

AGREEMENT dated the 1 day of 2018

PARTIES

VENDOR: Castle Rock Properties Limited (the *Vendor*)

PURCHASER: Augusta Industrial Fund No.1 Limited and/or nominee (the *Purchaser*)

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 (the *Property*)

Address: Mary Muller Drive, Hillsborough, Christchurch

Estate: Fee simple

Legal Description: **Area:** 79,456m² **Lot:** 2 **DP:** 392999

Unique Identifier or Certificate of Title: 372602

Registry: Canterbury Land Registry

PRICE AND PAYMENT

Purchase Price: \$53,758,095.00 (fifty-three million, seven hundred and fifty-eight thousand, and ninety five dollars) plus GST (if any)
[The Purchase Price has been calculated based on an assumed Net Operating Income of \$4,085,615.00 plus GST (if any) and a yield of 7.60%]

Net Operating Income: means the net operating income for the Property calculated in the same manner as provided for in the attached Schedule and on a GST exclusive basis

Deposit: \$2,619,421.20 (two million, six hundred and nineteen thousand, four hundred and twenty-one dollars, and twenty cents) payable in accordance with clause 21

Balance: The balance of the Purchase Price must be paid in cleared funds, in one sum, on the Settlement Date

Interest rate for late settlement: 10% per annum

DATES

GST date: The Settlement Date

OIA Consent required: Yes/No

OIA date: N/A

Settlement date: 15 December 2018 or such earlier date as the parties may agree

TENANCIES: See clause 22 and attached Schedule



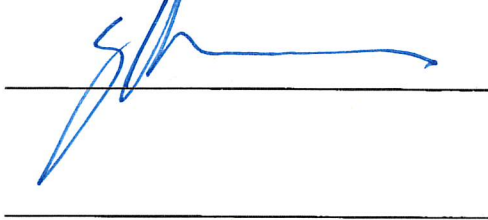
**VENDOR'S CHATTELS
FIXTURES & FITTINGS:**

All the Vendor's Chattels, Fixtures and Fittings as defined in clause 27 and as evidenced by the list to be provided by the Vendor to the Purchaser pursuant to clause 20

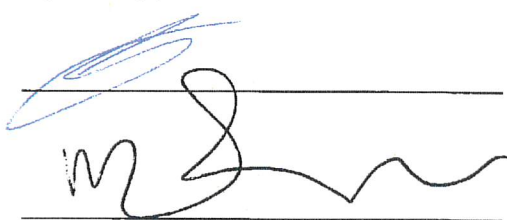
OPERATIVE CLAUSE

It is agreed that the Vendor sells and the Purchaser purchases the Property and the Vendor's Chattels, Fixtures and Fittings upon the terms set out above, and the special terms and the General Terms of Sale attached.

Signature(s) of Vendor



Signature(s) of Purchaser



DIRECTORY

	VENDOR	PURCHASER
Postal address	PO Box 22542, Christchurch 8140	PO Box 37953, Parnell 1151
Telephone	029 292 0627	+64 9 320 5591
Facsimile		
Email	graham.harris@longbeach.co.nz	luke@augusta.co.nz
Legal firm	Lane Neave	Chapman Tripp
Solicitor acting	Michael Wolfe Dean Seymour	Mark Nicholson/Kirsty-Anne Singleton
Solicitor's postal address	PO Box 2331, Christchurch 8140	PO Box 2206, Auckland 1140
Solicitor's telephone	+ 64 3 379 3720	+64 9 358 9828
Solicitor's facsimile	+ 64 3 379 8370	+64 9 357 9099
Solicitor's email	michael.wolfe@laneneave.co.nz dean.seymour@laneneave.co.nz	Mark.Nicholson@chapmantripp.com / Kirsty- Anne.Singleton@chapmantripp.com



GENERAL TERMS OF SALE
(see attached)



WA

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:
- An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - 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:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - 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
 - 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:
- 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
 - 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

- 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.
- 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.
- 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:

- All notices must be served in writing.
- 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.
- All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - on the party or on the party's lawyer:
 - by personal delivery; or
 - by posting by ordinary mail; or
 - by facsimile; or
 - by email; or
 - 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.
- In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
 - in the case of personal delivery, when received by the party or at the lawyer's office;
 - 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;
 - 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;
 - 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 10.8(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.

Deferral 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),
- (4) then the vendor may extend the settlement date:
- (a) where there is a deferral 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 deferral 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.

New Title Provision

- 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 untenantable and it is untenantable 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 untenantable 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 untenantable 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 vendor 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 1 are correct at the date of this agreement.
 15.3 Where the particulars stated on the front page and in Schedule 1 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 1 or they have altered.
 15.5 If any of the particulars stated by the purchaser in Schedule 1 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 1 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 rendered 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 1 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 in Schedule 1 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.

SCHEDULE 1**(GST Information – see clause 15.0)**

This Schedule must be completed if the vendor has stated on the front page that 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. Otherwise there is no need to complete it.

Section 1

1.	The vendor's registration number (if already registered):	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 3 and 4 is "No", go to question 7

5.	The purchaser's details are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
6.	The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption). OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No Yes/No
7.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No

If the answer to question 7 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

8.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
9.	The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 8 and 9 is "No", there is no need to complete this Schedule any further.

10.	The nominee's details (if known to the purchaser) are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
11.	The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption). OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop").	Yes/No Yes/No

FURTHER TERMS OF SALE

19 CONDITIONS

19.1 Due diligence

This agreement is conditional on the Purchaser completing a due diligence exercise and notifying the Vendor in writing before 4pm on the date which is twenty (20) working days after execution of this agreement by the parties that the Purchaser is satisfied that the Property is suitable for the Purchaser's requirements.

19.2 Benefit of Purchaser's conditions

The parties acknowledge that the condition in clause 19.1 of this agreement is inserted for the sole benefit of the Purchaser and may at any time, prior to the agreement being avoided, be waived by the Purchaser giving written notice of waiver to the Vendor. The satisfaction of the condition in clause 19.1 will be at the sole and absolute discretion of the Purchaser and, the Purchaser will not be obliged to provide any reason to the Vendor for the non-satisfaction of the condition.

19.3 Conditions not satisfied

If the condition in clause 19.1 is not satisfied (or waived) by the due date for satisfaction the Purchaser will pay to the Vendor the sum of \$10. Except for the obligation to make that payment, this agreement will be void and all money paid under it must be refunded without deduction or set off. Thereafter, neither party will have any claim against the other.

20 PROVISION OF INFORMATION AND ACCESS

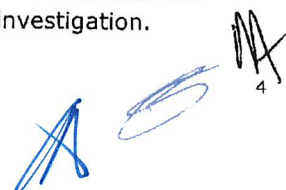
20.1 Vendor to provide information

To assist the Purchaser in carrying out its due diligence exercise as provided for in clause 19.1, within five (5) working days after the date this agreement is executed by the parties, the Vendor will provide to the Purchaser all relevant material and information which the Vendor has in its control or possession in relation to the Leases (as defined in clause 22) and the Property, including but not limited to:

- (a) full and complete copies of all Leases and all associated documentation;
- (b) particulars of the payment status of all tenants in the Property, including details of any indebtedness as at the date of provision of the information, and details of any concessions or incentives made in relation to any Leases;
- (c) full budgets for the current financial year for the Property showing actual and projected rent and operating expense payments, and the final accounts for rent and operating expenses for the Property for the last financial year;
- (d) copies of any Guarantees and Warranties;
- (e) a list of the Vendor's Chattels, Fixtures and Fittings;
- (f) details of any disputes or litigation (threatened, pending or current) in respect of the Property; and
- (g) any subsisting notice in respect of the Property from any authority having jurisdiction in respect of the Property.

20.2 Additional information

In addition to its obligations in clause 20.1, the Vendor will use all reasonable endeavours to provide the Purchaser with any additional information requested by the Purchaser that the Purchaser may reasonably require in order to carry out its due diligence investigation.



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20.3 Information warranty

The Vendor warrants, to the best of its knowledge and belief that all the material and information which it provides to the Purchaser under clauses 20.1 and 20.2 is complete, true and accurate, and that it is all the material and information that the Vendor has, or is aware of, in relation to the Leases and the Property.

20.4 Access to the Property

The parties acknowledge that to enable the Purchaser to carry out its due diligence exercise in terms of clause 19.1 of this agreement, the Purchaser through its consultants, contractors, agents or employees may require access to the Property. To the extent that the Vendor is entitled to under the terms of the Leases, the Vendor will provide or cause to be provided to the Purchaser, access to all parts of the Property to enable the Purchaser, its consultants, contractors, agents or employees to undertake any investigations and tests necessary to prepare reports for the Purchaser (but the Purchaser has no right to carry out tests of an intrusive nature). The Purchaser must ensure that its consultants, contractors, agents or employees undertake their inspection and investigations of the Property, as far as practicable, in a manner likely to cause the least possible interference with any tenant of the Property.

20.5 Purchaser liable for damage

If the Purchaser or its consultants, contractors, agents or employees cause any damage to the Property, or to any property of any tenant of the Property, the Purchaser must make good such damage immediately, at the Purchaser's cost. The Purchaser indemnifies the Vendor in respect of such damage, and any costs, losses, claims, proceedings, actions or demands made of the Vendor which results from such damage, or from the Purchaser's due diligence investigations carried out pursuant to this agreement.

21 DEPOSIT

21.1 Payment of deposit

The Purchaser must pay the deposit to the Vendor's solicitor following satisfaction or waiver of the condition in clause 19.1. The Vendor's solicitor will hold the deposit as stakeholder in an interest bearing trust account until the date that settlement is effected or this agreement is otherwise cancelled in accordance with its terms.

21.2 Interest

Interest on the deposit (less withholding tax, if applicable, and bank commission) will accrue to the party to whom the deposit is disbursed in accordance with this agreement.

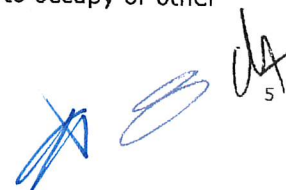
21.3 Return of the deposit on cancellation: If this agreement is cancelled by either party in accordance with its terms then:

- (a) All money paid under this agreement, plus interest (less withholding tax, if applicable, and bank commission) ("net interest") will be paid in full to the Purchaser and this agreement will be of no further force or effect; and
- (b) The Purchaser will have no claim against the Vendor for any costs, damages or compensation of any nature whatsoever arising out of this agreement or its cancellation.

22 LEASES AND MANAGEMENT OF THE PROPERTY

22.1 Leases

In this agreement, unless the context otherwise requires, *Lease* means any tenancy, lease, licence to occupy or other right of occupation (including oral arrangements) in relation to the whole or any part of the Property. The term *Lease* includes any document, letter, deed or agreement recording, varying or relating to such tenancy, lease, licence to occupy or other right of occupation.



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22.2 Vendor's obligations

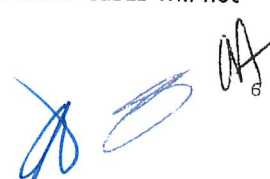
From the date of this agreement to the Settlement Date, the Vendor must:

- (a) comply with its obligations under the Leases in respect of the period prior to settlement;
- (b) not approve any renewal of any Lease without the Purchaser's prior written consent (not to be unreasonably withheld), and include the Purchaser in any discussions involving any renewal of any Lease;
- (c) continue to manage the Property to the same standards as the Vendor has done to date, and in a reasonable manner;
- (d) provide to the Purchaser all new material information relating to the administration and management of the Leases and the Property, (including any tenancy dispute or rent review);
- (e) keep the Purchaser fully informed regarding any legal proceeding, arbitration or other means of dispute resolution threatened or commenced by the Vendor, or by any person against the Vendor, in any matter relating to the Leases or the Property and will deal with all such matters having regard to the best interests of the Purchaser;
- (f) not, without the prior written consent of the Purchaser, at any time after the date the condition in clause 19.1 is satisfied or waived:
 - (i) approve any assignment, subletting, renewal, surrender or variation of any Leases or any tenant works;
 - (ii) approve the annual or monthly rent payable on a review of the rent under the Leases or take any material steps in connection with any such rent review;
 - (iii) grant any new Lease of the Property;
 - (iv) cancel any Lease or take any steps to cancel any Lease;
 - (v) commence or take any material steps in connection with any legal proceedings, arbitration or dispute resolution in connection with the Property;
 - (vi) incur any expenditure in respect of the Property in excess of the amounts contained in the budget of operating expenses included in the material provided to the Purchaser pursuant to clause 20;
 - (vii) give any consent or waiver in relation to any application under the Resource Management Act 1991 which directly or indirectly affects the Property;
 - (viii) grant or create any easements, covenants, encumbrances or other rights in respect of the Property; and
 - (ix) enter into any agreement in relation to the Property or the Leases which will subsist beyond the Settlement Date.

22.3 Purchaser's obligations

The Purchaser will:

- (a) not withhold or delay its consent under clause 22.2(f) where the Vendor is obliged to do any of the matters referred to in clause 22.2(f) above, and in all other cases will not unreasonably or arbitrarily withhold or delay its consent; and



- (b) use all reasonable endeavours to respond to the Vendor within sufficient time to enable the Vendor to meet any obligations under any Lease or other relevant agreement.

23 MACPAC LEASE

23.1 Landlord's works

The Vendor is to carry out and lawfully complete all the landlord's works associated with the lease to Macpac (the *Macpac Works*) in compliance with the landlord's obligations to Macpac, on or before the Settlement Date. The Purchaser acknowledges that the Macpac Works will not be undertaken under a building consent issued by the Christchurch City Council (the CCC). The Vendor shall instead obtain from the CCC a consent exemption in relation to the Macpac Works and shall procure that:

- (a) full working drawings are compiled for the Macpac Works;
- (b) the Macpac Works are supervised by a suitably qualified architect or engineer;
- (c) producer statements from the main contractor and relevant subcontractors are obtained and delivered to CCC for inclusion in CCC's property file; and
- (d) all conditions of the consent exemption are satisfied.

23.2 Retention

- (a) In the event that the Vendor has not fully discharged all of its liability under clause 23.1 prior to settlement, the cost of outstanding works shall be measured by a quantity surveyor appointed by agreement of both parties for the purpose (and, failing agreement, by the President of the New Zealand Law Society or his nominee) and a sum equal to twice that cost (the *Retention*) will be deducted from the purchase price and held in the trust account of the Purchaser's solicitor (acting as stakeholder) on interest bearing deposit until the Vendor has provided evidence to the Purchaser that it has discharged all of its liability under clause 23.1.
- (b) The Vendor must use reasonable endeavours to ensure that the quantity surveyor appointed under paragraph (a) above provides its determination of the cost of the outstanding works five (5) working days prior to settlement.
- (c) In the event that such liability has not been discharged by the date four (4) months following settlement, then the Purchaser may (at its election) step in and discharge any of the Vendor's outstanding obligations and recover its costs of doing so from the Retention (including any interest earned thereon).
- (d) Following the discharge of all the Vendor's liability under clause 23.1 (whether by the Vendor or the Purchaser) the balance of the Retention plus interest (if any) will be released to the Vendor.

23.3 Outstanding rental incentive

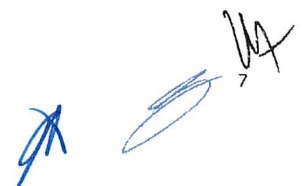
The Purchaser will be entitled to deduct the following amount from the Purchase Price on settlement:

$$A = \frac{B - C}{365} \times D$$

Where:

A = the amount to be deducted from the purchase price plus GST (if any)

B = \$431,720 plus GST (if any)



C = \$215,860 plus GST (if any)

D = the number of days between (and including) the date immediately following the date of settlement and the date immediately prior to (and including) the date on which the rental payable under the Macpac lease increases to \$431,720 plus GST (if any).

24 CONSULTANTS REPORTS

24.1 Consultant reports

Immediately following execution of this Agreement, the Vendor will supply a list of consultants with whom the Vendor has had dealings including its structural/civil engineer, fire engineer, construction contractor, geotech engineer, architect and *lighting* engineer. The Vendor will at the request of the Purchaser facilitate introductions to its consultants and will not object to the engagement of them, by the Purchaser, for the completion of reports or other work requested of them by the Purchaser, notwithstanding the existence of any actual or apparent conflict of interest.

25 GUARANTEES AND WARRANTIES

25.1 Provision of copies

The Vendor will provide copies of all current guarantees and warranties relating to the building and the Vendor's Chattels, Fixtures and Fittings on the Property within five (5) working days following execution of this agreement by the parties (*Guarantees and Warranties*).

25.2 Assignment of guarantees/warranties

On settlement, the parties will enter into a deed prepared by the Vendor's solicitors and approved by the Purchaser (such approval not to be unreasonably withheld) assigning to the Purchaser the benefit of all Guarantees and Warranties which are capable of being assigned to the Purchaser. Such assignment will be subject to the consent (where required) of the relevant guarantors/warrantors (which the Vendor will diligently pursue as soon as reasonably practicable). Immediately following settlement, the Vendor will serve written notice of the assignment on the relevant guarantors/warrantors.

25.3 Vendor to hold on trust

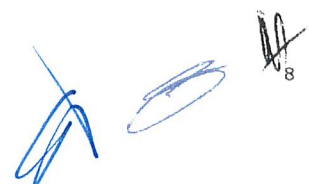
Where any Guarantees and Warranties are not able to be assigned but are able to be enforced by the Vendor after settlement, the Vendor covenants with the Purchaser to hold those Guarantees and Warranties on trust for the Purchaser. The Vendor will from time to time, when requested by the Purchaser, take reasonable steps to enforce such Guarantees and Warranties for the benefit of the Purchaser, subject to the Purchaser indemnifying the Vendor, on each occasion of enforcement, for all reasonable costs and expenses which the Vendor incurs in so doing. The obligations of the Vendor under this clause 25.3 shall enure from the Settlement Date until the date six months following the Settlement Date or earlier where the shareholders of the Vendor pass a resolution to liquidate the Vendor Company.

26 VENDOR'S SETTLEMENT OBLIGATIONS

26.1 Delivery of documentation

On the Settlement Date, in addition to the items referred to in clauses 3.4 and (if applicable) 3.7(2) of the General Terms of Sale, the Vendor must hand to the Purchaser at the office of the Vendor's solicitors:

- (a) original executed copies of all Leases held by the Vendor (or certified copies if the originals have been lost) including all agreements to lease, deeds of lease, deeds of variation, deeds of consent, rent review memoranda, deeds of renewal and other material documentation relating to the Leases;



- (b) letters to all tenants under the Leases signed by or on behalf of the Vendor advising that the Property has been sold and that they are to pay all rent and outgoings and any other amounts to the Purchaser from the Settlement Date;
- (c) original release deed polls executed by any parties holding a security interest in the Vendor's Chattels, Fixtures and Fittings included in the sale of the Property;
- (d) copies of the compliance schedule and current building warrant of fitness held at the Property, and all associated reports, service records and manuals relating to the building and the Vendor's Chattels, Fixtures and Fittings;
- (e) all Guarantees and Warranties; and
- (f) duly executed deed of assignment to be given under clause 25.

26.2 Incentives

- (a) Subject to the provisions of clause 23.3, the Vendor must pay out or discharge all Incentives prior to settlement. For the purposes of this clause, *Incentives* means any payment due to a tenant, any rent holiday or concessionary rental period, or any outgoings cap provided, or agreed to be provided, to a tenant of the Property as an inducement to that tenant entering into a Lease or agreeing to renew or extend a Lease.
- (b) If any Incentive is not paid out or discharged prior to settlement, the Purchase Price will be reduced by an amount equal to the aggregate cost to the Purchaser of all those Incentives that have not been paid out or discharged by the Vendor prior to settlement.

26.3 Bank Guarantees

On the Settlement Date, the Vendor will assign to the Purchaser the benefit of any bank guarantees associated with the Leases (*Bank Guarantees*) which are capable of assignment. Such assignment will be subject to the consent (where required) of the respective guarantors (which the Vendor will diligently pursue as soon as reasonably practicable). Immediately following settlement, the Vendor will serve written notice of the assignment on the relevant guarantors.

27 CHATTELS, FIXTURES AND FITTINGS

27.1 Chattels, fixtures and fittings included in sale

The Property is sold with the benefit of all fixtures, fittings, plant, equipment, systems, devices and other chattels situated on the Property as at the date of this agreement which are owned by the Vendor or any related party of the Vendor and are not owned by any of the tenants or other occupiers of the Property (*Vendor's Chattels, Fixtures and Fittings*).

28 VENDOR'S UNDERWRITES

28.1 Vendor's 12 month underwrite

The Vendor (or, at the election of the Vendor, a newly established entity appointed in accordance with clause 28.1(k)), will underwrite the Gross Rental received in respect of the premises currently demised by those Leases whose lease expiry date is on or before 15 December 2019 (or, if settlement is delayed due to a default by the Vendor, the date which is 12 months from the date that settlement takes place) (the *Underwritten Premises*) on the following terms:

- (a) *Term of the underwrite*: 12 months for each of the Underwrite Premises from the date on which the tenant vacates the relevant premises prior to 15 December 2019 and ceases payment of rental;

- (b) *Method of payment:* The amount of the underwrite payable by the Vendor will be calculated on a monthly basis and will be payable by the Vendor within three (3) working days of written demand;
- (c) *Gross Rental:* means the annual gross rental for each of the Underwritten Premises (comprising rent and outgoings);
- (d) *Underwritten Amount:* The monthly instalment of the underwrite for each of the Underwrite Premises during the Term will be equivalent to the difference between:
 - (i) the existing Gross Rental for the relevant Underwritten Premises set out in the attached Schedule divided by 12; and
 - (ii) the actual Gross Rental received for the relevant Underwritten Premises in respect of the relevant calendar month;
- (e) *GST exclusive:* The Underwritten Amount will be calculated on a GST exclusive basis;
- (f) *Purchaser's contribution to costs:* with effect from settlement, the Purchaser will cover all costs involved with retaining the existing tenants of the Underwritten Premises, including any incentives (rent free or cash), agency commissions and consultancy costs;
- (g) *Application of Underwrite:* The underwrite for each of the Underwritten Premises will not apply with effect from the date on which a new replacement lease is entered into by the Purchaser which meets the following criteria:
 - (i) A term expiring after the date 12 months following expiry or earlier termination of the existing lease of the Underwritten Premises; and
 - (ii) the Gross Rental payable under the replacement lease is greater than the Gross Rental payable under the existing Lease of the Underwritten Premises;
- (h) *Interest:* If any payment under this clause 28.1 is not paid on the due date for payment by the Vendor, then the Vendor will be in default and will be liable to pay default interest at the rate of 10% per annum on the amount outstanding from time to time to the Purchaser;
- (i) *GST:* The parties intend that the underwrite will be zero rated for GST purposes as an adjustment of the purchase price but if any GST does become payable then the Vendor will pay GST on the underwrite payments subject to the Purchaser issuing a valid tax invoice;
- (j) *Benefit:* The Vendor acknowledges that the benefit of the underwrite may be assigned to any nominee under this agreement and any successor in title.
- (k) *Alternative Underwrite:* The Vendor may, at the Vendor's election, appoint a newly established entity to provide the underwrite set out in clause 28.1 provided that the Vendor has given the Purchaser written notice of the appointment at least 3 Working Days prior to the Settlement Date (time being of the essence). Where the Vendor elects to appoint a newly established entity to perform the obligations of the Vendor under this clause 28.1(k), the Vendor shall procure that entity to pay on the Settlement Date an amount equal to the total value of the maximum underwrite liability to the trust account of the Vendor's solicitor with irrevocable instructions to apply the funds held to meet the Vendor's obligation under this clause 28.1.

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Unless and until the total value of the maximum underwrite liability under this clause 28.1 is received by the Vendor's solicitor in cleared funds, the Vendor will remain liable in respect of the obligations in this clause 28.1.

28.2 Vendor's 3 year underwrite for vacant space

The Vendor (or, at the election of the Vendor, a newly established entity appointed in accordance with clause 28.2(k)) will underwrite the rental and outgoings in respect of the currently vacant premises at 10a Chapmans Road and 27 carparks (the *Underwritten Vacant Space*) on the following terms:

- (a) *Term of the underwrite*: 3 years from the date immediately following the actual settlement date;
- (b) *Method of payment*: The amount of the underwrite payable by the Vendor will be calculated on a monthly basis and will be payable by the Vendor within three (3) working days of written demand;
- (c) *Underwritten Amount*: The monthly instalment of the underwrite for the Underwritten Vacant Space during the Term will be equivalent to the difference between:
 - (i) \$124,095.00 per annum (comprising rental of \$14,040 per annum for 27 carparks, \$90,055 per annum for 514.6 square metres of office space, and \$20,000.00 per annum of outgoings) divided by 12 (subject to adjustment under clause 28.2(d));
 - (ii) The actual rent and outgoings received by the Purchaser for the Underwritten Vacant Space in respect of the relevant calendar month;
- (d) *Fixed annual Underwritten Amount increase*: On each anniversary of commencement of the Term, the Underwritten Amount referred to in clause 28.2(c)(i) will be increased by 2%;
- (e) *GST exclusive*: The Underwritten Amount will be calculated on a GST exclusive basis;
- (f) *Purchaser's rights*: The Purchaser will be entitled to deal freely with the Underwritten Vacant Space at its sole discretion during the Term of the underwrite, including (but not limited to) refurbishing the Underwritten Vacant Space and showing the premises to tenants.
- (g) *Application of Underwrite*: The underwrite of the Underwritten Vacant Space will expire with effect from the date on which a new replacement lease of the Underwritten Vacant Space is entered into by the Purchaser which:
 - (i) reserves rent and outgoings in excess of the Underwritten Amount referred to in clause 28.2(c)(i) (as adjusted pursuant to clause 28.2(d));
 - (ii) is for a term which expires on a date following expiry of the Term of the Underwrite;
- (h) *Interest*: If any payment under this clause 28.2 is not paid on the due date for payment by the Vendor, then the Vendor will be in default and will be liable to pay default interest at the rate of 10% per annum on the amount outstanding from time to time to the Purchaser;

- (i) *GST*: The parties intend that the underwrite will be zero rated for GST purposes as an adjustment of the purchase price but if any GST does become payable then the Vendor will pay GST on the underwrite payments subject to the Purchaser issuing a valid tax invoice;
- (j) *Benefit*: The Vendor acknowledges that the benefit of the underwrite may be assigned to any nominee under this agreement and any successor in title.
- (k) *Alternative Underwrite*: The Vendor may, at the Vendor's election, appoint a newly established entity to provide the underwrite set out in clause 28.2 provided that the Vendor has given the Purchaser written notice of the appointment at least 3 Working Days prior to the Settlement Date (time being of the essence). Where the Vendor elects to appoint a newly established entity to perform the obligations of the Vendor under this clause 28.2, the Vendor shall procure that entity to pay on the Settlement Date an amount equal to the total value of the maximum underwrite liability to the trust account of the Vendor's solicitor with irrevocable instructions to apply the funds held to meet the Vendor's obligation under this clause 28.2(k). Unless and until the total value of the maximum underwrite liability under this clause 28.2 is received by the Vendor's solicitor in cleared funds, the Vendor will remain liable in respect of the obligations in this clause 28.2.

28.3 Rights of Vendor to Mitigate Underwrite Liability

- (a) In order to mitigate the liability which the Vendor may have pursuant to the underwrites described in clauses 28.1 and 28.2 of this Agreement, the Vendor will have the right following Settlement to seek out prospective tenants for the Underwritten Premises and for the Underwritten Vacant Space. The Purchaser agrees to act in good faith towards the Vendor in relation to prospective tenants introduced by the Vendor and further agrees not to withhold consent to prospective tenants where:
 - (i) the Vendor demonstrates to the Purchaser that the prospective tenant has the financial resources and the experience in business to meet its obligations under the lease;
 - (ii) the term of such lease is for a minimum period of:
 - (A) two years where the lease relates to the Underwritten Premises;
 - (B) three years where the lease relates to the Underwritten Vacant Space;
 - (iii) the rent is equal to or greater than the rental payable by the Vendor under the underwrites described in clauses 28.1 and 28.2 (whichever is applicable);
 - (iv) there are fixed 2% rental increases on each anniversary of the term; and
 - (v) the lease is otherwise on the terms of the most recent edition of the Auckland District Law Society deed of lease.
- (b) The Vendor agrees not to list the Vacant Premises with leasing agents without obtaining the Purchaser's consent which shall not be unreasonably withheld or delayed provided that where the Vendor elects to list the premises with agents other than those already commissioned by the Purchaser, the Purchaser shall have the right to approve the manner in which the Vacant Premises are offered to the market together with all signage and marketing material prepared for the purpose.

- (c) The Vendor agrees that it will not offer any incentive to a prospective tenant without the prior written approval of the Purchaser.

29 APPORTIONMENTS ON SETTLEMENT

29.1 Apportionments

The Vendor will provide no later than four (4) working days prior to the Settlement Date a full reconciliation of operating expense and rental payments as at the Settlement Date. The reconciliation will be carried out in accordance with standard market practice and will be subject to the Purchaser's written approval, such approval not to be unreasonably withheld or delayed.

29.2 Entitlements

The Vendor is entitled to all rent and other money payable under the Leases up to and including the Settlement Date (*Vendor's Proportion*). The Purchaser is entitled to all rent and other money payable under the Leases as and from the day immediately following the Settlement Date (*Purchaser's Proportion*).

29.3 Vendor to Account to Purchaser

The Vendor will hold on trust and forthwith disburse to the Purchaser any rent or other money received by the Vendor following Settlement that is due to the Purchaser.

29.4 Purchaser to Account to Vendor

The Purchaser will hold on trust and forthwith disburse to the Vendor any rent or other money received by the Purchaser following Settlement that is due to the Vendor.

29.5 Post-Settlement Reconciliation

The parties agree that within eight (8) weeks following settlement, the Vendor will instruct its property manager to complete a final reconciliation of the operating expenses for the Property. The final reconciliation will be carried out in accordance with standard market practice and will be subject to the Purchaser's written approval, such approval not to be unreasonably withheld or delayed. The Vendor will ensure that a copy of the final reconciliation is made available to the Purchaser within ten (10) working days of the date such final reconciliation is completed. The Vendor and Purchaser further agree that each will make to the other the payments (if any) required by the reconciliation within a further five (5) working days of the date the Purchaser receives the reconciliation. This obligation will be deemed to be a continuing obligation upon both parties that will survive settlement and the transfer of legal ownership in the Property to the Purchaser or as the Purchaser has directed).

29.6 Treatment of Arrears

Amounts which fall due from tenants under the Leases on or before the Settlement Date but which remain unpaid as at the Settlement Date (*Arrears*) will not be apportioned unless and until they are recovered from the tenants.

29.7 Recovery of Arrears

Following settlement:

- a) the Vendor will not be entitled to take any action against the tenants under the Leases to recover any Arrears; and
- b) the Purchaser will use all reasonable endeavours to recover any Arrears which relate to the Vendor's Proportion, but in doing so must consult fully with the Vendor at regular intervals and provide the Vendor with regular progress updates.



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30 MAJOR TRANSACTION

30.1 Major transaction

If the transaction evidenced by this agreement constitutes a "major transaction" as defined in the Companies Act 1993 or a "material transaction" as defined in the NZX Listing Rules for the Purchaser, then this agreement is subject to approval by resolution of the shareholders of the Purchaser to the transaction contemplated by this agreement prior to the Settlement Date..

31 LIMITATION OF LIABILITY

31.1 Limitation of liability

The parties acknowledge that the Purchaser may nominate a syndicate or fund to acquire the Property (or an undivided share of the Property) (*Fund*). If the nominee is a custodian of the Fund then the custodian's liability will be in its capacity as the custodian of the Fund and not in its personal capacity and accordingly the parties agree, notwithstanding any other provision of this agreement, that the custodian and any supervisor of the Fund and holding company of the custodian will not be personally liable under this agreement and that the liability of each will be limited to any assets of the Fund from time to time held in its or their hands (as the case may be) that are available at law to meet that liability.

32 GENERAL

32.1 Lowest Price

For purposes of the financial arrangement rules in the Income Tax Act 2007, the parties agree that the Purchase Price:

- (a) is the lowest price they would have agreed for the Property, on the date this agreement was entered into, if payment would have been required in full at the time the first right in the contracted property was transferred; and
- (b) is the value of the Property.

32.2 Public announcements

Neither party will make any public announcements nor communicate the existence of this agreement or of its terms (including the Purchase Price) to any third party, other than:

- (a) its legal advisors, consultants and financiers who have a "need to know" in relation to this agreement;
- (b) where necessary, to comply with my applicable law or the requirements of any regulatory body or its obligations under this agreement; and
- (c) where necessary in connection with any capital raising,

without the prior written approval of the other party to this agreement.

32.3 Purchaser relies on own judgement

The Purchaser acknowledges that the Purchaser has entered into this agreement in reliance on the Purchaser's own judgement and, apart from the Vendor's express warranties or representations set out in writing in this agreement, not in reliance on any warranties or representations made by or on behalf of the Vendor.

32.4 Entire agreement

This agreement constitutes the entire understanding and agreement of the parties relating to this agreement, and supersedes and extinguishes all prior agreements.



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32.5 Amendments

No amendment to this agreement will be effective unless it is in writing and signed by, or on behalf of, the Vendor and the Purchaser.

32.6 Partial invalidity

The illegality, invalidity or unenforceability of a provision of this agreement under any law will not affect the legality, validity or enforceability of that provision under any other law, or the legality, validity or enforceability of any other provision.

32.7 Counterparts and facsimile execution

This agreement may be executed in any number of counterparts, all of which will together constitute one and the same instrument, and the Vendor and the Purchaser may execute this agreement by signing any such counterpart. The Vendor and the Purchaser agree that a binding contract will also be constituted between them by the following procedure:

- (a) The Purchaser may execute an original of this agreement, in duplicate, and transmit a copy to the Vendor by facsimile;
- (b) The Vendor will execute the facsimile copy transmitted by the Purchaser and will transmit the executed copy to the Purchaser by facsimile;
- (c) Although a binding contract will already exist, the Purchaser will forward to the Vendor the original copy of the agreement, in duplicate, bearing the original signature of the Purchaser for execution by the Vendor;
- (d) Upon receipt of the duplicate original agreements, the Vendor will execute those copies, and will then return one of the copies to the Purchaser.

32.8 Further terms to prevail over general terms

If there is any conflict between these Further Terms of Sale and the General Terms of Sale, then these Further Terms of Sale will prevail.

32.9 Further assurances

The Vendor and the Purchaser will each sign, execute and do all deeds, schedules, acts, documents and things as may be reasonably required by the other to effectively carry out, and give effect to, the terms and intentions of this agreement.



SCHEDULE

Handwritten signatures in blue ink, including a large stylized signature and a smaller one.

19 October 2018

Castle Rock Properties Limited
c/- Michael Wolfe
Lane Neave
141 Cambridge Terrace
Christchurch 8013

FROM: Michael Cardy
DIRECT: +64 9 357 9628
EMAIL: michael.cardy@chapmantripp.com
PARTNER: Mark Nicholson
REF: 100267287/6662317.1

By email: michael.wolfe@laneneave.co.nz

Dear Michael

AUGUSTA INDUSTRIAL FUND NO.1 LIMITED (PURCHASER) – CASTLE ROCK PROPERTIES LIMITED (VENDOR) – CASTLE ROCK BUSINESS PARK AT MARY MULLER DRIVE, HILLSBOROUGH, CHRISTCHURCH (PROPERTY) - VARIATION OF AGREEMENT

- 1 We refer to the sale and purchase agreement dated 17 August 2018 in respect of the above Property (the *Agreement*).
- 2 We understand that the Vendor and the Purchaser have agreed to the following variations to the Agreement:
 - 2.1 Clause 19.1 of the Agreement (relating to the Conditions) is varied so that the agreement is conditional on the Purchaser completing a due diligence exercise and notifying the Vendor in writing before 4pm on 29 November 2018 that the Purchaser is satisfied that the Property is suitable for the Purchaser's requirements.
 - 2.2 The deposit is increased to \$5,375,809.50 (five million three hundred and seventy-five thousand, eight hundred and nine dollars, and fifty cents) ('Deposit').
 - 2.3 Clause 21 of the Agreement (relating to the Deposit) is deleted and replaced with the following:
 - 21.1 The Purchaser must pay the Deposit to the Vendor's solicitor following satisfaction or waiver of the condition in clause 19.1.
 - 21.2 Half of the Deposit (being \$2,687,904.75) may be disbursed to the Vendor immediately following payment of the Deposit by the Purchaser.
 - 21.3 The balance of the Deposit (being \$2,687,904.75) must be held by the Vendor's solicitor in an interest bearing trust account until the date that settlement is effected or this agreement is otherwise cancelled in accordance with its terms. Interest on the balance of the Deposit being held (less withholding tax, of applicable, and bank commission) will

accrue to the party to whom the deposit is disbursed in accordance with this agreement.

21.4 If this agreement is lawfully cancelled by either party for reasons other than the default of the Purchaser then:

- (a) All money paid under this agreement (whether disbursed to the Vendor or held by the Vendor's solicitor in an interest bearing trust account), plus interest (less withholding tax, if applicable, and bank commission) will be paid in full to the Purchaser and this agreement will be of no further force or effect; and
- (b) The Purchaser will have no claim against the Vendor for any costs, damages or compensation of any nature whatsoever arising out of this agreement or its cancellation.

2.4 The Settlement Date is amended to 28 March 2019.

3 Please confirm your client's agreement to the variations set out in this letter by signing and returning a copy of it to us.

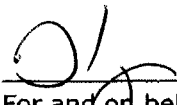
Yours faithfully



Michael Cardy
SOLICITOR

DIRECT: +64 9 357 9628
EMAIL: michael.cardy@chapmantripp.com

We confirm our acceptance of the above terms:


For and on behalf of Castle Rock Properties Limited - signed by Dean Andrew Seymour as solicitor and duly authorised agent of Castle Rock Properties Limited
Date: 19 October 2018

7 December 2018

Castle Rock Properties Limited
c/- Michael Wolfe
Lane Neave
141 Cambridge Terrace
Christchurch 8013

FROM: Michael Cardy
DIRECT: +64 9 357 9628
EMAIL: michael.cardy@chapmantripp.com
PARTNER: Mark Nicholson
REF: 100267287/6759074.1

By email: michael.wolfe@laneneave.co.nz

Dear Michael

**AUGUSTA INDUSTRIAL FUND NO.1 LIMITED AND/OR NOMINEE (PURCHASER) –
CASTLE ROCK PROPERTIES LIMITED (VENDOR) – CASTLE ROCK BUSINESS PARK
AT MARY MULLER DRIVE, HILLSBOROUGH, CHRISTCHURCH (PROPERTY) –
SECOND VARIATION OF AGREEMENT**

- 1 We refer to the sale and purchase agreement dated 17 August 2018 in respect of the above Property as varied by letter of variation dated 19 October 2018 (the *Agreement*).
- 2 We understand that the Vendor and the Purchaser have agreed to the following further variations to the Agreement:
 - 2.1 Clause 19.1 of the Agreement (relating to the Conditions) is varied so that the agreement is conditional on the Purchaser completing a due diligence exercise and notifying the Vendor in writing before 4pm on 7 December 2018 that the Purchaser is satisfied that the Property is suitable for the Purchaser's requirements.
 - 2.2 A new clause 33 relating to Vendor's Works is added to the Agreement as follows:
 - 33.1 The Vendor must carry out and lawfully complete all of the following works and attendances prior to and as a requirement of settlement (the *Vendor's Works*):
 - 33.1.1 Complete all works and comply with all conditions associated with RMA/2018/1850 relating to the alterations to 10A Chapmans Road;
 - 33.1.2 Complete all works and comply with all conditions associated with BCN/2018/2001 exemption relating to alterations to 10A Chapmans Road. This includes provision of PS3's, PS4's to the Purchaser and obtaining a revised compliance schedule upon completion of the works;



- 33.1.3 Reinststate the vacant tenancy to a condition suitable for occupation by potential tenants with full operation of all services (including HVAC, lighting, electrical and data);
- 33.1.4 Complete all works and comply with all conditions associated with BCN/2018/6118 and BCN/2018/5531 exemptions relating to alterations to 4 Mary Muller Drive (being the Macpac building). This includes provision of PS3's, PS4's to the Purchaser and obtaining a revised compliance schedule upon completion of the works;
- 33.1.5 Complete all works and comply with all conditions associated with BCN/2018/2167 exemption relating to alterations to 6 Mary Muller Drive (being the Kiwi Labels building). This includes provision of PS3's and PS4's to the Purchaser upon completion of the works;
- 33.1.6 In relation to the works required to be undertaken at 17 Mary Muller Drive as identified in Schedule 1:
- 33.1.6.1 Design the upgrade works required to bring the building (being the Tyco Safety building) up to 67% of the new building standard;
 - 33.1.6.2 Provide the design of the upgrade works to the Purchaser's engineer for approval, such approval not to be unreasonably withheld;
 - 33.1.6.3 Obtain building consent or a building consent exemption for the upgrade works;
 - 33.1.6.4 Complete the upgrade works in accordance with the approved design and the building consent or building consent exemption;
 - 33.1.6.5 Provide to the Purchaser PS3's and PS4's upon completion of the works;
- 33.1.7 At the Vendor's option, either:
- 33.1.7.1 Provide a fire engineer's report for 15 Mary Muller Drive (being the Nood Trading and TSB Living building) confirming compliance with the New Zealand Building Code in relation to the access control system attached to the

shared toilet facilities (which is not noted on the compliance schedule), and undertake any required alterations to ensure that the system complies with the NZ Building Code; or

33.1.7.2 the Vendor can vary the Nood Trading and TSB Living leases to provide that the currently shared toilet facilities are for exclusive use by Nood, and confirm compliance with NZ Building Code, together with provision of a base build fire report confirming that all required egress paths are provided once access is shut off;

33.1.8 In relation to the works required to be undertaken at 4 Mary Muller Drive (Macpac Building), 6 Mary Muller Drive (Kiwi Labels Building), 8 Mary Muller Drive (Contec Group Building), 12 Mary Muller Drive (Xtend-Life Building) and 15 Mary Muller Drive (Nood/TSB Building) as identified in Schedule 1:

33.1.8.1 Complete the design of the works required to be undertaken and provide the relevant PS1's in each case;

33.1.8.2 Provide the design of the works and the PS1 to the Purchaser's engineer for approval, such approval not to be unreasonably withheld;

33.1.8.3 Obtain building consent or a building consent exemption for the works;

33.1.8.4 Complete the works in accordance with the approved design and the building consent or building consent exemption;

33.1.8.5 Provide to the Purchaser PS3's and PS4's upon completion of the works;

33.2 The Vendor will:

33.2.1 Complete all works in a good and tradesman like manner;


33.2.2 Provide to the Purchaser copies of all as-built plans and specifications immediately following completion of the Vendor's Works; and

- 33.2.3 Take out a comprehensive contract works insurance policy in relation to the Vendor's Works and the Macpac Works with the Purchaser noted as an interested party and maintain that policy until all works have been completed.
- 33.3 For the avoidance of any doubt, clauses 25.2 and 25.3 (relating to Guarantees and Warranties) apply to the works required to be completed by the Vendor in accordance with clause 33.
- 33.4 In the event that the Vendor has not fully discharged all of its liability under clauses 33.1 and 33.2 prior to settlement, clause 23.2 (relating to the Retention) will apply to the Vendor's Works, the intention of the parties being that clause 23.2 applies to all liability of the Vendor pursuant to clauses 23.1, 33.1 and 33.2.
- 33.5 Where any dispute arises between the engineers engaged by the Vendor and the Purchaser in respect of the design of the Vendor's Works or where they fail to agree the scope of or specification for the Vendor's Works then that dispute shall be referred for resolution to a third engineer appointed by the engineers for the parties (and failing agreement as to that appointment, by the President of the New Zealand Law Society or his nominee) whose decision shall be final and binding.
- 33.6 The parties acknowledge and agree that it will always be sufficient for the design and construction of the Vendor's Works that they comply with the minimum standards applicable for such works under the New Zealand Building Code.
- 2.3 A new clause 34 relating to Contamination Monitoring is added to the Agreement as follows:
- 34.1 The Vendor shall endeavour to ascertain from Environment Canterbury whether there are any extant surface water monitoring obligations under consent notice 6209162.8 (*Consent Notice*) and will advise the Purchaser accordingly.
- 34.2 The Vendor agrees at its cost to arrange for AECOM to undertake monitoring of surface water in accordance with the requirements of the Consent Notice and to file a report containing the monitoring results with Environment Canterbury prior to the Settlement Date. The filing of the report shall satisfy the requirements of the Vendor under the provisions of this clause 34. The Purchaser acknowledges that any future monitoring and reporting shall be the responsibility of the Purchaser.
- 2.4 A new clause 35 relating to Outstanding CCCs is added to the Agreement as follows:

- 35.1 The Vendor will use reasonable endeavours to obtain and provide to the Purchaser a code compliance certificate for BCN/2008/6144 prior to settlement.
- 35.2 The Vendor will use reasonable endeavours to procure Tyco New Zealand Limited (in relation to the Tyco Safety lease) to provide prior to settlement either:
 - 35.2.1 a Code Compliance Certificate for BCN2005/10030 if works were completed pursuant to those consents; or
 - 35.2.2 written confirmation from Christchurch City Council that BCN2005/10030 has been withdrawn or cancelled.
- 35.3 The Vendor will use reasonable endeavours to procure Asaleo Care New Zealand Limited (SCA) to provide prior to settlement either:
 - 35.3.1 a Code Compliance Certificate for BCN/2009/224 and BCN/2011/3652 if works were completed pursuant to those consents; or
 - 35.3.2 written confirmation from Christchurch City Council that BCN/2009/224 and BCN/2011/3652 have been withdrawn or cancelled.
- 35.4 If the Vendor has not fully discharged all of its obligations contained in clauses 35.1 and 35.2 and 35.3 prior to settlement, the Vendor will not be released from its obligations on settlement and must continue to comply with its obligations in these clauses until such time as the obligations in these clauses have been complied with.
- 35.5 Prior to the Vendor being wound up, the Vendor must procure any entity that it appoints to provide the underwrite referred to in clause 28.1 to accept a transfer or assignment of the Vendor's liability to the Purchaser pursuant to clauses 35.1 to 35.4 (inclusive).

21 Please confirm your client's agreement to the variations set out in this letter by signing and returning a copy of it to us.

Yours faithfully



Michael Cardy

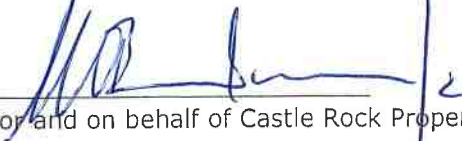
SOLICITOR

DIRECT: +64 9 357 9628

EMAIL: michael.cardy@chapmantripp.com



We confirm our acceptance of the above terms:


For and on behalf of Castle Rock Properties Limited

Date:

SCHEDULE 1

VENDOR SEISMIC UPGRADE WORKS FOR MARY MULLER DRIVE

#4 Mary Muller Drive

- Install folded 10mm angle brackets with 2-M12 Spatec bolts each leg between tilt slab panels P1 to P6 incl. and P29 to P31 incl. and floor as per Details SK1.
- Grout behind end-plate fixing to encasement on panel 18/19
- Epoxy fill crack around lap-plate on panel 23/24
- Repair damage to panel connection and install angle bracket to panel 27
- Paint exterior face of tilt slab panels with Resene X-300E to 800um DFT
- Epoxy inject cracks greater than 0.4mm wide on the exterior face of tilt slab panels

#6 Mary Muller Drive

- Paint exterior face of tilt slab panels with Resene X-300E to 800um DFT
- Epoxy inject cracks greater than 0.4mm wide on the exterior face of tilt slab panels
- Remove redundant cleat as shown on E1293/SK1 and at Grids 2/C and epoxy inject cracks adjacent to cleats
- Strengthen lower panel connection to column in south wall as denoted on E1293/SK1
- Isolated panel damage and spalling to the Southern wall is to be inspected and repaired for durability.
- Undertake remedial repair to slumped civil works in yard, defined scope for repair yet to be agreed.

#8 Mary Muller Drive

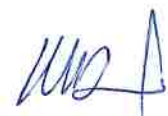
- Undertake remedial repair to slumped civil works in yard, defined scope for repair yet to be agreed.

#12 Mary Muller Drive

- Provide confirmation and specification of repairs undertaken to South wall of Xtend Life premises that were identified by SME but not specified or overseen by Engenium.

#15 Mary Muller Drive

- Install pairs of angle brackets (detail expected to be as for #4 MMD) between the side wall tilt slab panels P1, P10, P11, P12, P23 to P32 inclusive and the floor slab as shown on SC01.
- Paint exterior face of tilt slab panels in both the warehouse and annex with Resene X-300E to 800um DFT
- Epoxy inject cracks greater than 0.4mm wide on the exterior face of tilt slab panels
- Complete the design and detailing and install the roof bracing system that covers 2 pairs of bays and generally consists of the RB12 and RB20 Reidbrace system with 125x125x6mm and 150x150x6mm SHS struts as called up on S01 all with appropriate connections.



- Complete the design and detailing and install the wall bracing system that generally covers 2 pairs of bays and consists of the RB20 Reidbrace system with 150x150x6mm SHS struts as called up on S02 all with appropriate connections.
- Remove redundant damaged cleat/fitting on panel P1/P2
- Strengthen rafter connections to the 3 columns supporting the P2 to P5 panels between office and warehouse
- Strengthen office panel corner connections on grids K3 and K7
- Cut out door threshold/slab and re-pour on grid 1
- Design, detail and Install PFC transom to panels 2, 3, 4 and 5
- Demolish or make good all internal partitions
- Repair or replace ceiling grid and tiles
- Seismically brace ceiling and services
- Repair floor joints with grout fill, and grind flush any minor steps at floor joints
- Cracks in concrete panels at corner fixings are to be epoxy injected.
- Isolated panel damage and spalling to the southern wall (Grid A) is to be inspected and repaired for durability.
- A significant bulge in the Grid 1 wall sheeting is to be investigated and remedial works implemented if required.
- Undertake remedial repair to slumped civil works in yard, defined scope for repair yet to be agreed.

#17 Mary Muller Drive

- Upgrade to 67% NBS in accordance with the details provided in drawings E1319/S01 to S03.

