

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.

DATE:

VENDOR: Madill & Smeed Limited

PURCHASER: Augusta Funds Management Limited

and/or nominee

The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement:

Yes/No

PROPERTY

Address: 20 Paisley Road, Mt Wellington

Estate: ~~FEE SIMPLE LEASEHOLD STRATUM IN FREEHOLD STRATUM IN LEASEHOLD~~
~~CROSSLEASE (FEE SIMPLE) CROSSLEASE (LEASEHOLD)~~ (fee simple if none is deleted)

Legal Description:

Area (more or less): 13,630m² Lot/Flat/Unit: Lot 2 DP: DP 198664 Unique Identifier or CT: NA127C/413

Refer to Certificate of Title attached

PAYMENT OF PURCHASE PRICE

Purchase price: ~~\$24,444,444 (Twenty Four Million, Four Hundred & Forty Four Thousand, Four Hundred & Forty Four)~~

Plus GST (if any) OR Inclusive of GST (if any)
 If neither is deleted, the purchase price includes GST (if any).

GST date (refer clause 14.0):

Deposit (refer clause 2.0): 5% of the purchase price payable to Bayleys Real Estate Limited Trust Account upon satisfaction of Clause 19 herein.

Balance of purchase price to be paid or satisfied as follows:

(1) By payment in cleared funds on the settlement date which is 28 March 2018

OR

(2) In the manner described in the Further Terms of Sale.

Interest rate for late settlement: 12% p.a.

CONDITIONS (refer clause 10.0)

Finance Condition

LIM required: (refer clause 10.2) Yes/No

Lender:

Building report required: (refer clause 10.3) Yes/No

Amount required:

OIA Consent required: (refer clause 10.4) Yes/No

Finance date:

Land Act/OIA date:

TENANCIES (if any)

Name of tenant: Refer attached

Bond: \$

Rent: \$

Term:

Right of renewal:

SALE BY:

Bayleys Real Estate Limited
 a Member of the Bayleys Realty Group
 Bayleys House
 30 Gaunt Street
 AUCKLAND 1010
 Manager: Michael Bayley
 Salesperson: Chris Bayley (021 899 863)

Phone: 09 309 6020

Fax: 09 309 9404

Email: reception@bayleys.co.nz

ID: 4A4869E2-6B96-458F-8E87-180C8D06D43F

Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 1, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (15) "Property" means the property described in this agreement.
- (16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (20) "Settlement date" means the date specified as such in this agreement.
- (21) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title under the Unit Titles Act 2010.
- (24) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (25) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (26) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
- (27) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (28) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (29) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 1952.
- (30) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (31) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (32) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of subclause 10.2(2) the 15th day of January) in the following year, both days inclusive; and
 - (d) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (33) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
 - (b) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.2 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.2(2).

1.3 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by facsimile; or
 - (iv) by email; or
 - (v) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
 - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

- (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
- (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 222 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

1.4 Interpretation

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:
- (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and
- (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
- (3) where the property is a unit title:
- (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and
- (b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2)),
- have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
- (4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.6(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.

3.0 Possession and Settlement

Possession

- 3.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 3.2 If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
- (1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
- (2) to re-enter the property on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and the fixtures.
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 3.4 On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.

Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 3.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
- (2) prior to settlement:
- (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
- (b) certify and sign the transfer instrument.
- 3.7 The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
- (2) prior to settlement:
- (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
- (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 3.8 On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.14);
- (2) the vendor's lawyer shall immediately thereafter:
- (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
- (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
- (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.
- 3.9 All obligations under subclause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.
- ### Last Minute Settlement
- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
- (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
 - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).
- 3.13 Where subclause 3.12(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:
- (1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
 - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
 - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (6) the amount determined to be payable shall not be limited by the interim amount; and
 - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.14 (1) For the purposes of this subclause 3.14:
- (a) the default period means:
 - (i) in subclause 3.14(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in subclause 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.14(5), the period from the settlement date until the date when settlement occurs; and
 - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
 - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
 - (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period. A purchaser in possession under this subclause 3.14(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.14(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 3.14(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period.
- (6) The provisions of this subclause 3.14 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) Where the parties are unable to agree upon any amount payable under this subclause 3.14:
- (a) an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined;
 - (b) the interim amount shall be the lower of:
 - (i) the amount claimed; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date.
 - (c) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (d) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (e) the amount determined to be payable shall not be limited by the interim amount; and
 - (f) if the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Deferment of Settlement and Possession

- 3.15 If
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.16 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.17 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 9.2(3),
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (b) where there is a deferment of the settlement date pursuant to subclause 3.16, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

3.18 (1) Where

- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 172A of the Land Transfer Act 1952, of that title is not obtainable by the tenth working day prior to the settlement date,
 - (c) then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
 - (i) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (ii) the requisitions procedure under clause 6.0 is complete.
- (2) Subclause 3.18(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

4.0 Residential Land Withholding Tax

- 4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:
- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
 - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
 - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
 - (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
 - (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
 - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
 - (b) any costs payable by the vendor under subclause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 4.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
 - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 4.3 If pursuant to subclause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
 - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under subclause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
 - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

5.0 Risk and insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
 - (2) if the property is not untenable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
 - (3) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
 - (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 8.4 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
- (a) the tenth working day after the date of this agreement; or
 - (b) the settlement date.
- (2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 172A of the Land Transfer Act 1952 is obtainable.
- (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:
- (a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
 - (b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
 - (c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.
- (4) In the event of cancellation under subclause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.
- 6.3 (1) If the title to the property being sold is a cross lease title or a unit title and there are:
- (a) in the case of a cross lease title:
 - (i) alterations to the external dimensions of any leased structure; or
 - (ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted user covenant;
 - (b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be);
- then the purchaser may requisition the title under subclause 6.2 requiring the vendor:
- (c) in the case of a cross lease title, to deposit a new plan depicting the buildings or structures and register a new cross lease or cross leases (as the case may be) and any other ancillary dealings in order to convey good title; or
 - (d) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.

- (2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.
- 6.4 Except as provided by sections 36 to 42 of the Contract and Commercial Law Act 2017, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

7.0 Vendor's warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party; or
 - (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at settlement:
- (1) The chattels and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver them shall only create a right of compensation.
 - (2) All electrical and other installations on the property are free of any charge whatsoever.
 - (3) There are no arrears of rates, water rates or charges outstanding on the property.
 - (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
 - (5) Where the vendor has done or caused or permitted to be done on the property any works:
 - (a) any permit, resource consent, or building consent required by law was obtained; and
 - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
 - (c) where appropriate, a code compliance certificate was issued for those works.
 - (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
 - (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - (b) the building has a current building warrant of fitness; and
 - (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
 - (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
 - (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party,
 has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
 - (9) Any chattels included in the sale are the unencumbered property of the vendor.
- 7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - (2) the building has a current building warrant of fitness; and
 - (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 7.4 The vendor warrants and undertakes that on or immediately after settlement:
- (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
 - (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
 - (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
 - (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 7.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 6.4 and any right of equitable set-off.

8.0 Claims for compensation

- 8.1 If the purchaser claims a right to compensation either under subclause 6.4 or for an equitable set-off:
- (1) the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
 - (2) the notice must:
 - (a) in the case of a claim for compensation under subclause 6.4, state the particular error, omission, or misdescription of the property or title in respect of which compensation is claimed;
 - (b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
 - (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
 - (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 8.2 For the purposes of subclause 8.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given on or before the last working day prior to the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 11.1.
- 8.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 8.4 If the amount of compensation is disputed:
- (1) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
 - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
 - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (6) the amount of compensation determined to be payable shall not be limited by the interim amount; and
 - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.
- 8.5 The procedures prescribed in subclauses 8.1 to 8.4 shall not prevent either party taking proceedings for the specific performance of the contract.

9.0 Unit title and cross lease provisions

Unit Titles

- 9.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act 2010 ("the Act") require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.
- 9.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
 - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
 - (3) Not less than five working days before the settlement date, the vendor will provide:
 - (a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and
 - (b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
 - (4) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.
 - (5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
 - (7) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
 - (a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or
 - (b) any proceedings being instituted by or against the body corporate; or
 - (c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
 - (8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
 - (9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
 - (10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
 - (a) the transfer of the whole or any part of the common property;
 - (b) the addition of any land to the common property;
 - (c) the cancellation of the unit plan; or
 - (d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan, which has not been disclosed in writing to the purchaser.
 - (11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 9.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 9.2(3), the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - (2) elect that settlement shall still take place on the settlement date.
- 9.4 If the property is a unit title, each party specifies that:
- (1) the facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Act; and
 - (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Act.
- 9.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

Unauthorised Structures – Cross Leases and Unit Titles

- 9.6 (1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:
- (a) in the case of a cross lease title, any required lessors' consent; or
 - (b) in the case of a unit title, any required body corporate consent,
- the purchaser may demand within the period expiring on the earlier of:
- (i) the tenth working day after the date of this agreement; or
 - (ii) the settlement date,
- that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.
- (2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 6.2(3) and 6.2(4) shall apply with the purchaser's demand under subclause 9.6(1) being deemed to be an objection and requisition.

10.0 Conditions and mortgage terms

Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
 - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - (c) this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the purchaser shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.
- 10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.
- 10.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

Operation of Conditions

- 10.8 If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent.
 - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
 - (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
 - (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
 - (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

Mortgage Terms

- 10.9 Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 10.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
 (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able, and willing to proceed to settle in accordance with this agreement or is not so ready, able, and willing to settle only by reason of the default or omission of the other party.
 (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to subclause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
 (1) on or before the twelfth working day after the date of service of the notice; or
 (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive,
 time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
 (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
 (3) The vendor may give a settlement notice with a notice under this subclause.
 (4) For the purpose of this subclause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 11.1(3):
 (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
 (a) sue the purchaser for specific performance; or
 (b) cancel this agreement by notice and pursue either or both of the following remedies namely:
 (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
 (ii) sue the purchaser for damages.
 (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
 (3) The damages claimable by the vendor under subclause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
 (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
 (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
 (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
 (4) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
 (1) sue the vendor for specific performance; or
 (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

12.0 Non-merger

- 12.1 The obligations and warranties of the parties in this agreement shall not merge with:
 (1) the giving and taking of possession;
 (2) settlement;
 (3) the transfer of title to the property;
 (4) delivery of the chattels (if any); or
 (5) registration of the transfer of title to the property.

13.0 Agent

- 13.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.
- 13.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

14.0 Goods and Services Tax

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
 (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
 (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
 (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 (b) any default GST;
 (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

- 14.4 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice under subclause 11.1 with a notice under this subclause.

15.0 Zero-rating

- 15.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement is correct at the date of this agreement.
- 15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 2 are correct at the date of this agreement.
- 15.3 Where the particulars stated on the front page and in Schedule 2 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act.
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 15.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 2 or they have altered.
- 15.5 If any of the particulars stated by the purchaser in Schedule 2 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 2 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 15.6 If
- (1) the particulars in Schedule 2 state that part of the property is being used as a principal place of residence at the date of this agreement; and
 - (2) that part is still being so used at the time of the supply under this agreement,
- the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 15.7 If
- (1) the particulars stated in Schedule 2 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
 - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in subclauses 15.3 and 15.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.

16.0 Supply of a Going Concern

- 16.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated herein:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 16.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 14.0 of this agreement shall apply.

17.0 Limitation of Liability

- 17.1 If any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that:
 - (a) the person has power to enter into this agreement under the terms of the trust;
 - (b) the person has properly signed this agreement in accordance with the terms of the trust;
 - (c) the person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this agreement.
 - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

18.0 Counterparts

- 18.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

FURTHER TERMS OF SALE**19.0 Due Diligence**

19.1 This Agreement is conditional upon the Purchaser being entirely satisfied that the Property is suitable for the Purchaser's intended use at the agreed purchase price following the Purchaser undertaking a due diligence investigation of the Property including (but not limited to):

- 19.1.1 Satisfactory building and structural engineering reports in relation to the soundness and quality of the building;
- 19.1.2 The inspection of Lease documentation and tenancies;
- 19.1.3 A full chattels list;
- 19.1.4 Town planning and other zoning or permitted use aspects of the property as it relates to the Purchaser's intended use of the Property;
- 19.1.5 The identification of the position of the buildings in relation to the boundaries of the land;
- 19.1.6 All legal and title issues relating to the Property and any encumbrances or memorials registered against it;
- 19.1.7 A LIM report on the Property;
- 19.1.8 The suitability of the property for all its intents and purposes.

19.2 The parties acknowledge:

19.2.1 That the conditions in clause 19.1 are inserted for the sole benefit of the Purchaser and may, at any time, prior to this Agreement being cancelled or becoming unconditional, be waived by the Purchaser giving notice in writing; and

19.2.2 That the satisfaction of the conditions in clause 19.1 shall be at the sole and absolute discretion of the Purchaser and that if the conditions are not fulfilled due to the Purchaser not being satisfied with any aspect of the property the Purchaser shall not be obliged to state any reason for the Purchaser's lack of satisfaction.

19.3 The date for satisfaction of this condition is 22 December 2017.

19.4 Satisfaction or rejections of the conditions shall be effected by the Purchaser notifying the vendor or its solicitor in writing by 4:00pm on the Due Diligence date. After such time this Agreement shall be voidable by either party by giving notice in writing to the other and upon voidance of the Agreement, neither party shall have further right or claim against the other.

20.0 New lease to Halls Refrigerated Transport Limited

The parties agree that it is an essential term of settlement that the Vendor must deliver to the Purchaser an executed deed of lease with Halls Refrigerated Transport Limited on the terms set out in the attached "Tenancies" schedule and otherwise in the form agreed during the period for satisfaction of the condition in clause 19.1.

21.0 Confidentiality

The parties agree that they will keep the terms and existence of this agreement strictly confidential and will not disclose such terms unless:

(a) such disclosure is to its advisers, consultants or financiers; or

(b) such disclosure is required to comply with any law, any listing rules, the requirements of any regulatory body or to comply with the obligations in this agreement.

SCHEDULE 1

List all chattels included in the sale

(strike out or add as applicable)

Stove Fixed floor coverings Blinds Curtains Light fittings



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy


R.W. Muir
Registrar-General
of Land

Identifier NA127C/413
Land Registration District North Auckland
Date Issued 29 March 2000

Prior References
NA23B/355

Estate Fee Simple
Area 1.3630 hectares more or less
Legal Description Lot 2 Deposited Plan 198664

Proprietors
Madill & Smeed Limited

Interests

D489654.3 Consent Notice pursuant to Section 221(1) Resource Management Act 1991 - produced 22.3.2000 at 9.25 am and entered 29.3.2000 at 9.00 am

Subject to a party wall easement over part marked A on DP 316510 created by Transfer 5466501.2 - 23.1.2003 at 9:00 am

Appurtenant hereto is a party wall easement created by Transfer 5466501.2 - 23.1.2003 at 9:00 am

10276403.3 Mortgage to ANZ Bank New Zealand Limited - 9.12.2015 at 4:51 pm

Tenancies

- | | |
|--------------|--------------------------------------|
| 1. Tenant | Americold NZ Limited |
| Term | to 01/12/2019 |
| Rental | \$1,650,000pa + GST & Outgoings |
| ROR | Nil |
| | |
| 2. Tenant | Halls Refrigerated Transport Limited |
| Term | 12 years |
| Commencement | 01/12/2019 |
| Rental | \$1,709,000pa + GST & Outgoings |
| Review | 2% per annum |
| ROR | 2 of 6 years each |

Form of lease to be triple net lease, the final form of which will be agreed during due diligence.

BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - the purchaser wishes to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before the purchaser enters into the agreement:
 - the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010;
 - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7 and 9:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 1 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

© This form is copyright to the Real Estate Institute of New Zealand Incorporated and Auckland District Law Society Incorporated

DATE:

<p>VENDOR: Madill & Smeed Limited</p> <p>Contact Details:</p> <p>VENDOR'S LAWYERS: Firm: Individual Acting: Contact Details:</p>
--

<p>PURCHASER: Augusta Funds Management Limited</p> <p>Contact Details: PO Box 37953 Parnell Auckland 1151</p> <p>PURCHASER'S LAWYERS: Firm: Chapman Tripp Individual Acting: Mark Nicholson Contact Details:</p>
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<p>LICENSED REAL ESTATE AGENT: Bayleys Real Estate Limited</p> <p>Agent's Name: a Member of the Bayleys Realty Group Manager: Michael Bayley Salesperson: Chris Bayley (021 899 863)</p> <p>Contact Details: Bayleys House 30 Gaunt Street AUCKLAND 1010 Phone: 09 309 6020 Fax: 09 309 9404 Email: reception@bayleys.co.nz</p>
--

7 March 2018

Scott Hunter
Rice Craig
Papakura

FROM: Kirsty-Anne Singleton
DIRECT: +64 9 358 9828
MOBILE: +64 21 905 095
EMAIL: kirsty-anne.singleton@chapmantripp.com
REF: 100303464/6141144.1

by email

Dear Scott

**MADILL & SMEED LIMITED (VENDOR) - AUGUSTA FUNDS MANAGEMENT LIMITED
OR NOMINEE (PURCHASER) - 20 PAISLEY PLACE, MT WELLINGTON (PROPERTY)**

- 1 We refer to the undated agreement for sale and purchase of the Property between Madill & Smeed Limited as vendor and Augusta Funds Management Limited as purchaser (*Agreement*).
- 2 Our client offers to satisfy the due diligence condition contained in clause 19.1 of the Agreement subject to your client agreeing to the following:
 - 2.1 That the settlement date is varied to 31 May 2018;
 - 2.2 That a new clause 19.5 is added to the Agreement as follows:

19.5 The Vendor warrants to the best of its knowledge and belief that all the material, documentation and information provided to the Purchaser by the Vendor for the purposes of the Purchaser's due diligence investigation and/or pursuant to the Agreement is complete, true and accurate in all respects and that it is all the material, documentation and information that the Vendor has, or is aware of, and which a purchaser might reasonably consider material in relation to the Property.
 - 2.3 That a new clause 22.0 is added to the Agreement as follows:

22.0 The Vendor indemnifies the Purchaser from and against all costs, losses, claims, proceedings, actions or demands for which the Purchaser (or the Purchaser's nominee) as owner of the Property (including its successors in title and assigns) is or may be or become liable for:

 - (a) under any statute or regulation; and/or
 - (b) in relation to the landlord's repair, replacement, renewal and maintenance obligations in respect of the Property pursuant to

the deed of lease dated 14 May 2001 (*Current Lease*) for the period following settlement.

2.4 That a new clause 23.0 is added to the Agreement as follows:

23.0 The Vendor agrees to top up the annual rent payable under the Current Lease for the period from settlement until 29 November 2019. The Vendor will pay to the Purchaser (or the Purchaser's nominee) as owner of the Property (including its successors in title and assigns) the sum of \$632.08 plus GST on a monthly basis on the same date that the tenant pays rent under the Current Lease.

2.5 That your client provides all of the following executed documents to the Purchaser (or the Purchaser's nominee) prior to and as an essential term of settlement:

- (a) A deed of lease of the Property for a term of 12 years from 1 December 2019 between the Purchaser (or the Purchaser's nominee) as landlord, Icepak Limited as tenant and Hall's Group Limited as guarantor on the terms and conditions set out in Schedule 1.
- (b) A deed of covenant between the Vendor and the Purchaser which contains the following:
 - (i) The indemnity set out in paragraph 2.3 above; and
 - (ii) The rental top up set out in paragraph 2.4 above,
 such deed of covenant to be freely assignable by the Purchaser to its successors in title.
- (c) A deed of rent review relating to the Current Lease between the Vendor as landlord and the current tenant of the Property, Americold NZ Limited, as tenant, confirming that the rent payable for the Property for the period from 1 December 2017 until 29 November 2019 is \$1,642,415.00 plus GST per annum.
- (d) A deed of covenant relating to the canopy constructed on 20 Paisley Place (in accordance with clause 6 of the deed of covenant dated 24 May 2001 between Perpetual Trust Limited, Lewis Holdings Limited, ELG Properties Limited and P & O Logistics (NZ) Limited) between the following parties:
 - (i) the Purchaser (or the Purchaser's nominee);
 - (ii) the registered proprietor of the property at 4 Paisley Place;
 - (iii) the proprietor of the improvements at 4 Paisley Place; and

(iv) the tenant under the Current Lease and a lease of the land and improvements at 4 Paisley Place.

2.6 That the Vendor will be bound by the underwrite set out in Schedule 2.

2.7 That the Vendor and the Purchaser acknowledge the existence of the pre-acquisition condition report dated December 2017 prepared for and on behalf of the Purchaser by Hampton Jones, a copy of which is attached as Schedule 3.

3 Please confirm your client's agreement to the above by signing and returning a duplicate of this letter.

Yours faithfully



Kirsty-Anne Singleton

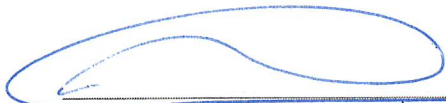
SENIOR ASSOCIATE

DIRECT: +64 9 358 9828

EMAIL: kirsty-anne.singleton@chapmantripp.com

We confirm that the Agreement is varied as set out in this letter:

Signed for and on behalf of:



Madill & Smeed Limited *by its solicitor*

Date: *08/03/2018*

SCOTT ALAN HUNTER
SOLICITOR
PAPAKURA

SCHEDULE 1

**Deed of Lease
(see attached)**

BETWEEN

[Insert Landlord entity]

("the Lessor")

A N D

Icepak Limited

("the Lessee")

AND

Hall's Group Limited

("the Guarantor")

**Deed of Lease relating to Premises
at 20 Paisley Road, Mt Wellington**



8-10 Queen Street PAPA KURA
Telephone: (09) 295 1700
Facsimile: (09) 295 1701

THIS DEED dated the _____ day of _____ 2017

BETWEEN [INSERT LANDLORD ENTITY] (hereinafter called "the Lessor")

AND **ICEPAK LIMITED** a company incorporated in New Zealand under company number 3009720 (hereinafter called "the Lessee")

AND **HALL'S GROUP LIMITED** a company incorporated in New Zealand under company number 2481928 (hereinafter called "the Guarantor")

IT IS AGREED

The Lessor leases to the Lessee and the Lessee takes on lease the Premises for the term and at the rental set out in the First Schedule and subject to the terms and conditions set out in the Second Schedule.

The Guarantor guarantees the obligations of the Lessee under this Lease on the terms set out in the Second Schedule.

SIGNED AS A DEED

SIGNED on behalf of
[_____]
as Lessor by two of its Directors

.....
Director

.....
Director

SIGNED on behalf of
ICEPAK LIMITED
as Lessee by two of its Directors

.....
Director

.....
Director

SIGNED on behalf of
HALL'S GROUP LIMITED
as Lessee by two of its Directors

.....
Director

.....
Director

FIRST SCHEDULE

Reference Schedule

[Refer table annexed for details of each property]

Item 1 Name and address of Lessor:

Item 2 Name and address of Lessee and the Guarantor

Icepak Limited
1 Spartan Road
Takanini
Auckland
2105

Hall's Group Limited
1 Spartan Road
Takanini Auckland 2105

ITEM 3 DESCRIPTION OF BUILDING AND LAND

(a) **Buildings**

The buildings on the Land, together with any extension or alterations subsequently made to the same.

(B) **LAND**

20 Paisley Road, Mt Wellington being the whole of the land comprised in computer freehold register NA127C/413.

ITEM 4 DESCRIPTION OF PREMISES

The Land and the Buildings thereon together with the Lessor's Fixtures and Fittings.

ITEM 5 (INITIAL TERM OF LEASE)

Twelve (12) years

ITEM 6 RIGHTS OF RENEWAL

(a) Rights of Renewal Two (2) further terms of Six (6) years each

(b) Renewal dates 1 December 2031 and 1 December 2037

ITEM 7 COMMENCEMENT DATE

1 December 2019

ITEM 8 EXPIRY OF TERMS

- (a) Expiry date (Initial Term): 30 November 2031
- (b) Final Expiry date: 30 November 2043

ITEM 9 (INITIAL) RENT

\$1,709,000.00 per annum plus GST

ITEM 10 RENT REVIEW DATES

Each anniversary of the Commencement Date.

ITEM 11 PERMITTED USE

Coolstore and coldstore storage and operations, controlled atmospheric storage, blast freezing, dry goods storage and handling, transportation, distribution and general logistics and incidental and ancillary administration and office facilities.

ITEM 12 SPECIFIED RATE OF INTEREST

A rate that is 5 percent per annum above the Lessor's bank's base rate for commercial lending from time to time.

ITEM 13 SCHEDULES FORMING PART OF THIS LEASE

- First Schedule: Reference schedule
- Second Schedule: Terms and conditions
- Third Schedule: Lessee's Fixtures and Fittings
- Fourth Schedule: Lessor's Fixture and Fittings

SECOND SCHEDULE

Terms and Conditions

1.0 DEFINITIONS, INTERPRETATIONS AND EXCLUSIONS

1.1 Definitions: In this Lease, unless a contrary intention appears:

"Authorised Officer" means in respect of each party, any director or any person from time to time nominated as an authorised officer by that party by a written notice to the other party accompanied by specimen signatures of all new persons so appointed.

"Authority" means any authority having jurisdiction over the Land and/or Building and includes, where appropriate, any utility supplier;

"Building Services" means all services provided by the Lessor as an integral part of the building for the general use and enjoyment of the building by the Lessee including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications and lifts whether or not they are located within the premises but excluding the Refrigeration Plant.

"Existing Lease" means the deed of lease of the Property between Perpetual Trust Limited as landlord and Eskimo Logistics Group Limited as tenant dated 14 May 2001.

"Existing Lease Works" means all repair, maintenance, replacement, redecoration and cleaning works required to be carried out by the lessee and/or the lessor under the Existing Lease.

"Expiry Date" means the expiry date specified in Item 8(a) of the First Schedule or if the Lessee exercises its rights of renewal in accordance with the terms and conditions set out in this Lease then the last day of the renewed term(s).

"GST" means Goods and Services Tax or any tax in the nature of a goods and services tax;

"Guarantor" means the guarantor named in this Lease;

"Lease" means this deed (and includes the schedules and annexures specified in Item 13 of the First Schedule);

"Lessee" means the Lessee, its successors and permitted assigns and where the circumstances permit, the employees and agents of the Lessee;

"Lessee's Fixtures and Fittings" means the items of plant, machinery or fixtures and fittings which are in or on the Premises and owned by the Lessee which, at the Commencement Date include the chattels owned by the Lessee and the fixtures detailed in the Third Schedule, and which shall include a replacement of any of such items and any other fixtures and fittings installed by the Lessee after the Commencement Date;

"Lessor" means the Lessor its successors and assigns and where the circumstances permit, the employees and agents of the Lessor;

"Lessor's Fixtures and Fittings" means the Buildings, Building Services and the other fixtures on the Land (excluding the Lessee's Fixtures and Fittings) detailed in the Fourth Schedule, and which shall include a replacement of any of such items and any

other fixtures and fittings after the Commencement Date;

"PINZ" means the Property Institute of New Zealand;

"Property Council" means the Property Council of New Zealand Inc.;

"Refrigeration Plant" means all refrigeration plant, refrigeration equipment and refrigeration machinery associated with the cool and cold store facilities at the Premises.

"Related Company" has the meaning given to it in the Companies Act 1993.

"Rent" means the rent specified in Item 9 of the First Schedule as varied under this Lease from time to time;

"Rentable Area" has the meaning ascribed to it and follows the system of calculation set down by the Property Council/PINZ from time to time in their Guide for Measurement of Rentable Areas;

"Term" means the term of this Lease together with any renewal term (where the renewal is exercised by the Lessee in accordance with this Lease);

"Vendor" means Madill & Smeed Limited as vendor under an agreement for sale and purchase of the Premises dated on or about 29 November 2017 with Augusta Funds Management Limited as purchaser; and

"Working Day" means a day which is not a Saturday or Sunday or a public holiday in Auckland, New Zealand, and not any day commencing on 24 December in any year and ending on 5 January in the following year.

1.2 **Interpretation:** In this Lease, unless a contrary intention appears:

- (a) whenever terms appear in this Lease that also appear in the First Schedule then those terms shall have and include the meaning set out in the First Schedule;
- (b) singular words shall include the plural, the masculine gender shall include the feminine, persons shall include companies, and vice versa;
- (c) any provision of this Lease to be performed by two or more persons shall bind those persons jointly and severally;
- (d) the table of contents and any headings and marginal notations in this Lease have been inserted for convenience only and shall not limit or govern the construction of the terms of this Lease;
- (e) any reference in this Lease to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation and all statutes or regulations replacing the same;
- (f) references in this Lease to "month" or "monthly" shall mean respectively calendar month and calendar monthly; and
- (g) where the Lessor's consent or approval is required pursuant to any provision of this Lease such consent or approval shall be required for each separate occasion despite any prior consent or approval obtained for a similar purpose

on a prior occasion.

- 1.3 **Exclusion of certain Property Law Act provisions:** The covenants, conditions and powers contained in Sections 218 and 219 of the Property Law Act 2007 shall not be implied in this Lease and are expressly negatived.
- 1.4 **Exclusion of implied terms:** This document comprises the entire agreement between the parties and any previous representations, warranties, arrangements and statements whether expressed or implied are excluded from this Lease and do not form part of the agreement between the parties.
- 1.5 **Unenforceable provisions:** If any provision of this Lease shall be held to be illegal, invalid or unenforceable this shall not affect the other provisions in this Lease, which shall remain in full force and effect.

2.0 **TERM**

- 2.1 **Term of Lease:** The Term of this Lease shall commence on the Commencement Date and shall expire at midnight on the Expiry Date.
- 2.2 **Monthly tenancy/holding over:** If the Lessor permits the Lessee to continue to occupy the Premises beyond the Expiry Date and the Lessor and Lessee agree the rent which will be payable during such occupation, the Lessee's occupation shall, unless otherwise agreed, be pursuant to a tenancy at will terminable on the basis set out below. The rental shall be payable monthly in advance, the first payment to be made on the day following the Expiry Date. The tenancy shall be determinable at any time by either party by 20 Working Days' notice in writing but otherwise the tenancy shall continue on the terms and conditions (so far as applicable to a tenancy at will) set out in this Lease.
- 2.3 **Right of renewal:** The Lessee may serve written notice of its wish to renew this Lease ("Intention to Renew Notice") no earlier than eighteen months before and no later than twelve months before the relevant Renewal Date. Following service of the Lessee's Renewal Notice, the Lessor shall, provided that at the date of service of the Lessee's Renewal Notice the Lessee is not in material breach of this Lease, renew this Lease from the Expiry Date for the additional period(s) noted in Item 6 of the First Schedule, as follows:
- (a) the Rent shall be reviewed in accordance with clause 3.4 of this Lease;
 - (b) the Rent shall be subject to review and/or adjustment during the further Term(s) on the specified Rent Review Dates; and
 - (c) the renewal lease shall be upon and subject to the covenants and agreements expressed and implied in this Lease in relation to the initial Lease Term except that the Rights of Renewal set out in Item 6 of the First Schedule shall be reduced by one and the initial Lease Term plus all further Term(s) shall expire on or before the Final Expiry Date.

3.0 **RENT, GST, OPERATING EXPENSES, RENT REVIEW, INTEREST, RATES**

- 3.1 **Agreement to pay Rent:** The Lessee will pay the Lessor the Rent, as varied in accordance with this Lease without demand), deduction, set-off or counterclaim.
- 3.2 **Goods and services tax**

- (a) In this clause:

"the Act" means the Goods and Services Tax Act 1985;

"the basic consideration" means the consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply of goods and services by or on behalf of the Lessor under this Lease (other than tax payable pursuant to this clause);

"goods and services tax" means goods and services tax charged in accordance with the Act; and

"goods", "services" and "taxable supply" have the meanings respectively assigned to them by the Act.

- (b) The basic consideration is not inclusive of goods and services tax.
- (c) In addition to the basic consideration, the Lessee will pay to the Lessor the amount of all goods and services tax chargeable on any taxable supply by the Lessor under this Lease.
- (d) Any amount payable by the Lessee pursuant to clause 3.2(c) shall:
- (i) be payable on the date on which the relevant supply is deemed to take place by virtue of the Act; and
 - (ii) be recoverable and bear interest as though it were Rent.

3.3 **Manner of payment of Rent and other moneys:** The Rent shall be paid by the Lessee by equal monthly instalments in advance on the first day of each month commencing on the Commencement Date provided that if this Lease shall commence on a day other than the first day of a month then the Lessee shall pay on the Commencement Date the Rent calculated on a daily basis from the Commencement Date through to the end of that month. The Lessee shall pay the Rent to the Lessor by automatic payment.

3.4 **Percentage Review of Rent**

- (a) The Rent shall be automatically increased on each Rent Review Date in accordance with the following formula:

$$R = A \times 1.02$$

Where:

A = Rent payable immediately preceding the relevant Rent Review Date;

R = Rent payable from the relevant Rent Review Date.

- (b) The Lessee shall pay the reviewed Rent on and from the relevant Rent Review Date without the need for any notice or demand from the Landlord.

3.5 **Interest on overdue moneys:** Without prejudice to other remedies, if any moneys payable by the Lessee to the Lessor shall be unpaid for 5 days after the due date for payment (whether any demand shall have been made or not) such moneys shall

bear interest computed from the due date until the date of payment in full at the Specified Rate.

3.6 **Outgoings**

- (a) The Lessee shall pay all outgoings incurred in respect of the Premises including the following:
 - (i) rates, taxes, assessments and/or levies payable to any local or territorial authority (including New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment);
 - (ii) charges for water, gas, electricity, telephones and other utilities or services;
 - (iii) rubbish collection charges;
 - (iv) insurance premiums and related valuation fees for the insurances the Lessor is obliged to maintain under this Lease; and
 - (v) any other costs, fees, and charges relating to the Premises which the Lessor becomes liable for during the Term (it being acknowledged that this Lease is intended to be a "triple net lease" and the Lessee will not be entitled to require the Lessor to pay any such costs, fees and charges or to seek any reimbursement from the Lessor).
- (b) Where permissible, the Lessee will pay the outgoings specified in clause 3.9(a) directly to the relevant authority, utility providers, service contractors or other third party as and when they fall due. For any outgoings specified in clause 3.9(a) which cannot be directly paid by the Lessee:
 - (i) the Lessor will provide a tax invoice for such outgoings to the Lessee (with reasonable supporting details and documents);
 - (ii) the Lessee shall pay the invoiced amount no later than 10 Working Days from the date of receipt of the invoice; and
 - (iii) the Lessor shall pay such outgoings to the relevant payee.

4.0 **ASSIGNMENT AND SUBLETTING**

4.1 **Control of assignment and subletting**

- (a) Save as expressly permitted pursuant to this clause 4, the Lessee shall not assign, sublet, part with possession or transfer any whole or part of the Premises or otherwise deal with the whole or any part of the Premises.
- (b) Subject always to compliance with clause 4.2:
 - (i) the Lessee may assign the whole (but not part) of the Premises with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed) where the proposed assignee is respectable, responsible and suitable and has a financial covenant or can demonstrate sufficient financial resources sufficient to enable it to meet its obligations under the Lease;

- (ii) the Lessee may sublet the whole (or part) of the Premises with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed) where the proposed sublessee is respectable, responsible and suitable and has a financial covenant or can demonstrate sufficient financial resources sufficient to enable it to meet its obligations under the proposed sublease.
- (c) Any consent provided by the Lessor shall only become effective (and until such time the Lessor shall not be obliged to release any documents signifying such consent) upon satisfaction of the conditions listed in clause 4.2.
- (d) Where the Lessor consents to a sublease, such consent shall extend only to that sublease and, notwithstanding the terms of such sublease, the Lessor's consent shall not permit any sublessee to deal with any sublease in any way which the Lessee is restrained from dealing without consent.

4.2 **Conditions of Assignment/Subletting**

- (a) No later than 10 Working Days prior to the date of the proposed assignment/subletting ("Disposal Date") the Lessee shall give to the Lessor:
 - (i) written notice of the proposed assignment or subletting;
 - (ii) such information as the Lessor may reasonably require to demonstrate to the Lessor the financial covenant or resources of the proposed assignee/sublessee and any proposed guarantor;
 - (iii) such information as the Lessor may reasonably require of the proposed assignee's or sublessee's proposed use of the Premises.
- (b) The Lessee shall:
 - (i) on the Disposal Date pay to the Lessor such reasonable sum of money as the Lessor shall require on account of the third party costs incurred by the Lessor in considering the proposed assignment or subletting. All such costs may be charged and retained by the Lessor whether or not the proposed assignment or subletting proceeds to completion.
 - (ii) In the case of an assignment, by the Disposal Date:
 - (aa) deliver to the Lessor a deed duly executed by the Lessee and the proposed assignee in a form acceptable to the Lessor covenanting that the proposed assignee will at all times pay the Rent and observe all the terms and conditions of this Lease; and
 - (bb) where the Lessor has consented to the assignment on the basis that a guarantee of the assignee's obligations will be provided, arrange for the agreed guarantors to enter into a deed guaranteeing the performance of the proposed assignee of the terms of this Lease;
 - (iii) In the case of a sublease, by the Disposal Date deliver to the Lessor a deed duly executed by the sublessee in a form acceptable to the Lessor containing a covenant that the proposed sublessee will at all times observe the terms and conditions of this Lease (in so far as they are

applicable to the subleased premises) and to pay the rent due under the sublease.

- (c) There is to be no material unremedied breach of any of the terms of this Lease as at the Disposal Date.

4.3 **Change of shareholding:** For the purposes of this clause 4.0, if the Lessee is a company that is not listed on the New Zealand Stock Exchange or the Australian Stock Exchange, any:

- (a) change or rearrangement in the ultimate beneficial ownership of the shareholding of the Lessee; or
- (b) alteration in the constitution of the Lessee altering the effective control of the Lessee; or
- (c) other change whereby there is a change in the effective management or control of the Lessee,

will be deemed a proposed assignment of this Lease and will require the consent of the Lessor under this clause 4.0.

5.0 MAINTENANCE AND ALTERATIONS

5.1 Lessee to keep Premises in good repair:

- (a) Subject to clauses 5.1(c), (d), (e) and (h), the Lessee's liability to repair and maintain the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) will be limited to carrying out any repair and maintenance that is necessary to:
 - (i) ensure that the Premises comply with all statutory and regulatory requirements (including but not limited to those relating to health and safety);
 - (ii) comply with the requirements of the Lessor's insurer;
 - (iii) mitigate any nuisance caused to adjoining properties;
 - (iv) keep the Refrigeration Plant in good and substantial repair and condition (including replacement of the Refrigeration Plant or any individual component of the Refrigeration Plant where it has reached the end of its economic life);
 - (v) comply with the obligations contained in clause 5.1(b).
- (b) The Lessee shall keep and maintain the Premises (including the Lessor's Fixtures and Fittings) in good order and repair, having regard to their condition as at the Commencement Date (following completion of any Existing Lease Works), including:
 - (i) keeping the Premises clean and tidy;
 - (ii) maintaining service maintenance contracts for all Building Services;
 - (iii) keeping and maintaining the Lessee's Fixtures and Fittings in good

operational order and repair;

- (iv) repairing all glass breakages and breakage or damage to all doors, windows, light fittings and power points in the Buildings and shall keep and maintain the electrical system in the Buildings in good operating condition as determined by the Lessee (acting reasonably);
- (v) painting those parts of the interior and exterior of the Buildings which have been previously painted when the Lessee (acting reasonably) determines the same requires repainting;
- (vi) washing down the exterior of the Buildings when the Lessee (acting reasonably) determines the same requires cleaning;
- (vii) keeping all floor coverings in the Buildings clean and replace all floor coverings worn or damaged by the Lessee other than by fair wear and tear with floor coverings of a similar quality when reasonably required by the Lessee;
- (viii) maintaining the storm and wastewater drainage systems on the Premises (including downpipes and guttering of the Buildings) clear and unobstructed;
- (ix) maintaining all surfaced areas on the Premises (including the carparking, vehicular and pedestrian accessways) in a clean and tidy condition, repairing and/or resurfacing such areas to an appropriate standard and specification when such repair and/or resurfacing is determined by the Lessee to be reasonably required;
- (x) ensuring all rubbish is disposed of in a manner as reasonably determined by the Lessee;
- (xi) maintaining all fences and gates on the Premises; and
- (xii) making good any damage caused to the Building by improper or careless use by the Lessee;
- (xiii) maintaining compliance schedules for each of the Buildings (including all reports and supporting information as required by sections 108 and 110 of the Building Act 2004 as and when required),

save that the Lessee will have no liability under this clause 5.1(b) to repair and maintain the Premises if and to the extent such repair and maintenance is required as a result of fair wear and tear following reasonable use or is the result of the Lessor's failure to comply with its obligations under clause 5.9(a).

- (c) The Lessee shall not be responsible for any damage caused by:
 - (i) fire, flood, explosions, lightning, storm, earthquake or volcanic activity; or
 - (ii) any risk against which the Lessor is insured, in each case, except where:
 - (aa) any such damage is intentionally done or caused by the Lessee or any agent of the Lessee;

- (bb) such damage is the result of an act or omission by the Lessee or any agent of the Lessee that occurred on or about the Premises and/or the Land and which constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
 - (cc) any insurance moneys are rendered irrecoverable as a consequence of any act or omission on the part of the Lessee or any agent of the Lessee.
- (d) The Tenant must arrange for the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) to be inspected on the Commencement Date and at 6 monthly intervals thereafter from the Commencement Date by a mutually agreed property management company and for the property management company to prepare a report. If the parties are unable to agree on the identity of the property management company then either party may apply to the chair of the Property Institute of New Zealand to identify the property management company. The Tenant will provide the report to the Landlord immediately upon receipt (which must be addressed to both the Landlord and the Tenant). The Tenant must (at its own cost) obtain any specialist technical report(s) recommended by the property management company in its report and must (at its own cost) comply with any recommendations in the report (and any separate specialist technical report) relating to maintenance (including preventative maintenance), repair and replacement within a reasonable time of receiving the report (or, if applicable, within a reasonable time of receiving any specialist technical report) and provide confirmation of completion of such works to the Landlord.
- (e) On the final expiry or earlier determination of this Lease, the Lessee:
 - (i) shall yield up the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) in such a condition that it is fit for its intended purpose (being the existing use as at the Commencement Date) and can be reasonably let to another high quality tenant;
 - (ii) shall remove its chattels from the Premises;
 - (iii) may, but shall not (otherwise as set out in subclause (ii)) be obliged to, remove all the Lessee's Fixtures and Fittings and make good any damage to the Premises. In respect of the Lessee's make good obligations under this subclause 5.1(e)(iii), the Lessee shall, in a good and workmanlike manner fill, patch and/or repair any holes or damage caused by the Lessee as a result of the removal of the Lessee's Fixtures and Fittings in the floors, walls and/or ceiling.
- (f) Ownership of any Lessee's Fixtures and Fittings left in the Premises following the expiry or earlier determination of this Lease shall vest in the Lessor.
- (g) The Lessee must not remove the Refrigeration Plant (or any other component of the Premises necessary to operate the coolstore facility) from the Premises.
- (h) Without limiting the Lessee's obligations contained in this clause 5, the parties will (at the Lessee's cost) instruct an independent building surveyor approved by the Lessor to inspect the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) not earlier than 18 months prior to expiry

of the Term (and not later than 15 months prior to expiry of the Term) in order to identify what works need to be carried out by the Lessee in order to comply with its obligations contained in clause 5.1(e). The cost of the report will be shared equally by the Lessee and the Lessor. The Lessee must carry out the works identified in the report that are necessary to comply with clause 5.1(e).

- (i) Without prejudice to any other rights or remedies of the Lessor, any failure by the Lessee to fully comply with its obligations contained in clause 5.1(e) prior to final expiry (or earlier determination) of this Lease will entitle the Lessor to charge rent and outgoings to the Lessee at the same rates as applied immediately prior to final expiry (or earlier determination) until such time as the relevant works have been completed in full.

5.2 **Lessee to keep Refrigeration Plant in good repair**

The Lessee shall keep and maintain the Refrigeration Plant in good order and repair including all repairs and replacements of both an operating and a capital nature.

- 5.3 **No liability for the Lessor:** The parties acknowledge that this Lease is intended to be a "triple net lease" and the Lessor shall not have any liability to repair, maintain, replace, reseal, clean or redecorate the whole or any part or parts of the Premises (except as set out in clause 7.2(a)).

- 5.4 **Building warrant of fitness:** The Lessee shall be responsible for obtaining a building warrant of fitness for all Buildings on the Premises. The Lessor shall sign any necessary documentation at the cost of the Lessee (but will not otherwise have any liability to the Lessee in connection with the obtaining of a building warrant of fitness). If the Lessee fails to obtain the building warrant of fitness within a reasonable time following the due date for renewal, the Lessor may (at the Lessee's cost) obtain the warrant of fitness as required.

- 5.5 **Right to undertake maintenance:** If the Lessee has not within a reasonable time following receipt of written notice from the Lessor, which notice shall specify a timeframe which the Lessor considers reasonable in the circumstances, carried out any work to be done pursuant to clause 5, such work may be undertaken by the Lessor at the cost of the Lessee, payment to be made to the Lessor on demand, and which may be recovered by the Lessor as rent in arrear.

5.6 **Alterations and additions:**

- (a) The Lessee may make non-structural alterations or additions to any part of the Premises without the Lessor's consent. The Lessee shall notify the Lessor of any such alterations or additions and provide updated as-built plans to the Lessor promptly following completion of the Works.
- (b) If the Lessee wishes to make any structural alterations or additions, the Lessee shall obtain the prior written consent of the Lessor, such consent not to be unreasonably withheld or delayed. The Lessee shall provide the Lessor with plans and specifications of any proposed structural alterations. The Building and Premises as altered or added to, shall remain in the ownership of the Lessor.
- (c) The Lessee will ensure that any alterations or additions made to the Premises:

- (i) are carried out in a good and workmanlike manner and in accordance with all necessary consents;
 - (ii) do not, in the opinion of the Lessor, diminish the residual value of the Premises; and
 - (iii) comply with all statutory and regulatory requirements.
- (d) The Lessee shall not be obliged to reinstate any alterations or additions undertaken in accordance with clauses 5.6(a) or (b) at the end or earlier expiry of the Term (provided that it has complied with the terms of clause 5.1(c)).
- (e) The Lessee shall have exclusive naming and signage rights to the Premises and shall not require the consent of the Lessor to any erection or alteration to any signage provided that upon expiry of this Lease the Lessee shall remove all signage to promote the Lessee and make good any damage caused to the Building by such removal.

5.7 Compliance with laws and notices:

- (a) The Lessee shall at all times comply with all statutes, ordinances, regulations, bylaws or other enactments (whether or not in place as at the Commencement Date) relating to the Premises and with all requirements, notices or orders notified to the Lessee given by any Authority.
- (b) The Lessee shall:
- (i) comply strictly with any building consent in respect of any work being carried out by or on behalf of the Lessee;
 - (ii) comply with any notice to rectify given by a territorial authority in respect of any building work carried out by or on behalf of the Lessee;
 - (iii) not do or allow anything which would constitute a breach by the Lessor of any obligation under the Building Act 2004; and
 - (iv) not do or allow anything which would constitute a breach by the Lessee or the Lessor of any obligation in the Health and Safety at Work Act 2015.
- (c) The Lessee will bring to the attention of the Lessor any requirements, notices or orders affecting the Premises or the Building which may come to the attention of or be served on the Lessee (whether or not the Lessee is obliged to comply with the same).

5.8 Entry by Lessor to view and effect repairs and alterations: The Lessor shall have the right to enter the Premises at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) to view the state of repair and to ascertain whether or not there has been any breach of this Lease;
- (b) to carry out any work which the Lessor is entitled to undertake pursuant to clause 5.5; and/or
- (c) for the purpose of complying with any legislation or with any notice served on

the Lessor or Lessee for which the Lessee is not responsible under this Lease, provided that in exercising such rights the Lessor shall use its reasonable commercial endeavours to minimise any disturbance caused to the Lessee and shall comply with all reasonable requirements of the Lessee, including in respect of health and safety.

5.9 Prior leasing arrangements:

- (a) The Lessor covenants in favour of the Lessee to:
 - (i) use its reasonable endeavours to enforce the obligations on the part of the tenant contained in the Existing Lease; and
 - (ii) comply with the obligations on the part of the lessor contained in the Existing Lease in relation to the Existing Lease Works if and to the extent that the Lessor is indemnified by the Vendor for the cost of those works.
- (b) Save as provided for in clause 5.9(a), the Lessee acknowledges and agrees that the Lessor will have no liability to the Lessee regarding the condition of the Premises.

5.10 Separation works:

- (a) If and to the extent that any works need to be carried out to separate the Premises from any adjoining premises (*Separation Works*), then the Lessor will use reasonable endeavours to reach agreement with the registered proprietor of the adjoining premises that the Separation Works are not required to be carried out (but the Lessor shall not be required to make any payment in order to reach such agreement). If the Lessor is unable to reach agreement and the Separation Works are required to be carried out, then the Lessee (and not the Lessor) will be liable to carry out such works on demand from the Lessor. The Separation Works will be carried out by the Lessee:
 - (i) in a good and workmanlike manner; and
 - (ii) in accordance with:
 - (aa) all necessary consents;
 - (bb) the requirements of any adjoining owner which are legally binding on the Lessor;
 - (cc) the reasonable requirements of the Lessor; and
 - (dd) all statutory and regulatory requirements.

6.0 INSURANCES

6.1 Lessor shall insure

- (a) The Lessor shall at all times during the term keep and maintain cover in respect of the Premises against damage and destruction by fire, flood, explosion, lightening, storm earthquake and volcanic activity for full replacement and reinstatement or (if not obtainable) indemnity to full

insurable value together with cover for up to 24 months indemnity in respect of consequential loss of rent and outgoings, and \$10,000,000 public liability. If insurance cover required under this subclause becomes unavailable during the Term other than because of the Lessor's act or omission, the Lessor will not be in breach while cover is unavailable, provided the Lessor uses all commercially reasonable endeavours on an ongoing basis to obtain cover. The Lessor will advise the Lessee in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Lessor will also provide the Lessee with reasonable information relating to the cover when requested by the Lessee.

- (b) The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Lessor, the excess will represent an amount for which the Lessor has not insured, or has not fully insured the Premises against destruction or damage arising from the events to which the section applies. If the Lessor makes any claim against its insurance for any destruction or damage because of any negligent act or omission or default of the Lessee, the Lessee will pay the Lessor the amount of the excess not exceeding \$2,000.

6.2 Lessee not to void insurance

- (a) The Lessee shall not carry on or allow upon the Premises any trade or occupation or allow to be done any act or thing which:
 - (i) shall make void or voidable any policy of insurance on the Premises;
 - (ii) may render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Lessee shall have first obtained the consent of the insurer of the Premises and the Lessor and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Lessee in a reasonable manner of the business use or of any use to which the Lessor has consented shall be deemed not to be a breach of this clause.
- (b) In any case, where in breach of subclause 6.2(a) the Lessee has rendered any insurance void or voidable and the Lessor has suffered loss or damage, the Lessee shall at once compensate the Lessor in full for such loss or damage.

6.3 When Lessee to have benefit of Lessor's insurance

- (a) Where the Premises are destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Lessor is (or has covenanted with the Lessee to be) insured the Lessor will not require the Lessee to meet the cost of making good the destruction or damage to the Premises. The Lessee will not be excused from liability under this subclause if and to the extent that:
 - (i) the destruction or damage was intentionally caused by the Lessee or those for whom the Lessee is responsible; or
 - (ii) the destruction or damage was the result of an act or omission by the Lessee or those for whom the Lessee is responsible and that act or omission:

(aa) occurred on or about the property; and

(bb) constitutes an imprisonable offence; or

(iii) any insurance moneys that would otherwise have been payable to the Lessor for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Lessee or those for whom the Lessee is responsible.

6.4 **Lessee to maintain insurances:** The Lessee shall keep current at all times with a reputable insurance company a policy or policies of:

(a) public and products liability insurance applicable to the Premises and the business carried on in the Premises for an amount of not less than \$10 million; and

(b) for the replacement of the Lessee's Fixtures and Fittings.

The Lessee will, if requested, provide the Lessor from time to time with certificates of currency.

6.5 **Lessee to claim:** In the event there is any damage to the Lessee's Fixtures and Fittings due to an insured event and the provisions of clause 7.1 do not apply, then the Lessee shall:

(a) prepare and submit a claim to the insurer in respect of the damage; and

(b) use reasonable endeavours to obtain the proceeds of the insurance policies; and

(c) promptly respond to any enquiries and requests received from the insurer in relation to the claim.

On receipt of any proceeds from the Lessee's insurer, the Lessee shall promptly utilise the proceeds to reinstate and repair the damage to the Lessee's Fixtures and Fittings.

7.0 **DAMAGE OR DESTRUCTION**

7.1 **Total Destruction:** If the Premises or the Building shall be destroyed or so damaged as to render the Premises or the Building untenable then the term shall at once terminate from the date of destruction or damage. Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

7.2 **Partial Destruction**

(a) If the Premises or the Buildings shall be damaged but not so as to render the Premises or the Buildings untenable and:

(i) the Lessor's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Lessee; and

(ii) all the necessary permits and consents are obtainable,

the Lessor shall with all reasonable speed expend any insurance monies

received in repairing such damage and/or reinstating the Premises or the Building. The Lessor will not otherwise have any liability to repair or reinstate the Premises or the Building.

- (b) If the Lessor has not reinstated the Premises and/or Building so that the Premises are in a suitable condition to be handed over to the Lessee within twenty four (24) months of the date of the destruction or damage, then either party may serve written notice on the other terminating this Lease.
- (c) Any repair or reinstatement shall be carried out by the Lessor using materials and a form of construction which are:
 - (i) of an equal or better standard than; and
 - (ii) to a plan equivalent to,

that which existed in the Premises prior to the occurrence of the damage or destruction.
- (d) Until the completion of the repairs or reinstatement a fair proportion of the Rent and outgoings shall cease to be payable as from the date of damage.
- (e) If any necessary permit or consent shall not be obtainable the parties shall discuss in good faith with a view to agreeing any changes to the Premises or Buildings which may enable consent to be obtained, but if no such agreement is reached within 40 Working Days of the permit or consent being declined then the Term shall at once terminate but without prejudice to the rights of either party against the other.

7.3 **No access in emergency**

- (a) If there is an emergency and the Lessee is unable to gain access to the Premises to fully conduct the Lessee's business from the Premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency, including:
 - (i) a prohibited or restricted access cordon applying to the Premises; or
 - (ii) prohibition on the use of the Premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent Authority that the Premises are fit for use;
or
 - (iii) restriction on occupation of the Premises by any competent Authority,then a fair proportion of the Rent and outgoings shall cease to be payable for the period commencing on the date when the Lessee became unable to gain access to the Premises to fully conduct the Lessee's business from the Premises until the inability ceases.
- (b) This subclause 7.3(b) applies where subclause 7.3(a) applies and this Lease is not cancelled as provided for elsewhere in this clause 7. When this subclause 7.3(b) applies, either party may terminate this Lease by giving 10 Working Days written notice to the other if the Lessee is unable to gain access to the Premises for 12 months.

Any termination shall be without prejudice to the rights of either party against the other.

8.0 USE OF PREMISES

8.1 **Permitted use:** The Lessee will not use the Premises for any purpose other than the Permitted Use. If the Permitted Use requires compliance with section 114 or section 115 of the Building Act 2004, the Lessee shall comply with the Building Act 2004 and pay all compliance costs.

8.2 **Suitability of Premises:** The Lessor does not warrant that the Premises are or will be suitable for any of the purposes of the Lessee and to the extent permitted by law all implied warranties as to suitability are expressly negated.

8.3 **Payment of utility charges by Lessee:** The Lessee shall pay to the relevant Authorities all charges for utilities and other services connected to the Premises and if the Lessee makes default in payment, the Lessor may pay the charges and recover the same, as if such charges were Rent in arrears.

9.0 DEFAULT BY LESSEE

9.1 **Re-entry:** If at any time during the term of this Lease:

- (a) any Rent payable by the Lessee is in arrears for 10 Working Days;
- (b) there is a default by the Lessee in respect of any obligation of the Lessee other than payment of Rent and such default is not remedied within a reasonable period after notice has been given to the Lessee or, in the case of repairs required to be effected by the Lessee, such repairs are not completed within a reasonable time;
- (c) execution is levied against any of the assets of the Lessee and remains unsatisfied;
- (d) the Lessee (not being a company) is declared bankrupt or insolvent or assigns his/her estate or enters into a deed of arrangement for the benefit of creditors; or
- (e) the Lessee (being a company) either:
 - (i) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the Lessor);
 - (ii) is wound up or dissolved;
 - (iii) enters into a scheme of arrangement with any of its creditors; or
 - (iv) has a receiver or voluntary administrator appointed,

subject to the Lessor having served, in accordance with section 353 Property Law Act 2007, a valid notice pursuant to section 245 or 246 (as the case may be) of the Property Law Act 2007, it shall be lawful for the Lessor to re-enter the Premises and determine the estate of the Lessee and remove or otherwise deal with any goods, fittings, fixtures and effects found on the Premises without releasing the Lessee from any liability in respect of any antecedent breach.

9.2 **Lessor may remedy Lessee's default:** The Lessor may remedy at any time without notice any default by the Lessee under this Lease and in such case all costs incurred by the Lessor shall be paid by the Lessee to the Lessor on demand.

9.3 **Non-Waiver:** No waiver by the Lessor of any breach of this Lease shall operate as a waiver of any similar or subsequent breach. No custom or practice which may exist or develop between the parties shall be construed to waive or lessen any rights, powers or privileges at law or in equity for the Lessor to insist upon the strict observance by the Lessee of this Lease.

9.4 **Essential terms:** Any breach of the following covenants by the Lessee shall be deemed to be a breach of an essential term of this Lease:

- (a) the covenant to pay Rent and any other moneys to the Lessor where such breach gives rise to a right of re-entry under this Lease;
- (b) the covenant dealing with assignments, subletting and parting with possession; and
- (c) the covenant dealing with the use of the Premises.

10.0 COVENANTS BY LESSOR

10.1 **Quiet enjoyment:** The Lessee paying the Rent and other monies payable to the Lessor under this Lease and observing the Lessee's covenants in this Lease shall peaceably hold the Premises without improper interruption by the Lessor or persons lawfully claiming under the Lessor until the expiry or sooner determination of this Lease.

10.2 **Signage:** The Lessor shall not erect any signage on the Premises during the Term.

10.3 **Requirement to notify:** In the event that the Lessor intends to sell transfer or otherwise dispose of its interest in the Land to a third party transferee ("Transferee"), the Lessor shall serve written notice ("Sale Notice") on the Lessee advising of such intention.

11.0 CONSENT OF MORTGAGEE

11.1 The Lessor shall, at its own expense, procure the consent of any mortgagee of the Premises, which consent shall be in a form reasonably acceptable to the Lessee and which shall:

- (a) continue in respect of any extension or renewal of the Term;
- (b) acknowledge the right of the Lessee to remove its fixtures and fittings; and
- (c) not impose any additional obligations on the Lessee.

12.0 MISCELLANEOUS

12.1 **Lessee to permit exhibition of Premises:** The Lessee will permit the Lessor or the Lessor's agents to exhibit the Premises to prospective purchasers of the Building at all reasonable times during the Term and to prospective tenants during the last 6 months of the Term on reasonable notice. The Lessor shall comply with all reasonable requirements of the Lessee in respect of such rights of access to the Premises.

12.2 **Notices:** All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) must be in writing addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:

LESSOR
[LESSOR
ENTITY]

[Lessor address]
Attention: [insert
name]

Lessee

Icepak Limited
1 Spartan Road, Takanini 2105
Attention: Chief Executive
Officer

Guarantor

Hall's Group Limited 1 Spartan
Road, Takanini 2105 Attention:
Chief Executive Officer

- (b) must be signed by the sender or if a company, by its Authorised Officer;
- (c) will be taken to have been served:
- (i) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;
- (ii) in the case of mail, on the fifth Working Day after the date on which the notice is accepted for posting by the relevant postal authority,
- but if service is on a day which is not a Working Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Working Day, the notice will be taken to have been served on the next Working Day in that place; and
- (d) must, to the extent applicable, comply with the provisions of Part 7 of the Property Law Act 2007.

12.3 **Disputes resolution**

- (a) In the event of any dispute arising between the parties in respect of this Lease except as otherwise expressly provided, the parties shall, without prejudice to any other right or entitlement they may have pursuant to this Lease or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique shall be as agreed between the parties or as selected by LEADR (Leading Edge

Alternative Dispute Resolvers).

- (b) If the dispute is not resolved within 14 days of written notice by one party to the other of the dispute either party may refer the dispute to arbitration before a sole arbitrator under the Arbitration Act 1996.
- (c) The arbitration will be commenced by one party notifying the other party in writing of its requirement that a dispute or disputes be referred to arbitration and by nominating a sole arbitrator.
- (d) If the other party does not accept the arbitrator nominated by the first party and both parties are unable to agree on a single arbitrator within 7 days of the service of the notice under clause 12.3(c) requiring arbitration (excluding the date of service), either party may request the president of the Auckland District Law Society (or its successor entity) appoint an arbitrator.
- (e) If any arbitrator fails to act in pursuance of the arbitration, either party may request the aforesaid law society president to nominate within 10 days a replacement for that arbitrator who shall act in place of the defaulting arbitrator.
- (f) The arbitrator shall give reasons for his or her award and those reasons shall form part of the award.
- (g) Either party may appeal to the High Court on any question of law arising out of an award.
- (h) The provisions of the First and Second Schedules to the Arbitration Act 1996 apply except as otherwise varied in the above clauses.
- (i) Nothing in clauses 12.3(a) to 12.3(h) shall prevent either party from applying to the High Court for urgent equitable relief in respect of any matter under this Lease.

12.4 **Freehold covenants:** The Lessee shall at all times observe and comply with all of the terms, covenants and conditions of any instruments registered against the title to the Land.

12.5 **Costs:** Each party shall pay its own costs in respect of the negotiation, preparation and completion of this Lease or any extension or variation.

12.6 **Governing law:** This Lease is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of New Zealand courts.

13.0 **GUARANTEE**

13.1 In consideration of the Lessor granting this Lease at the request of the Guarantor, as the Guarantor admits and acknowledges, the Guarantor guarantees:

- (a) payment by the Lessee of the rent and other money due and payable at the times and in the manner provided for in the Lease;
- (b) the due and punctual observance and performance by the Lessee of those covenants, terms and conditions expressed or implied in the Lease which are to be observed and performed by the Lessee under the Lease.

13.2 The Guarantor acknowledges and agrees that:

- (a) although as between the Lessee and the Guarantor the latter may only be a surety, as between the Guarantor and the Lessor, the Guarantor will be deemed a principal debtor;
- (b) no waiver or indulgence by the Lessor, or any other act, matter or thing, will operate to release the Guarantor from liability under the Guarantor's covenants in this deed.

13.3 The Guarantor's liability under this deed is not affected by:

- (c) the granting of time or any other indulgence to the Lessee;
- (d) the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the Lessor's rights against the Lessee or by any omission to enforce those rights;
- (e) any variation of the Lease; or
- (f) any other thing which under the law on sureties might, if not for this clause, wholly or partly release the Guarantor from the Guarantor's obligations under this deed.

13.4 The Lessor is not obliged to commence proceedings against the Lessee before taking proceedings against the Guarantor.

13.5 The Guarantor will guarantee the obligations of the Lessee under any renewed lease in circumstances where Hall's Refrigeration Transport Limited (or a related company of Hall's Refrigeration Transport Limited) has exercised the right of renewal. In such circumstances, the Guarantor will if required by the Lessor execute a deed of renewal of this Lease (which will include this clause 13.0).

THIRD SCHEDULE

Lessee's Fixtures and Fittings

The schedule of Lessee's Fixtures and Fittings will be prepared by the Lessee as at the Commencement Date and will be subject to the written approval of the Lessor (which will not be unreasonably withheld or delayed provided that it does not include any of the Lessor's Fixtures and Fittings). Following approval by the Lessor the schedule will be annexed to this Lease.

FOURTH SCHEDULE

LESSOR'S FIXTURES AND FITTINGS

The schedule of Lessor's Fixtures and Fittings will be prepared by the Lessor as at the Commencement Date (having regard to ownership of the fixtures and fittings within the Building following expiry of the Existing Lease) and will be subject to the written approval of the Lessor (which will not be unreasonably withheld or delayed provided that it does not include any of the Lessor's Fixtures and Fittings). Following approval by the Lessee the schedule will be annexed to this Lease.

SCHEDULE 2

UNDERWRITE

1. The Purchaser intends to establish an industrial fund (likely structured as a company) (the *Fund*) to effect settlement of the purchase of a number of industrial properties (including the Property).
2. The Vendor agrees to underwrite \$6 million of the equity to be raised by the Fund (the *Equity*) on and subject to the following paragraphs:
 - a. The Equity is being underwritten in the following manner:
 - i. Augusta Capital Limited will underwrite the first \$35 million of the Shortfall (the *Tranche A Shortfall*); and
 - ii. The Vendor and other third parties will underwrite any Shortfall above the Tranche A Shortfall (the *Tranche B Shortfall*).

Shortfall means the difference between the equity that the Fund sets as the minimum it wishes to raise and the actual amount of equity raised by the Fund.

- b. Where the Shortfall is greater than \$35 million, the Vendor's share of the Tranche B Shortfall (the *Vendor's Share*) will be calculated on a proportionate basis having regard to its underwritten amount of \$6 million relative to the amounts underwritten by all underwriters other than Augusta Capital Limited.
- c. Following notification in writing by the Purchaser of the Shortfall and the Vendor's Share (which must occur prior to the Settlement Date), the Vendor must, within two working days of such notification:
 - i. complete the Fund's application form and provide an executed copy to the Purchaser; and
 - ii. pay its proportionate share of the Shortfall to a bank account nominated by the Purchaser or give notice to the Purchaser that it may set-off the Vendor's liability against the amount owed under this paragraph against the Purchase Price.
- d. On receipt of the amount owed by the Vendor under paragraph 2.c, the Purchaser will procure that the Fund issues to the Vendor a number of shares in the Fund which reflects the Vendor's Share.
- e. Provided you have performed all your obligations under this letter agreement, the Purchaser will pay to you a total underwriting fee of \$180,000. That fee will be payable on the following dates:
 - i. The Purchaser will pay one half of the total underwriting fee on the date which is 5 Working days after the date of this letter;

- ii. The Purchaser will pay the second half of the underwriting fee within 5 Working days following the Settlement Date. The parties agree that the Purchaser will pay the fee to the Vendor whether or not there is a Shortfall and the Vendor is required to comply with clause 2.c.
- f. The Vendor agrees that the Purchaser may set off its obligation to pay the Purchase Price on the Settlement Date against the Vendor's obligation to pay the Vendor's Share under paragraph 2.c.
- g. The Purchaser agrees that:
 - i. it will use reasonable endeavours to sell down any shares in the Fund that are issued to the Vendor as part of its underwriting commitment; and
 - ii. will procure that Augusta Capital Limited does not sell down any shares in the Fund that are issued to Augusta Capital Limited until such time as all shares acquired by the Vendor and any other underwriter are sold.
- h. Both the Purchaser and you acknowledge that the rights and obligations set out in this letter agreement are made for the benefit of the Fund, and the above terms are intended to be legally enforceable by the Fund.

SCHEDULE 3

**Hampton Jones Report
(see attached)**

Deed of Nomination Agreement for sale and purchase of 20 Paisley Place, Mt Wellington, Auckland

Augusta Funds Management Limited (Nominator)

Augusta Industrial Fund No. 1 Limited (Nominee)



DEED OF NOMINATION - AGREEMENT FOR SALE AND PURCHASE OF 20 PAISLEY PLACE, MT WELLINGTON

Date: 30 April 2018

PARTIES

Augusta Funds Management Limited (the *Nominator*)

Augusta Industrial Fund No. 1 Limited (the *Nominee*)

BACKGROUND

A By an undated agreement for sale and purchase as varied by letter dated 7 March 2018 (together the *Agreement*) made between the Nominator as purchaser and Madill & Smeed Limited as vendor (*Vendor*), the Nominator has agreed to purchase and the Vendor has agreed to sell the property situated at 20 Paisley Place, Mt Wellington, Auckland (*Property*).

B The Nominator wishes to nominate the Nominee as the purchaser under the Agreement.

C The Nominee wishes to accept the nomination.

THE PARTIES AGREE as follows:

1 NOMINATION

The Nominator nominates the Nominee as the purchaser under the Agreement with effect from the date of this deed (*Nomination Date*), and the Nominee accepts the nomination.

2 NOMINATOR'S UNDERTAKING AND INDEMNITY

2.1 The Nominator:

- (a) undertakes to fulfil the purchaser's obligations under the Agreements up to and including the Nomination Date; and
- (b) indemnifies the Nominee against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Nominee as a direct or indirect result of any breach by the Nominator of the Nominator's undertaking in this clause 2.1.

3 NOMINEE'S UNDERTAKING AND INDEMNITY

3.1 The Nominee:

- (a) undertakes to fulfil the purchaser's obligations under the Agreement with effect from the Nomination Date; and



- (b) indemnifies the Nominator against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Nominator as a direct or indirect result of any breach by the Nominee of the Nominee's undertaking in this clause 3.1.

4 NOMINEE'S COVENANT WITH NOMINATOR

4.1 The Nominee covenants with the Nominator:

- (a) that it is a registered person as that term is defined in the Goods and Services Tax Act 1985 (*GST Act*); and
- (b) that the Nominee's details are as follows:

Address: Level 2, 30 Gaunt Street, Wynyard Quarter, Auckland 1010

Registration Number: 125-732-399

- (c) that the Nominee intends at settlement to use the goods supplied under the Agreements for making taxable supplies; and
- (d) that the Nominee does not intend at settlement to use the Property (or part of the Property) as a principal place of residence by the Nominee or a person associated with the Nominee under s2A(1)(c) of the *GST Act*; and
- (e) to pay the GST (if any) payable under the Agreements on any supply evidenced by the Agreements.

5 NOMINEE TO REIMBURSE NOMINATOR

5.1 On the Nomination Date the Nominee will reimburse the Nominator for:

- (a) all money, including interest and goods and services tax (if any) paid by the Nominator pursuant to the Agreements; and
- (b) the Nominator's reasonable legal and other costs and disbursements relating to the Agreements.

6 NOTICE OF PROVISIONS OF AGREEMENT

6.1 The Nominee acknowledges that the Nominee has executed this deed with full notice of all provisions contained or implied in the Agreements.

7 COUNTERPARTS ELECTRONIC DELIVERY ALLOWED

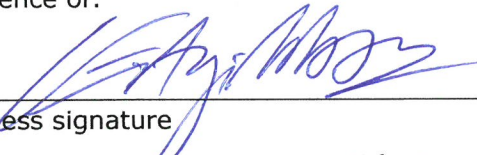
7.1 This deed may be executed in any number of counterparts, all of which will together constitute one and the same instrument, and the parties may execute this deed by signing any such counterpart. Without limiting any other mode of delivery, the parties agree to allow delivery of this deed by transmission, in electronic form by any means of electronic communication (including facsimile or email of a scanned



copy) of an original of this deed executed by a party, to the other party or its solicitors.

EXECUTED AND DELIVERED AS A DEED

Executed by Augusta Funds Management Limited by its directors/authorised signatories in the presence of:

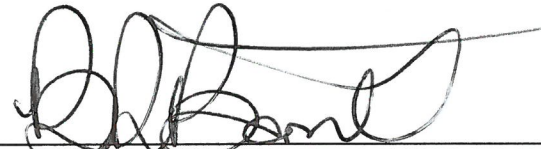


 Witness signature

 Print Name **Luke Jared Fitzgibbon**

 Occupation **Solicitor**

 Address **Auckland**



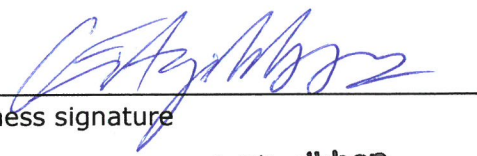
 Director/Authorised Signatory

 Print Name

 Director/Authorised Signatory

 Print Name

Executed by Augusta Industrial Fund No. 1 Limited by its directors/authorised signatories in the presence of:

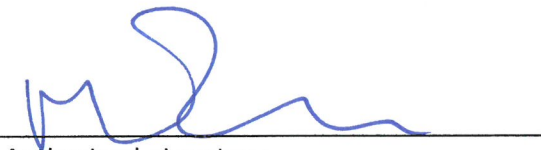


 Witness signature

 Print Name **Luke Jared Fitzgibbon**

 Occupation **Solicitor**

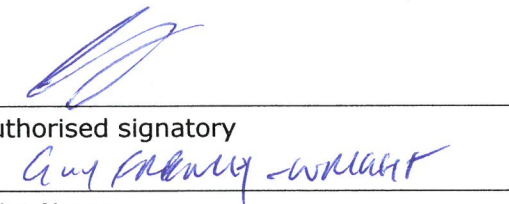
 Address **Auckland**



 Authorised signatory

MARK FRANCIS

 Print Name



 Authorised signatory

Guy Francis

 Print Name