent or other party must not continue to be used; and
5. making recommendations to the Principal in relation to the on-going leasing strategy of the Assets.”

(d) Amend **Schedule 2 (Charges and Payment)** by adding:

(i) a new paragraph 4A as follows:

**4A Development Management Fees**

- (i) In consideration for the performance of the Development Management Services, the Manager is separately entitled to receive a Development Management Fee being an amount determined as a percentage of the actual total project and development costs (excluding land and property purchase costs and excluding repairs and maintenance) incurred by the Manager where the percentages are set out in the following table:

<b>Total project and development costs (\$)</b>	<b>Applicable percentage</b>
For the first \$500,000	5%
Then for amounts between \$500,001 up to and including \$3,000,000	4%
Then for amounts in excess of \$3,000,001	3%

- (ii) The Development Management Fee is payable monthly in arrears during the period in which the Development Management Services are provided.

(ii) a new paragraph 4B as follows:

#### 4B Leasing Fees

- (i) In consideration for the performance of the Leasing Services, the Manager is separately entitled to receive a Leasing Fee being an amount determined as a percentage of the first year's gross rental (disregarding any rent-free period, financial contribution, allowance or inducement, whether in cash or kind, or other concession given to the tenant or licensee (as the case may be)) where the percentages are set out in the following table:

<b>Lease Term</b>	<b>Applicable percentage***</b>
1 year	11%
2 years	11%
3 years	11%
4 years	12%
5 years	13%
5+ years	13% plus 0.5% for each additional year after year 5, subject to a maximum fee of 15%**

\*\*\*The scale of leasing fees shown in the table above does not apply to a new lease entered into with a sitting tenant or pursuant to option contained in the original lease.

- (ii) The parties acknowledge and agree that the Manager is separately entitled to receive a lease renewal fee of 5% of the first year's gross rental (disregarding any rent-free period, financial contribution, allowance or inducement, whether in cash or kind, or other concession given to the tenant or licensee (as the case may be)) where a new lease is entered into with a sitting tenant or pursuant to an option contained in an original lease.
- (iii) The Leasing Fee is only payable if the Manager negotiates a lease or licence agreement directly with a tenant or licensee (as the case may be).
- (iv) The Leasing Fee is due and payable within 10 Business Days of a binding agreement for lease, lease or licence being executed by the

tenant or licensee (as the case may be), and all other documentation (including bank guarantees) reasonably required by the Principal being provided and any other terms reasonably imposed by the Principal being complied with.

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### **3 General**

#### **3.1 Confirmation**

Each party is bound by the Management Agreement as varied by this deed.

#### **3.2 Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

#### **3.3 Severability**

Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

#### **3.4 Notices**

The notice provisions in the Management Agreement are deemed to be included in this deed.

#### **3.5 Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed.

#### **3.6 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

#### **3.7 Variation**

An amendment or variation to this deed is not effective unless it is in writing and signed by the parties.

### **3.8 Counterparts**

This agreement may be executed in counterparts.

### **3.9 Governing law**

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

### **3.10 Attorneys**

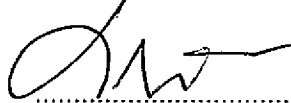
Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**EXECUTED** as a deed.

# Signing page

DATED: 18 February 2010

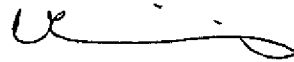
EXECUTED by CHALLENGER )  
MANAGEMENT SERVICES )  
LIMITED in accordance with )  
section 127(1) of the Corporations )  
Act 2001 (Cwlth) by authority of its )  
directors: )



Signature of director )

Trent Alston )

Name of director (block letters) )



Signature of director/company )  
secretary\* )

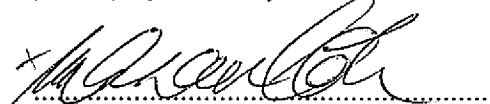
\*delete whichever is not applicable )



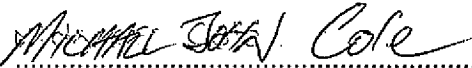
Name of director/company secretary\* )  
(block letters) )

\*delete whichever is not applicable )

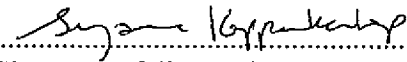
EXECUTED by CHALLENGER )  
LISTED INVESTMENTS )  
LIMITED in accordance with section )  
127(1) of the Corporations Act 2001 )  
(Cwlth) by authority of its directors: )



Signature of director )

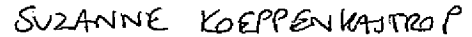


Name of director (block letters) )



Signature of director/company )  
secretary\* )

\*delete whichever is not applicable )



Name of director/company secretary\* )  
(block letters) )

\*delete whichever is not applicable )

