

Deed of Access, Indemnity and Insurance

relating to

Investore Property Limited

Date 10 June 2016

BELL GULLY

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This **Deed of Access, Indemnity and Insurance** is made by **Investore Property Limited**

on 10 June 2016

Introduction

- A. The Company wishes to indemnify, and effect and maintain insurance for, each Indemnified Person to the maximum extent permitted by its constitution, the Companies Act 1993 and any other applicable laws, subject to the terms and conditions set out in this Deed.
- B. The Company also wishes to provide each Indemnified Person with access to documents of the Company, both during the time the Indemnified Person holds office as a director of the Company or a Subsidiary of a Company and, in certain circumstances, after the Indemnified Person ceases to hold office as a director.
- C. The Company wishes to record in this Deed the terms on which the indemnity, insurance and the right to access documents will be provided or effected (as the case may be) to each Indemnified Person.

It is agreed

1. Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Board means the board of directors of the Company;

Board Documents means any board or committee paper, or minutes (including any document tabled at a meeting) provided by the Company or a Subsidiary of the Company to the board of directors of the Company or the Subsidiary (as the case may be) or to a board committee while the relevant Indemnified Person holds office as a director (whether or not the Indemnified Person is a member of the committee concerned);

Business Day means a day on which all registered banks are open for business generally in Auckland;

Claim means any actual or threatened action, proceeding, claim or demand;

Company means Investore Property Limited;

Deed means this deed of access, indemnity and insurance;

Final Determination Date means the earlier of:

- (a) the date on which the time for any appeal or review of any Judgment has passed; and
- (b) the date all rights of appeal in relation to any Judgment have been exhausted;

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of law;

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

Indemnified Person means each person who, at or after the date of this Deed, holds the office of director of the Company or a Subsidiary of the Company;

indemnify includes relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a similar meaning;

Judgment means a final judgment or order given or made by a Court in any civil or criminal proceedings;

Related Company means a "related company" as defined in section 2(3) of the Companies Act 1993, read as if the expression "company" in that section included any body corporate wherever incorporated or established; and

Subsidiary means a "subsidiary" as defined in section 5 of the Companies Act 1993.

1.2 General references

In this Deed, unless the context otherwise requires:

- (a) a reference to a clause is a reference to a clause of this Deed;
- (b) a reference to this Deed or another instrument includes any variation or replacement of either of them;
- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Deed);
- (d) the singular includes the plural and vice versa;
- (e) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (g) a reference to \$ or dollars is a reference to the lawful currency of New Zealand; and
- (h) words importing one gender include the other genders.

1.3 Headings

Ignore headings in construing this Deed.

2. Indemnity for costs in proceedings

Subject to clauses 6 and 7 and to compliance by the relevant Indemnified Person with any commitments given by that Indemnified Person in accordance with clauses 6 and 11, the Company will indemnify each Indemnified Person against any costs (inclusive of GST, if applicable) which the Indemnified Person incurs in any proceeding:

- (a) that relates to liability for any act or omission of the Indemnified Person in the Indemnified Person's capacity as a director of the Company, or a director of a Subsidiary of the Company; and
- (b) in which the Indemnified Person is acquitted, or has Judgment given in the Indemnified Person's favour, or which is discontinued with respect to the Indemnified Person, or to which the Indemnified Person is not a party.

3. Indemnity for liabilities incurred

Subject to clauses 4, 6 and 7 and to compliance by the relevant Indemnified Person with any commitments given by that Indemnified Person in accordance with clauses 6 and 11, the Company will indemnify each Indemnified Person against:

- (a) any liability that the Indemnified Person incurs to any person, other than the Company or a Related Company of the Company, for any act done or omission made in the Indemnified Person's capacity as a director of the Company, or a director of a Subsidiary of the Company; and
- (b) all costs (inclusive of GST, if applicable) that the Indemnified Person incurs in defending or settling any claim or proceeding relating to such liability or to the threat or possibility of such liability.

4. Limitations on indemnity

4.1 Limit on extension

The indemnities under this Deed do not extend to:

- (a) any liability of an Indemnified Person arising out of or in connection with the Indemnified Person's wilful default or fraud;
- (b) criminal liability of an Indemnified Person;
- (c) liability for breach of section 131 of the Companies Act 1993; or
- (d) any other liability of an Indemnified Person for which the giving of an indemnity is prohibited by law.

5. Insurance

5.1 Insurance cover

Subject to compliance with any commitments given by the relevant Indemnified Person in accordance with clause 6, the Company will, to the extent it has not already done so, effect as soon as practicable following the date of this Deed, and maintain, at its cost, forward insurance cover and run-off insurance cover (for a reasonable period of time) with a

reputable insurer for such amount as is reasonably available to the Company (having regard to cost), for each Indemnified Person in respect of:

- (a) liability, not being criminal liability, for any act done or omission made in the Indemnified Person's capacity as a director of the Company, or a director of a Subsidiary of the Company;
- (b) costs that the Indemnified Person incurs in defending or settling any claim or proceeding relating to any liability described in paragraph (a) above; and
- (c) costs that the Indemnified Person incurs in defending any criminal proceedings:
 - (i) that have been brought against the Indemnified Person in relation to any act done or omission made in the Indemnified Person's capacity as a director of the Company, or a director of a Subsidiary of the Company; and
 - (ii) in which the Indemnified Person is acquitted.

The insurance cover in respect of clauses 5.1(b) and (c) (**Costs Policy**) will be provided by the Company pursuant to a separate policy to that obtained by the Company in respect of clause 5.1(a) (**Liability Policy**), and the Company will ensure that any limit on the amount of cover under the Liability Policy will not affect the amount of cover under the Costs Policy.

5.2 Co-operation by Indemnified Person

An Indemnified Person shall take such steps as the Company may reasonably request to enable it to take out and maintain the insurance cover contemplated by clause 5.1.

6. Claims

6.1 Notification required

If any Claim is brought or threatened to be brought against the Indemnified Person, as a result of which the Indemnified Person may seek to have recourse to this indemnity, the Indemnified Person shall:

- (a) as soon as practicable, notify the Company in writing of the existence of the Claim;
- (b) on request provide the Company or its authorised representatives with all such information, cooperation and assistance as may reasonably be requested in respect of the Claim, liability or costs for which the Indemnified Person is seeking, or may be entitled to seek, indemnification under this deed, including without limitation full information on the actual or alleged act or omission which has given rise to such Claim, liability or costs,

in which case the Indemnified Person's costs (if any) of meeting the Indemnified Person's obligations in paragraphs (a) and (b) will be met by the Company within 5 Business Days of the Indemnified Person providing the Company with suitable evidence that such costs have been incurred.

6.2 Control of Claim

If an Indemnified Person notifies the Company of a Claim under clause 6.1(a) and the Company accepts that it is or, depending on whether that Indemnified Person is acquitted, may be, liable to indemnify the Indemnified Person under clause 2 or clause 3, then the Company may require, as a condition to such acceptance of actual or potential liability, that it has the right to:

- (a) assume on behalf of that Indemnified Person, the conduct of defending such Claim under the Company's sole management and control and at its cost;
- (b) institute legal proceedings in that Indemnified Person's name as part of that defence; and
- (c) settle the Claim or any related legal proceedings on behalf of that Indemnified Person with that Indemnified Person's prior written consent (such consent not to be unreasonably withheld),

provided the Company must agree to instruct its lawyers on behalf of both the Company and that Indemnified Person and ensure as far as possible that any client legal privilege attaches to any document produced by those lawyers, for the benefit of both the Company and that Indemnified Person. The Company must, in conducting any defence of any Claim, act reasonably having regard to the interests of the relevant Indemnified Person and the Company.

6.3 Dispute as to application

Where the Company has assumed the defence of any Claim brought against the Indemnified Person pursuant to clause 6.2, if the Company intends (whether by reason of fact or matter which is asserted or proven in such proceedings or otherwise) to assert that the indemnities contained in clauses 2 or 3 do not apply:

- (a) the Company shall immediately notify the Indemnified Person of such intention;
- (b) the Indemnified Person shall be entitled to resume the conduct of such parts of such Claim as relate to the matters for which the Company disputes its liability to indemnify the Indemnified Person;
- (c) both parties shall take appropriate steps to determine whether the indemnities contained in clause **Error! Reference source not found.** apply; and
- (d) neither party shall compromise or settle any such Claim until such matter is agreed or determined.

6.4 Commitment by Indemnified Person

The Company may require, as a condition to acceptance by the Company that it is or may be liable to indemnify an Indemnified Person under clause 2 or clause 3 in relation to a Claim, that if the Company assumes control of any defence to that Claim under clause 6.2, the relevant Indemnified Person commits to the Company to:

- (a) take all reasonable steps in relation to the Claim (including, without limitation, providing full information on the actual or alleged act done or omission made which has given rise to the Claim) that the Company reasonably requires;
- (b) take all reasonable steps to assist the Company to the best of the Indemnified Person's abilities in any action the Company may take to avoid, dispute, defend or appeal any legal action connected with the Claim; and
- (c) not admit any liability for, or settle any action connected with, the Claim without the Company's prior written consent (such consent not to be unreasonably withheld).

6.5 Consultation by Indemnified Person

The Company may require, as a condition to acceptance by the Company that it is or may be liable to indemnify an Indemnified Person under clause 2 or clause 3 in relation to a Claim, that if the Company does not assume control of the conduct of any defence to that Claim the relevant Indemnified Person commits to the Company to consult with the Company in relation to the steps to be taken, if any, in defending such Claim to the greatest extent that is reasonable and prudent having regard to the interests of the Indemnified Person and the Company.

6.6 Co-operation by Indemnified Person

For the purposes of this clause 6 and clause 7, where the Company may incur a liability to an Indemnified Person under this Deed, or where an Indemnified Person may be entitled to claim under a policy or policies of insurance insuring an Indemnified Person or the Company against all or any of the liability and costs incurred by an Indemnified Person, it will be a condition of such indemnity and/or insurance that the Indemnified Person commits to the Company to assist and co-operate with the Company, with the insurers providing such insurance and with their respective representatives (including legal representatives) to the greatest extent that is reasonable and prudent having regard to the interests of that Indemnified Person, the Company and the insurers (including, without limitation, providing full information on the actual or alleged act done or omission made which has given rise to the liability).

7. Compromises of Claims

The Company may refuse to indemnify an Indemnified Person under clauses 2 and 3 and/or to effect or maintain insurance for an Indemnified Person under clause 5, if that Indemnified Person settles or compromises any Claim for which that Indemnified Person may be entitled to indemnity under clause 2 or clause 3 unless the Company has given its prior written consent to the proposed settlement or compromise (such consent not to be unreasonably withheld).

8. Payments, advances and repayments

8.1 Payment of Claims

If an Indemnified Person notifies the Company of a Claim for which he or she is entitled to be indemnified under clause 3, the Company will pay the costs and liabilities (inclusive of GST, if applicable) incurred by that Indemnified Person in relation to that Claim, as those costs or liabilities are incurred, within 14 days of that Indemnified Person notifying the Company of those costs (or such earlier period as may be reasonably required in order to pay third party costs). For the avoidance of doubt, the indemnity contained in clause 2 is enforceable without the Indemnified Person having to first pay any cost or liability.

8.2 Advances

If an Indemnified Person notifies the Company of a potential Claim which the Indemnified Person reasonably believes he or she will be entitled to be indemnified for under clause 2 on the Final Determination Date following a Judgment, the Company will advance to the Indemnified Person amounts equal to the costs (inclusive of GST, if applicable) incurred by the Indemnified Person in relation to that Claim, as those costs become payable by the Indemnified Person, by way of an unsecured loan, within 14 days of the Indemnified Person notifying the Company of those costs (or such earlier period as may be reasonably required in order to pay third party costs) provided that the Indemnified Person commits to the Company that if, on the Final Determination Date following a Judgment:

- (a) the Indemnified Person is not entitled to be indemnified under clause 2, the Indemnified Person must repay all amounts advanced under this clause 8.2 within 28 days after receiving written notice from the Company;
- (b) the Indemnified Person is entitled to be indemnified under clause 2, all amounts advanced under this clause 8.2 to the Indemnified Person will be deemed to have been paid pursuant to the Company's indemnity under clause 2 and the Indemnified Person will be under no obligation to repay such amounts; and
- (c) no interest will be payable on any amounts advanced to the Indemnified Person under this clause 8.2.

8.3 Payment in cleared funds

All payments to be made under this Deed will be made on the due date in cleared funds.

9. Access to Board Documents

9.1 Access to Board Documents

- (a) While an Indemnified Person holds office as a director of the Company or a Subsidiary of the Company, the Company must, at no cost to that Indemnified Person, allow the Indemnified Person to inspect and copy Board Documents or any other record of the Company or a Subsidiary of the Company in its possession, custody or control for any proper purpose concerning the exercise of powers and discharge of duties as a director.
- (b) After an Indemnified Person ceases to hold office as a director of the Company or a Subsidiary of the Company, the Company must, at no cost to the Indemnified Person, allow the Indemnified Person to inspect and copy, on reasonable notice, Board Documents or any other record of the Company or a Subsidiary of the Company in its possession, custody or control that are relevant to a legal proceeding or an investigation or inquiry which relates to the Indemnified Person.

9.2 Access may be refused

The Company may, on the instructions of the Board, refuse access to a Board Document or any other record of the Company if:

- (a) access is determined by the Board, acting reasonably, and in good faith, to be prejudicial to the interests of the Company or any Related Company of the Company;
- (b) access is inconsistent with the relevant Indemnified Person's obligations under this Agreement; or
- (c) allowing the Indemnified Person to inspect or copy a Board Document or other record of the Company would, in the opinion of the Board, waive privilege in respect of that Board Document or other record of the Company.

9.3 Privilege to be preserved

If the Company or a Related Company has any right (including a right it has jointly or in common with an Indemnified Person or with an Indemnified Person and others) to privilege, such as legal professional privilege, in respect of any Board Document or other record of the Company which an Indemnified Person inspects, copies or uses under this Deed or under the Companies Act 1993 or under the general law rights of a director:

- (a) by permitting such inspection, copying or use to that Indemnified Person, neither the Company nor any related body corporate nor any Related Company waives any privilege; and
- (b) in so inspecting, copying or using such a Board Document or record of the Company, that Indemnified Person must use best efforts to ensure that so far as is practical any such right to privilege is not lost or waived.

9.4 **Privilege of the Company and an Indemnified Person**

Nothing in this Deed or done pursuant to this Deed prevents the Company or a Related Company from relying on privilege in proceedings between an Indemnified Person and the Company or Related Company (including in respect of a Board Document or other record of the Company which the Company or Related Company has disclosed to the Indemnified Person outside those proceedings).

10. **Retention of Company records**

- (a) Where the Company is aware, whether by notice from an Indemnified Person or otherwise, that:
 - (i) a Claim has been made or there is evidence to suggest a Claim may be made against that Indemnified Person by any person; or
 - (ii) a Government Agency has commenced, or there is evidence to suggest a Government Agency will commence, any investigation or inquiry into events that occurred;

in relation to any act done or omission made in the Indemnified Person's capacity as a director or employee of the Company or a Subsidiary of the Company (as the case may be), the Company will retain, and will procure that the relevant Subsidiary retains, all relevant documents indefinitely.

- (b) Subject to paragraph (a) above, the Company will retain the records specified in section 189 of the Companies Act 1993 for at least seven years.

11. **Subrogation**

The Company may require, as a condition to acceptance by the Company that it is or may be liable to indemnify an Indemnified Person under clause 2 or clause 3 in relation to a Claim, that the Indemnified Person commit to the Company that if the Company makes any payment under this Deed in respect of any costs or liability for which the Indemnified Person is entitled to indemnification, then the Company is to be subrogated to the Indemnified Person's rights (including, without limitation, any rights of recovery under insurance or otherwise) to the extent of such payment in relation to or arising out of the act or omission which gave rise to the Indemnified Person's right of indemnification under this Deed.

12. **Term and termination**

12.1 **Term**

The Company acknowledges that the Indemnities remain in full force and effect in relation to any act or omission occurring or arising prior to the termination of this Deed and while an Indemnified Person held office as a director of the Company or a Subsidiary of the Company

(as the case may be) even if that Indemnified Person has ceased to be a director before any claim is made under this Deed.

12.2 Termination

The Company may terminate this Deed in respect of an Indemnified Person on giving that Indemnified Person at least 30 days' written notice or, if not terminated by notice, then this Deed will terminate without notice upon termination (for any reason) of the Indemnified Person's appointment as director of the Company or a Subsidiary of the Company (provided that where the Indemnified Person has more than one appointment, then this Deed will terminate only with respect to the appointment terminated).

12.3 Rights not affected

A termination of this Deed under clause 12.2 will not affect:

- (a) an Indemnified Person's right to be indemnified under clause 2 or clause 3 in relation to costs or liabilities incurred for any act done or omission made as a director of the Company or a Subsidiary of the Company before the date of termination;
- (b) the Company's obligation to maintain run-off insurance cover (to the extent not already in place); or
- (c) clause 9 of this Deed.

13. No discharge

The Company is not to be discharged nor are its obligations to be affected by any matter or thing which, but for this clause, would or might have discharged the Company or affected its obligations, including:

- (a) the giving or time, credit or other indulgence or concession to the Company or any other person;
- (b) anything done or omitted to be done by an Indemnified Person in the exercise or non-exercise of his or her rights and powers;
- (c) any release, discharge, compromise or other arrangement given to or made with the Company or any other person; and
- (d) any other indemnity or other agreement not having been provided, or being void, defective or informal, or being released or discharged (in whole or in part).

14. Subsidiaries

The Company's obligations under this Deed will extend to any company which becomes a Subsidiary of the Company after the date of this Deed and will continue to apply in relation to any company which ceases to be a Subsidiary of the Company after the date of this Deed in relation to acts done or omissions made by an Indemnified Person whilst such company was a Subsidiary of the Company.

15. Notices

15.1 Form of notice

Each notice or other communication under this Deed is to be in writing, is to be made by email, facsimile, personal delivery or by post to the addressee at the facsimile number or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The email address, facsimile number, address and relevant person or office holder of each party shall be as notified by each party to the other from time to time.

15.2 Notice effective

No communication is to be effective until received. A communication is to be deemed to be received by the addressee:

- (a) if sent by email, on the date and time at which it enters the addressee's information system unless a delivery failure notice has been received by the sender, in which case the notice will be deemed not to have been given;
- (b) in the case of a facsimile, on the Business Day on which it is sent or, if sent after 5.00 pm (in the place of receipt) on a Business Day, or if sent on a non-Business Day, on the next Business Day after the date of sending;
- (c) in the case of personal delivery, when delivered; and
- (d) in the case of a letter, on the third Business Day after posting by fastpost or by airmail.

16. Severability

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction in part or in whole will be ineffective as to such jurisdiction to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Deed or affecting the validity or unenforceability of such provision in any other jurisdiction.

17. Third party rights

For the purposes of the Contracts (Privity) Act 1982, the Company acknowledges that this Deed is intended to confer legally enforceable benefits on each Indemnified Person in accordance with, and subject to, its terms.

18. Amendments

This Deed may only be amended or supplemented by the agreement of all parties in writing.

19. Assignment

19.1 No assignment by Indemnified Person

No Indemnified Person may assign or transfer all or part of his or her rights under this Deed.

19.2 Company may assign

The Company may, with the prior written approval of the relevant Indemnified Person (acting reasonably), assign or transfer its rights and obligations in relation to that Indemnified Person under this Deed.

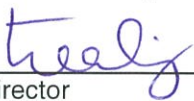
20. Governing law

This Deed shall be governed by and construed in accordance with New Zealand law.

Execution

Executed and **delivered** as a deed.

Investore Property Limited by:



Director

KATHRYN HEALY

Print name



Director

Tim Storey

Print name