

**DEVELOPMENT AGREEMENT**

**156-160 CENTRAL PARK DRIVE**

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**EVEREST CENTRAL INVESTMENT LIMITED**

**MAGSONS INVESTMENTS LIMITED**

**VIJAY HOLDINGS LIMITED**

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DATED

31<sup>ST</sup> January

2019

**PARTIES:**

- (1) **EVEREST CENTRAL INVESTMENT LIMITED (Investor)**
- (2) **MAGSONS INVESTMENTS LIMITED (Vendor)**
- (3) **VIJAY HOLDINGS LIMITED (Contractor)**

**BACKGROUND:**

- A The Vendor is the owner of the Property.
- B The Vendor has agreed to sell the Property to the Investor.
- C The Contractor has agreed to carry out the Development on the Property for the benefit of the Investor.

**AGREEMENT:**

The Vendor agrees to sell the Property to the Investor and make the various payments required to be made by the Vendor under this Agreement, including paying interest and fees under the Loan Facility.

The Contractor agrees to complete the Development on the Property.

The Investor agrees to purchase the Property and to pay for the Development in stages in accordance with this Agreement.

The Vendor guarantees the obligations on the part of the Contractor under this Agreement. The Contractor guarantees the obligations on the part of the Vendor under this Agreement.

The parties agree as set out in the Second Schedule.

This Agreement replaces and supersedes the prior agreement between the parties dated 4 December 2018, which is no longer in effect.

**EXECUTED AS AN AGREEMENT**

**SIGNED** for and on behalf of  
**EVEREST CENTRAL INVESTMENT**  
**LIMITED** as the Investor

)  
)  
)



**SIGNED** for and on behalf of  
**MAGSONS INVESTMENTS LIMITED**  
as the Vendor

)  
)  
)



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**SIGNED** for and on behalf of  
**VIJAY HOLDINGS LIMITED**  
as the Contractor

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)  
)  
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## FIRST SCHEDULE

### Reference Schedule

<b>Property:</b>	All that land at 156-160 Central Park Drive, Henderson, comprised in Unique Identifier 618171.
<b>Buildings:</b>	The buildings to be constructed on the Property in accordance with this Agreement.
<b>Car Parks:</b>	Approximately 625 car parks as shown generally in the positions in the Outline Plans and Specifications.
<b>Land Price:</b>	\$21,200,000 plus GST (if any)
<b>Building Price:</b>	\$37,800,000 plus GST (if any)
<b>Property Settlement Date:</b>	3 Working Days after satisfaction of the Capital Raising condition (clause 2.2), or such later date as may be nominated by the Investor by notice in writing to the Vendor, but no later than 5 Working Days after satisfaction of the condition in clause 2.2.
<b>Target Completion Date:</b>	30 November 2019
<b>Sunset Date:</b>	30 April 2020
<b>Default Interest Rate:</b>	5% above the Bank of New Zealand's base rate for commercial lending at the time of default.
<b>Address of Investor:</b>	C/- Maat Consulting Limited, P O Box 301848, Albany, Auckland 0752 (Attention: Neil Tuffin)  Email: <a href="mailto:ntuffin@maat.co.nz">ntuffin@maat.co.nz</a>
<b>Address of Contractor:</b>	C/- Magsons Investments Limited, P O Box 69-155, Glendene, Auckland (Attention: Vinod Kumar)  Email: <a href="mailto:vinod@nidoliving.co.nz">vinod@nidoliving.co.nz</a>
<b>Address of Vendor:</b>	C/- Magsons Investments Limited, P O Box 69-155, Glendene, Auckland (Attention: Vinod Kumar)  Email: <a href="mailto:vinod@nidoliving.co.nz">vinod@nidoliving.co.nz</a>

## SECOND SCHEDULE

### Terms and Conditions

#### 1 DEFINITIONS AND INTERPRETATION

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1.1 **Definitions** - In this Agreement unless the context indicates otherwise:

**"Agreement"** means this agreement together with the schedules to this agreement and any of the documents or plans attached and any amendments or variations made from time to time in writing and signed by the parties;

**"Agreement to Lease"** means the agreement to lease entered into between the Investor (as Landlord) and the Tenant in respect of the Property (on completion of the Development) and the Vendor (as Guarantor) and dated 30 November 2018;

**"Approvals"** means all necessary consents, authorities, and permits required from any Authority for the Contractor to complete the Development including all consents required pursuant to the Resource Management Act 1991 and the Building Act 2004;

**"Architect"** means the architect from time to time engaged by the Vendor and/or the Contractor and notified to the Investor in relation to the Development Works;

**"Authority"** means any local body, government or other authority having jurisdiction over or authority for the Buildings or the Property, and their use or occupation;

**"Bank Guarantee"** means the bank guarantee for the Bank Guarantee Sum which the Tenant must provide in accordance with the Agreement to Lease and the Lease, to secure the performance of the Tenant's obligations under the Lease;

**"Bank Guarantee Sum"** means \$2,000,000;

**"Capital Raising"** means the required capital raising, by way of an initial offer of shares to the public in CPPIL, whereby \$30,000,000 of capital is introduced to CPPIL;

**"Certificate of Practical Completion"** means the certificate issued in accordance with clause 11.1;

**"Continuity Guarantees"** means the guarantees to be procured by the Contractor from the Key Subcontractors for the benefit of the Investor in the form set out in the Sixth Schedule;

**"Cost to Complete"** from time to time and at any time, means the estimated costs to complete the Development as certified by the Investor's Consultant as at the date specified in a certificate issued by the Investor's Consultant;

**"CPPIL"** means Central Park Property Investment Limited;

**"CPPIL Shareholders"** means the holders of B Shares in CPPIL from time to time;

**"Default"** has the meaning set out in clause 19 of this Agreement;

**"Defects Liability Period"** means the period of 12 months from the Practical Completion Date, and in respect of any defects rectified during that period, a further 12 months from the date of rectification of the defect;

**"Detailed Plans and Specifications"** means the detailed plans and specifications in respect of the Development Works as developed by or on behalf of the Contractor in accordance with this Agreement;

**"Development"** means the 2 storey retail and warehousing complex and the associated 2 level car parking building to be developed by the Contractor on the Property in accordance with this Agreement;

**"Development Works"** means all works on the Land (including construction of the Buildings, the Car Parks and all other associated structures, plant, services, landscaping, accessways, fences and civil works) carried out as part of the Development, generally in accordance with the Outline Plans and Specifications and subject to any variations permitted by this Agreement;

**"Dispute"** means a dispute arising between or among the parties on any matter under this Agreement (except a dispute over a right to rescind or terminate this Agreement);

**"Dispute Notice"** means a written notice by either party to the other under clause 30.2 that it requires a Dispute to be referred to an Expert;

**"Expert"** means the independent expert agreed between the parties under clause 30.2 or appointed under clause 30.3;

**"Funder"** means the debt funder for the Development Works, which at the date of this Agreement is intended to be Pearlfisher Capital Limited pursuant to the Indicative Offer;

**"General Terms of Sale"** means the general terms of sale included in the Third Schedule;

**"GST"** means tax charged under the Goods and Services Tax Act 1985 and includes any tax charged in substitution for that tax;

**"Indicative Offer"** means the indicative offer for the proposed Loan Facility dated 17 December 2018 given by Pearlfisher Capital Limited in favour of the Investor and includes any formal loan offer arising out of that indicative offer and any other funding offer or loan facility entered into by the Investor with any other party for the funding of the Development or for refinancing such facilities;

**"Insolvency Event"** means any of the following events in respect of a party:

- (a) an application (other than any application that is frivolous or vexatious and which is being contested in good faith by appropriate proceedings by the relevant party) or an order is made, or a resolution is passed, for its dissolution (which shall include the bankruptcy, winding-up or liquidation) or removal from the register;
- (b) the holder of a security interest takes possession or a liquidator, provisional liquidator, trustee, receiver, receiver and manager, administrator, statutory manager or similar official, is appointed in respect of it, or the whole or a substantial part of its assets;
- (c) a distress, attachment or other execution is levied or enforced upon or commenced against a substantial part of its assets and is not stayed or discharged within 10 Working Days; or
- (d) it is unable to pay its debts when due, or enters into dealings with any of its creditors generally with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors with a view to avoiding or in expectation of insolvency, or stops payments to its creditors generally;

**"Investor's Consultant"** means the company (and person within that company) nominated by the Investor, from time to time, to liaise with the Contractor on matters relating to the Development. As at the date of this Agreement the company nominated by the Investor is Barnes Beagley Doherr;



**"Issue Costs"** means the costs incurred by Maat to third parties arising out of the matters contained in this Agreement and the capital raising referred to herein, including (without limitation) all legal, valuation, accounting, consulting and regulatory costs;

**"Key Subcontracts"** means the subcontracts or supply agreements to be entered into by the Contractor in connection with the Development with the Key Subcontractors;

**"Key Subcontractors"** means the subcontractors and suppliers for each of the following:

- (a) the respective suppliers of reinforcing steel, structural steel, floor coverings, mechanical plant;
- (b) the following works packages:
  - (i) piling;
  - (ii) site works, including basecourse;
  - (iii) concrete;
  - (iv) structural steel;
  - (v) fire;
  - (vi) lifts;
  - (vii) escalators;
  - (viii) electrical;
  - (ix) mechanical;
  - (x) roofing;

**"Lease"** means the lease of the Property to be entered into between the Investor and the Tenant;

**"Lease Commencement"** means the commencement date under the Lease or such later date when the Tenant has made its first full monthly payment of rent under the Lease;

**"Liquidation"** means liquidation, statutory management, receivership, entry into a scheme of arrangement or compromise with creditors, amalgamation, administration, assignment for the benefit of creditors, bankruptcy or, in the case of an individual, death;

**"Loan Facility"** means the facility agreement to be entered into by the Funder (as lender) and the Investor (as borrower) for the debt funding for the Development Works, and includes all security interests and other documents required in respect of such loan facility, and any other loan facility entered into by the Investor with any other party for the funding of the Development or for refinancing such facilities;

**"Maat"** means Maat Consulting Limited;

**"Monthly Progress Payments"** means the monthly payments towards the Building Price required under clause 4;

**"Outline Plans and Specifications"** means the outline plans and specifications for the Development Works which are to be annexed to this Agreement as the Fourth Schedule upon satisfaction of the condition in clause 2.3;

**"Payment Schedule"** means a payment schedule issued in accordance with clause 4.4;

"**PCG**" means the project control group to be formed in accordance with clause 8;

"**Practical Completion**" means that stage of the Development when:

- (a) the Development Works have been substantially completed so that they are capable of being reasonably used and enjoyed by the Tenant without material inconvenience (except for any works which cannot be completed until the Tenant's fitout works have been completed) even if there are works of a minor nature that require finishing, altering or remedying; and
- (b) reasonable access to the Property is available;

"**Practical Completion Date**" means the date when Practical Completion has been achieved in accordance with clause 11.1;

"**President**" means the then current president of the Auckland District Law Society;

"**Programme**" means the programme for the Development Works included in the Fifth Schedule;

"**related company**" has the meaning given to that term in section 2(3) of the Companies Act 1993;

"**Shareholders' Agreement**" means the shareholders' agreement entered into between CPPIL and the Vendor, in respect of their respective shareholdings in the Investor, and dated on or around the date of this Agreement;

"**Tenant**" means Magsons Hardware Limited; and

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

1.2 **General provisions of interpretation** – In this Agreement, unless the context otherwise requires:

- (a) all words and phrases throughout this Agreement will have the meanings ascribed to them as set out in the First Schedule;
- (b) expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the introduction and the schedules;
- (c) the schedules and their contents have the same effect as if set out in the body of this Agreement;
- (d) terms defined in the Lease and/ or in the General Terms of Sale have the same meaning in this Agreement;
- (e) the singular includes the plural and vice versa;
- (f) a reference to a person includes references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- (g) references to parties are references to parties to this Agreement and include each party's executors, administrators and successors; and
- (h) any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and each of them severally.

- 1.3 **Statutes and regulations** - References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.

## **2 CONDITIONS**

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- 2.1 **Due diligence** - This Agreement is conditional upon the Investor being entirely satisfied that the Property and the proposed Development is suitable to it following the Investor undertaking a due diligence investigation in respect of the following matters and all other matters of relevance to the Investor:
- (a) the title to the Property and all interests noted thereon;
  - (b) the obtaining of a satisfactory land information memorandum from Auckland Council in respect of the Property;
  - (c) the Outline Plans and Specifications;
  - (d) the financial viability of the proposed business use under the Lease;
  - (e) the cost to complete the Development;
  - (f) all reports and other information disclosed by the Vendor; and
  - (g) an assessment of the overall financial suitability of the Investor's proposed investment in the Property,
- by 5pm on 22 February 2019.
- 2.2 **Capital Raising and Loan Facility** – This Agreement is further conditional on the Investor confirming to the Vendor that the Capital Raising undertaken by CPIL has been successfully completed, and that the Loan Facility is in place and all conditions precedent to initial drawdown have been satisfied, by no later than 5pm on 8 March 2019.
- 2.3 **Agreement on Outline Plans and Specifications** – This Agreement is further conditional on the parties agreeing on the Outline Plans and Specifications, by 5pm on 8 February 2019. Once agreed, the Outline Plans and Specifications will be added to the Fourth Schedule of this Agreement within each counterpart original.
- 2.4 **Termination of agreement** - If any of the conditions in clauses 2.1, 2.2 or 2.3 are not satisfied or waived within the specified period, then either party may terminate this Agreement by giving written notice to the other party to that effect and this Agreement shall be immediately at an end. Termination is without prejudice to any claim under this Agreement arising before the date of termination.
- 2.5 **Waiver** - The condition in clause 2.1 is for the sole benefit of the Investor and may be waived by the Investor. The conditions in clauses 2.2 and 2.3 are for the benefit of all parties and may not be waived.
- 2.6 **Provision of information** – The Vendor must within five Working Days of the date of this Agreement supply to the Investor's solicitors all material information relating to the Property, including all reports and other materials in the Vendor's possession. The Vendor shall promptly respond to any reasonable requests for further information by the Investor in connection with its due diligence investigation.
- 2.7 **Cost reimbursement** – If this Agreement is terminated pursuant to clause 2.4, the Vendor will reimburse Maat for 50% of the Issue Costs incurred by Maat up to the date of termination. This clause confers a benefit on Maat for the purposes of the Contract and Commercial Law Act 2017.

### 3 SALE OF PROPERTY

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- 3.1 **Sale and purchase** – The Vendor will sell and the Investor will purchase the Property on the Property Settlement Date in accordance with this Agreement.
- 3.2 **Property Settlement Date** – On the Property Settlement Date:
- (a) The Vendor will transfer title in the Property to the Investor, free from any security interests; and
  - (b) The Investor will pay the Land Price to the Vendor which will be satisfied by:
    - (i) the Investor issuing \$7,500,000 of B Shares to the Vendor in accordance with the Shareholders' Agreement; and
    - (ii) the Investor paying the Vendor \$13,700,000 in cleared funds.
- 3.3 **No apportionment of outgoings** – Despite the transfer of title of the Property to the Investor on the Property Settlement Date, the Vendor will remain responsible for payment of all rates, taxes, levies, insurance premiums, utility expenses, service charges, maintenance costs, compliance costs and other outgoings in respect of the Property from the Property Settlement Date to (and including) the Lease Commencement, and will reimburse the Investor for any such costs the Investor incurs within 5 Working Days of written demand.
- 3.4 **Assignment of Development IP** – On the Property Settlement Date the Vendor and the Contractor will assign to the Investor all of the Vendor's and Contractor's respective right, title and interest in all intellectual property relating to the Development and the Development Works, free from all security interests, on the following basis:
- (a) The parties will enter into a deed of assignment (to be prepared by the Investor's solicitors, acting reasonably, and provided to the Vendor's solicitors no later than 3 Working Days prior to the Property Settlement Date) which gives effect to such assignment.
  - (b) Under such deed the Contractor will be granted a licence to use such intellectual property for the purposes of completing the Development Works following the Property Settlement Date as required by this Agreement.

For the avoidance of doubt, this clause only relates to the assignment of intellectual property relating to the Development and the Development Works. The Vendor and its related companies (including the Tenant) retain all intellectual property held by them in the "Nido Living" concept as that relates to the intended retail trading, both from the Property and from internet sales. The Vendor and the Contractor jointly and severally indemnify the Investor against all losses, liabilities, costs, claims, charges, expenses, actions and demands which the Investor may incur, or which may be made against the Investor, by any third party alleging any breach or infringement of that party's intellectual property rights as a result of the Development or from the business carried on by the Tenant at the Property including the use of the "Nido Living" concept.

- 3.5 **Settlement Deliverables** – On the Property Settlement Date, in addition to the items referred to in clause 3.8(2) of the General Terms of Sale, the Vendor shall hand to the Investor:
- (a) any original resource consents relating to the Property and the Development which do not run with the land, together with duly executed transfers of those resource consents and the appropriate fee (if any) payable to the local or regional authority in respect of their transfer; and
  - (b) the executed deed of assignment of intellectual property in the form provided by the Investor's solicitors pursuant to clause 3.4.

The Investor will execute all documents referred to in this clause which are required to be executed by the Investor promptly following settlement and will deliver the Vendor's counterpart to the Vendor's solicitors. Notwithstanding that the Investor may not have executed any of the documents referred to in this clause on Property Settlement Date, the parties will be bound by the documents as if they were so executed.

- 3.6 **General Terms of Sale** – The remainder of the terms relating to the sale and purchase of the Property are set out in the General Terms of Sale. Where there is a conflict between the General Terms of Sale and the remainder of this Agreement, the remainder of this Agreement will prevail.
- 3.7 **Reasonable endeavours** – The Investor will use its commercially reasonable endeavours to procure that CPPIL completes the Capital Raising (but without the Investor or CPPIL being required to expend any more money in doing so than as will be outlined in the product disclosure statement to be issued by CPPIL), and will keep the Vendor informed of its progress.

#### **4 PAYMENT OF BUILDING PRICE**

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- 4.1 **Fixed Price** - The Investor will pay the Contractor a fixed price (the Building Price) of \$37,800,000 plus GST for the Development Works.
- 4.2 **Monthly Progress Payments** - The Contractor will be entitled to receive Monthly Progress Payments in respect of the Development Works, but only on the basis as set out in clauses 4.3 to 4.8 below.
- 4.3 **Payment Claims** – Payment claims must be served by the Contractor on the Investor's Consultant as agent of the Investor, and at the same time a copy of the payment claim shall be provided to the Investor. The Contractor's payment claims shall:
- (a) identify the relevant Development Works to which the payment claim relates;
  - (b) identify the claimed amount in respect of the relevant Development Works and the manner in which the claimed amount has been calculated;
  - (c) indicate the due date for payment which shall be 8 Working Days after the date of service of the payment claim; and
  - (d) be accompanied by such information and evidence as may be reasonably required by the Investor's Consultant to verify the Cost to Complete at the time of issue of the payment claim.
- 4.4 **Assessment of Payment Claims** - The Investor's Consultant (acting fairly and impartially) shall assess each of the Contractor's payment claims. Where the Investor's Consultant considers that the amount claimed does not comply with the terms of this Agreement, and with the Investor's Consultant's valuation of the work carried out, the Investor's Consultant (on behalf of the Investor) shall provide a Payment Schedule in response to each payment claim not later than 5 Working Days after the date of service of the payment claim. The Payment Schedule shall:
- (a) identify the Contractor's payment claim to which it relates;
  - (b) identify the date when the payment claim was served on the Investor's Consultant, and the due date for payment;
  - (c) identify the date when the Payment Schedule is provided;
  - (d) show the sum certified by the Investor's Consultant, which shall comprise the value of the Contractor's payment claim (amended as necessary under clause 4.6), and less any other deductions required by this Agreement or by Law;

- (e) include the Investor's Consultant's best estimate of the Cost to Complete at the time of issue of the Payment Claim;
  - (f) show the manner in which the sum under clause 4.4(d) has been calculated; and
  - (g) set out the reason or reasons for any difference between the sum under clause 4.4(d) and the claimed amount.
- 4.5 **Payment of Monthly Progress Payments** – Subject to clauses 4.6, 4.7 and 5.5, the Investor will pay the amount specified in the Payment Schedule to the Contractor within 5 Working Days after the date of the Payment Schedule or 8 Working Days after the Payment Claim was received, whichever is the latest.
- 4.6 **Cost to Complete** – Despite anything to the contrary in this Agreement, each Monthly Progress Payment shall not exceed the amount which is:
- (a) the Building Price;
  - (b) less the aggregate of:
    - (i) all previous Monthly Progress Payments or other payments made to the Contractor in respect of the Development Works; and
    - (ii) the Cost to Complete certified by the Investor's Consultant in accordance with clause 4.4.

No Monthly Progress Payment will be payable if the above calculation results in a zero or negative number.

- 4.7 **Payment pre-requisites** – Despite anything to the contrary in this Agreement, no payments will be required to be paid to the Contractor unless all of the following pre-requisites have been met:
- (a) The title to the Property has transferred to the Investor in accordance with clause 3.2;
  - (b) The Contractor has proven to the satisfaction of the Investor's Consultant that there are no arrears in payment of any monies due to the Key Subcontractors (which the Investor's Consultant may confirm at any time by making direct contact with all or any of the Key Subcontractors);
  - (c) In respect of any payments which relate to work done by Key Subcontractors, until certified copies of the relevant Key Subcontracts have been provided to the Investor, and those Key Subcontractors have executed and provided Continuity Guarantees in favour of the Investor in the form included in the Sixth Schedule;
  - (d) The Vendor is not in default in respect of any of its payment obligations under this Agreement, including without limitation under clauses 5.2 or 5.3;
  - (e) In respect of any payments scheduled to take place after the anticipated date for the initial drawdown under the Loan Facility (May 2019), the Loan Facility is formalised, and the conditions precedent to drawdown and ongoing conditions are met (other than where a failure to satisfy any conditions is due to a default solely on the part of the Investor under this Agreement);
  - (f) There is no outstanding material Default on the part of the Contractor or the Vendor under this Agreement;
  - (g) The Investor's Consultant is satisfied (in its absolute discretion) that the Development Works are in a suitable position to enable payment of a profit margin to the Contractor (and until the Investor's Consultant is so satisfied, Monthly



Progress Payments will not include any payment towards the Contractor's profit margin); and

- (h) The Vendor is able to prove, to the reasonable satisfaction of the Investor, on an ongoing basis, that the Tenant will be able to provide the Bank Guarantee in favour of the Investor on or before the date required for provision of the Bank Guarantee under the Agreement to Lease. If:
  - (i) the Investor at any time has reasonable grounds to doubt the ability of the Tenant to provide the Bank Guarantee in respect of the full Bank Guarantee Sum; or
  - (ii) the Tenant fails to provide the Bank Guarantee in favour of the Investor on or before the date required for provision of the Bank Guarantee under the Agreement to Lease (time being of the essence),

the Investor may apply any payments required to be made by the Investor under this Agreement (whether those payments are required to be made to the Vendor or the Contractor) towards payment of a security deposit (equivalent to the Bank Guarantee Sum), by paying such monies to the Investor's solicitors for them to hold as security for the performance of the Tenant's obligations under the Lease, and the parties will procure that the Lease is amended to include usual provisions for the holding of a security deposit. The Contractor and the Vendor agree that any payments made by the Investor pursuant to this clause will fully discharge the Investor's obligations to them in respect of the amounts so paid. Notwithstanding the foregoing, the Investor must not apply any of the first three Monthly Progress Payments towards payment of a security deposit under this clause.

- 4.8 **Payment after termination** – If this Agreement is terminated for any reason (other than pursuant to clause 2.4) the Contractor will not be entitled to make any claims for payments under this Agreement at the date of termination until after:

- (a) there is a return to CPPIIL of an amount equal to the full subscription amount paid by CPPIIL for its shares in the Investor (which payment will take priority to any claim by the Contractor under this Agreement); and
- (b) the Vendor has paid to the Investor all amounts owing by it under this Agreement; and
- (c) all other payment pre-requisites (including without limitation the requirements of clauses 4.6 and 4.7) have been met.

- 4.9 **Disputes** – If any dispute arises between the Investor and the Contractor as to any payments pursuant to this clause 4, the parties will immediately confer and endeavour to reach agreement within 5 Working Days from the date the dispute first arose. If the dispute cannot be resolved between the parties within that period, then such dispute shall be determined by the Expert in accordance with clause 30.

## **5 LOAN FACILITY AND FUNDING PAYMENTS**

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### **5.1 Loan Facility –**

- (a) The parties will each use their reasonable endeavours to ensure formalisation of the Loan Facility and to satisfy the conditions precedent to drawdown (including the entry into a tripartite or quadripartite agreement with the Funder which provides step-in rights in favour of the Funder under this Agreement). The Investor will comply with the obligations on the part of the borrower under the Loan Facility, except where any failure to comply is caused (wholly or partly) by:
  - (i) the actions or inaction on the part of the Vendor, the Contractor or the Tenant;

- (ii) the Vendor, the Contractor or the Tenant not complying with any of their respective obligations under this Agreement, the Agreement to Lease, the Shareholders' Agreement or any ancillary documents related to the Development; or
  - (iii) the Funder or its advisers not being satisfied with the terms of this Agreement, the Agreement to Lease, the Shareholders' Agreement or any ancillary documents related to the Development.
- (b) The Vendor will procure the performance by Vinod Kumar with all obligations on his part under the Loan Facility as a guarantor.
- (c) The parties will also use their reasonable endeavours to arrange refinancing of the initial Loan Facility with a registered bank prior to the final repayment date, and the Vendor will procure the same guarantees as provided under the initial Loan Facility (except that Vinod Kumar will only be required to give a personal guarantee if the directors of Maat are also required to, and agree to, give personal guarantees). The Investor's obligation to use its reasonable endeavours to arrange such refinancing will not extend to procuring that either CPPIL or Maat or any of the shareholders of those companies provide guarantees.

**5.2 Vendor to pay funding costs** - The Vendor shall pay to the Investor:

- (a) All interest payable under the Loan Facility when due, from the date of initial drawdown of that facility until the refinancing of the Loan Facility with a registered bank, but less a notional interest rate to apply during the investment term of the Loan Facility (after the expiry of the construction term of the Loan Facility) of 4.45% per annum which will be met by the Investor; and
- (b) All fees payable under the Loan Facility (including without limitation all fees referred to in the Indicative Offer or any replacement loan offer provided by the Funder), and any other costs associated with establishment of the Loan Facility, including the Funder's solicitors' costs.

The Vendor's obligation to pay interest shall include any default interest should the Vendor fail to comply with the requirements of this Agreement, or should the parties be unable to arrange refinancing of the Loan Facility before the required repayment date. The Vendor must pay all such amounts due directly to the Funder on or before the due date for payment, including all capitalised interest (and interest on interest).

- 5.3 CPPIL Dividends** - If Lease Commencement has not occurred by the Target Completion Date (time being of the essence), the Vendor must, for the period from the Target Completion Date until Lease Commencement is achieved, pay the Investor an amount equal to the monthly distributions payable by CPPIL to the CPPIL Shareholders (at 8.5% per annum on the respective levels of capital of the CPPIL Shareholders). The Vendor must pay the Investor the monthly amount required, in cleared funds, no later than 2 Working Days prior to the date on which CPPIL normally makes distributions to the CPPIL Shareholders.
- 5.4 Investor to provide details** - The Investor must advise the Vendor of all amounts due under clauses 5.2 or 5.3 no later than 5 Working Days prior to them becoming payable (unless, in respect of clause 5.2, the Vendor has been advised directly by any communications from the Funder).
- 5.5 Set-off** - If the Vendor fails to make any payments required under this Agreement, including without limitation under clauses 5.2 or 5.3, then without prejudice to the other remedies available to the Investor, the Investor may set-off the amount of any shortfall against Monthly Progress Payments, and make payments directly to the Funder (in respect of clause 5.2) or to CPPIL (in respect of clause 5.3) in reduction of any Monthly Progress Payment(s). The Contractor agrees that any such set-off or payment will discharge the Investor's obligations to the Contractor in respect of the amount set-off or paid.



## 6 DETAILED PLANS AND SPECIFICATIONS

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- 6.1 **Architect to complete** – The Contractor shall arrange, at its cost, for the Architect to complete and produce the Detailed Plans and Specifications in accordance with sound and accepted architectural and engineering principles and based on and conforming with the Outline Plans and Specifications.
- 6.2 **Investor's Approval** - The Detailed Plans and Specifications shall be submitted to the Investor for approval. Such approval shall not be unreasonably or arbitrarily withheld provided the Detailed Plans and Specifications reflect the content, quality and intent shown and described in the Outline Plans and Specifications.
- 6.3 **Objections** - If the Investor considers on reasonable grounds that the Detailed Plans and Specifications do not comply with the provisions of clause 6.1, then the Investor may within fifteen (15) Working Days of receipt of the Detailed Plans and Specifications (time being of the essence) give a notice in writing to the Contractor specifying any objections the Investor has to them and any modifications required by the Investor. The Contractor must notify the Investor in writing of the fifteen (15) Working Day timeframe, and the consequences of clause 6.4, when supplying the Detailed Plans and Specifications to the Investor. The Contractor will not unreasonably or arbitrarily withhold its approval to the Investor's modifications provided they are required to ensure the Detailed Plans and Specifications conform to the content, quality and intent shown and described in the Outline Plans and Specifications.
- 6.4 **Deemed approval** – If no notice of objection is given within the time period stated in clause 6.3 for objections to be raised, then the Investor shall be deemed to have approved the Detailed Plans and Specifications.
- 6.5 **Disputes** - Any disputes which may arise in respect of the Detailed Plans and Specifications shall be resolved in accordance with the following procedure:
- (a) Following receipt of any notice of objection given within the requisite time to the Contractor by the Investor in accordance with clause 6.3, the parties shall consult and use all reasonable endeavours to resolve by agreement their dispute as to the Detailed Plans and Specifications;
  - (b) If agreement is not reached within 3 Working Days of the date on which the Investor's notice of objection is received by the Contractor then at any time thereafter the dispute may be referred, by either party, to the Architect to be determined;
  - (c) The Architect shall act as a single adjudicator and as an expert but not as an arbitrator;
  - (d) In making any determination the Architect shall certify that he is acting impartially and in his professional capacity;
  - (e) The Architect may seek specialist advice if the matter in dispute falls outside his particular area of expertise;
  - (f) The parties will endeavour to have the Architect agree to make his determination in each instance within 10 Working Days; and
  - (g) Any costs of the Architect in making his determination shall be borne in equal shares by the parties, provided that should either party consider that the other party should bear all or any specified part of the costs, then the matter shall be dealt with as a Dispute under clause 30.
- 6.6 **Decision final** - The parties agree that they will be bound by the decision of the Architect which shall be final and binding.

## **7 CONSTRUCTION**

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- 7.1 **Construction** - Upon completion of the Detailed Plans and Specifications, the Contractor must with all reasonable speed undertake and complete the Development Works:
- (a) at the Contractor's cost in all respects;
  - (b) in a proper and workmanlike manner;
  - (c) in accordance with the Detailed Plans and Specifications and any variations thereto made in accordance with this Agreement;
  - (d) in accordance with the Approvals;
  - (e) in accordance with all relevant legislation and all other requirements of all relevant Authorities;
  - (f) so as to be structurally sound and weatherproof;
  - (g) in accordance with the Programme, and the various milestone dates contained in the Programme; and
  - (h) so as to achieve Practical Completion by the Target Completion Date.
- 7.2 **Approvals** – The Contractor must apply for and obtain all Approvals necessary for completion of the Development Works and for the lawful occupation of the Property and undertaking of the permitted use under the Lease. The Contractor must obtain the written approval of the Investor in respect of any conditions attaching to any Approvals that are obtained after the date of this Agreement, or to any variations to any existing Approvals (such approval not to be unreasonably withheld or delayed).
- 7.3 **Possession** – From the Property Settlement Date, the Investor grants the Contractor full possession of the Property until the Practical Completion Date (or sooner termination of this Agreement) for the purposes of undertaking the Development Works. The Investor (together with its consultants, employees, agents and the Funder) will be entitled to reasonable access to the Property on reasonable notice from time to time to the Contractor.
- 7.4 **No warranty** – The Investor gives no warranty regarding the suitability of the Property and the Contractor enters the Property entirely at its own risk.
- 7.5 **Key subcontractors** – The Contractor will procure that the Key Subcontractors enter into Continuity Guarantees in favour of the Investor in the form included in the Sixth Schedule.
- 7.6 **Agreement to Lease** – Notwithstanding any other provision of this Agreement, as between the Contractor and the Investor, the Contractor will be liable to perform all of the obligations on the part of the landlord contained in the Agreement to Lease at its cost as they relate to completion of the Development.

## **8 PROJECT CONTROL GROUP (PCG)**

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- 8.1 **Formation of the PCG** - The PCG's primary role will be to facilitate a regular update for each of the members of the PCG on the ongoing progress with the construction and completion of the Development Works.
- 8.2 **Membership of the PCG** - The following persons will be members of the PCG:
- (a) one representative of the Contractor;
  - (b) the Contractor's project manager;

- (c) one representative of the Investor;
- (d) the Investor's Consultant;
- (e) one representative of the Funder;
- (f) the Funder's appointed Quantity Surveyor;
- (g) the Architect; and
- (h) such other person or persons (whether as continuing members or as ad hoc members of the PCG) as the Contractor and the Investor may from time to time determine.

8.3 **Meetings of the PCG** - The PCG will meet at such times as and when requested by any member of the PCG, but in any event at intervals of not greater than one month. The Investor's Consultant is to be the chairman of all meetings and will ensure that due notice is given to other members of the PCG, that meetings are held with appropriate formality and that adequate minutes of the meetings are kept and circulated to all members of the PCG. Either party may by furnishing 3 Working Days' prior written notice to the other require the convening of a special meeting of the PCG.

8.4 **Decisions of the PCG** - Decisions on the part of the PCG will be by consensus. Each party agrees to abide by decisions of the PCG provided no such decision will be competent to vary the provisions of this Agreement or the Lease.

## 9 VARIATIONS

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9.1 **Contractor's variations** - The Contractor shall not vary the Detailed Plans and Specifications without first obtaining the Investor's written consent to such variations (and the Funder's prior written consent if that is required). The consent of the Investor shall not be unreasonably withheld or delayed where such variations will not:

- (a) adversely affect the market value of the Buildings or the Property, or the market rental for the Property or any component parts of the Property;
- (b) adversely affect the quality, performance, durability, lifespan or usefulness of the Buildings or any material component of the Development Works;
- (c) alter the external appearance of the Buildings;
- (d) increase the ongoing operating expenses for the Property;
- (e) result in a reduction of the gross floor areas of any of the respective parts of the premises (retail/warehouse/offices) by more than 2% from the estimated areas set out in the Outline Plans and Specifications at the date of this Agreement;
- (f) result in a reduction of the number of Car Parks by more than 5% of the number of Car Parks stated in the First Schedule;
- (g) materially increase the cost of the Development Works (unless the Contractor can demonstrate to the Investor's satisfaction that the Contractor has the financial resources to meet those additional costs);
- (h) cause any delays in achieving Practical Completion by the Target Completion Date; and
- (i) otherwise adversely affect the interests of the Investor as the owner of the Property.

For the avoidance of doubt, where the Investor consents to a variation, this will not result in an increase to the Building Price payable. The Contractor warrants that the Building

Price fully reflects the provisions of this clause 9.1 and it waives all claims it may have under contract, tort or otherwise to claim an increase in the Building Price.

- 9.2 **Substitution of materials** - The Contractor shall be entitled to substitute any materials with materials of at least the same quality without the Investor's consent if such materials are unavailable, delayed or impracticable to incorporate, and provided the requirements of clause 9.1(a) to 9.1(i) are met.
- 9.3 **Authority requirements** - In the event that any Authority, or any other provision in law, requires the Contractor to vary the Detailed Plans and Specifications the Contractor shall consult with the Investor regarding the implementation of such variations or alterations and shall ensure that such variations or alterations do not reduce or adversely affect the quality, value, usefulness, size or appearance of the Property or the Buildings or the number of Car Parks, provided that in such circumstances the Investor shall, other than as set out in this clause 9.3, have no right to object to such variations.

## 10 TIMING AND DELAYS

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- 10.1 **Programme** - The Contractor must carry out the Development Works in accordance with the Programme and will not be entitled to amend any milestone dates in the Programme without the prior written approval of the Investor.
- 10.2 **Contractor to notify** - The Contractor must promptly notify the Investor of any anticipated delays in the completion of the Development Works.
- 10.3 **Delay** - If it becomes apparent that Practical Completion is not likely to be achieved by the Target Completion Date, the Contractor shall take all steps, at its own cost, to accelerate the Development Works to avoid the delay or minimise the delay as much as reasonably practicable.
- 10.4 **Serious Slippage Notice** - If at any time the Investor considers (acting reasonably) that events or circumstances prevail that have impacted or are likely to impact on the construction programme for the Development Works such that there is a real and substantial risk that Lease Commencement will not occur by the Sunset Date, the Investor may serve a notice ("**Serious Slippage Notice**") requesting the Contractor to address the position and to provide appropriate solutions so that Lease Commencement will occur prior to the Sunset Date.
- 10.5 **Parties to act in good faith** - Following the issue by the Contractor of a Serious Slippage Notice, the Investor and the Contractor shall consult actively with each other, and take appropriate reasonable steps with a view to reaching proposals or solutions acceptable to the Investor to address the slippage so that the Lease Commencement will occur prior to the Sunset Date.
- 10.6 **Termination for serious slippage** - If the Contractor has been unable to provide an acceptable proposal or solution to the Investor within 20 Working Days of the receipt of a Serious Slippage Notice, then the Investor shall be entitled to cancel this Agreement by notice in writing to the Contractor.
- 10.7 **Failure to meet revised milestones** - Any proposal or solution put forward by the Contractor pursuant to clauses 10.4 to 10.6 must include a revised Programme and milestone dates, and the parties will identify which of those are "**Key Milestones**" and "**Key Milestone Dates**" for the purposes of this clause. If the proposal or solution put forward by the Contractor is accepted by the Investor, then any failure to achieve a Key Milestone by a Key Milestone Date will entitle the Investor to cancel this Agreement by notice in writing to the Contractor.
- 10.8 **Sunset Date** - If Lease Commencement has not been achieved by the Sunset Date, then the Investor may terminate this Agreement forthwith upon written notice to the Contractor and the Vendor.

- 10.9 **Requirements following termination** - Upon termination pursuant to clauses 10.6, 10.7 or 10.8, and without prejudice to any other rights of the Investor, the Contractor shall leave all Development Works and other improvements remaining on the Property in their then current condition and state of repair, and ownership of such Development Works and other improvements shall vest in the Investor absolutely. The Contractor must leave the Property in a clean and tidy condition and will remove any rubbish or debris.
- 10.10 **Investor Default** – The Target Completion Date will be extended to the extent that any delay in achieving Practical Completion is caused by any breach of this Agreement by the Investor, but for no other reason. If the Contractor wishes to claim an extension of time to the Target Completion Date pursuant to this clause 10.10, it must do so within two (2) Working Days of the commencement of the event for which the Contractor wants to claim an extension, and must notify the Investor of its actual or likely effect on the Development Works. Any dispute as to any claim for an extension of time will be determined under clause 30.

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## 11 PRACTICAL COMPLETION

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- 11.1 **Certification** - When the Architect, acting in good faith, professionally and without bias to either party determines that Practical Completion has been achieved, the Architect shall forthwith issue the Certificate of Practical Completion.
- 11.2 **Advise the Authority** - The Contractor agrees, as soon as is practicable following completion of the Development Works, to advise the Authority in the prescribed form that the Development Works have been completed to the extent required by any building consent issued in respect of such work and shall ensure a code compliance certificate is issued in respect of the Development Works and in compliance with the Building Act 2004 without undue delay.

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## 12 CONSTRUCTION WARRANTIES

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- 12.1 **Construction warranties** - The Contractor shall procure the guarantees and warranties in respect of the Development Works as are referred to in the Outline Plans and Specifications and must take all reasonable steps to enforce any such guarantees or warranties against the other party to such guarantee or warranty, if requested by the Investor. The Contractor must use its reasonable endeavours to procure that the form of warranty provided by subcontractors is in the form set out in the Seventh Schedule. The Contractor must also execute the form of warranty set out in the Seventh Schedule in favour of the Investor, with all necessary amendments.
- 12.2 **Consultants** – The Contractor shall use its reasonable endeavours to procure that the consultants engaged in respect of the Development Works provide Duty of Care Deeds in favour of the Investor, in the form set out in the Eighth Schedule.

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## 13 RECTIFICATION OF DEFECTS

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- 13.1 **Contractor to remedy** - Any defects or other faults which may appear in the Development Works and be notified in writing to the Contractor by the Investor within the Defects Liability Period, as a result of bad or faulty materials or workmanship, or materials or workmanship not being in accordance with this Agreement, shall upon the direction in writing of the Investor and within a reasonable time be amended and made good by the Contractor at its own cost.
- 13.2 **Inspections** - The Contractor will within 10 Working Days prior to the estimated Practical Completion Date and within 20 Working Days prior to the last day of the Defects Liability Period procure the Investor's Consultant to inspect the Development Works and prepare and certify a list of all defects (to generally accepted industry standards) in the Development Works. The Investor's Consultant's certificate in respect of the defects will be addressed to both the Contractor and the Investor.
- 13.3 **Remedial Works** - All defects noted on the defects lists:

- (a) resulting from the initial joint inspection will be remedied by the Contractor at its sole cost to the satisfaction of the Investor's Consultant within 10 Working Days of the initial inspection or such longer period as the Investor's Consultant considers is reasonable; and
  - (b) resulting from the second joint inspection will be remedied by the Contractor at its sole cost to the satisfaction of the Investor's Consultant within 20 Working Days or such longer period as the Investor's Consultant considers is reasonable.
- 13.4 **Final Inspection** - On expiry of the Defects Liability Period the Contractor will arrange a final inspection of the Works by the Investor's Consultant to confirm all defects have been remedied to the reasonable satisfaction of the Contractor and the Investor. The Investor will be entitled to attend the final inspection of the Development Works and make submissions. Upon satisfactory completion of all defects the Investor's Consultant will confirm the same in writing to the Contractor and the Investor.
- 13.5 **Investor ability to remedy** - If the Contractor does not attend to or remedy any defects (either identified by inspection or as notified to the Contractor by the Investor or the Investor's Consultant) within the timeframes outlined above or such longer period as may be agreed, the Investor will be entitled to:
- (a) undertake such repairs and works necessary to remedy such defects; and
  - (b) recover all costs reasonably incurred by the Investor to remedy such defects from the Contractor by deducting such costs from any money due, or to become due, to the Contractor.

## **14 CONTRACTOR WARRANTIES**

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- 14.1 The Contractor warrants to the Investor that:
- (a) the Development Works will be completed in accordance with all standards and requirements included in this Agreement;
  - (b) it has the resources and expertise to perform its obligations under this Agreement;
  - (c) the Programme is realistically achievable, and includes adequate contingency for delays;
  - (d) it has or will obtain all necessary Approvals required for it to carry out and complete the Development Work and for the completed Development to be lawfully used for the permitted use under the Lease; and
  - (e) it will not allow the Property to be used in contravention of section 363 of the Building Act 2004.

## **15 VENDOR WARRANTIES**

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- 15.1 The Vendor warrants to the Investor that:
- (a) all information about the Property and the proposed use of the Property under the Lease made available by or on behalf of the Vendor to the Investor is, to the best of the Vendor's knowledge and belief, true and correct and complete in all material respects;
  - (b) to the best of its knowledge the Vendor does not hold any information which would reasonably be considered to be material to a purchaser of the Property and an investor in the Development and which has not been provided to the Investor during its due diligence investigation (and prior to the satisfaction or waiver of the condition in clause 2.1);



- (c) the completed Development may be lawfully used for the permitted use under the Lease; and
- (d) it has the resources and expertise to perform its obligations under this Agreement.

## **16 RISK**

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- 16.1 The Contractor accepts and bears all risks relating to the Development Works including the following:
- (a) faults or defects in the design or construction of the Development Works;
  - (b) adverse weather, flooding or natural disaster;
  - (c) industrial action;
  - (d) loss or damage to the Development Works which is not covered by the insurances the Contractor is required to put in place;
  - (e) the effect of any required variation to the Development Works;
  - (f) any delay in the issue of any Approvals;
  - (g) the location of utilities not being where anticipated, and any delays in dealing with utility providers;
  - (h) the actual cost of the Development Works (including inflation, cost increases and interest rate increases) is greater than the fixed Building Price specified in clause 4.1;
  - (i) the taxes levied on the Contractor including all taxes relating to the construction and operation of the Development Works are more adverse than estimated by the Contractor;
  - (j) sub-surface conditions or physical conditions of the Development Works are more adverse than foreseen by the Contractor;
  - (k) there is an unforeseen change in the economy or demographics which negatively impacts on the Development Works; and
  - (l) any other circumstances not foreseen by the Contractor at the time of entering into this Agreement,

and the Contractor shall not make any claim for damage, loss, expense or seek to be indemnified for any liability from the Investor because of any such risk having eventuated except where such risk has arisen as result of a breach by the Investor of the terms of this Agreement.

## **17 INSURANCE AND DAMAGE**

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- 17.1 **Insurance policies** - The Contractor must not commence the Development Works until the following insurance policies are in place (at the Contractor's cost in all respects):
- (a) contracts works insurance:
    - (i) for a sum insured of not less than the full value of the Development Works including allowances for demolition and removal of debris costs and professional fees;
    - (ii) the contract works insurance policy shall be in the joint names of the Contractor and the Investor;

- (b) public liability insurance:
  - (i) the limit of indemnity shall be not less than \$20,000,000;
  - (ii) the policy shall be in the joint names of the Contractor and the Investor;
  - (iii) the insurance shall include a "cross liability clause" so that the indemnity specified applies to each of the insured parties as if separate policies had been issued;
  - (iv) the insurance shall include liability arising out of vibration, weakening or removal of support; and
  - (v) the insurance shall provide indemnity arising out of the use of all mobile or mechanical plant and equipment to be used for the Development Works.

**17.2 Further obligations** - The Contractor must:

- (a) maintain the above insurances until the Practical Completion Date;
- (b) effect each policy with a reputable insurer approved by the Investor;
- (c) ensure that the respective interests of the Investor and the Funder are noted on each policy;
- (d) give the Investor certified copies of all policies, renewal certificates, and endorsement slips, as soon as it receives them;
- (e) punctually pay all premiums in respect of all insurance policies and give the Investor copies of receipts for payment of premiums if and when requested by the Investor.

**17.3 Damage or Destruction** - If all or part of the Development Works are damaged or destroyed by any insured risk, the Contractor shall (without limiting the other obligations of the Contractor under this Agreement) apply all insurance proceeds received to undertaking the prompt repair or replacement of the Development Works so that to the greatest extent possible, the Contractor continues to comply with its obligations under this Agreement.

## **18 INDEMNITY**

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**18.1 Contractor's indemnity** - To the extent permitted by law, the Contractor indemnifies the Investor against all losses, liabilities, costs, claims, charges, expenses, actions and demands which the Investor may incur, or which may be made against the Investor, as a result of:

- (a) a breach of any of the warranties issued or given by the Contractor under this Agreement;
- (b) any claim arising out of or relating to any wrongful act, wrongful omission, neglect or default of the Contractor pursuant to this Agreement;
- (c) any failure on the part of the Contractor to perform any of its obligations under this Agreement; or
- (d) any failure by the Contractor to comply with the Approvals or any laws.

**18.2 Vendor's indemnity** - To the extent permitted by law, the Vendor indemnifies the Investor against all losses, liabilities, costs, claims, charges, expenses, actions and demands which the Investor may incur, or which may be made against the Investor, as a result of:



- (a) a breach of any of the warranties issued or given by the Vendor under this Agreement;
- (b) any claim arising out of or relating to any wrongful act, wrongful omission, neglect or default of the Vendor pursuant to this Agreement; or
- (c) any failure on the part of the Vendor to perform any of its obligations under this Agreement.

## **19 DEFAULT**

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**19.1 Default** - The occurrence of any of the following events will constitute a Default (for the purposes of this clause 19 and clause 20 but not otherwise limiting what amounts to a breach or a default of the terms of this Agreement):

- (a) failure by the Contractor to carry out and complete the Development in accordance with the Outline Plans and Specifications, subject to any variations permitted by this Agreement;
- (b) failure by any party to pay any amounts due under this Agreement on the due date for payment (provided all pre-requisites set out in this Agreement for any such payment have been met);
- (c) if an Insolvency Event occurs in relation to any party;
- (d) if an Insolvency Event occurs in relation to the Tenant (which will be deemed to be a Default on the part of both the Vendor and the Contractor);
- (e) if the Contractor commits a material breach of any provision of this Agreement, which leads to the whole or part of the Development being abandoned by the Contractor or otherwise substantially incapable of being delivered by the Contractor as contemplated by this Agreement, or if the Contractor is persistently, flagrantly or wilfully neglecting to carry out its obligations in this Agreement;
- (f) if the Vendor commits a material breach of any provision of this Agreement;
- (g) if the Investor commits a material breach of any provision of this Agreement;
- (h) if the Contractor or the Vendor commits any breach of this Agreement that is likely to have a material adverse impact on the market value of the Property on completion of the Development, or the market rentable value of the premises within the Development;
- (i) the occurrence of any event of default under the Loan Facility which is caused by any party, where such event has resulted in a refusal by the Funder to advance any amount(s) under the Loan Facility (in which case the party causing the default under the Loan Facility will be the party in Default);
- (j) a breach by the Vendor or the Contractor of the provisions of clause 22.

**19.2 Notice** - If a Default occurs, except in relation to a Default not capable of remedy or a Default of the kind referred to in subclause 19.1(c), the party not in Default shall give the party in Default a notice requiring it to rectify that Default (or overcome its effects) within the following periods:

- (a) If the relevant Default is a failure to pay money, the notice period is 10 Working Days.
- (b) In all other cases of Default, the notice period is 20 Working Days or, where such period is manifestly inadequate, such longer period as may be determined by the party not in Default (acting reasonably).

If the party in Default is the Investor, any notice given by the party not in Default for the purposes of clauses 19 and 20 will only be effective if given by both the Vendor and the Contractor. If the party in Default is either the Vendor or the Contractor, any notice given by the party not in Default for the purposes of clauses 19 and 20 may only be given by the Investor, and the Investor will be the only party entitled to exercise the remedies in clauses 19 and 20.

- 19.3 **Failure to Remedy** - If the party in Default fails to remedy the Default (or overcome its effects) in accordance with the terms of any notice given under clause 19.2, the party not in Default may, at its absolute discretion, extend the period of time in which the party in Default is to rectify that Default (or overcome its effects).
- 19.4 **Settlement default** - Clauses 19 and 20 of this Agreement will not apply in respect of any default by the Vendor or the Investor of their respective settlement obligations in respect of the sale and purchase of the Property on the Property Settlement Date. Such default shall be dealt with in accordance with the General Terms of Sale.

## 20 TERMINATION FOR DEFAULT

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- 20.1 **Termination for Vendor or Contractor Default** - If a Default has been committed by either the Vendor or the Contractor then (subject to the Investor having served the required notice pursuant to clause 19.2 where required and the Default not being remedied within the required timeframe) the Investor may, without prejudice to any other rights of the Investor under this Agreement or at law:

- (a) immediately terminate this Agreement by written notice to the Vendor and the Contractor; and
- (b) require the Contractor to immediately vacate the Property.

For the avoidance of doubt, the Investor may exercise its right to terminate pursuant to this clause 20.1 in relation to any Default which is not capable of remedy or which is of the kind set out in subclause 19.1(c) without having to serve a notice under clause 19.2. Upon termination pursuant to this clause 20.1, and without prejudice to any other rights of the Investor, the Contractor shall leave all Development Works and other improvements remaining on the Property in their then current condition and state of repair, and ownership of such Development Works and other improvements shall vest in the Investor absolutely. The Contractor must leave the Property in a clean and tidy condition and will remove any rubbish or debris.

- 20.2 **Termination for Investor Default** - If a Default has been committed by the Investor then (subject to the Vendor and the Contractor having served the required notice pursuant to clause 19.2 where required and the Default not being remedied within the required timeframe) the Vendor and the Contractor may, without prejudice to any other rights under this Agreement or at law and after having first served on the Investor 10 Working Days prior written notice of their intention to do so, terminate this Agreement and cease all Development Works.

## 21 GST

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- 21.1 All amounts in this Agreement are exclusive of GST, which must be paid in addition to all payments for taxable supplies made under this Agreement. If any party fails to pay any GST by the due date then without prejudice to the other party's rights and remedies the defaulting party will pay on demand an amount equal to any additional tax, interest, penalty or fine payable by the other party as a result of such default.

## 22 ASSIGNMENT

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- 22.1 **Personal rights** - The rights conferred by this Agreement are personal to the Vendor and the Contractor respectively. The Vendor and the Contractor must not assign, transfer, subcontract or otherwise dispose of this Agreement or their respective interests and obligations under this Agreement.

- 22.2 **Deemed assignment** - Any change in the legal or beneficial ownership of any of the shares in the capital of the Vendor or the Contractor, or change in the rights attaching to existing capital, or any other thing which shall have the effect of altering the effective management or control of the Vendor or the Contractor prior to the Lease Commencement shall be deemed to be an assignment of that party's interest in this Agreement and a breach of the provisions of this Agreement.
- 22.3 **Assignment by Investor** - Prior to the payment by the Investor of all monies due under this Agreement, the Investor may not assign any of its interest under this Agreement, or sell, transfer or otherwise its interest in the Property following the Property Settlement Date, except for:
- (a) An assignment of its interest under this Agreement by way of security to the Funder, together with the mortgaging of the Property pursuant to the Loan Facility;
  - (b) An assignment (and sale of the Property) to an entity related to or managed by the Investor or by Maat, if the Investor procures the relevant third party to enter into a deed of covenant with the Contractor pursuant to which that third party agrees to be bound by the terms of this Agreement on and from the date of the transfer in place of the Investor.

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## **23 COSTS**

- 23.1 The Vendor and the Investor will share equally in the cost of initial preparation of this Agreement and the Agreement to Lease, and will meet their own costs associated with the subsequent negotiations of those documents.

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## **24 NO CAVEAT**

- 24.1 Neither the Vendor nor the Contractor will have any interest in the Property which is capable of supporting a caveat after the Property Settlement Date, and neither party may lodge a caveat in respect of any interest it may purport to have.

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## **25 COMPLETE AGREEMENT**

- 25.1 This agreement is the entire agreement between the parties relating to the Development; it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to the construction of the Development.

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## **26 NON WAIVER**

- 26.1 A party's failure to insist in any one or more instances on strict performance of any of this Agreement's terms, or any party's waiver of any term or right under this Agreement or of any default by any other party, will not be taken as that party's waiver of that term, right or default in the future.

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## **27 DEFAULT INTEREST**

- 27.1 If any party has not paid any money payable under this Agreement on the due date (whether any demand for that money has been made or not), then that money will bear interest at the Default Rate computed from the due date until payment in full.

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## **28 NOTICES**

- 28.1 **Notices** - Each notice given under this Agreement shall be in writing and delivered personally or sent by post or email to the address of the relevant party set out in the First Schedule or to any other address from time to time designated for that purpose by at least five (5) Working Days' prior notice to the other party. Where a notice is given by email, the party giving the notice must confirm in the body of the email that the email constitutes a notice for the purpose of this clause 28.1.

28.2 **Receipt** - A notice under this Agreement is deemed to be received if:

- (a) delivered personally, when delivered;
- (b) posted, five (5) Working Days after posting; or
- (c) sent by email, when actually received in readable form by the recipient,

provided that any notice deemed received after 5 pm or on a non-Working Day shall be deemed to have been received on the next Working Day.

## 29 NON DISCLOSURE

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29.1 **Confidentiality** - Subject to clause 29.1 below, each party must keep the terms of this Agreement and all information received from the other party confidential.

29.2 **Exceptions** - Despite clause 29.1, a party may make any disclosures in relation to this Agreement:

- (a) as, in its absolute discretion, it thinks necessary to:
  - (i) its professional advisers, bankers, financial advisers, auditors and financiers to whom it is reasonably necessary to disclose the information;
  - (ii) comply with any applicable law or requirement of any regulatory body; or
  - (iii) any of its employees to whom it is reasonably necessary to disclose the information;
- (b) to party's contractors, consultants or agents to whom it is reasonably necessary to disclose the information;
- (c) if the information is generally and publicly available other than as a result of that party's breach of clause 29.1; and
- (d) with the written consent of the other party.

In addition a party may, with the prior consent of the other party (which consent may not be unreasonably withheld or delayed), issue a press release relating to the subject matter of this Agreement.

29.3 **Survive termination** - The obligations of the parties under this clause 29 will survive the expiration or termination of this Agreement.

## 30 RESOLUTION OF DISPUTES

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30.1 **Resolution of Dispute** - Save to the extent this Agreement expressly states to the contrary, if a Dispute arises, the parties agree that before exercising any rights they may have at law, each of them must use all reasonable endeavours to resolve the Dispute. A party seeking resolution of a Dispute must give a notice to the other party to the Dispute and the parties' representatives must meet within 5 Working Days after that notice is given to attempt to resolve the Dispute.

30.2 **Procedure on Dispute** - If the parties do not resolve any Dispute pursuant to clause 30.1 within the time specified (whether or not this Agreement expressly requires that dispute to be determined pursuant to this clause 30) then either party may issue to the other a Dispute Notice.

30.3 **Failure to agree on Expert** - If the parties are unable to agree on an Expert within 5 Working Days after service of the Dispute Notice, either party may request the President to appoint an Expert to determine the dispute.

#### 30.4 **The Expert –**

- (a) The Expert appointed under clause 30.3 should be of a discipline most closely associated with the type of issue in Dispute. Despite this clause, the Expert appointed by the President will be deemed to be of a discipline most closely associated with the type of issue in Dispute.
- (b) The Expert must act as an expert and not as an arbitrator and his or her decision will be final and binding on the parties (except for manifest error and provided that the Expert's decision is not one regarding a matter of law).
- (c) The fees of the Expert will be payable by the parties as directed by the Expert.

#### 30.5 **Expert determination** - The following applies in the case of any Dispute referred for determination under clause 30.2:

- (a) The Expert may enquire into the Dispute as that person thinks fit including hearing representations and taking advice from people that the Expert considers appropriate;
- (b) The parties may make submissions to and must give the Expert every assistance the Expert requires, including providing copies of relevant documents; and
- (c) Each party must pay its own costs in connection with the Dispute.

#### 30.6 **No suspension** - Pending resolution of any Dispute pursuant to this clause 30, the Contractor must not cease or suspend the Development Works.

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### 31 **SEVERANCE**

- 31.1 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that provision in any other jurisdiction.

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### 32 **AMENDMENT**

- 32.1 This agreement may be amended only by another agreement executed by all parties.

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### 33 **COUNTERPARTS**

- 33.1 This agreement may be executed in a number of counterparts. All the counterparts taken together constitute this Agreement.

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### 34 **GUARANTEES**

- 34.1 **Vendor Guarantee** - In consideration of the Investor entering into this Agreement, the Vendor:

- (a) guarantees the performance of the Contractor's obligations in this Agreement; and
- (b) indemnifies the Investor from and against all claims, demands, damages, losses, costs and liabilities which the Investor may suffer or incur as a result of the Contractor's breach of any of the Contractor's obligations and covenants in this Agreement.

- 34.2 **Contractor Guarantee** - In consideration of the Investor entering into this Agreement, the Contractor:

- (a) guarantees the performance of the Vendor's obligations in this Agreement; and

- (b) indemnifies the Investor from and against all claims, demands, damages, losses, costs and liabilities which the Investor may suffer or incur as a result of the Vendor's breach of any of the Vendor's obligations and covenants in this Agreement.

### **THIRD SCHEDULE**

#### **General Terms of Sale**

Refer attached.

## **FOURTH SCHEDULE**

### **Outline Plans and Specifications**

[To be agreed and attached following confirmation of the condition in clause 2.3 of the Second Schedule.]



## **FIFTH SCHEDULE**

### **Programme**

Refer attached.

## **SIXTH SCHEDULE**

### **Required form of Continuity Guarantee**

Refer attached.

## **SEVENTH SCHEDULE**

### **Required form of Contractor and Subcontractor Warranty**

Refer attached.

## **EIGHTH SCHEDULE**

### **Required form of Duty of Care Deed**

Refer attached.

**AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE**

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

DATE:

VENDOR: MAGSONS INVESTMENTS LIMITED

PURCHASER: EVEREST CENTRAL INVESTMENT LIMITED

and/or nominee

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

Yes/No

**PROPERTY**

Address: 156-160 Central Park Drive, Henderson, Auckland

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

Legal Description:

Area (more or less):

31,373 square metres

Lot/Flat/Unit:

Lot 2

DP:

464917

Unique Identifier or CT:

618171

**PAYMENT OF PURCHASE PRICE**

Purchase price: \$

Plus GST (if any) OR ~~inclusive of GST~~ (if any)

If neither is deleted, the purchase price includes GST (if any)

GST date (refer clause 14.0):

Deposit (refer clause 2.0): \$

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

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

OR

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

Interest rate for late settlement:

% p.a.

**CONDITIONS (refer clause 10.0)**

Finance condition

Lender:

Amount required:

Finance date:

LIM required: (refer clause 10.2)

Yes/No

Building report required: (refer clause 10.3)

Yes/No

OIA Consent required: (refer clause 10.4)

Yes/No

Land Act/OIA date:

**TENANCIES (if any)**

Name of tenant:

Bond:

Rent:

Term:

Right of renewal:

SALE BY:

Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 2, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

Release date: 14 November 2017

## GENERAL TERMS OF SALE

### 1.0 Definitions, time for performance, notices, and interpretation

#### 1.1 Definitions

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

#### 1.2 Time for Performance

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

#### 1.3 Notices

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

- (1) All notices must be served in writing.
- (2) Any notice under section 26 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
  - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
  - (b) on the party or on the party's lawyer:
    - (i) by personal delivery; or
    - (ii) by posting by ordinary mail; or
    - (iii) by facsimile; or
    - (iv) by email; or
    - (v) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
  - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
  - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
  - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
  - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

- (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
  - (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
  - (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
  - (6) In accordance with section 222 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.
- 1.4 Interpretation
- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
  - (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
  - (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
  - (4) Headings are for information only and do not form part of this agreement.
  - (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

## 2.0 Deposit

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

## 3.0 Possession and Settlement

### Possession

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

### Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 3.6 The purchaser's lawyer shall:
  - (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
    - (b) certify and sign the transfer instrument.
- 3.7 The vendor's lawyer shall:
  - (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
    - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 3.8 On the settlement date:
  - (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.14);
  - (2) the vendor's lawyer shall immediately thereafter:
    - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
    - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
    - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.
- 3.9 All obligations under subclause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

### Last Minute Settlement

- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
  - (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
  - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

## Purchaser Default: Late Settlement

3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:

- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
- (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
  - (a) account to the purchaser on settlement for incomes 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 incomes 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 incomes 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 incomes, 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),
- 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 untenable and it is untenable on the settlement date, the purchaser may:
    - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
    - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
  - (2) if the property is not untenable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
  - (3) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
  - (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 6.4 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 6.1 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 10.6(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 10.6(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 10.6(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 1946 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

- 10.6 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 this 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 tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 15.6 If
- (1) the particulars in Schedule 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 stated 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

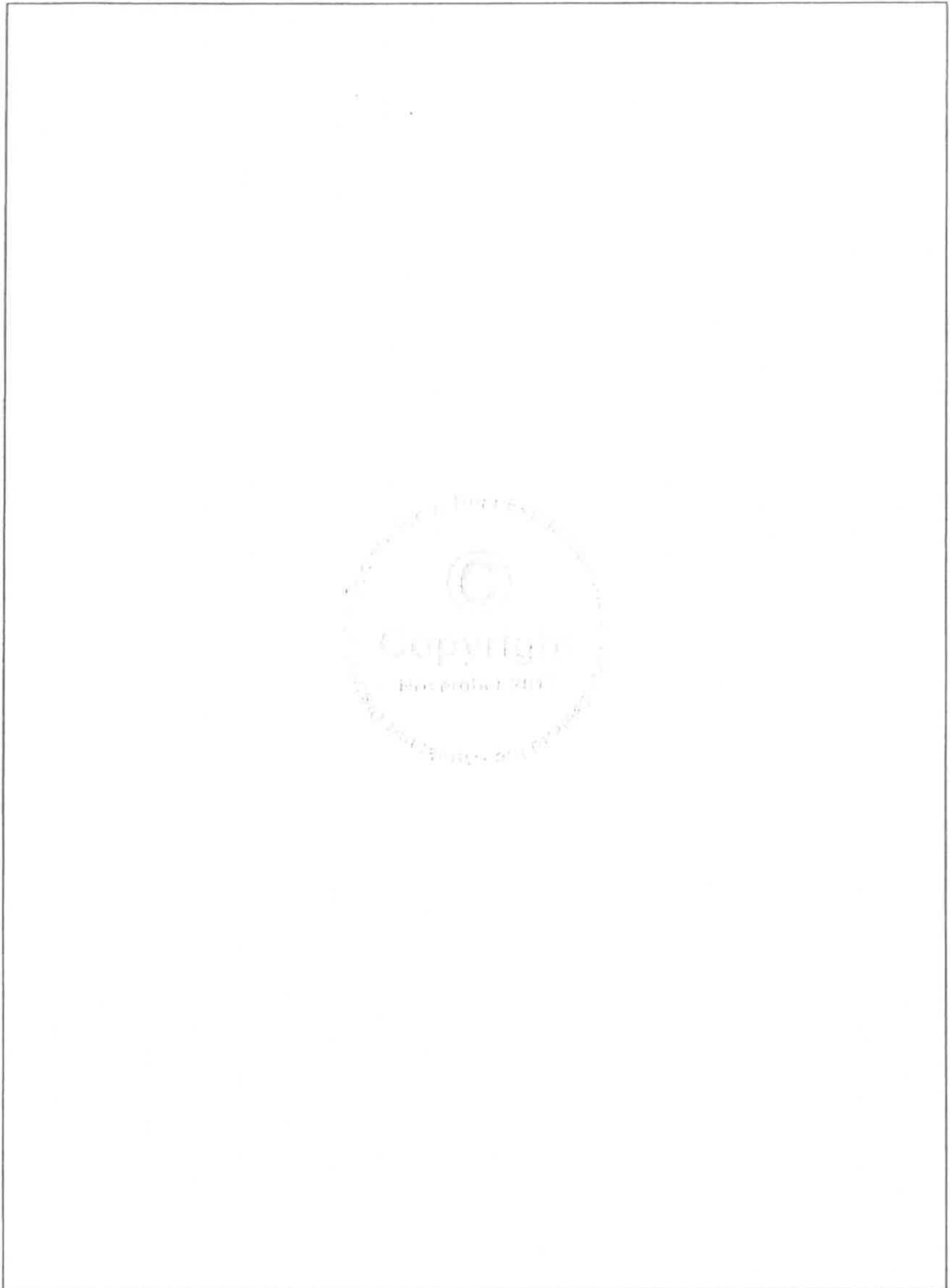
- 17.1 If any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that:
    - (a) the person has power to enter into this agreement under the terms of the trust;
    - (b) the person has properly signed this agreement in accordance with the terms of the trust;
    - (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.

*Handwritten signature and initials*

## FURTHER TERMS OF SALE



*[Handwritten signature]* *[Handwritten mark]*

## 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: Everest Central Investment Limited (b) Address: C/- Maat Consulting Limited, P O Box 301848, Albany, Auckland (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



**SCHEDULE 2**

List all chattels included in the sale

*(strike out or add as applicable)*~~Stove~~~~Fixed floor coverings~~~~Blinds~~~~Curtains~~~~Light fittings~~**WARNING** *(This warning does not form part of this agreement)*

This is a binding contract. Read the information set out on the back page before signing.

**Acknowledgements**

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Agents Authority.

Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010.

Signature of Purchaser(s):

Signature of Vendor(s):

  
\_\_\_\_\_  
Director / Trustee / Authorised Signatory / Attorney\**Delete the options that do not apply**If no option is deleted, the signatory is signing in their personal capacity*  
\_\_\_\_\_  
Director / Trustee / Authorised Signatory / Attorney\**Delete the options that do not apply**If no option is deleted, the signatory is signing in their personal capacity*\_\_\_\_\_  
Director / Trustee / Authorised Signatory / Attorney\**Delete the options that do not apply**If no option is deleted, the signatory is signing in their personal capacity*\_\_\_\_\_  
Director / Trustee / Authorised Signatory / Attorney\**Delete the options that do not apply**If no option is deleted, the signatory is signing in their personal capacity*

\*If this agreement is signed under:

- (i) a Power of Attorney – please attach a Certificate of non-revocation (available from ADLS: 4098WFP or REINZ); or
- (ii) an Enduring Power of Attorney – please attach a Certificate of non-revocation and non-suspension of the enduring power of attorney (available from ADLS: 4997WFP or REINZ).

Also insert the following wording for the Attorney's Signature above:

*Signed by [full name of the donor] by his or her Attorney [attorney's signature]*

## BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
  - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
  - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
  - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
  - there is any doubt as to the position of the boundaries.
  - the purchaser wishes to check the weatherlightness and soundness of construction of any dwellings or other buildings on the land.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before the purchaser enters into the agreement:
  - the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010;
  - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 and 9.0:
  - are able to be complied with; and if not
  - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 2 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

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

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

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

Ninth Edition 2012 (7)

## AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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

DATE:

VENDOR:

MAGSONS INVESTMENTS LIMITED

Contact Details:

VENDOR'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

PURCHASER:

EVEREST CENTRAL INVESTMENT LIMITED

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details:

#### FOURTH SCHEDULE

##### Outline Plans and Specifications

[To be agreed and attached following confirmation of the condition in clause 2.3 of the Second Schedule.]

792



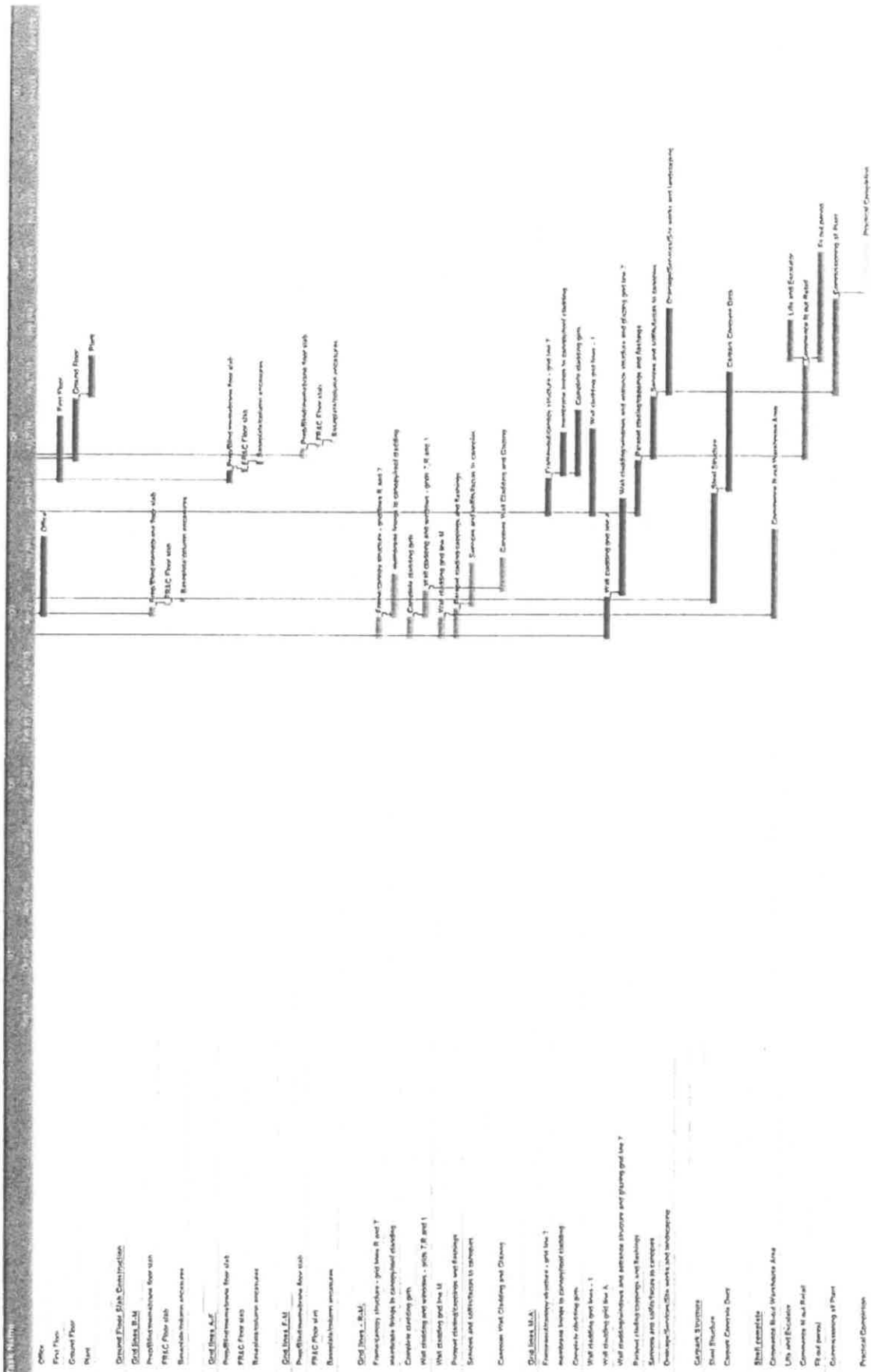
FIFTH SCHEDULE

Programme

Refer attached.









## Comments

Row 2

Uda Dap (linda.dap@melcorp.com) 10/26/2018 9:20 AM  
Attach documents relevant to the task

Or link to web documents

SIXTH SCHEDULE

Required form of Continuity Guarantee

Refer attached.

197

*[Handwritten signature]*

FORM OF CONTINUITY GUARANTEE

Contract for: ..... at .....  
("the Contract Works")

THIS DEED is made on: .....

BETWEEN Everest Central Investment Limited  
("the Principal")

AND .....  
("the Subcontractor")

INTRODUCTION

- A. By a development agreement dated the ..... day of ..... 201.... (the Contract) made between the Principal and Vijay Holdings Limited ("the Contractor"), the Contractor agreed to construct the Development Works described in the Construction Contract and to carry out and fulfil the obligations imposed upon the Contractor.
- B. The Contractor has sublet part of the work to be carried out under the Contract to the Subcontractor (as more particularly described in the schedule to this deed) ("the Subcontract Works").

NOW THIS DEED WITNESS as follows:

1. The Subcontractor hereby covenants that in the event the Contract is terminated by the Principal or the Principal resumes possession of the Site and expels the Contractor before the completion of the Development Works, the Subcontractor will, if required by the Principal, complete its portion of the Subcontract Works under the same conditions and for the same consideration as originally agreed between the Contractor and the Subcontractor. The Principal shall only be liable for payments under such arrangement accruing as from the date the Principal notifies the Subcontractor in writing that it is required to continue with the Subcontract Works pursuant to this deed. The Contractor shall be liable for all payments to the Subcontractor due and payable prior to such notification by the Principal to the Subcontractor.
2. The Subcontractor acknowledges that the Subcontractor has read the Contract and the Subcontractor is fully conversant with the provisions thereof. It is particularly acknowledged that the Subcontractor is a Subcontractor of the Contractor appointed pursuant to the provisions of the Contract and is in no way differentiated under the Contract.
3. Any dispute between the Principal and the Subcontractor arising out of this agreement, shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.
4. The dispute shall be referred to a sole Arbitrator if the Principal and the Subcontractor agree upon one within fifteen days after receipt of the notice of dispute. If a sole Arbitrator is not so appointed, then within five further days, two Arbitrators shall be appointed (by hand delivered notice), one to be appointed by the Principal and one to be appointed by the Subcontractor and such Arbitrators shall jointly appoint an Umpire.
5. If one party fails to appoint an Arbitrator within the period of five days, the Arbitrator appointed by the other party shall be deemed to have been agreed upon as the sole Arbitrator. If neither party appoints an Arbitrator within the five days, then the notice shall be deemed to have lapsed. References in this agreement to "the Arbitrator" shall include, where appropriate, two Arbitrators and the Umpire.



6. The Principal may at any time assign all of the Principal's rights, title, interests and obligations under this deed at the Principal's sole discretion and the Subcontractor will consent to such assignment on request.
7. For the purposes of section 12 of the Contract and Commercial Law Act 2017, the Subcontractor acknowledges that its warranties and covenants in this deed constitute promises which confer or are intended to confer a benefit on the Principal and the Principal's financier and all owners, lessees, occupiers and operators of the completed Development Works.
8. The Subcontractor acknowledges and agrees that the Principal shall not be liable for payment of any retentions that have or ought to have accrued in respect of any work carried out prior to the date of the Principal requiring the Subcontractor to complete the works under this Continuity Guarantee, and that the Subcontractor's claim for such retentions is with the Contractor.
9. The covenants in this Deed on the part of the Subcontractor are for the benefit of and may be enforced by any person for the time being entitled to receive the benefits of the covenants and agreements on the part of the Principal under the Contract.

**EXECUTED AS A DEED**

Signed by the Subcontractor: .....

on this: ..... day of ..... 201...

*(And where required) signed in the presence of:*

Witness Signature: .....

Name (print): .....

Address (print): .....

Occupation (print): .....

Signed by the Principal: .....

on this: ..... day of ..... 201...

*(And where required) signed in the presence of:*

Witness Signature: .....

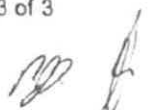
Name (print): .....

Address (print): .....

Occupation (print): .....

**SCHEDULE**

[Attach copy of Subcontract/Terms of Engagement]

A handwritten signature in black ink, appearing to be 'M. F.', located at the bottom right of the page.

**SEVENTH SCHEDULE**

**Required form of Construction Warranty**

Refer attached.

Handwritten signature or initials in the bottom right corner.

## WARRANTY AGREEMENT - SUBCONTRACTOR AND CONTRACTOR WARRANTY

THIS DEED is made on

20

BY [ ] (company number [ ]) of [ ] (with its successors and permitted assigns called the "Warrantor").

IN FAVOUR OF Everest Central Investment Limited (with its successors and assigns called the "Beneficiary").

### INTRODUCTION

- A By an agreement dated the [ ] day of [ ] 20[ ] ("Contract") made between the Principal and the Contractor, the Contractor agreed to carry out certain works ("Contract Works").
- B. By a subcontract dated [ ] the Warrantor agreed to undertake a portion of the Contract Works.
- C Pursuant to the provisions of the Contract, the Warrantor has agreed to enter into this warranty in favour of the Beneficiary in respect of [ ], ("Warranted Works") such Warranted Works forming part of the Contract Works.

### BY THIS DEED:

1. **FOR** the purpose of this warranty:
  - (a) the expression "defects" extends to include all defects, faults, omissions, shrinkages, undue deterioration and other faults in the Warranted Works that are due to any designs provided by (or on behalf of) the Warrantor or any Materials or workmanship not being in accordance with the Contract or the warranty contained in clause 3;
  - (b) the expression "repair" includes and extends to renewal and/or replacement as necessary to remedy defects;
  - (c) any notice required to be given by the Beneficiary to the Warrantor pursuant to the provisions of this warranty shall be deemed to have been validly and effectually given by leaving the same at or posting it to the registered office of the Warrantor or, if there is no such registered office, by leaving it at or posting it to the business address of the Warrantor last known to the Beneficiary. In the event of such notice being given by post the notice shall be deemed to have been received on the day after it is posted;
  - (d) "Warranty Period" means the date that is [period] years from the date of the issue of the Practical Completion Certificate under the Contract;
  - (e) except where the context requires otherwise or as expressly modified by this warranty, defined references and terms in this warranty shall have the same meaning as in the Contract; and
  - (f) references to clauses or schedules are references to clauses or schedules of this warranty.
2. **THIS** warranty (including the warranties, indemnities and guarantees contained herein):
  - (a) is a continuing warranty;
  - (b) is irrevocable;
  - (c) will remain in full force and effect until the expiry of the Warranty Period; and



- (d) is in addition to, and not in substitution for, any other security, right or interest that the Beneficiary may have now or which it may subsequently take or hold against the Warrantor.
3. **THE** Warrantor warrants to and covenants with the Beneficiary that:
- (a) the Warranted Works are or shall be fit for the purposes for which they are required by (or reasonably inferred from) the Contract;
  - (b) all Materials used in the Warranted Works are or will be new and of good quality and in accordance with the provisions of the Contract;
  - (c) it has and shall maintain during the Warranty Period, professional indemnity insurance in an amount of not less than [\$ ] on an each and every claim basis; and
  - (d) all work involved in carrying out the Warranted Works has or will be carried out in a good and workmanlike manner, using the degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced contractor or architect (as applicable) engaged in the same type of undertaking as the Warranted Works and under the same or similar circumstances and in accordance with the provisions of the Contract.
4. **THE** Warrantor warrants to the Beneficiary that the Warrantor shall at its own expense:
- (a) repair all defects in the Warranted Works;
  - (b) make good any damage to buildings or structures caused or contributed to by any defect or repairs or replacements in or to the Warranted Works; and
  - (c) make good and indemnify the Beneficiary in respect of all losses occasioned by or arising out of any defect in the Warranted Works,
- occurring at any time prior to the expiry of the Warranty Period.
5. **ALL** rectification of the Warranted Works shall be carried out at the Warrantor's cost in all things, promptly, in accordance with the duty of care set out in clause 3(d). If any building consent or other statutory approval or consent is required for the rectification work, then the Warrantor shall obtain such consent or approval at its cost.
6. **IF** the Warrantor does not repair any defect or make good any damage or loss within fourteen (14) days of receiving notice of that defect, damage or loss, the Beneficiary may carry out the work and/or make good the damage or loss specified in the notice and recover all costs thereby incurred from the Warrantor but without releasing the Warrantor from any obligation or liability. Such costs may include the cost of all labour, material, travelling and other charges incurred by the Beneficiary in repairing such defect or making good any such damages or loss.
7. **THE** Warrantor shall not be liable for any defect, loss or damage solely attributable to:
- (a) any act, omission or negligence of the Beneficiary or any other person for which the Beneficiary, as between itself and the Contractor, is responsible (including, without limitation, any failure by the Beneficiary to operate and/or maintain the Warranted Works in accordance with the Contract and/or the Contractor's written instructions); or
  - (b) earthquake or war; or
  - (c) any forces of nature which reasonable foresight and ability on the part of the Warrantor one could not foresee or provide against.
8. **THE** Warrantor further indemnifies and holds the Beneficiary harmless from and against any costs, claims, liabilities, or expenses which the Beneficiary may incur or for which the

Beneficiary may become liable arising from any failure by the Warrantor to promptly rectify all defects in the Warranted Works notified to the Warrantor under this warranty.

9. **THIS** warranty shall be deemed to be a continuing warranty so that the Beneficiary shall be entitled from time to time and at all times during the period referred to in clause 1 to give notice of any defect or damage or loss (or any one or more of the same), to which clause 3 applies.
10. **IN** the event that this warranty is executed prior to the issue of a Final Completion Certificate, no Variation of the Warranted Works subsequent to the execution of this warranty and before the date of the issue of a Final Completion Certificate shall be deemed to vary the liability of the Warrantor under this warranty, and all references to the Warranted Works shall be deemed to include the Warranted Works as originally specified together with such Variations thereto and the issuing of any Final Completion Certificate in respect of the Warranted Works or any part of the Warranted Works (or of the Contract Works of which they form part) shall not affect the liability of the Warrantor under this warranty.
11. **THE** Warrantor agrees that the rights contained in this warranty shall inure for the benefit of any company or joint venture in which the Beneficiary has an interest and the rights contained in this warranty may be assigned by the Beneficiary without the consent of the Warrantor.
12. **THIS** warranty is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this warranty.

**EXECUTED AS A DEED**

**For and on behalf of the Warrantor:**

)

)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director



EIGHTH SCHEDULE

Required form of Duty of Care Deed

Refer attached.

## DUTY OF CARE DEED

Contract for [Contract Name & Contract Number]

THIS DEED is made on ..... day of ..... 20.....

BY ..... ('the Consultant')

IN FAVOUR OF Everest Central Investment Limited ('the Principal')

### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A The Principal has a contract with Vijay Holdings Limited ('the Contractor') for the design and construction of buildings at 156-160 Central Park Drive, Henderson ('the Project').
- B The Contractor has engaged the Consultant under a separate consultancy agreement ('Consultancy Agreement') to provide professional services in relation to the Project, as described in the Consultancy Agreement ('Services').
- C The Consultant has agreed to provide a duty of care deed to the Principal on the terms set out in this deed.

### THE PARTIES AGREE

1. **THE** Consultant warrants and acknowledges that:
  - (a) It owes a duty of care to the Principal in carrying out its duties in respect of the Services; and
  - (b) It has or will carry out the Services in accordance with:
    - (i) The Consultancy Agreement; and
    - (ii) All reasonable skill care and diligence expected of an experienced professional consultant providing services similar to the Services.
2. **THE** Consultant acknowledges that the Principal may rely upon the Consultant's warranty in clause 1 above.
3. **THE** maximum aggregate liability of the Consultant to the Principal for any breach of the Consultant's warranty in clause 1 above shall be limited to the amount stated in the Schedule to this Deed. To avoid doubt, the Consultant's aggregate liability under or in connection with the Consultancy Agreement or this deed, whether under contract, tort, statute or otherwise, (including to the Principal and the Contractor) shall be collectively no greater than the applicable monetary limit of its liability under the Consultancy Agreement
4. **THE** covenants set out in the deed are provided subject always to the terms of the Consultancy Agreement and on the basis the Consultant will:
  - (a) not owe or have any greater obligations or liability, whether in scope or duration, to the Principal than the Consultant would have owed or had to the Contractor; and



(b) be entitled to raise all limitations and to raise all defences to liability to the Principal as is otherwise available to it against the Contractor.

5. **THIS** deed shall be governed by and construed in accordance with the laws of New Zealand and the Consultant submits to the non-exclusive jurisdiction of its Courts.

#### SCHEDULE

Clause	Subject matter	Specific Data
3	Consultant's maximum aggregate liability	\$[insert amount]

In witness of which this deed has been executed and delivered

**SIGNED** on behalf of the Consultant by:

.....

Director

.....

Director

NOTE – This duty of care deed shall be executed by the Consultant in the manner required for execution of a deed. A company shall execute the deed by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the deed is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.

