

Russell Weir

From: Glen Heath <Glen@manson.co.nz>
Sent: Friday, 15 April 2016 7:50 a.m.
To: Christopher Green
Cc: 'Phil Hinton'; 'Luke Fitzgibbon'; Brooke Finch
Subject: RE: 4 Graham Street - Capex deed and Deed of Assignment of Warranties and Guarantees

Thanks Chris

We confirm our agreement to:

1. The revised Deed of Warranty.
2. The revised Deed of Assignment, subject to the reinstatement of clause 3.2 – this is included in the form agreed as attached to the S&P agreement, and was acceptable to Augusta at Spark. Once sold, Mansons no longer controls the building and the purchaser is the one who has that control and should be under that obligation to preserve the warranties. While Mansons has some protection against this in clause 2.5(b)(ii) of the Deed of Warranty, the two provisions are consistent and should remain accordingly.

Regards

Glen Heath BCom/LLB
Chief Executive Officer

mansons
T C L M L I M I T E D

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Parnell, Auckland 1052

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From: Christopher Green [<mailto:Christopher.Green@chapmantripp.com>]
Sent: Thursday, 14 April 2016 5:20 p.m.
To: Glen Heath
Cc: 'Phil Hinton'; 'Luke Fitzgibbon'; Brooke Finch
Subject: 4 Graham Street - Capex deed and Deed of Assignment of Warranties and Guarantees

Hi Glen,

Further to our telephone call this afternoon, please see **attached** revised drafts of the Capex Deed and Deed of Assignment of Warranties and Guarantees.

In each document, I have accepted all of the recent Mansons changes and marked up my proposed further amendments (please be aware that these edits have not yet been approved by Augusta).

I will send you updated drafts of the other documents we discussed during our call as soon as possible this afternoon.

Regards,
Chris

CHRIS GREEN
SENIOR ASSOCIATE

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Dated

2016

Mansons Properties (151 Victoria) Limited

Mansons TCLM Limited

[Augusta entity]

**Deed of Warranty in respect of Building A,
4 Graham Street, Auckland**

This deed is dated the day of 2016

Parties

- 1 **Mansons Properties (151 Victoria) Limited** (registered company number 4403798) ("Mansons")
- 2 **Mansons TCLM Limited** (registered company number 1851464) ("TCLM").
- 3 **[Augusta entity]** (registered company number [company number]) ("**Purchaser**").

Background

- A. Mansons is the current registered proprietor of the Property and was the developer of the Development.
- B. TCLM was engaged by Mansons to design and construct the Development.
- C. Mansons and the Purchaser are parties to the Agreement.
- D. Mansons TCLM enters into this Deed in favour of the Purchaser pursuant to clause 23.2 of the Agreement.

Operative Provisions

1 **Definitions and Interpretation**

1.1 **Definitions**

In this Agreement unless the context otherwise requires or it is expressly stated otherwise:

- (a) "**Agreement**" means the agreement for sale and purchase dated 16 February 2016 as varied by a deed of variation dated 31 March 2016 between Mansons as vendor and the Purchaser as purchaser in respect of the Property.
- (b) "**Capital Expenditure**" means expenditure which:
 - (i) is necessary to replace or renew any element of the buildings comprised in either the Property or the Development which cannot reasonably be repaired and which requires replacement or renewal in order to properly perform its intended function to a reasonable standard (but excluding any element of the building(s) comprised in the Property which requires replacement or renewal due to: damage caused by a Damaging Event; improper use of the relevant part of the Development by the Purchaser, any tenant of the Development, or any other person; or failure by the Purchaser to properly maintain the relevant building element);
 - (ii) would not be recoverable as operating expenses pursuant to the provisions of the leases in respect of the Development that exist at the date of this Deed.
- (c) "**Damaging Event**" means any:
 - (i) subsidence, shrinkage, contraction or expansion which a reasonable contractor or consultant could not reasonably be expected to have made provision for; and
 - (ii) any damage suffered or incurred as a result of any accident, Act of God or insurable risk occurring after 16 February 2016.

- (d) **"Deed"** means this deed together with the attached schedule, and such other documents as this Deed expressly provides as being intended to comprise part of this Deed and any amendments or variations to this Deed from time to time agreed to in writing and signed by the parties.
- (e) **"Deed of Assignment of Warranties and Guarantees"** means the Deed of Assignment and Guarantees in respect of the Property between Mansons and the Purchaser and dated on or about the same date as this Deed.
- (f) **"Defects"** means any defects in the design, materials, or workmanship of any part of the buildings, fixtures, or fittings constructed or installed by Mansons TCLM (including its contractors and subcontractors) in the Development, but excluding any damage or deficiency attributable to matters beyond the reasonable control of Mansons TCLM, including a Damaging Event; improper use of the relevant part of the Development by the Purchaser, any tenant of the Development or any other person; or failure by the Purchaser to properly maintain the relevant part of the Development.
- (g) **"Development"** is the office complex located on the Land.
- (h) **"Land"** means the land situated at 4 Graham Street, Auckland City, comprised in computer freehold registers 708752 to 708754 (inclusive).
- (i) **"Mansons TCLM"** means Mansons and TCLM.
- (j) **"Property"** means Lot 3 and an undivided share in Lot 1 on Deposited Plan 490577, being computer freehold register 708753, known as Building A, 4 Graham Street, Auckland City.
- (k) **"Term"** means the term commencing on the date of this Deed and expiring on 15 February 2026.

1.2 Interpretation

In this Deed unless the context otherwise requires or it is expressly stated otherwise:

- (a) All monetary references are to New Zealand dollars.
- (b) Words denoting a person shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, estate, agency of state, municipal authority, government or any statutory body in each case whether or not having a separate legal identity.
- (c) Any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally.
- (d) References to clauses and schedules are references to clauses and schedules in this Agreement.
- (e) Headings are included for reference only and shall not affect the interpretation of this Agreement.
- (f) Any reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.
- (g) Any party shall include that party's executors, administrators, successors and, where permitted, assigns and, where not repugnant to the context, includes the employees,

agents, licensees, invitees, contractors and any other person under the control or direction of that party.

1.3 Severability

If any provision or part of this Deed is illegal, unenforceable, or invalid, then such provision or part shall be deemed to be removed from and not form part of this Deed, but the rest of this Deed shall not be affected and shall continue in full force and effect.

1.4 Conflict

If there is a conflict or inconsistency between the contents of the Schedules and the provisions of this Deed the provisions of this Deed shall prevail.

2 Defects Warranty

2.1 Subject to clause 2.5 below, Mansons TCLM covenants in favour of the Purchaser that it will at Mansons TCLM's cost promptly:

- (a) Repair or remedy any Defects that occur or become apparent to the Purchaser and are notified to Mansons TCLM in writing during the Term;
- (b) Make good any damage to buildings or structures caused by any such Defect or repairs or replacements made by Mansons TCLM to remedy any such Defect.

2.2 All rectification of Defects will be carried out by Mansons TCLM in a good and workmanlike manner, and to the satisfaction of the Purchaser (acting reasonably). If any building consent or other statutory approval or consent is required for the rectification work, then Mansons TCLM will obtain such consent or approval at its cost, and will obtain any code compliance certificate or other certification of completion of the relevant works if applicable.

2.3 The Purchaser shall procure that Mansons TCLM is provided with reasonable access to the relevant parts of the Development to enable Mansons TCLM to perform its obligations in clause 2, on terms to be agreed between the Purchaser and Mansons TCLM (each acting reasonably) according to each particular Defect that may arise.

2.4 In effecting any repairs to Defects as set out in clause 2, Mansons TCLM will use its best endeavours to minimise any disturbance caused to the occupation and use of the Development by tenants of the Development.

2.5 If a Defect arises which is covered by any then-current guarantee or warranty assigned to the Purchaser pursuant to the Deed of Assignment of Warranties and Guarantees, then:

- (a) the Purchaser shall, before requesting Mansons TCLM to repair or remedy the same, take reasonable steps to procure the repair or remedy of the Defect by third party that supplied the relevant guarantee or warranty (Mansons TCLM acknowledges and agrees that the taking of reasonable steps will not extend to commencing litigation or arbitration);
- (b) Mansons TCLM will be released from any claim or liability to the Purchaser relating to a Defect to the extent that:
 - (i) the Defect is repaired or remedied by the relevant third party; or
 - (ii) the ability to require the third party to repair or remedy the Defect is prejudiced by any act or omission of the Purchaser.

- (c) if despite the Purchaser having taken reasonable steps in accordance with sub-clause (a) above the relevant third party fails to repair or remedy the relevant Defect within a reasonable time, then:
- (i) the Purchaser may require Mansons TCLM to repair or remedy the Defect (at the cost of Mansons TCLM); and
 - (ii) if the Purchaser so requires Mansons TCLM to repair or remedy the Defect, the Purchaser shall (in respect of the particular Defect only) assign the benefit of the relevant warranty or guarantee provided by the applicable third party to Mansons TCLM (for the purpose of enabling Mansons TCLM to enforce the relevant warranty or guarantee against the applicable third party) so that Mansons TCLM will be entitled to the benefit of any compensation recovered from that third party in respect of the Defect.

3 Capital expenditure warranty

- 3.1** Mansons TCLM warrants to the Purchaser that no Capital Expenditure will be required to be incurred by the Purchaser during the Term.

4 General

4.1 No assignment

None of the parties to this Deed shall be entitled to assign their interests under this Deed save that the Purchaser shall be entitled to assign the benefit of this Deed to its successors in title in respect of the Property.

3.2 Notices

- (a) Any notice permitted or required to be given under this Deed shall be in writing and shall either be:

- (i) Delivered.
- (ii) Sent by facsimile transmission; or
- (iii) Sent by email;

to the addressee at the addressee's last known address, facsimile number, or email as specified below or subsequently advised in writing.

- (b) The parties' addresses and facsimile numbers at the date of this Deed are:

Mansons TCLM

Name: Mansons TCLM Limited
Address: 72 St Georges Bay Road
Parnell
Auckland

Attention: Glen Heath
Email: glen@manson.co.nz

Purchaser

Name: [Augusta entity]
Address: [insert]
[insert]

Attention: [insert]
Email: [insert]

- (c) Any notice required to be given under this Deed or implied by statute will be valid and effectual if given under the hand of the party, the party's solicitor or any authorised representative for the time being of the party and if the party is a corporation by its general manager, company secretary or a director.
- (d) Any notice sent by facsimile transmission during a working day between 8 am and 5 pm shall be deemed to be received upon completion of an error free confirmed transmission and in every other case shall be deemed to be received at 8 am on the next working day after such confirmation.
- (e) Any notice sent by email during a working day between 8 am and 5 pm shall be deemed to be received when acknowledged by the recipient by return email (excluding an automatically generated email) or other writing, and in every other case shall be deemed to be received at 8 am on the next working day after such acknowledgement.
- (f) If a party changes address or facsimile number, the address and facsimile number specified shall continue to be the address and facsimile number of that party for the purposes of this Deed unless the party sending the notice knows of the change of address or facsimile number or until that other party gives written notice to the party sending the notice giving full particulars of the changed address or facsimile number.
- (g) This Deed may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same Deed. A party may enter into this Deed by signing a counterpart copy and sending it to any other party, including by facsimile or email.

EXECUTION

**Signed on behalf of
Mansons Properties (151 Victoria)
Limited by:**

Director's/attorney's name

Director's/attorney's signature

in the presence of:

Witness Name.....

Witness Occupation.....

Witness Address.....

Witness Signature.....

**Signed on behalf of
Mansons TCLM Limited by:**

Director's/attorney's name

Director's/attorney's signature

in the presence of:

Witness Name.....

Witness Occupation.....

Witness Address.....

Witness Signature.....

**Signed by/on behalf of
[Augusta entity] by:**

Name and designation

Signature

Name and designation

Signature

in the presence of:

Witness Name.....

Witness Occupation.....

Witness Address.....

Witness Signature.....