

Limited Partnership Agreement for Building A Graham Street Limited Partnership

AFM GP (Building A Graham Street) Limited (General
Partner)

AFM LP Limited (Initial Limited Partner)



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Date: 29 April 2016

PARTIES

AFM GP (Building A Graham Street) Limited (*General Partner*)

AFM LP Limited (*Initial Limited Partner*)

BACKGROUND

- A The limited partnership to be governed by this Agreement will be registered under the Act with the name Building A Graham Street Limited Partnership and with the General Partner as the initial general partner and the Initial Limited Partner as the initial limited partner.
- B The Limited Partnership is being established by the Manager in connection with an offer of interests (in the Limited Partnership) to the public.
- C The Limited Partnership will acquire the Property. Upon settlement of the Limited Partnership's acquisition of the Property, a replacement limited partnership agreement will amend and restate this agreement and new limited partners will be admitted to the Limited Partnership, on the basis of that replacement limited partnership agreement.

IT IS AGREED:

1 DEFINITIONS

1.1 Defined terms

In this Agreement, unless the context requires otherwise:

Act means the Limited Partnerships Act 2008;

Agreement means this limited partnership agreement, as amended from time to time;

Business means carrying out the business set out in clause 2.6;

Business Day means any day of the week other than Saturday, Sunday or a public holiday in Auckland;

Conflict of Interest means a conflict of interest between the General Partner or any of its related parties and the Limited Partnership or the Initial Limited Partner.

Governing Document means the governing document in respect of the Offer, intended to be entered into by (amongst others) the Manager and the LP;

GST means goods and services tax as defined under the Goods and Services Tax Act 1985;



LIMITED PARTNERSHIP AGREEMENT

Limited Partnership or LP means the limited partnership to be registered pursuant to, and governed by, the Act and this Agreement;

Manager means Augusta Funds Management Limited;

Offer means the offer of interests in the Limited Partnership to the public by the Manager under the Financial Markets Conduct Act 2013;

Partner or Partners means the General Partner and/or the Initial Limited Partner as the context may require;

Partnership Interest has the meaning set out in the Act;

Property means the land and buildings located at Building A, 2-4 Graham Street, Auckland; and

Registrar means the Registrar of Companies in New Zealand.

1.1 **Construction**

In the construction of this Agreement, unless the context requires otherwise:

Background and Schedules: the Background and Schedules form part of this Agreement;

Clauses and Schedules: references to clauses and schedules are to clauses and schedules of this Agreement;

Headings: headings appear as a matter of convenience and do not affect the construction of this Agreement;

Including: including and similar words do not imply any limitation;

Persons: a reference to a person includes a company, limited partnership, and also any body of persons, whether corporate or unincorporate and includes their representatives, executors and assigns;

Singular, Plurals and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations.

2 **LIMITED PARTNERSHIP**

2.1 **Commencement**

The Limited Partnership will commence upon the registration of the Limited Partnership with the Registrar.



2.2 Name

The name of the Limited Partnership will be Building A Graham Street Limited Partnership or, subject to section 35 of the Act, such other name as the General Partner from time to time determines.

2.3 Registered Office

The registered office of the Limited Partnership is Level 2, 4 Viaduct Harbour Avenue, Auckland, or subject to section 68(3) of the Act, such other place in New Zealand as the General Partner from time to time determines.

2.4 Address for Service

The address for service of the Limited Partnership is Level 2, 4 Viaduct Harbour Avenue, Auckland, or subject to section 71(3) of the Act, such other place as the General Partner from time to time determines.

2.5 Compliance with the Law

The General Partner must procure that particulars of any relevant changes in the composition, terms or details of the Limited Partnership are notified to the Registrar in accordance with the Act and/or the requirements of the Registrar. The General Partner must procure that the requirements of the Act and of any other legislation or regulations applicable to the Limited Partnership are duly satisfied.

2.6 Business

The business of the Limited Partnership is to undertake any activity necessary or desirable in connection with the acquisition of the Property and the Offer, including (without limitation) entering into the Governing Document.

2.7 Commencement and Duration

Prior to the registration of the Limited Partnership the parties agree that this Agreement with the exception of this clause is of no legal effect and there will be no partnership between any or all of them. The Initial Limited Partner is to be a limited partner in the Limited Partnership as from the date that the Limited Partnership is registered with the Registrar or such later date as the Initial Limited Partner is registered with the Registrar as a limited partner. The Limited Partnership will continue in accordance with the Act until it is removed from the register by the Registrar at which point there will not be a partnership between any or all of the Partners.

3 COMMITTED CAPITAL

- (a) The committed capital of the Initial Limited Partner shall be \$1, which the Initial Limited Partner shall contribute to the Limited Partnership on the date of this Agreement.
- (b) After the date of this Agreement the committed capital of the Limited Partnership may be increased as agreed by the General Partner and the Initial Limited Partner from time to time.



4 RIGHTS AND DUTIES OF THE PARTNERS

4.1 Management

- (a) The General Partner has responsibility for the management and control of the business and affairs of the Limited Partnership, subject to the terms of this Agreement.
- (b) Subject to clauses 4.1(c), the General Partner may delegate its authority and powers given to it pursuant to the Agreement to such person or persons, and engage advisors or service providers to the Limited Partnership, as it may reasonably select and appoint.
- (c) The General Partner remains responsible and liable for the performance of its obligations under the Act and this Agreement. The General Partner is responsible for the acts or omissions of any delegate or service provider when fulfilling or exercising (or purporting to fulfil or exercise) powers or obligations of the General Partner, as if they were the acts of the General Partner.

4.2 Authority and Powers

Subject to the terms of this Agreement and the Governing Document, the General Partner will manage and administer the LP and the Property for the benefit of the Initial Limited Partner and any subsequent limited partners, notwithstanding any Conflict of Interest, generally with full and complete power of management.

4.3 Fees and Expenses

The Limited Partnership is to bear all fees, costs and expenses (including GST) associated with operating the Limited Partnership including reporting, regulatory, accounting and legal costs, audit and certification fees and the costs of the Limited Partnership's administration together with any legal and other professional costs (including the fees for reporting accountants) (including GST) relating to the evaluation, making or disposal of any investment, insofar as they are not recoverable from any other person. In addition, except as otherwise provided, all taxes, duties and all fees or other charges levied by any governmental agency against the Limited Partnership in connection with its activities is to be borne by the Limited Partnership.

4.4 Limited Partners

- (a) Notwithstanding any other provisions of this Agreement, the Initial Limited Partner must not take part in the management or control of the business and affairs of the Limited Partnership, and has no right or authority to act for the Limited Partnership or to take any part in or in any way to interfere in the conduct or management of the Limited Partnership or to vote on matters relating to the Limited Partnership except as expressly provided for in this Agreement and where that is not prohibited by the Act.
- (b) The Initial Limited Partner must on request promptly provide all information to the General Partner as may be reasonably necessary for the operation of the Limited Partnership including any registration, regulatory and taxation requirements.



4.5 Exclusion of fiduciary duties

- (a) Except as specifically outlined in this Agreement, no Partner owes fiduciary duties or any other duties at law or in equity to another Partner or the Limited Partnership, and the application of section 49 of the Act is excluded.
- (b) The General Partner may compete with the Business of the Limited Partnership.

4.6 Restriction on withdrawal and transfer

- (a) The Initial Limited Partner is not entitled to withdraw the capital contributed from the Limited Partnership until the termination of the Limited Partnership in accordance with clause 6 of this Agreement.
- (b) No Partner may assign, transfer or otherwise dispose of their Partnership Interest without the consent of all parties to this Agreement.

5 DISTRIBUTIONS

The Limited Partnership may make distributions to the Initial Limited Partner as and when determined by the General Partner however the General Partner must not cause the Limited Partnership to make any distribution pursuant to this clause 5:

- (a) unless there is cash available for such distribution;
- (b) unless the Limited Partnership and the General Partner will comply with the provisions of the Act relating to such distributions; or
- (c) which, in the reasonable opinion of the General Partner, would or might leave the Limited Partnership with insufficient funds to meet any present or future contemplated obligations, liabilities or contingencies including obligations to the General Partner or otherwise to protect the interests of the Limited Partners.

6 TERMINATION AND LIQUIDATION

6.1 Termination

Subject to clause 6.2, the Limited Partnership and this Agreement will terminate on the occurrence of any of the following events:

- (a) by agreement of the General Partner and Initial Limited Partner to that effect; or
- (b) any event otherwise specified as a terminating event in the Act, other than section 86(1)(b) of the Act, which is excluded.

6.2 Liquidation of Interests of Partners

On termination of the Agreement or on the occurrence of a terminating event the LP shall be wound up and the assets of the LP distributed to the Initial Limited Partner.



7 MEETINGS OF PARTNERS

7.1 Procedure

- (a) On the General Partner or the Initial Limited Partner requiring a meeting the General Partner is to call a meeting of the Limited Partners. Notice of such meeting is to be given to the Initial Limited Partner by the General Partner within 10 Business Days of receipt by the General Partner of such request and such meeting will be held within 60 Business Days of the date on which such notice is received by the Initial Limited Partner but not earlier than 10 Business Days from that date.
- (b) Each notice of a meeting of the Limited Partners must state the time and the place at which such meeting will be held (such time and place, to be reasonably selected by the General Partner and such meeting may be held by telephone, internet or any other reasonable means) and must state briefly the purpose of and the business to be transacted at the meeting.

8 MISCELLANEOUS

8.1 Indemnification of the General Partner

- (a) To the extent allowed by law the General Partner, and its officers (including managers and directors), partners, contractors (who are acting in a similar manner as employees but who are not treated as employees for relevant employment legislation purposes), employees and personnel (*Indemnified Persons*):
 - (i) are not liable, and will have no responsibility, to any current or future Partner or any other person for any loss or damage incurred, sustained or suffered by the Limited Partnership however arising in connection with or as a result of the services provided by any of them pursuant to this Agreement; and
 - (ii) are, on demand, and subject to any limitation in this Agreement indemnified out of the assets of the Limited Partnership against any and all claims, liabilities (including liabilities in contract or tort), costs or expenses incurred by it performing any of its duties or exercising any of its powers in relation to the Limited Partnership or attempting to do so;

except that:

- (iii) the Indemnified Persons will be liable and will not be indemnified with respect to any matter or amount to the extent it results from an Indemnified Person's gross negligence, willful dishonesty, fraud, willful misconduct, willful illegal act or material breach of an obligation under this Agreement.
- (b) In particular, but without prejudice to subclause (a), the General Partner is on demand, indemnified against any tax liability (including withholding taxes) in respect of tax on income or capital gains paid or allocated to the Initial Limited Partner, such indemnity to be satisfied in the first instance by the Initial Limited Partner but, if not so satisfied, out of the assets of the Limited Partnership, in which event the Limited Partnership will be subrogated to the rights of the General Partner against the Initial Limited Partner. The Limited Partnership may set off all amounts satisfied out of the assets of the Limited Partnership against any distribution to be made to that Limited Partner.



- (c) The General Partner and the Indemnified Persons are not liable to the Limited Partnership or the Initial Limited Partner for and will be indemnified under clause 8.1(a) against the negligence, dishonesty, wilful default or bad faith of any agent, service provider or delegate, provided that the agent, service provider or delegate was selected and appointed applying reasonable care, is reliable and competent in relation to the matters concerned and the General Partner continues to monitor to the extent reasonable in the circumstances, the acts or omissions of the agent, service provider or delegate.

8.2 **Third Party Rights**

The Partners and the Limited Partnership acknowledge that the provisions of that clause 8.1 provide a benefit for the relevant third parties as set out in this clause for the purposes of the Contracts (Privity) Act 1982.

8.3 **Admission and Variation of Limited Partnership Agreement**

- (a) This Agreement may be amended and/or replaced by the agreement of the parties.
- (b) New Partners may only be admitted by variation or replacement of this Agreement. It is the parties intention that this Agreement be replaced (and new limited partners admitted) upon settlement of the acquisition of the Property by the LP.

8.4 **Governing Law**

- (a) This Agreement and the rights of the parties are governed by and construed in accordance with the laws of New Zealand.
- (b) Each of the parties irrevocably agrees that the courts of New Zealand have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

8.5 **Application of the Act**

Where this Agreement is inconsistent with the Act and such inconsistency is not permitted or contemplated by the Act, the terms of the Act apply.

8.6 **Execution in Counterpart**

This Agreement may be executed in counterparts (including by facsimile or PDF transmission) each of which is deemed to be an original.



LIMITED PARTNERSHIP AGREEMENT

EXECUTION

Signed for and on behalf of

AFM GP (Building A Graham Street)

Limited by:

Director

in the presence of:

Name:

Luke Jared Fitzgibbon
Solicitor
Auckland

Occupation:

Address:

Signed for and on behalf of

AFM LP Limited by:

Director

in the presence of:

Name:

Luke Jared Fitzgibbon
Solicitor
Auckland

Occupation:

Address: