

29 July 2019

Rock Solid Holdings Limited  
c/- Bay Law Office  
Barristers & Solicitors  
535 Blockhouse Bay Road  
Blockhouse Bay  
**AUCKLAND**

**By email**

**Attention:** Peter Jacobsen | Alison Dymond

**ROCK SOLID HOLDINGS LIMITED (VENDOR) – OYSTER PROPERTY HOLDINGS LIMITED AND/OR NOMINEE (PURCHASER) – 101 MCLAUGHLINS ROAD & 12 HARBOUR RIDGE DRIVE, WIRI, AUCKLAND (PROPERTY)**

**Background**

1. The Vendor and Purchaser are parties to an agreement for sale and purchase of real estate dated 17 June 2019 in respect of the Property (**Agreement**).
2. In the course of our client's due diligence investigations, it has identified certain matters which it requires to be confirmed and/or rectified by way of variation to the Agreement. We record the arrangements in this letter (as set out below) and ask that the Purchaser signs this letter in the space provided in order to confirm agreement to such arrangements and document the variations to the Agreement.

**Underwrite Sum**

3. The parties acknowledge and agree that for the purposes of clause 36 of the Agreement, on the basis that Settlement occurs on 21 October 2019 (and subject to paragraph 4 below), the underwrite sum to be paid by the Vendor to the Purchaser on Settlement (by way of a credit in favour of the Purchaser in the settlement statement) shall be \$58,020.39 (**Underwrite Sum**).
4. In the event that Settlement occurs on a date:
  - (a) earlier than 21 October 2019, the Underwrite Sum shall be increased by a sum equal to the number of days between the date of Settlement and 21 October 2019 multiplied by a daily rate of \$181.80; or
  - (b) later than 21 October 2019, the Underwrite Sum shall be reduced by a sum equal to the number of days between the date of Settlement and 21 October 2019 multiplied by a daily rate of \$181.80.

**Variations to Agreement**

5. The Vendor and the Purchaser have agreed to vary the Agreement as set out below:
  - (a) **Definitions:** The following new definitions are inserted in clause 35.1:

DAS-106231-10-219-V1

**"Completion"** means, in respect of any Vendor Works Project, completion of such works:

- (a) *in good and workmanlike manner having used suitably experienced contractors and good quality materials;*
- (b) *without unremedied defects; and*
- (c) *in accordance with all applicable laws and the requirements of all relevant authorities, including (where applicable) obtaining all necessary consents, permits and code compliance certificates,*

*and provided that the Vendor has provided written notification to the Purchaser confirming completion of the Vendor's Works in accordance with the above requirements together with copies of any documentation referred to above.*

**"Vendor Works"** means the works identified in the Vendor Works Schedule (annexed to this agreement as Schedule 3) to be undertaken by the Vendor in accordance with clause 38.1 and **"Vendor Works Project"** means each individual Vendor Works project identified in such schedule."

- (b) **Settlement Deliverables:** Clause 23.1 is varied by inserting the following new sub-clauses (g) to (i):

"(g) *a letter (the form of which shall be prepared by the Purchaser for the approval of the Vendor (acting reasonably)) from Stonehill Trustees Limited addressed to the Purchaser and the Purchaser's successors and assigns confirming that:*

(i) *neither the McLaughlins Property or the Harbour Ridge Property in their state, condition and configuration as at Settlement breach or contravene the land covenants contained in easement instruments 10888755.5 and 11117074.3 (as applicable to each Property); and*

(ii) *any alterations, erections of improvements or signage, or any other acts undertaken by the Lessees which the Lessees are not prohibited from undertaking pursuant to the terms of the respective Leases (the form of such Leases being that which exists at Settlement) do not breach or contravene the land covenants contained in easement instruments 10888755.5 and 11117074.3 (as applicable to each Property);*

(h) *seismic reliance letters addressed to the Purchaser, its nominee and manager from the contractor and structural engineer who constructed and/or were engaged in respect of the construction of the building(s) on each of the McLaughlins Property and Harbour Ridge Property (in the forms annexed to this agreement as Schedule 4);*

(i) *a letter from the Vendor addressed to the Purchaser, its nominee and manager confirming the Vendor's intention in respect of certain provisions contained in the Harbour Ridge Property Lease (in the form annexed to this agreement as Schedule 5)".*

- (c) **Deed of Assignment:** Clause 24.2 is deleted and replaced with the following:

"24.2 *The Vendor will not be required to obtain the consent of any third parties to the agreements or documents referred to in clause 24.1 but will assist the Purchaser in the enforcement of any such agreements and documents and*

*shall hold such agreements and documents on trust for the benefit of the Purchaser."*

- (d) **Vendor Works:** New clause 38 is inserted as follows:

**"38 Vendor Works**

- 38.1 *The parties acknowledge that during the Purchaser's due diligence investigations, it has identified the Vendor Works on the McLaughlin's Property and Harbour Ridge Property as requiring remediation. The Vendor agrees that it shall (at the Vendor's sole cost) diligently procure Completion of the Vendor Works in a timely manner. The Vendor shall achieve Completion of all of the Vendor Works prior to Settlement.*
- 38.2 *In the event that the Vendor's Works (or any part thereof) has not achieved Completion by the Settlement Date, the Purchaser shall (without limiting any other right or entitlement that the Purchaser may have, including without limitation charging default interest during such delay period) be entitled to delay Settlement to be the date that is five (5) working days after Completion of all of the Vendor's Works."*

- (e) **McLaughlin's Property Defects Liability Period:** New clause 39 is inserted as follows:

**"39 McLaughlin's Property Defects Liability Period**

- 39.1 *The parties acknowledge that pursuant to clause 10.5 of the agreement to lease dated 19 March 2018 (**McLaughlin's ATL**), the landlord is obliged to rectify defects (**Defects**) in the Landlord's Works (as defined in the McLaughlin's ATL) that arise and are notified to the landlord by the McLaughlin's' Lessee within 6 months of the commencement date of the McLaughlin's Property Lease, being the period expiring on 30 November 2019 (**Defects Liability Period**).*
- 39.2 *Notwithstanding Settlement occurring, the Vendor shall remain liable to perform (at the Vendor's sole cost) all obligations of the landlord under the McLaughlin's ATL pursuant to clause 10.5 of the McLaughlin's ATL. As soon as reasonably possible following notification of any such Defect to the Vendor, the Vendor shall rectify such Defect in accordance with the requirements of the McLaughlin's ATL. Without limiting clause 10.5 of the McLaughlin's ATL, the Vendor shall undertake any such Defect rectification works (and achieve Completion) as if such works were a Vendor Works Project pursuant to clause 38 above. The Vendor indemnifies the Purchaser in respect of any claim, loss, liability or cost incurred or suffered by the Vendor as a result of any breach by the Vendor of its obligations pursuant to this clause 39.2 (including without limitation for claim by the McLaughlin's Lessee in respect of a breach by the landlord of clause 10.5 of the McLaughlin's ATL.*
- 39.3 *For the avoidance of doubt, in the event that Settlement occurs prior to the expiry of the Defects Liability Period on 30 November 2019, the Vendor's obligations in clause 39.2 shall survive and continue following Settlement.*

- (f) **Schedules:**

- (i) The Vendor Works Schedule annexed to this variation letter as **Annexure A** shall be inserted as the Third Schedule of the Agreement.
- (ii) The forms of seismic reliance letters annexed to this variation letter as **Annexure B** shall be inserted as the Fourth Schedule of the Agreement.

- (iii) The form of Harbour Ridge Property Lease intention letter annexed to this variation letter as **Annexure C** shall be inserted as the Fifth Schedule of the Agreement.

## 6. Interpretation

The Agreement shall be read with all necessary modifications to give effect to the variations recorded in this variation letter and, to the extent that any provision of this variation letter conflicts with the Agreement, the provisions contained in this letter shall prevail. Capitalised terms not otherwise defined in this letter shall have the meaning prescribed by the Agreement.

## Execution and Binding Agreement

7. Please execute this letter in the space provided below and return it to us in order to document the agreed variations. In signing this letter the signatory agrees that the Agreement has been varied (as set out above) and the signatory confirms that they are authorised to bind the Vendor in this regard. We confirm that we are so authorised by the Purchaser and further confirm the variations on behalf of the Purchaser.

Yours faithfully

**THOMPSON BLACKIE BIDDLES LIMITED**



**Sam Greenwood | David Simpson**  
Director | Senior Solicitor

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Email: sam.greenwood@tbblegal.com | david.simpson@tbblegal.com

*Acknowledged and agreed:*

*Authorised representative of the Vendor*

**ANNEXURE A****SCHEDULE 3 – VENDOR WORKS SCHEDULE**

Refer attached.

ELEMENT	LOCATION	ISSUE	PHOTO REFERENCE
<b>12 Harbour Ridge Drive</b>			
STRUCTURAL / FAÇADE	Internal Warehouse	Localised cracking to the tilt panels which is emanating calcium. Vendor to engage a suitable engineer to repair crack and confirm no structural issues.	1
STRUCTURAL / FAÇADE	Internal Warehouse	Localised cracking to the floor slab. Vendor to engage a suitable engineer to repair crack and confirm no structural issues.	2
STRUCTURAL / FAÇADE	Meeting Room	Water ingress to the meeting room windows has been identified by the tenant on inspection. It appears it may be a sealant or façade issue. Vendor to instruct a suitable engineer to identify issue, provide remedial plan and execute accordingly.	3
STRUCTURAL / FAÇADE	Upstairs Office	Water ingress has been identified and is visible due to staining on the ceiling tiles. It appears it may be a sealant or façade issue. Vendor to instruct a suitable engineer to identify issue, provide remedial plan and execute accordingly.	4
ELECTRICAL	All Distribution Boards (DB's)	Missing pole fillers. Provide pole fillers where openings have been left in escutcheon plates	5
ELECTRICAL	Exit lighting	Upstairs office does not have any emergency exit lighting. Please provide confirmation that this floor does not require emergency lighting. If there is no confirmation, then the vendor is to engage a qualified engineer to provide and install sufficient emergency lighting to the upstairs office in accordance with NZ guidelines/ code. Furthermore, Warehouse inspection noted a number of emergency lighting not working. Replace and upgrade where necessary.	6
ELECTRICAL	Metal sink earthing	Metal sinks not earthed. Metal sinks are to be earthed to ensure compliance with AS/NZS 3000. Electrical contractor to investigate equipotential bonding.	7
ELECTRICAL	Passive Fire Sealing around all cable penetrations	Confirmation that fire sealing has been applied to all cable penetrations. Fire sealing is to be provided for all cable penetrations between separate fire cells. A qualified contractor to carry out a detailed site survey and provide fire sealing wherever necessary.	
PLUMBING & DRAINAGE	Domestic cold-water main	No test tags on DCW main. Provide test tag at backflow prevention device	
PLUMBING & DRAINAGE	Hose taps	No vacuum brakes to hose taps. Provide vacuum breaks at external hose taps to prevent backflow into the water supply.	
PLUMBING & DRAINAGE	Accessible WC hot water	Water is hotter than maximum temperate to WC taps. Provide new thermostatic mixing valve for compliance.	
<b>101 McLaughlin's</b>			
ROOFING	All elevations	Swarf damage was noted to the roof. The affected areas of roof coverings are to be rubbed down, treated and repainted with an approved paint coating prior to the completion of the sale. Advice should be sought from the manufacturer for remedial works prior to implementation.	1
STRUCTURAL / FAÇADE	External Warehouse	Localised cracking to the tilt panels. Note that the vendor is currently remediating these issues. Provide certification on completion (if required).	2
ELECTRICAL	All Distribution Boards (DB's)	Missing pole fillers. Provide pole fillers where openings have been left in escutcheon plates	3
ELECTRICAL	Emergency lighting - Office	It appears that the office emergency lighting is insufficient. Please provide confirmation that this floor has compliant emergency lighting. If there is no confirmation, then engage a qualified engineer to install sufficient emergency lighting to the office in accordance with NZ guidelines.	4
ELECTRICAL	Passive Fire Sealing around all cable penetrations	Confirmation that fire sealing has been applied to all cable penetrations. Fire sealing is to be provided for all cable penetrations between separate fire cells. A qualified contractor to carry out a detailed site survey and provide fire sealing wherever necessary.	
ELECTRICAL	Metal sink earthing	Metal sinks not earthed. Metal sinks are to be earthed to ensure compliance with AS/NZS 3000. Electrical contractor to investigate equipotential bonding.	
FIRE PROTECTION	Labelling	Missing lables to all fire devices. Provide labels to all fire devices.	
PLUMBING & DRAINAGE	Valve main	Missing test tag to main valve. Provide test tag at backflow prevention device	
PLUMBING & DRAINAGE	Accessible WC hot water	Water is hotter than maximum temperate to WC taps. Provide new thermostatic mixing valve for compliance.	

**ANNEXURE B****SCHEDULE 4 – FORM OF SEISMIC RELIANCE LETTERS**

Refer attached.



29 July 2019

Oyster Management Limited / Oyster Property Holdings Limited and Nominee  
L18, 55 Shortland Street  
Auckland Central  
Auckland 1011

To whom may concern

**BUILDING EARTHQUAKE CAPACITY - LETTER OF RELIANCE - 101 MCLAUGHLINS ROAD & 12 HARBOUR RIDGE DRIVE, WIRI, AUCKLAND**

**Background**

1. The buildings and improvements located at 101 McLaughlins Road and 12 Harbour Ridge Drive, Wiri, Auckland (**Building**) were designed and constructed by Rock Solid Holdings Limited trading as Euroclass Design and Build (**Contractor**).
2. The structural building design was reviewed and approved by us in our capacity as a structural engineer to the project.
3. We acknowledge that you (or an entity nominated by you) is looking to purchase the Building (**Purchaser**). The Purchaser and Oyster Management Limited (as manager) (**OML**) has sought the confirmations contained in this letter and an entitlement to rely upon the confirmations contained in this letter on the basis that both the Purchaser and OML be considered our client.

**Confirmations and reliance**

We confirm that:

1. We, as structural engineer to the project, reviewed and approved the structural design of the Building only, and confirmed that in regards to structure, it was designed in compliance with the then current Building Code and all necessary consents/approvals from the relevant lawful authorities.
2. At the time of building consent the Building was designed in accordance B1/VM1 of the building code and as such was designed to a seismic loading of no less than [100%] Ultimate limit state (ULS) loading. Considering the recent age of both structures we



confirm that this would equate to a %NBS (New Build Standard) rating of greater than 100%NBS as at the date of this letter.

3. We carried out construction monitoring to CM3 level, and supplied upon completion a PS4 producer statement – construction review, stating that we believe on reasonable grounds that part of the building works have been completed in accordance with the relevant requirements of the building consent.
4. We hold professional indemnity cover which extends to and covers any liability which may arise as a result of the original design with a maximum limit of **\$2,000,000 (Liability Cap)**, our liability to the Purchaser and/or OML pursuant to this letter shall not exceed the Liability Cap.

We confirm, by this letter, that the Purchaser and OML are entitled to rely upon the above confirmations and we acknowledge that the Purchaser and OML will be relying on such confirmations when determining whether to proceed with its acquisition of the Building.

I, as signatory of this letter, confirm that I am authorised to provide the above confirmations and execute this letter for and on behalf of our company.

**THORNE DWYER STRUCTURES**



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Name: Damian Linehan CMEngNZ, CPEng  
Title: Director

THORNE DWYER  
STRUCTURES LIMITED

CONSULTING ENGINEERS

88 CHARLOTTE STREET  
EDEN TERRACE  
PO BOX 99 812 AUCKLAND  
TELE (09) 307 2702  
EMAIL [engineer@tdstructures.co.nz](mailto:engineer@tdstructures.co.nz)

26 July 2019

Oyster Management Limited / Oyster Property Holdings Limited and Nominee  
L18, 55 Shortland Street  
Auckland Central  
Auckland 1011

To whom may concern

**BUILDING EARTHQUAKE CAPACITY - LETTER OF RELIANCE - 101 MCLAUGHLINS ROAD & 12  
HARBOUR RIDGE DRIVE, WIRI, AUCKLAND**

**Background**

1. The buildings and improvements located at 101 McLaughlins Road and 12 Harbour Ridge Drive, Wiri, Auckland (**Building**) were designed and constructed by Rock Solid Holdings Limited trading as Euroclass Design and Build (**Contractor**).
2. We, as Contractor, oversaw delivery of the Building in accordance with all necessary consents/approvals from the relevant lawful authorities.
3. We acknowledge that you (or an entity nominated by you) is looking to purchase the Building (**Purchaser**). The Purchaser and Oyster Management Limited (as manager) (**OML**) has sought the confirmations contained in this letter and an entitlement to rely upon the confirmations contained in this letter on the basis that both the Purchaser and OML be considered our client.

**Confirmations and reliance**

We confirm that:

1. We have overseen delivery all relevant documentation to Council which confirms that all building work has been carried out in accordance with the consented plans and the current Building Code and the Building has achieved practical completion.
2. The Building has been issued with the required code compliance certificates.

We confirm, by this letter, that the Purchaser and OML are entitled to rely upon the above confirmations and we acknowledge that the Purchaser and OML will be relying on such confirmations when determining whether to proceed with its acquisition of the Building. We further confirm that the Purchaser and/or OML shall, for all intents and purposes, be

The logo for euroclass, featuring the word "euroclass" in a bold, sans-serif font. The text is white and set against a dark blue, textured background that resembles a building facade or a modern architectural design.

euroclass

considered our client and shall be entitled to all rights and entitlements as if they had originally contracted our company to undertake construction of the Building.

I, as signatory of this letter, confirm that I am authorised to provide the above confirmations and execute this letter for and on behalf of our company.

**ROCK SOLID HOLDINGS LIMITED**

A handwritten signature in blue ink, appearing to read "Peter Bishop". The signature is written over a horizontal line.

Name: Peter Bishop

Title: Director

**ANNEXURE C****SCHEDULE 5 – FORM OF HARBOUR RIDGE PROPERTY LEASE INTENTION LETTER**

Refer attached.

29 July 2019

Oyster Management Limited / Oyster Property Holdings Limited and Nominee  
Level 18  
55 Shortland Street  
Auckland 1010

To whom it may concern

**CONFIRMATION OF INTENTION OF LEASE PROVISIONS – 12 HARBOUR RIDGE DRIVE, WIRI,  
AUCKLAND – NBL (NEW ZEALAND) LIMITED**


We refer to the deed of lease dated 22 October 2018 between Rock Solid Holdings Limited as landlord and NBL (New Zealand) Limited as tenant (**Lease**) in respect of the property at 12 Harbour Ridge Drive, Wiri, Auckland (**Premises**).

We confirm to you (as prospective purchaser of the Premises and future landlord under the Lease) that in negotiating and completing the Lease, our intention in respect of certain provisions under the Lease was and is as follows:

1. As at the date of this letter, clause 51.3 of the Lease no longer applies for the following reasons:
  - a. the Premises has never been open to the public, therefore, the Tenant's responsibility to obtain a certificate of public use as soon as practicable following Practical Completion is not required; and
  - b. the landlord has completed its obligations under that clause as all necessary consents and approvals in respect of the Premises have been obtained by the Landlord,and as such clause 51.3 does not contain any enduring obligations;
2. the references to "Tenant's Works" within clause 51 of the Lease are references to the Tenant's initial "Tenant's Works" under the agreement to lease; and

I, as signatory of this letter, confirm that I am authorised to provide the above confirmations and execute this letter for and on behalf of our company.

**ROCK SOLID HOLDINGS LIMITED**

  
Name: Robert [unclear]  
Title: Director