



862 Great South Road, Penrose, Auckland, NZ 1061

LEGAL DESCRIPTION

CERTIFICATE OF TITLE	LOT	DP	LAND AREA
NA2D/1065	Allotment 123	Section 12 Suburbs of Auckland	9,573m <sup>2</sup>
NA20D/1433	Lot 1	30597	4,047m <sup>2</sup>
NA717/111	Lot 1	28959	4,047m <sup>2</sup>
NA723/293	Lot 1	29269	2,023m <sup>2</sup>
NA1020/180	Lot 1, Part Lot 2	27421	2,023m <sup>2</sup>
NA1137/135	Part Lot 2	27421	2,023m <sup>2</sup>
		<b>TOTAL LAND AREA</b>	<b>23,736m<sup>2</sup></b>

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## 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 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
  - (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 10.8(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.

## 3.0 Possession and Settlement

### Possession

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

### Settlement

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

### Last Minute Settlement

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

## Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly, and
  - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to
    - (a) account to the purchaser on settlement for 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),
- (4) then the vendor may extend the settlement date:
- (a) where there is a deferral of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
  - (b) where there is a deferral of the settlement date pursuant to subclause 3.16, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

## New Title Provision

## 3.18 (1) Where

- (a) the transfer of the property is to be registered against a new title yet to be issued; and
  - (b) a search copy, as defined in section 172A of the Land Transfer Act 1952, of that title is not obtainable by the tenth working day prior to the settlement date;
  - (c) then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which
    - (i) the vendor has given the purchaser notice that a search copy is obtainable, or
    - (ii) the requisitions procedure under clause 6.0 is complete
- (2) Subclause 3.18(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

**4.0 Residential Land Withholding Tax**

- 4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then
- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
    - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
    - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
  - (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
  - (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
    - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
    - (b) any costs payable by the vendor under subclause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 4.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
  - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 4.3 If pursuant to subclause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
  - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under subclause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
  - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

**5.0 Risk and insurance**

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property 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 8.4 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

**6.0 Title, boundaries and requisitions**

- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
- (a) the tenth working day after the date of this agreement; or
  - (b) the settlement date
- (2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 172A of the Land Transfer Act 1952 is obtainable.
- (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:
- (a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
  - (b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
  - (c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.
- (4) In the event of cancellation under subclause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.
- 6.3 (1) If the title to the property being sold is a cross lease title or a unit title and there are:
- (a) in the case of a cross lease title:
    - (i) alterations to the external dimensions of any leased structure; or
    - (ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted user covenant;
  - (b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be);
- then the purchaser may requisition the title under subclause 6.2 requiring the vendor:
- (c) in the case of a cross lease title, to deposit a new plan depicting the buildings or structures and register a new cross lease or cross leases (as the case may be) and any other ancillary dealings in order to convey good title; or
  - (d) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.

- (2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.
- 6.4 Except as provided by sections 36 to 42 of the Contract and Commercial Law Act 2017, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

### 7.0 Vendor's warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party; or
  - (2) given any consent or waiver,
- which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at settlement:
- (1) The chattels and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver them shall only create a right of compensation.
  - (2) All electrical and other installations on the property are free of any charge whatsoever.
  - (3) There are no arrears of rates, water rates or charges outstanding on the property.
  - (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
  - (5) ~~Where the vendor has done or caused or permitted to be done on the property any works:~~
    - (a) any permit, resource consent, or building consent required by law was obtained; and
    - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
    - (c) where appropriate, a code compliance certificate was issued for those works.
  - (6) ~~Where under the Building Act, any building on the property sold requires a compliance schedule:~~
    - (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
    - (b) the building has a current building warrant of fitness; and
    - (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
  - (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
  - (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party,
- has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
- (9) Any chattels included in the sale are the unencumbered property of the vendor.
- 7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
  - (2) the building has a current building warrant of fitness; and
  - (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 7.4 The vendor warrants and undertakes that on or immediately after settlement:
- (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
  - (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
  - (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
  - (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 7.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 6.4 and any right of equitable set-off.

### 8.0 Claims for compensation

- 8.1 If the purchaser claims a right to compensation either under subclause 6.4 or for an equitable set-off:
- (1) the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
  - (2) the notice must:
    - (a) in the case of a claim for compensation under subclause 6.4, state the particular error, omission or misdescription of the property or title in respect of which compensation is claimed;
    - (b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
    - (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
    - (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 8.2 For the purposes of subclause 8.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given on or before the last working day prior to the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 11.1.
- 8.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 8.4 If the amount of compensation is disputed:
- (1) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
  - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
  - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
  - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
  - (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
  - (6) the amount of compensation determined to be payable shall not be limited by the interim amount; and
  - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.
- 8.5 The procedures prescribed in subclauses 8.1 to 8.4 shall not prevent either party taking proceedings for the specific performance of the contract.

## 9.0 Unit title and cross lease provisions

### Unit Titles

- 9.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act 2010 ("the Act") require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.
- 9.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
  - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
  - (3) Not less than five working days before the settlement date, the vendor will provide:
    - (a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and
    - (b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
  - (4) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.
  - (5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
  - (6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
  - (7) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
    - (a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or
    - (b) any proceedings being instituted by or against the body corporate; or
    - (c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
  - (8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
  - (9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
  - (10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
    - (a) the transfer of the whole or any part of the common property;
    - (b) the addition of any land to the common property;
    - (c) the cancellation of the unit plan; or
    - (d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan,
 which has not been disclosed in writing to the purchaser.
  - (11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 9.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 9.2(3), the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
  - (2) elect that settlement shall still take place on the settlement date.
- 9.4 If the property is a unit title, each party specifies that:
- (1) the facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Act; and
  - (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Act.
- 9.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

### Unauthorised Structures – Cross Leases and Unit Titles

- 9.6 (1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:
- (a) in the case of a cross lease title, any required lessors' consent; or
  - (b) in the case of a unit title, any required body corporate consent,
- the purchaser may demand within the period expiring on the earlier of:
- (i) the tenth working day after the date of this agreement; or
  - (ii) the settlement date,
- that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.
- (2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 6.2(3) and 6.2(4) shall apply with the purchaser's demand under subclause 9.6(1) being deemed to be an objection and requisition.

## 10.0 Conditions and mortgage terms

### Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
  - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
  - (c) this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.
- 10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.
- 10.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

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## Operation of Conditions

- 10.8 If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent.
  - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
  - (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
  - (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
  - (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
  - (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

## Mortgage Terms

- 10.9 Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 10.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

## 11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.  
 (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able, and willing to proceed to settle in accordance with this agreement or is not so ready, able, and willing to settle only by reason of the default or omission of the other party.  
 (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to subclause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:  
 (1) on or before the twelfth working day after the date of service of the notice; or  
 (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.  
 (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.  
 (3) The vendor may give a settlement notice with a notice under this subclause.  
 (4) For the purpose of this subclause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 11.1(3):  
 (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:  
 (a) sue the purchaser for specific performance; or  
 (b) cancel this agreement by notice and pursue either or both of the following remedies namely:  
 (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or  
 (ii) sue the purchaser for damages.  
 (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.  
 (3) The damages claimable by the vendor under subclause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:  
 (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale, and  
 (b) all costs and expenses reasonably incurred in any resale or attempted resale; and  
 (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale  
 (4) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:  
 (1) sue the vendor for specific performance; or  
 (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

## 12.0 Non-merger

- 12.1 The obligations and warranties of the parties in this agreement shall not merge with:  
 (1) the giving and taking of possession;  
 (2) settlement;  
 (3) the transfer of title to the property;  
 (4) delivery of the chattels (if any); or  
 (5) registration of the transfer of title to the property.

## 13.0 Agent

- 13.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.
- 13.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

## 14.0 Goods and Services Tax

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:  
 (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;  
 (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;  
 (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:  
 (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and  
 (b) any default GST;  
 (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and  
 (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(15) 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 2 are correct at the date of this agreement.
- 15.3 Where the particulars stated on the front page and in Schedule 2 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 2 or they have altered.
- 15.5 If any of the particulars stated by the purchaser in Schedule 2 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 2 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 2 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 2 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.

FURTHER TERMS OF SALE

Ninth Edition 2012 (6)

See Further Terms of Sale

SCHEDULE 1

List all chattels included in the sale

*(strike out or add as applicable)*

Stove      Fixed floor coverings      Blinds      Curtains      Light fittings

f  
WA

## FURTHER TERMS OF SALE

### 19 CONDITIONS

#### 19.1 Due diligence

This agreement is conditional on the Purchaser completing a due diligence exercise and notifying the Vendor in writing before 4pm on 21 December 2017 that the Purchaser is satisfied that the Property is suitable for the Purchaser's requirements.

#### 19.2 Benefit of Purchaser's condition

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

#### 19.3 Condition not satisfied

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

### 20 PROVISION OF INFORMATION AND ACCESS

#### 20.1 Vendor to provide information

To assist the Purchaser in carrying out its due diligence exercise as provided for in clause 19.1, the Vendor will use all reasonable endeavours to provide the Purchaser with any information requested by the Purchaser that the Purchaser may reasonably require in order to carry out its due diligence investigation. This information will include (but will not be limited to) all design drawings and building consents for the proposed new offices and canopy to be constructed on the Property.

#### 20.2 Information warranty

The Vendor warrants, to the best of its knowledge and belief, that all the material and information which it provides to the Purchaser under clause 20.1 is complete, true and accurate.

#### 20.3 Access to the Property

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

#### 20.4 Purchaser liable for damage

If the Purchaser or its consultants, contractors, agents or employees cause any damage to the Property, or to any property of any tenant of the Property, the Purchaser must make good such damage immediately, at the Purchaser's cost. The Purchaser indemnifies the Vendor in respect of such damage, and any costs, losses, claims, proceedings, actions or

*will use its best endeavours to provide information to the purchaser under cl 20.1 which is complete, true + accurate*

*WA*

*WA*

demands made of the Vendor which results from such damage, or from the Purchaser's due diligence investigations carried out pursuant to this agreement.

## 21 ROOFING WORKS

### 21.1 Vendor to provide details

Immediately following execution of this agreement the Vendor will provide full details in connection with the re-roofing of the buildings within that part of the Property shown coloured pink on the plan attached as Schedule 2 (Roofing Works). The Roofing Works entail re-roofing with colour steel with clearlite panels or a comparable alternative. ~~The details to be provided by the Vendor will include a set of plans and specifications, copies of any consents obtained for the Roofing Works, and (if applicable) a copy of the roofing contract pursuant to which the Roofing Works are being carried out (Roofing Contract). If a Roofing Contract has not yet been entered into then the Vendor must prior to satisfaction or waiver of the condition in clause 19.1 enter into a formal Roofing Contract for the Roofing Works on terms approved by the Purchaser (not to be unreasonably withheld or delayed)~~

copies in this regard will be provided during due diligence

### 21.2 Vendor to complete

The Vendor will carry out and complete the Roofing Works prior to the Settlement Date in a good and workmanlike manner, using new materials and in accordance with the plans and specifications referred to in clause 21.1, all statutory and regulatory requirements and any obligations owed to the tenant of the Property. The Vendor will comply with its obligations under any Roofing Contract entered into.

### 21.3 Assignment of guarantees/warranties

On Settlement, the parties will co-operate with each other to procure the assignment of any guarantees or warranties in respect of the Roofing Works that are capable of assignment to the Purchaser. Where any such guarantees and warranties are not able to be assigned but are able to be enforced by the Vendor after Settlement, the Vendor covenants with the Purchaser to hold those guarantees and warranties on trust for the Purchaser. The Vendor will from time to time, when requested by the Purchaser, take reasonable steps to enforce such guarantees and warranties for the benefit of the Purchaser.

at the purchaser's cost in all the apts.

## 22 DEMOLITION WORKS

### 22.1 Vendor to provide details

Immediately following execution of this agreement the Vendor will provide full details in connection with the proposed demolition of the buildings and improvements within that part of the Property shown coloured yellow on the attached plan (Demolition Works). The Demolition Works will include:

- (a) removal of 1 layer of concrete slab up to 250mm thick;
- (b) removal of existing footings and foundations to a maximum of 600mm below the existing ground levels;
- (c) demolition of existing timber water tank and concrete surroundings; and
- (d) disposal of all the demolition materials off-site.

The details to be provided by the Vendor will include any consents, costings, and existing (or proposed) form of demolition ~~contract~~ for the Demolition Works (Demolition Contract). If the Partial Surrender is completed pursuant to clause 23 prior to settlement, the Vendor will enter into a formal Demolition Contract for the Demolition Works on terms approved by the Purchaser (not to be unreasonably withheld or delayed).

quote  
accept the demolition quote

AA

22.2 Vendor to complete

As soon as reasonably practicable following completion of the Partial Surrender referred to in clause 23, the Vendor will carry out and complete the Demolition Works in a good and workmanlike manner, and in accordance with all statutory and regulatory requirements and any obligations owed to the tenant of the Property. The Vendor will use its reasonable endeavours to progress the Demolition Works as soon as reasonably practicable. The Vendor will comply with its obligations under the Demolition Contract. *quote p. 11*

23 LEASING ARRANGEMENTS

23.1 Proposed Partial Surrender

It is acknowledged that the existing lease of the Property (Existing Lease) will be partially surrendered to exclude the buildings coloured yellow and orange on the plan attached as Schedule 2 together with the adjoining sealed and hardstand areas to the southwest of the buildings coloured pink on the attached plan (the Partial Surrender). *as shown on the Premises Plan attached*

23.2 Vendor to provide details

Immediately following execution of this agreement the Vendor will provide full details in connection with the proposed terms of the Partial Surrender together with a full update regarding any negotiations.

23.3 Negotiations

The Vendor will consult with the Purchaser regarding the negotiation of the Partial Surrender prior to reaching any binding agreement. If a binding agreement for the Partial Surrender is not completed prior to the date on which this agreement is declared unconditional then the final terms of any such agreement will be subject to the Purchaser's prior written approval.

23.4 Liability

The Vendor will meet all payments due under any documentation entered into in respect of the Partial Surrender and prior to Settlement will observe and perform the obligations on the part of the landlord contained in that documentation (including in relation to the conduct of the Roofing Works and the Demolition Works). *relating to the demolition works and roofing works. p. 11*

24 OUTSTANDING WORKS

24.1 Application

The terms of this clause 24 will apply if and to the extent that the Roofing Works and the Demolition Works have not been completed to the reasonable satisfaction of the Purchaser, including the issue of any required Code Compliance Certificate (Outstanding Works) at least 5 Working Days prior to the Settlement Date.

24.2 Assignment

The Vendor will continue to progress the Outstanding Works up to Settlement. On Settlement, the Purchaser will take over responsibility for completing any Outstanding Works and the Vendor will assign to the Purchaser the benefit of the Roofing Contract and/or the Demolition Contract (as may be applicable) and will enter into and execute a deed of assignment prepared by the Purchaser's solicitors in customary form. *quote*

24.3 Determination of Outstanding Costs

Within 3 Working Days prior to the Settlement Date, the parties will determine the costs to complete the Outstanding Works as follows: *at the purchaser's cost p. 11*

- quote.* *or if the parties can't agree it.* *WA*
- (a) The determination will be based on the value of the Outstanding Works specified under the Roofing Contract and/or the Demolition Contract (as may be applicable) or if such contracts do not fix the value of the Outstanding Works then the determination will be certified by an independent quantity surveyor (Independent QS) appointed jointly by the parties (the identity of whom will be agreed prior to the date on which the condition in clause 19.1 is satisfied or waived).
  - (b) If agreement regarding the identity of the Independent QS is not reached prior to satisfaction or waiver of the condition in clause 19.1 then either party will be entitled to apply to the President (or acting deputy) of the Property Institute of New Zealand to identify the Independent QS. Any certificate by the Independent QS will be final and binding on the parties.

#### 24.4 Retention

On Settlement, Chapman Tripp will withhold from the purchase monies payable to the Vendor a retention equal to 150% of the Outstanding Costs determined pursuant to clause 24.3 (Retention). The Retention will be held in an interest bearing trust account on behalf of both the Vendor and the Purchaser as follows:

- (a) The Purchaser will be entitled to draw-down from the Retention (including any interest earned less commission and withholding tax) any costs incurred in connection with completion of the Outstanding Works;
- (b) Following completion of the Outstanding Works to the reasonable satisfaction of the Purchaser (and the issue of a Code Compliance Certificate in respect of the Outstanding Works), the Vendor will be entitled to claim the balance of the Retention (if any).

#### 25 MAJOR TRANSACTION

##### 25.1 Parties to obtain approval if required

Where a party to this agreement is a company, and if the transaction evidenced by this agreement is a major transaction for that party, that party warrants to the other party that it has, or will have by the Settlement Date, obtained every necessary approval by special resolution of its shareholders, and the approval of any other relevant person, to the transaction contemplated by this agreement as if it is a "major transaction" as defined in the Companies Act 1993.

#### 26 GENERAL

##### 26.1 Lowest Price

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

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

##### 26.2 Public announcements

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

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

*WA*

(c) where necessary in connection with any capital raising undertaken by the Purchaser and/or its nominee,  
without the prior written approval of the other party to this agreement.

26.3 Further terms to prevail over general terms

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

26.4 Further assurances

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

27.0 TERMINATION OF PRIOR AGREEMENT

Both parties acknowledge that this agreement supersedes a prior agreement between the Vendor and Purchaser on the property at 862-880 Great South Road, Penrose dated 16th November 2017. Upon the signing of this agreement by both parties the previous agreement will be at an end.

1 07

## SCHEDULE 2

### (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 question 3 and 4 is "No", go to question 7

5.	The purchaser's details are as follows:	
	(a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
6.	The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or 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).	Yes/No
	OR	
	The purchaser intends at settlement to use part of the property as a principal place of residence by the purchaser or 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
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 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).	Yes/No
	OR	
	The purchaser expects the nominee to intend at settlement to use part of the property as a principal place of residence by the purchaser or 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

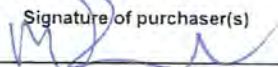
#### WARNING (This warning does not form part of this agreement)

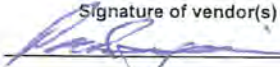
This is a binding contract. Read the information set out on the back page before signing.

#### 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)  
  
 \_\_\_\_\_  
 DIRECTOR

Signature of vendor(s)  
  
 \_\_\_\_\_  
 D. BOETS

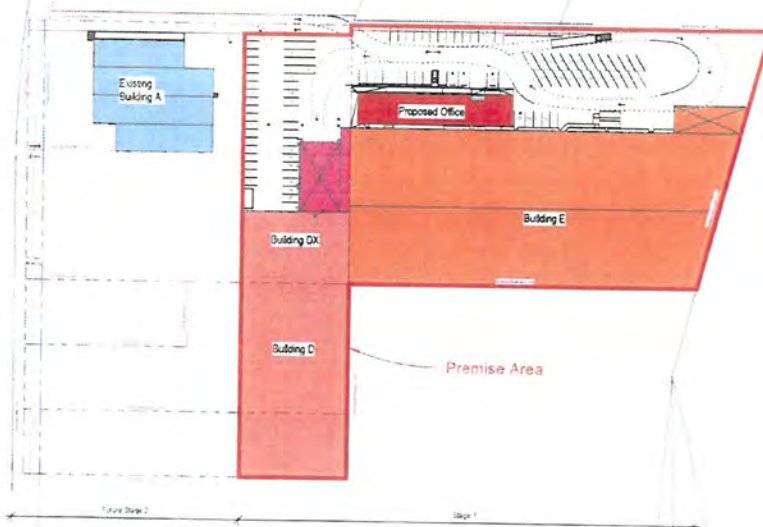


14

Check all Dimensions on site before construction  
Copyright of drawings belongs to Ken Davis Architects  
All work to comply with NZ Building Code and  
relevant NZ Standards



GREAT SOUTH ROAD



Premise Area  
Graphic Packaging  
Alteration/Additions  
852 Great South Road

**KEN DAVIS ARCHITECTS**  
100/101A, P.O. Box 21066, Devonport, Auckland 1142  
T: 09 484 7222 F: 09 484 7223 E: ken@kdv.co.nz

Project Name:  
852 Great South Road  
852 Great South Road, Penrose, Auckland

Drawn By:  
Premise Area

Scale: 1:1000 @ A3 Date: 8 Nov 2017  
Sheet No: A-023

1 Proposed - Site Plan Premises Area  
A-023 1:1000 @ A3

WA



**COMPUTER INTEREST REGISTER  
UNDER LAND TRANSFER ACT 1952**



Search Copy

**Identifier** 377620  
**Land Registration District** North Auckland  
**Date Registered** 03 September 2007 09:00 am

**Prior References**

NA1020/180	NA1137/135	NA20D/1433
NA2D/1065	NA717/111	NA723/293

<b>Estate</b>	Leasehold	<b>Instrument</b>	L 7526157.5
<b>Area</b>	2.3737 hectares more or less	<b>Term</b>	9 Years commencing 17.8.2007 (Right of Renewal) and now extended to 31 December 2017 and extended to 31 December 2018

**Legal Description** Lot 1 Deposited Plan 27421 and Lot 1 Deposited Plan 30597 and Allotment 123 Section 12 Suburbs of Auckland and Lot 1 Deposited Plan 28959 and Lot 1 Deposited Plan 29269 and Lot 2 Deposited Plan 27421

**Proprietors**  
Graphic Packaging International New Zealand Limited

**Interests**

10416839.2 Variation of the within lease and extension of term to 31 December 2017 - 21.6.2016 at 3:24 pm  
10500585.4 Variation of the within lease and extension of term to 31 December 2018 - 1.8.2016 at 2:54 pm

WA

CT 377620  
H2007/0223

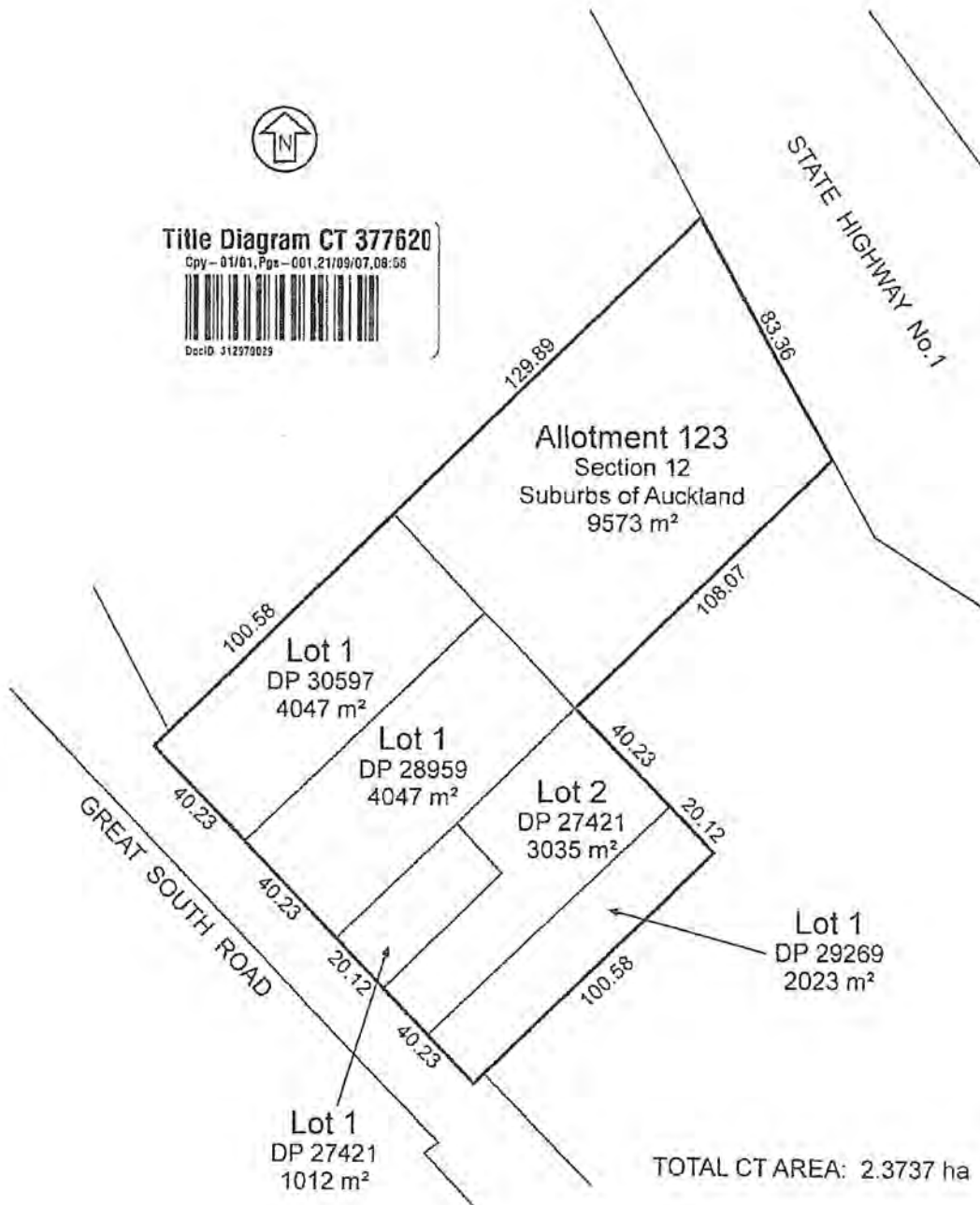


**Title Diagram CT 377620**

Cpy - 01/01, Pgs - 001, 21/09/07, 08:58



DocID: 312970029





COMPUTER FREEHOLD REGISTER  
UNDER LAND TRANSFER ACT 1952



Search Copy

R W Muir  
Registrar-General  
of Land

Identifier **NA20D/1433**  
Land Registration District **North Auckland**  
Date Issued 17 December 1971

**Prior References**  
NA783/271

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Estate Fee Simple  
Area 4047 square metres more or less  
Legal Description Lot 1 Deposited Plan 30597

**Proprietors**  
The Pack House Limited

**Interests**

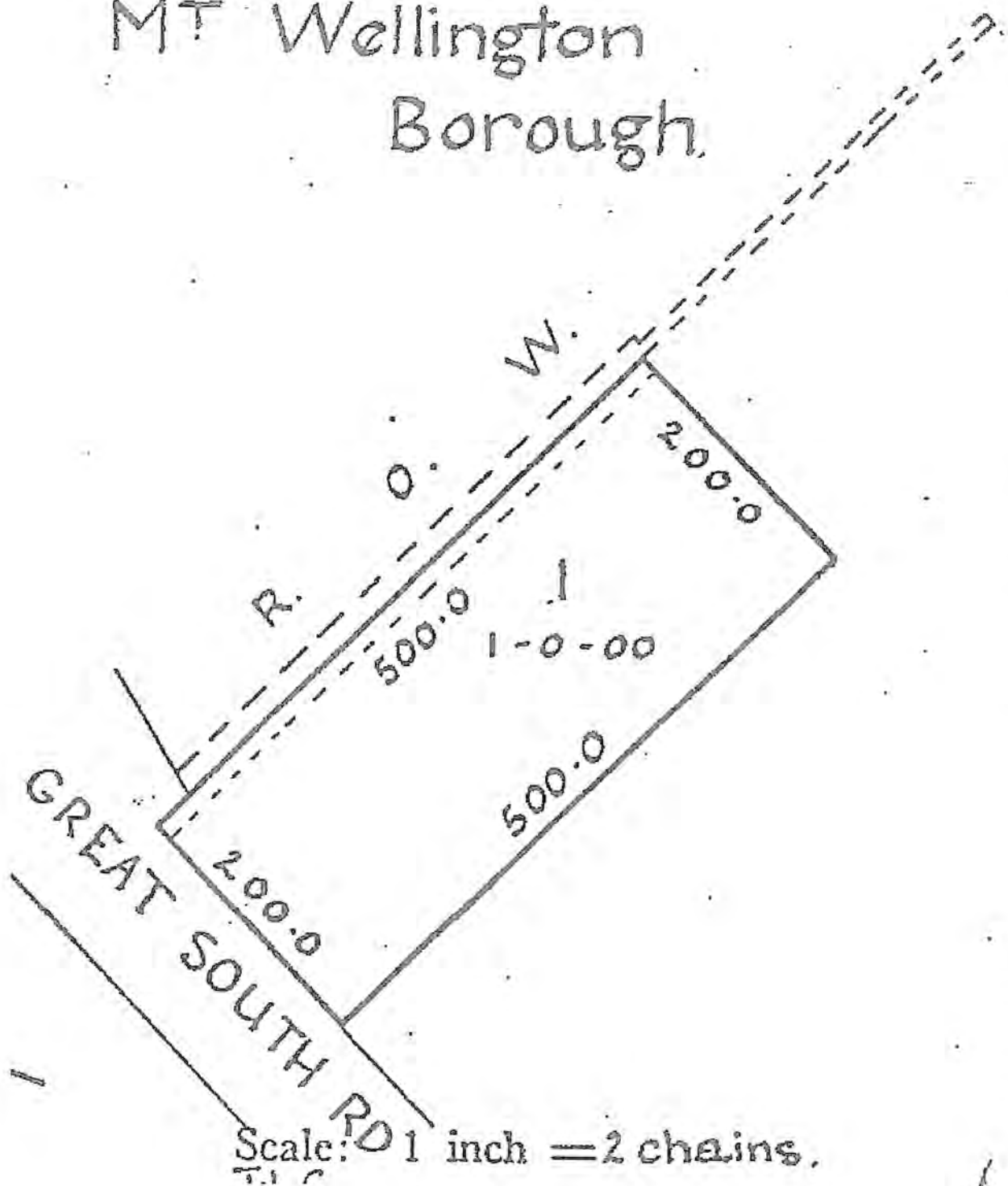
Fencing Agreement in Transfer 341414  
Subject to a right of way over part created by Transfer 630175  
Appurtenant hereto is a right of way created by Transfer 630175  
7526157.5 Lease Term 9 Years commencing 17.8.2007 (Right of Renewal) CT 377620 issued - 3.9.2007 at 9:00 am  
10416839.2 Variation of Lease 7526157.5 and extension of term to now 31 December 2017 - 21.6.2016 at 3:24 pm  
10500585.4 Variation of Lease 7526157.5 and extension of term 31 December 2018 - 1.8.2016 at 2:54 pm  
10500585.5 Mortgage to Bank of New Zealand - 1.8.2016 at 2:54 pm  
10500585.6 Mortgage to Tuangi Investments Limited and to WK Purdje Trustee Limited and to John Henry Chatterley and Margaret Anne Chatterley and to Allied Financial Services Limited in shares - 1.8.2016 at 2:54 pm

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Transaction Id 49623328  
Client Reference ac:nebillus001

Search Copy Dated 20 02 17 3:35 pm, Page 1 of 1  
Register Only

# MT Wellington Borough



Handwritten signature or initials.



**COMPUTER FREEHOLD REGISTER  
UNDER LAND TRANSFER ACT 1952**



Search Copy

**Identifier** NA723/293  
**Land Registration District** North Auckland  
**Date Issued** 06 February 1940

**Prior References**  
NA615/137

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**Estate** Fee Simple  
**Area** 2023 square metres more or less  
**Legal Description** Lot 1 Deposited Plan 29269

**Proprietors**  
The Paek House Limited

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**Interests**

Fencing Agreement in Transfer 318100 - 6.2.1940  
7526157.5 Lease Term 9 Years commencing 17.8.2007 (Right of Renewal) CT 377620 issued - 3.9.2007 at 9:00 am  
10416839.2 Variation of Lease 7526157.5 and extension of term to now 31 December 2017 - 21.6.2016 at 3:24 pm  
10500585.4 Variation of Lease 7526157.5 and extension of term 31 December 2018 - 1.8.2016 at 2:54 pm  
10500585.5 Mortgage to Bank of New Zealand - 1.8.2016 at 2:54 pm  
10500585.6 Mortgage to Tuangi Investments Limited and to WK Purdie Trustee Limited and to John Henry Chatterley and Margaret Anne Chatterley and to Allied Financial Services Limited in shares - 1.8.2016 at 2:54 pm

UA

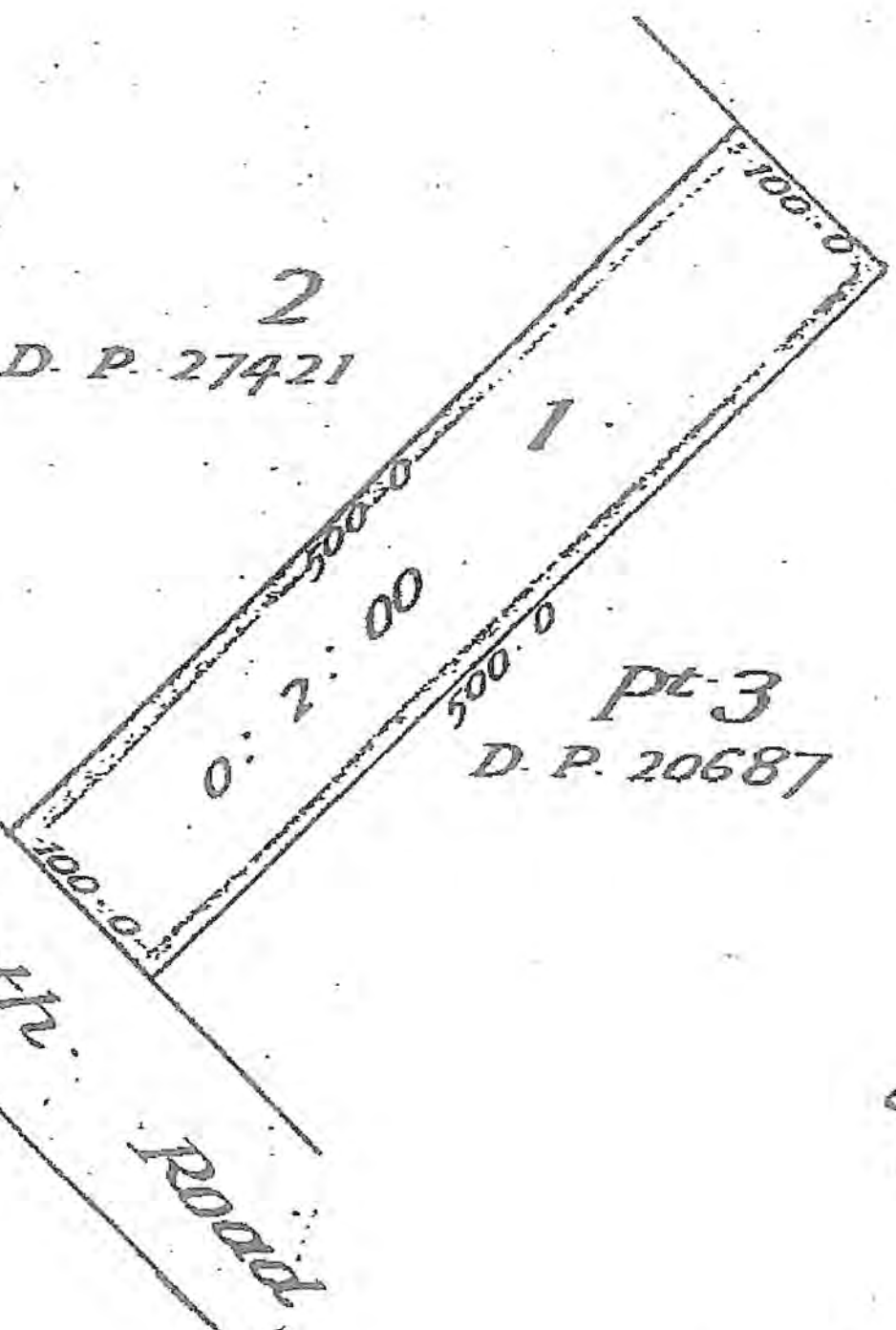


2  
D. P. 27421

1

Pt-3  
D. P. 20687

Gt. South Road



9  
4



COMPUTER FREEHOLD REGISTER  
UNDER LAND TRANSFER ACT 1952



Search Copy

Identifier **NA1020/180**  
Land Registration District **North Auckland**  
Date Issued 18 December 1951

**Prior References**

NA695/222          NA695/223

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Estate                Fee Simple  
Area                 2023 square metres more or less  
Legal Description   Lot 1 Deposited Plan 27421 and Part Lot 2  
                             Deposited Plan 27421

**Proprietors**

The Pack House Limited

**Interests**

Fencing Agreement in Transfer 292404  
Fencing Agreement in Transfer 292403  
Fencing Agreement in Transfer 503092 - 18.12.1951  
D256355.1 CERTIFICATE PURSUANT TO SECTION 37 BUILDING ACT 1991 - 26.3.1998 AT 3:59 PM  
7526157.5 Lease Term 9 Years commencing 17.8.2007 (Right of Renewal) CT 377620 issued - 3.9.2007 at 9:00 am  
10416839.2 Variation of Lease 7526157.5 and extension of term to now 31 December 2017 - 21.6.2016 at 3:24 pm  
10500585.4 Variation of Lease 7526157.5 and extension of term 31 December 2018 - 1.8.2016 at 2:54 pm  
10500585.5 Mortgage to Bank of New Zealand - 1.8.2016 at 2:54 pm  
10500585.6 Mortgage to Tuangi Investments Limited and to WK Purdie Trustee Limited and to John Henry Chatterley and Margaret Anne Chatterley and to Allied Financial Services Limited in shares - 1.8.2016 at 2:54 pm

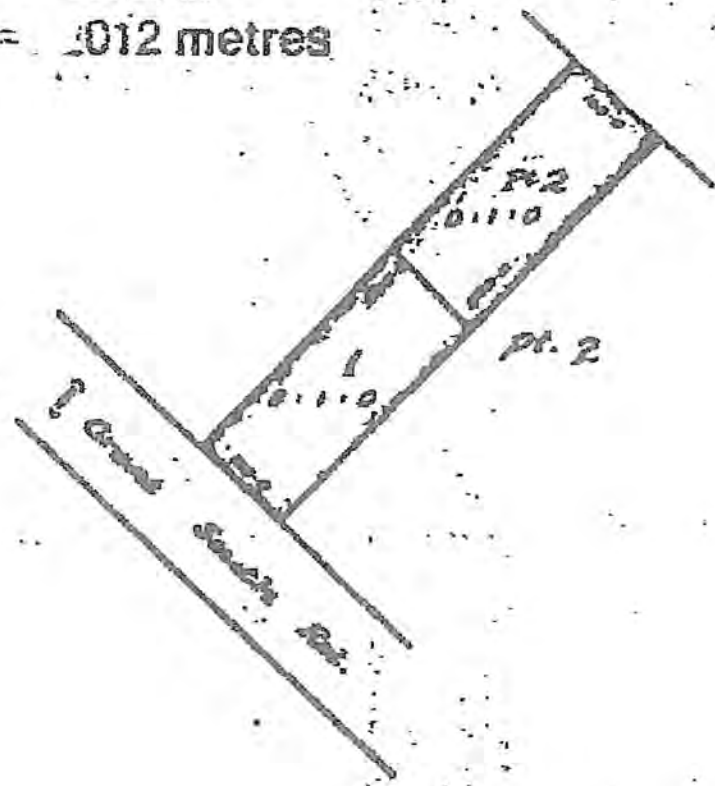
1  
WJ

METRIC AREA IS 2024 m<sup>2</sup>

2024 m<sup>2</sup>

Conversion Factors:

- 1 Acre = 4046 m<sup>2</sup>
- 1 Perch = 35.3 m<sup>2</sup>
- 1 Link = 2012 metres



Handwritten signature or initials.



COMPUTER FREEHOLD REGISTER  
UNDER LAND TRANSFER ACT 1952



Search Copy

R W Muir  
Registrar-General  
of Land

Identifier: **NA1137/135**  
Land Registration District: **North Auckland**  
Date Issued: 20 April 1955

**Prior References**  
NA695/223

---

Estate: Fee Simple  
Area: 2023 square metres more or less  
Legal Description: Part Lot 2 Deposited Plan 27421

**Proprietors**  
The Pack House Limited

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**Interests**

Fencing Agreement in Transfer 292404

D256355.1 CERTIFICATE PURSUANT TO SECTION 37 BUILDING ACT 1991 - 26.3.1998 AT 3:59 PM

7526157.5 Lease Term 9 Years commencing 17.8.2007 (Right of Renewal) CT 377620 issued - 3.9.2007 at 9:00 am

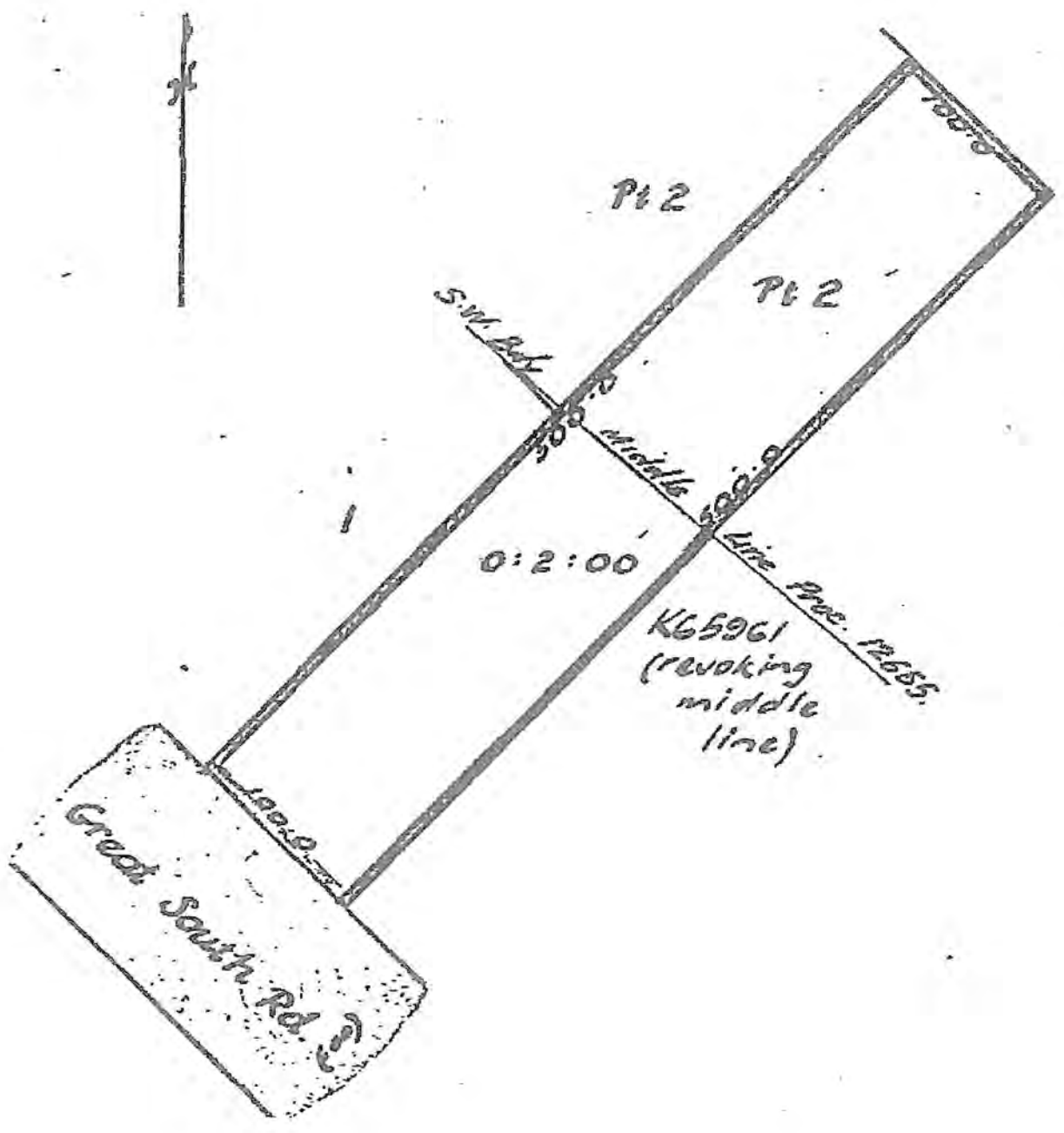
10416839.2 Variation of Lease 7526157.5 and extension of term to now 31 December 2017 - 21.6.2016 at 3:24 pm

10500585.4 Variation of Lease 7526157.5 and extension of term 31 December 2018 - 1.8.2016 at 2:54 pm

10500585.5 Mortgage to Bank of New Zealand - 1.8.2016 at 2:54 pm

10500585.6 Mortgage to Tuangi Investments Limited and to WK Purdie Trustee Limited and to John Henry Chatterley and Margaret Anne Chatterley and to Allied Financial Services Limited in shares - 1.8.2016 at 2:54 pm

✓



✓

## 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 weathertightness 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 and 9:
  - 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 1 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.**

## 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:**  
Penrith Holdings Limited

Contact Details:

**VENDOR'S LAWYERS:**

Firm:

Individual Acting:

Contact Details:

**PURCHASER:**  
Augusta Funds Management Limited

Contact Details:

**PURCHASER'S LAWYERS:**

Firm:

Individual Acting:

Contact Details:

**LICENSED REAL ESTATE AGENT:** Bayleys Real Estate Limited

Agent's Name: a Member of the Bayleys Realty Group

Manager: Michael Bayley

Salesperson: James Valintine (021 0237 1868)

Contact Details: Bayleys House

30 Gaunt Street

AUCKLAND

1010

Phone: 09 309 6020

Fax: 09 309 9404

Email: reception@bayleys.co.nz

To: Penrith Holdings Limited

22 December 2017

**862-880 GREAT SOUTH ROAD, PENROSE, AUCKLAND**

1. We refer to the agreement for sale and purchase dated 8 December 2017 between Penrith Holdings Limited (*PHL*) and Augusta Funds Management Limited (*AFM*) and/or nominee (*Agreement*).
2. AFM hereby confirms that the due diligence condition contained in clause 19.1 of the Agreement is satisfied, subject to PHL confirming its written acceptance of the terms set out in paragraph 3 below, by signing and returning a copy of this letter.
3. The terms referred to above are as follows:
  - a. The settlement date will be revised to 29 March 2018.
  - b. It will be an essential term of settlement that PHL provides the following documentation:
    - i. A construction contract in accordance with the requirements set out in paragraph 3c below executed by Ebert Construction Limited (*Construction Contract*);
    - ii. A written undertaking from Ebert Construction Limited (*Contractor*) confirming that the Construction Contract executed by them is unconditionally and irrevocably released to AFM (and/or its nominee) for countersigning upon settlement;
    - iii. A bond in accordance with the requirements set out in paragraph 3c below addressed and unconditionally and irrevocably released to AFM (and/or its nominee);
    - iv. An irrevocable royalty free copyright licence in favour of AFM (and/or its nominee) from the consultants engaged by PHL to prepare the plans and specifications attached to the Agreement to Lease and any additional design work undertaken pursuant to paragraph 3.c.ii. below;
    - v. An agreement to lease fully executed by PHL, Graphic Packaging International Limited and Graphic Packaging International Australia Pty Limited in the form attached as Schedule 1 (*Agreement to Lease*) together with approval from the tenant to the sale of the Property to AFM and/or nominee (if and to the extent required under the Agreement to Lease);
    - vi. A copy of the building consent documentation as lodged for the canopy and associate yard works to be constructed pursuant to the Agreement to Lease.
  - c. The Construction Contract will be based on NZS3910:2013 for a fixed lump sum subject to the following:
    - i. The plans and specifications will be as per the plans and specifications attached to the Agreement to Lease together with the Contractor's pricing schedule dated 20 December 2017 (*Plans*);
    - ii. If the Contractor requires any additional detailed design prior to approval of the Construction Contract and agreement of the fixed lump sum of \$2,085,000 plus GST (if any) then PHL will be responsible for preparing the additional detailed design which will be subject to approval by AFM (and/or its nominee) (such approval not to be unreasonably withheld or delayed);
    - iii. The Construction Contract will provide for a defects liability period of 3 months building works and 12 months for the services.



**AUGUSTA**  
FUNDS MANAGEMENT

- iv. An insurance or performance bond if required by a registered New Zealand bank approved by AFM on terms approved by AFM for a sum of not less than 5% of the contract sum, provided that AFM will be liable for the cost of the bond up to a maximum of \$5,000;
  - v. The Construction Contract must be consistent in all material respects with the terms of the Agreement to Lease;
  - vi. The Construction Contract will otherwise be on terms approved by AFM (such approval not to be unreasonably withheld or delayed) including that the base cost to AFM or its nominee does not exceed \$2,085,000 plus GST (if any) and AFM is liable for the costs of any variations in excess of that figure. AFM will respond on the Construction Contract within 2 Working days of receipt and will be deemed to have approved the Construction Contract if it provides no response.
- d. Following completion of the deed of lease (pursuant to the Agreement to Lease) and finalisation of the rental payable by the tenant the Purchase Price will be subject to adjustment if the passing rental under the deed of lease is less than or greater than \$1,019,000 plus GST and outgoings. The adjustment will be calculated and paid as follows:
- i. If the passing rental is less than \$1,019,000 plus GST and outgoings then the Purchase Price will be reduced by an amount equivalent to the amount of the rental shortfall capitalised at the rate of 6.5% per annum (*Price Reduction*). PHL will reimburse the full amount of the Price Reduction to AFM and/or nominee within 5 Working Days of written demand.
  - ii. If the passing rental is greater than \$1,019,000 plus GST and outgoings then the Purchase Price will be increased by an amount equivalent to the additional rental capitalised at the rate of 6.5% per annum (*Price Increase*). AFM and/or nominee will pay the full amount of the Price Increase to PHL within 5 Working Days of written demand.
- e. The above terms and conditions are in substitution for clause 21 of the Agreement.
- f. Clause 22 of the Agreement relating to the demolition works will still apply save that:
- i. The demolition quote referred to in clause 22 is attached as Schedule 2 and is approved by AFM and/or nominee;
  - ii. The reference in clause 22 to completion of the "Partial Surrender" will be replaced with reference to execution of the Agreement to Lease.
- g. Clause 23 of the Agreement relating to the leasing arrangements will be deleted (on the basis that execution of the Agreement to Lease in the agreed form is a term of settlement).
- h. Clause 24 will be retained save that it will only apply to the demolition works under clause 22.
- i. PHL will be bound by the underwrite set out in Schedule 3.
- j. Clause 20.2 is amended to incorporate the handwritten amendment, and to delete the standard wording after and including the word "warrants".



**AUGUSTA**  
FUNDS MANAGEMENT

4. If the above terms are accepted, please countersign and return to us a duplicate copy of this letter following which the Agreement will be unconditional.

Yours faithfully

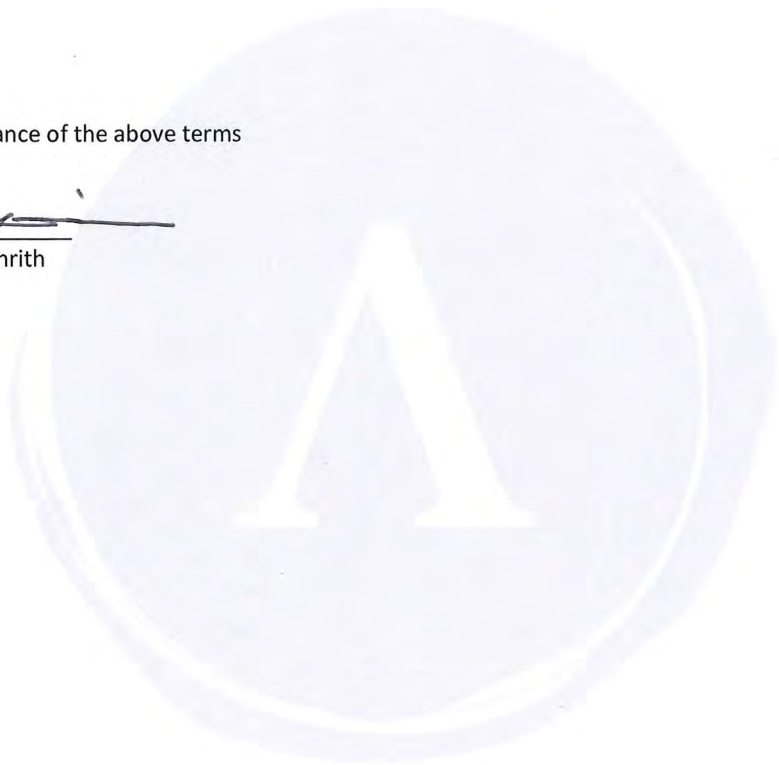
**AUGUSTA FUNDS MANAGEMENT LIMITED**

Mark Francis  
**MANAGING DIRECTOR**

We confirm our acceptance of the above terms

For and on behalf of Penrith  
Holdings Limited

Date:



**AUGUSTA FUNDS  
MANAGEMENT LIMITED**  
[www.augusta.co.nz](http://www.augusta.co.nz)

**AUCKLAND OFFICE**

Level 2, Bayleys House, 30 Gaunt Street, Wynyard Quarter, Auckland 1010, New Zealand  
PO Box 37953, Parnell 1151 | P +64 (9) 300 6161 | F +64 (9) 300 6162

**NEW PLYMOUTH OFFICE**

335 Devon Street East, New Plymouth 4312, New Zealand  
PO Box 44, New Plymouth 4340 | P +64 (6) 759 1520 | F +64 (6) 759 1521



**AUGUSTA**  
FUNDS MANAGEMENT

**SCHEDULE 1**

**Agreement to Lease  
(see attached)**



**FIRST SCHEDULE**

1. **PREMISES:** Those parts of the Landlords property at 862-880 Great South Road, Penrose, Auckland, comprising warehouse, canopy, factory, amenities, ~~and~~ office, car parks and yard, more particularly described in the Further Terms attached hereto and as shown on the attached ~~site plans~~ *PREMISE AREA outlined in red on plan A-023.*
2. **CAR PARKS:** ~~60~~ *CT 2* car parks, as shown on the attached site plan.
3. **TERM:** 8 years from Practical Completion Date (see Further Terms)
4. **COMMENCEMENT DATE:** Practical Completion Date
5. **RIGHTS OF RENEWAL:** One of 8 years
6. **RENEWAL DATES:** 8 years from the Commencement Date
7. **FINAL EXPIRY DATE:** 16 Years from the Commencement Date
  
8. **ANNUAL RENT:**

Premises	\$980,000.00	plus GST
(Subject to review if applicable)	Car Parks	\$included in premises plus GST
	TOTAL	\$980,000.00 plus GST

(But see Further Terms)
9. **DEPOSIT:** \$0.00 plus GST  
(advance rent)
  
10. **RENT REVIEW DATES:**

(Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)

  1. ~~Market rent review dates:~~ See Further Terms
  2. ~~CPI rent review dates:~~
  
11. **DEFAULT INTEREST RATE:** 7% above the % per annum Landlords overdraft rate  
(subclause 5.1 of the Lease)
12. **BUSINESS USE:** Any use permitted by the Auckland Council  
(subclause 16.1 of the Lease)

**AGREEMENT TO LEASE**

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

**GENERAL** address of the premises:

**862-880 Great South Road, Penrose, Auckland**

**DATE:** 21<sup>ST</sup> DECEMBER 2017

**LANDLORD:** Penrith Holdings Limited

**TENANT:** Graphic Packaging International NZ Limited

**GUARANTOR:** Graphic Packaging International Australia Pty Limited (ABN 057-776-888)

THE LANDLORD agrees to grant and the Tenant agrees to take a lease of the premises and the carparks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT agree

- (1) as set out in the First, Second and Third Schedules
- (2) that the Landlord's fixtures, fittings and chattels contained in the premises are those described in the Fourth Schedule.

THE GUARANTOR (and if more than one jointly and severally), in consideration of the Landlord entering into this Agreement at the Guarantor's request, agrees with the Landlord to guarantee to the Landlord the obligations of the Tenant and to sign the Lease as a guarantor.

**SIGNED** by the Landlord  
**Penrith Holdings Limited**



**SIGNED** by the Tenant  
**Graphic Packaging International NZ Limited**



**SIGNED** by the Guarantor  
**Graphic Packaging International Australia Pty Limited (ABN 057-776-888)**



**WARNINGS** (These warnings do not form part of this contract)

1. This contract is binding on all parties upon signing. All parties should seek legal advice **before signing**.
2. Before signing this contract the Tenant should make sure that the status of the property under the Resource Management Act 1991 is satisfactory for the Tenant's intended use of it.
3. The parties should agree upon and record the Landlord's fixtures, fittings and chattels and their condition in the Fourth Schedule.
4. The parties are advised to insert a clause requiring inclusion of a report of the condition of the premises as at the commencement of the lease.

13. **LANDLORD'S INSURANCE:**  
 (subclause 23.1 of the Lease)  
 (Delete or amend extent of cover as appropriate)
- (Delete either (a) or (b): if neither option is deleted, then option (a) applies)
- (Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)
- (1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:
- (a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass).
- ~~OR~~
- ~~(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).~~
- (2) Cover for the following additional risks:
- (a) ~~(i) 12 months~~  
 OR  
 (ii) 24 months  
 indemnity in respect of consequential loss of rent and outgoings.
- (b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.
- (c) Public liability.
14. **NO ACCESS PERIOD:**  
 (subclause 27.6 of the Lease)
- (Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)
- (1) 9 months  
~~OR~~  
~~(2)~~
15. **PROPORTION OF OUTGOING:**  
 (subclause 3.1 of the Lease)
- ~~% which at commencement date is estimated to be \$ See Further Terms plus GST per annum~~
16. **LIMITED LIABILITY TRUSTEE:** N/A
17. **OUTGOINGS:**  
 (clause 3 of the Lease)
- (1) Rates or levies payable to any local or territorial authority.
  - (2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
  - (3) Rubbish collection and recycling charges.
  - (4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
  - (5) Any insurance excess (but not exceeding \$2000) in respect of a claim and insurance premiums and related valuation fees.
  - (6) Service contract charges for air conditioning, lifts, other building services and security services.
  - (7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.
  - (8) The provisioning of toilets and other shared facilities.
  - (9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
  - (10) Yard and carparking area maintenance and repair charges but excluding charges for repaving or resealing.
  - (11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.
  - (12) Management expenses.
  - (13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

## SECOND SCHEDULE

### DEFINITIONS, NOTICES AND INTERPRETATION

#### 1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meaning as in section 4 of the Property Law Act 2007 and the Lease.
- (2) "Agreement" means this document including the front page, any further terms and any schedules and attachments.
- (3) "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; and
  - (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
  - (c) the day observed as the anniversary of any province in which the premises are situated.
- (4) A Working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (5) Any act done pursuant to this agreement by a party after 5.00 pm on a Working day, or on a day which is not a Working day, shall be deemed to have been done at 9.00 am on the next succeeding Working day.
- (6) Where two or more acts (including service of notice) done pursuant to this Agreement 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 1.1(5).

#### 1.2 Notices

All notices must be in writing and must be served by one of the following means:

- (1) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (2) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
  - (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
  - (b) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.
- (3) In respect of the means of service, a notice is deemed to have been served:
  - (a) In the case of personal delivery, when received by the addressee.
  - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
  - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
  - (d) in the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- (4) In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- (5) A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- (6) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 1.1(5).
- (7) Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

#### 1.3 Interpretation

- (1) Headings are for information only and do not form part of this Agreement.
  - (2) The terms, conditions and covenants contained in this Agreement shall not merge insofar as they either have not been fulfilled at the time of the execution of the Lease or are not reflected in the Lease but shall remain in full force and effect.
- 1.4 If there is more than one Landlord or Tenant, the liability of the Landlords or the Tenants as the case may be is joint and several.
  - 1.5 Where the Tenant executes this Agreement with provision for a nominee or on behalf of a company to be formed, the Tenant shall remain liable for all the obligations on the part of the Tenant hereunder until such time as the Tenant and the Guarantor have signed the Lease.
  - 1.6 This agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Communication of execution of this agreement may be made by each party transmitting by facsimile or email to the other party or their respective agents a counterpart of this agreement executed by the party sending the facsimile or email.

### DEPOSIT

- 2.1 The Tenant shall pay as a deposit an advance rental payment of the amount specified in the First Schedule. The deposit shall be payable to the Landlord or the Landlord's agent immediately upon execution of this Agreement by all parties and/or at such other time as is specified in this Agreement. The person to whom the deposit is paid shall hold it as a stakeholder until this Agreement is unconditional or is avoided.
- 2.2 The Landlord shall not be entitled to cancel this Agreement for non-payment of the deposit unless the Landlord has first given to the Tenant three working days' notice in writing of intention to cancel and the Tenant has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.

- 2.3 Without prejudice to any of the Landlord's rights or remedies, including any right to claim for additional expenses and damages, if the deposit or any portion thereof is not paid upon the due date for payment the Tenant shall pay to the Landlord interest at the default interest rate on the portion of the deposit so unpaid for the period from the due date for payment until payment. Unless a contrary intention appears on the front page or elsewhere in this agreement the default interest rate 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 default interest is payable, plus 5 per cent per annum.

## LEASE PAYMENTS

- 3.1 The Tenant shall pay the annual rent by equal monthly payments in advance as from the commencement date specified in the First Schedule.
- 3.2 The Tenant shall pay the Goods and Services Tax payable by the Landlord in respect of the rent and other payments payable by the Tenant pursuant to the Lease.
- 3.3 In addition to the rent the Tenant shall pay the outgoings specified in the First Schedule and where any outgoing is not separately assessed in respect of the premises then the Tenant shall pay such proportion thereof as is specified in the First Schedule or if no proportion is specified then a fair proportion.

## LEASE

- 4.1 The Tenant shall enter into a formal lease with the Landlord to be prepared by the Landlord's lawyer using the current Auckland District Law Society Inc Deed of Lease form amended in accordance with the provisions of this Agreement ("Lease"). Each party will pay their own costs of the negotiation and preparation of the Lease and any deed recording a rent review or renewal.
- 4.2 Unless otherwise set out in the Third Schedule, it is agreed that the Landlord's fixtures, fittings and chattels contained in the premises as more particularly described in the Fourth Schedule are in a good state of repair.
- 4.3 Notwithstanding that the Lease may not have been executed, the parties shall be bound by the terms, covenants and provisions contained in this Agreement and in the Lease as if the Lease had been duly executed.

## DISPUTE RESOLUTION

- 5.1 Unless otherwise provided in this Agreement, if a party considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to resolve the dispute between themselves within five (5) working days of the receipt of the notice, failing which the parties will endeavour in good faith within a further ten (10) working days to appoint a mediator and resolve the dispute, time being of the essence.
- 5.2 Neither party will commence legal proceedings against the other except for injunctive relief before following the procedure set out in subclause 5.1.

## NO ASSIGNMENT

- 6.1 The Tenant shall not assign or agree to assign this Agreement or the Tenant's interest under this Agreement and the Tenant shall not register any caveat against the land in respect of its interest under this Agreement. The Tenant shall not be entitled to exercise the right of assignment contained in the Lease until such time as the Tenant has signed the Lease.

## AGENT

- ~~7.1 If the name of a licensed real estate agent is recorded on this Agreement it is acknowledged that the lease evidenced by this Agreement has been made through that agent whom the Landlord appoints as the Landlord's agent to effect the Lease. The Landlord shall pay the agent's charges including GST for effecting such Lease.~~

## LIMITATION OF LIABILITY

- ~~8.1 If any person enters into this Agreement as trustee of a trust, then:~~

~~(1) That person warrants that:~~

- ~~(a) that person has power to enter into this Agreement under the terms of the trust; and~~  
~~(b) that person has properly signed this Agreement in accordance with the terms of the trust; and~~  
~~(c) that 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 as a result of fraud or gross negligence 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.~~

- ~~8.2 Notwithstanding subclause 8.1, a party to this Agreement that is named in item 16 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 8.1(2).~~

**THIRD SCHEDULE**  
FURTHER TERMS (if any)

See attached Further Terms



## FOURTH SCHEDULE

LANDLORD'S FIXTURES, FITTINGS AND CHATTELS (if any)

(Subclause 4.2)

**In accordance with a list to be provided by the Landlord to the Tenant prior to the Commencement Date.**



DATED \_\_\_\_\_

**BETWEEN**

Landlord Penrith Holdings Limited

Ph \_\_\_\_\_

Fax \_\_\_\_\_

Email \_\_\_\_\_

**AND**

Tenant Graphic Packaging International NZ Limited

Ph \_\_\_\_\_

Fax \_\_\_\_\_

Email \_\_\_\_\_

**AGREEMENT TO LEASE**

© This form is copyright to  
Auckland District Law Society Inc

General address of the premises:

862-880 Great South Road, Penrose, Auckland

Landlord's lawyer (indicate individual acting)

**Gray Thompson, Thompson Vodanovich, +64 021 544  
556, gray@thompsonvodanovich.com**

Tenant's lawyer (indicate individual acting)

Deposit paid to \_\_\_\_\_

Amount: \$ \_\_\_\_\_

Date paid \_\_\_\_\_

~~LEASE NEGOTIATED BY:~~

~~Licensed Real Estate Agent~~ \_\_\_\_\_

~~Office~~ \_\_\_\_\_

~~Address~~ \_\_\_\_\_

~~Telephone~~ \_\_\_\_\_

~~Manager~~ \_\_\_\_\_

~~Salesperson~~ \_\_\_\_\_

## FURTHER TERMS – ATL – PENRITH AND GRAPHIC PACKAGING

### DEFINITIONS AND INTERPRETATION

9.1 Throughout this Agreement and in the attached Schedules (including in the Lease) the following words and phrases shall, unless the context otherwise requires, have the meanings ascribed to them:

"**Access Date**" means the date the Premises are available for the Tenant to undertake the Tenant's Works, which shall be the date the Landlord specifies in the Access Notice;

"**Access Notice**" means the written notice to be served on the Tenant by the Landlord advising of the Access Date in accordance with clause 11.1;

"**Access Area**" means the access area for access to and egress from the Premises, as shown blue on the plan attached to this agreement;

"**Authority**" means any local body, government, statutory or non-statutory authority having jurisdiction, or authority over, or in respect of, the construction, use or occupation of the Premises;

"**Code Compliance Certificate**" has the same meaning as in the Building Act 2004;

"**Defects Liability Period**" means the period commencing on the Practical Completion Date and expiring on the date which is six (6) months following the same;

"**Due Date for Practical Completion**" means 5 months from the date the Landlord obtains the requisite Resource/Building Consents in respect of the Landlords Works;

"**Engineer**" means a suitably qualified engineer appointed by the Landlord and acting independently and without bias between the parties;

"**Estimated Works Completion Date**" means 31 July 2018:

"**Force Majeure Event**" means:

- (a) inclement weather sufficient to delay exterior works;
- (b) loss or damage by fire, flood, explosion, earthquake, lightning, storm, tempest, riot or civil commotion; or
- (c) any delay in any Authority issuing any consent except to the extent the delay is caused or contributed to by the party alleging such a delay has occurred,

which results in the Landlords Works being delayed;

"**Guide**" means the Property Council of New Zealand and Property Institute of New Zealand's "Guide for the Measurement of Rentable Areas" as updated from time to time;

"**Land**" means the Premises and the Access Route;

"**Landlord's Works**" means all those works to be undertaken by the Landlord which are specified in Annexure A;

"**Optional Tenant's Works**" means those fit out works the Premises which may be undertaken by the Tenant being those works specified at Part B of Annexure B;

**"Practical Completion"** means the later of:

Substantial completion of the Landlord's Works, subject only to minor work listed and authorised by an engineer for later completion and defects listed for rectification, which do not adversely affect the Tenant's use and enjoyment of the Premises and subject to compliance with clause 12.5 (except in the case of manifest error or fraud) a certificate of the Engineer as to Practical Completion addressed to the Landlord and the Tenant shall be final and conclusive evidence thereof; and

The date when a Certificate for Public Use or Code of Compliance Certificate under the Building Act 2004 has issued in respect of the Premises.

**"Practical Completion Date"** means the date Practical Completion is certified by the Engineer;

**"Rentable Area(s)"** means the rentable areas of the Premises and the Building which shall be measured in accordance with the Guide;

**"Rentable Components"** means each separate rentable component of the Premises, being the warehouse, factory, office, amenities, canopy, carparks and yard, as specified in the First Schedule of this Agreement to Lease;

**Rental Rates Per Component** means the rental rate per square meter for each component as follows:

Amenities: \$200

Office: \$230

Warehouse: \$100

Canopy: \$60

Factory: \$100

Car parks and yard: included in the rent for the other Rentable Components.

**"Shared Access Period"** means the period commencing on the Access Date and expiring on the Commencement Date; and

**"Tenant's Works"** means the fit out works to the Premises to be undertaken by the Tenant which shall include the works listed in Part A of Annexure B and may also include the Optional Tenant's Works.

## 10. LANDLORD'S WORKS

10.1 **Landlord to carry out works:** As soon as practicable following the execution of this Agreement, the Landlord shall, at its own cost, procure that the Landlord's Works are carried out:

- (a) in a good, professional and workmanlike manner;
- (b) in accordance with the scope of works identified in Annexure A (subject to any variation in accordance with clause 10.3 and substitution in accordance with clause 10.4);

- (c) to sound and accepted architectural and engineering standards;
  - (d) to be sound and weather tight in all respects;
  - (e) to comply with all obligations, restrictions and requirements imposed by or arising in consequence of all statutes, regulations, by laws, district plans and district rules in force from time to time;
  - (f) in an order and manner which ensures that the Access Notice is served as soon as possible;
  - (g) in accordance with all permits, consents and approvals granted in relation to the Landlord's Works; and
  - (h) as expeditiously as possible.
- 10.2 **Landlord to keep the Tenant informed:** The Landlord shall keep the Tenant fully informed as to the progress of the Landlord's Works.
- 10.3 **Variations to Landlord's Works:** The Landlord shall not make nor permit any material variations to the Landlord's Works without the Tenant's consent, such consent not to be unreasonably or arbitrarily withheld. The Landlord shall, if it proposes to make any material variation to the Landlord's Works, notify the Tenant of the variations which it is proposing to make in sufficient detail to enable the Tenant to properly consider whether to approve those variations.
- 10.4 **Substitution of the Landlord's Works:** If through unavailability of materials or through any other cause beyond the reasonable control of the Landlord it is impractical for the Landlord to incorporate in the Landlord's Works any material, finish, product, system, plant or equipment provided for in Annexure A then the Landlord may substitute an alternative of a kind or nature to be determined by the Landlord and approved by the Tenant, such approval not to be unreasonably or arbitrarily withheld provided that such substitution shall adhere to and preserve to the maximum extent practicable the value, appearance and usefulness of the Landlord's Works.
11. **TENANT'S WORKS**
- 11.1 **Access Notice:** The Landlord shall serve the Access Notice as soon as reasonably practicable, but in any case, it shall serve the Access Notice no later than two (2) weeks prior to the Access Date.
- 11.2 **Shared Access:** Where the Access Date is earlier than the Commencement Date, the Landlord agrees to grant the Tenant non-exclusive access to the Premises for the Shared Access Period.
- 11.3 **Tenant to undertake the Tenant's Works:** During the Shared Access Period, the Tenant shall:
- (a) use the Premises only for carrying out the Tenant's Works and, if it so elects, the Optional Tenant's Works; and
  - (b) use reasonable endeavours to complete the Tenant's Works (and if applicable the Optional Tenant's Works) as expeditiously as possible.
- 11.4 **Landlord may complete construction:** Notwithstanding clause 11.2, the Landlord may carry out and complete the Landlord's Works during the Shared Access Period, provided that the Landlord's work does not cause material interference with the Tenant's Works.

## 12. PRACTICAL COMPLETION

- 12.1 **Due Date for Practical Completion:** The Landlord shall ensure that the Practical Completion Date is not later than the Due Date for Practical Completion. The parties agree that the Due Date for Practical Completion may be extended to 30 September 2018 provided that the Landlord has provided the Tenant with reasonable evidence that it has made significant progress towards Practical Completion and that such progress indicates that the Practical Completion Date will occur on or before 30 September 2018.
- 12.2 **Sunset Date:** In the event that for any reason whatsoever the Practical Completion Date has not occurred on or before 3 months after the Due Date for Practical Completion, the Tenant shall be entitled to cancel this Agreement at any time after such date. Cancellation by the Tenant under this clause 12.2 shall be without prejudice to any other remedies available at law to the Tenant.
- 12.3 **Notification of Estimated Works Completion Date:** The Landlord shall give the Tenant as much notice as is reasonably possible of the Estimated Works Completion Date (which shall not be later than the Due Date for Practical Completion).
- 12.4 **Delays and extensions:** The Estimated Works Completion Date shall be extended by one day for each day of delay caused by a Force Majeure Event.
- 12.5 **Attend inspection:** The Landlord shall ensure that the Tenant shall be entitled to and shall be given sufficient notice to be able to attend or appoint a representative to attend any inspection to be carried out by the Engineer for the purpose of certifying Practical Completion, and the Engineer shall take account of any representations made by the Tenant or its representatives during such inspection.
- 12.6 **Code Compliance Certificates:** Promptly and without undue delay following completion of the Landlord's Work, the Landlord shall procure the issuance of a Code Compliance Certificate for the Landlord's Works and a compliance schedule (as defined in the Building Act 2004) for systems and features incorporated in the Landlord's Works, and shall provide copies to the Tenant.

## 13. DEFECTS

- 13.1 **Landlord to remedy defects:** The Landlord will, at its own expense, as soon as possible, remedy all defects arising (without limitation) from the design, materials or workmanship in the Landlord's Works notified to the Landlord within the Defects Liability Period to the satisfaction of the Tenant and shall carry out such remedial works in a manner so as to minimise any inconvenience caused to the Tenant or its invitees, and any works which are likely to be noisy and/or otherwise significantly interfere with the Tenant's use of the Premises shall be carried out outside the Tenant's busiest trading hours.
- 13.2 **Final inspection:** On expiry of the Defects Liability Period, the Landlord shall (if required to do so by the Tenant) arrange a final inspection of the Landlord's Works with the Tenant to confirm all defects have been remedied to the entire satisfaction of the Tenant. Upon satisfactory completion of all defects the Tenant shall confirm the same in writing to the Landlord.
- 13.3 **Tenant ability to remedy:** In the event that the Landlord does not attend to or remedy any defects (either identified by inspection or as notified to the Landlord by the Tenant) within the Defects Liability Period, the Tenant shall be entitled to undertake such repairs and works necessary to remedy such defects, and recover from the Landlord all costs incurred by the Tenant in doing so.

#### 14. COMMENCEMENT DATE OF LEASE

- 14.1 **Term of the Lease:** The term of the Lease and the respective obligations of the Landlord and the Tenant will commence on and from the Commencement Date. Any prior Lease as between the Landlord and Tenant in respect of the property will be deemed to have been surrendered and will lapse as at the Commencement Date, without prejudice to any claims that may have accrued in respect of any prior lease up to that date.
- 14.2 **Commencement Date:** The Commencement Date is the date on which the last of the following conditions is satisfied:
- (a) the Landlord's Works have reached Practical Completion; and
  - (b) the Tenant has been provided with exclusive occupation of the Premises.

#### 15. MEASUREMENT OF PREMISES AND ANNUAL RENT

- 15.1 **Landlord to procure measurement:** As soon as the Landlord's Works have reached an appropriate stage of completion for measurement of the Rentable Components to be carried out and in any event no later than the Commencement Date, the Landlord shall procure that a registered surveyor promptly measures and certifies to both of the parties both the total floor area of the Building ("**Certified Gross Floor Area**") and the Rentable Areas of each Rentable Component ("**Certified Rentable Area**"). Immediately after such certification is available the Landlord shall provide the Tenant with a copy thereof, together with a copy of any final plan of the Building and copies of the registered surveyor's or such other consultant's measurements and calculations.
- 15.2 **Final Plans and Annual Rent calculation:** Subject to clause 15.1, the Certified Rentable Area will be included in the Lease as the Rentable Area(s) of the Building to apply (subject only to any additions or alterations subsequently made to the Building) throughout the term of the Lease.
- 15.3 **Adjustment to calculation of Annual Rent:** With respect to the calculation of the Annual Rent to apply from the Commencement Date the following provisions shall apply, in each case, with respect to each Rentable Component:
- (a) If the Certified Rentable Area is greater or less than the estimated rentable area set out in the First Schedule ("**Estimated Rentable Area**"), then the Annual Rent for that Rentable Component shall be adjusted by applying the applicable rate per m2 so that the Annual Rent reflects the 'as built' Certified Rentable Area.

#### 16. INSURANCE

- 16.1 **Landlord to maintain insurance:** On and from the date of this Agreement until the expiry of the Defects Liability Period, the Landlord shall hold current policies of insurance in respect of the following:
- (a) cover for full replacement and reinstatement of the Premises in the event of damage or destruction;
  - (b) contractors' all risk cover in respect of the Landlord's Works; and
  - (c) public liability cover of not less than \$5,000,000.00.

## 17. DEALINGS BY LANDLORD

- 17.1 The Landlord shall obtain the prior consent of any mortgagee of the property in respect of this Agreement and the Lease.

## 18. OUTGOINGS

- 18.1 **Tenant's proportion of outgoings:** The Tenant's proportion of outgoings shall be the same proportion as the Certified Rentable Area of the Premises bears to the total Certified Gross Floor Area of the Property from time to time.

## 19. NOT TO OBSTRUCT ACCESS AREA

- 19.1 **No obstruction:** The Tenant shall not obstruct, stop on or load or unload while using the Access Area.

## 20 RENT AND RENT REVIEWS

- 20.1 **Rent:** Rent, until 31 October 2017 remains at the rate of \$150,919.19 pcm plus GST and outgoings. For the month of November 2017 only, it reduces to \$100,000.00 plus GST and outgoings and thereafter reduces to \$81,666.67 pcm plus GST and outgoings, until 31 December 2018, subject to adjustment under clause 15 to reflect the reduced space occupied by the Tenant. Thereafter, the rent will be reviewed as detailed in the following clause.

- 19.2 **Rent reviews:** Irrespective of the Commencement Date, the base rent of \$980,000.00 pa will be adjusted annually as from and including 1 January 2019 by way of a fixed increase of 3.5%, and will also be reviewed to market every 4 years from that date (1 January 2019), provided that the reviewed rent can never be less than the rent payable during the preceding 12 months. In the event that the market review results in a rent less than the fixed 3.5% increase, the Landlord will not impose the fixed increase on that occasion and the assessed market rent shall apply for 12 months from the market review date. For clarity, the fixed annual increases of 3.5% shall continue to apply thereafter, until the next market review date, and the same process shall apply, and so on until the lease ends or is ended. Further, when undertaking market reviews, the valuers shall have regard to all component parts of the Premises, including carparks and yard.

## 21 Landlord To Complete

- 21.1 **Completion of development:** The Landlord will complete the development as it applies to Graphic Packaging and obtain a Code Compliance Certificate prior to any sale if the Landlord desires to sell the property.

## 22 Make Good On Exit

- 22.1 **Tenant's make good:** The Tenant shall at the end of the term;
1. Remove all equipment and machines, ducts, flues, goods conveyor, racking and any subsidiary machinery owned by the Tenant.
  2. Remove all foundations above and below the floor, Bobst, Pile Brackets and fill making good the levels, to the Landlords engineers plans and specifications.
  3. Sprinkler drops to be finished at roof level, compliant to FPIS requirements.

4. Remove all machine sub wiring.
5. Remove roof penetrations and replace the entire sheet affected.
6. Remove dangerous goods stores.
7. Cyclon Tower to be removed.

**23 Asbestos Removal.**

23.1 **Asbestos removal:** The landlord will remove the asbestos roof material (and replace the same with suitable, complying roof material) on buildings D, E and X (see attached site plan/s) in such a way to comply with and meet the Asbestos Regulation currently in force, and will do so working in conjunction with the Tenant so as to minimise interference with their business. The Tenant will assist where ever reasonably possible to facilitate the asbestos removal and the installation of the new roof material. The removal work will be carried out by specialised asbestos removers, ATL.

**24 Surrender of Existing Lease**

24.1 **Surrender:** In the event that this Lease commences before the Tenant's existing lease (being L7526157.5 registered against CFR 377620 North Auckland Registry) expires, the parties agree that this lease will come into effect on the Commencement Date, and that the existing lease will be deemed to be surrendered, but without prejudice to any antecedent defaults or omissions.

**ANNEXURE A**  
**Landlord's Works**

**See attached outline drawings, and specification as provided to the Tenant**

## KEN DAVIS ARCHITECTS

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17 November 2017

# Outline Specification

## Alterations and Additions (Stages 1A and 1B)

for

### Graphic Packaging International NZ Ltd

862 Great South Road  
Penrose  
Auckland

#### GENERAL

##### Summary Scope of Work:

As a result of the proposed rationalization of Graphic Packaging Ltd premises on the site at 862 Great South Road, it is proposed to alter and add to the Existing Finished Goods Warehouse (Building D) and the Existing Production Warehouse (Building E) which includes the following work in two stages:

- Stage 1A: New Office Building:
  - Construct a new single level office building for Graphic Packaging Ltd, beside and linked to their existing production warehouse (Building E) at the North East side of the site.
- Stage 1B: Alterations and Additions to Buildings D and DX
  - New Truck Canopy: Construct a new truck canopy for the outward goods dispatch to existing Finished Goods Warehouse (Building D) with adjacent lower staff/pedestrian canopy
  - New Roller Door Opening and new single side door existing North Wall of Building DX
  - Infill wall to existing roller door opening to the west side of Building D
  - New west and north walls to Building DX
  - Alterations to Service Yard
    - New painted carpark markings to new pavement only.
    - By lessee carpark markings in areas outside 1a and 1b on Plan A002

- **Exclusions:** The following work is not included in the proposed works and is to be undertaken by others
  - Data /Security
  - Soft Fitout
  - Blinds

### Standards

- Ensure that all work meets the requirements of the NZ Building Code, all relevant NZ Standards and best trade practice

### Generally

- Make good all existing building elements damaged/disturbed by the work in areas 1a and 1b on Plan A002 excluding existing pavement.

### Stage 1A: New Office Building:

#### Relevant Documents

The Outline Specification shall also be read in conjunction with:

Ken Davis Architects drawings

- A-000            Location Plan
- A-001            Existing/Demolition - Birds Eye Views From North West
- A-011            Existing/Demolition Site Plan
- A-012            Proposed Stage 1 - Site Plan
- A-E140/B        Electrical/Data/Furniture Plans
- A-E311           Cross Section 2

### Building Scope

The scope of the building work is defined in the attached drawings and this outline specification, and includes for the following building elements and spaces.

### Building Works

- The construction of a new single level office building connected to existing building "E" on the North-West side of the site as part of Stage 1A
- The construction of a connecting link between existing building "E" and the new office building.
- Demolition of existing structures by others, including but not limited to external stair, 4no. DG stores, exit ramp and door.

### Building Services

- Mechanical Services
- Electrical
- Fire (including extending the sprinkler system from Building E)
- Plumbing and Drainage

#### **Excavation**

- Excavation for new pad and strip foundations, including floor slab
- Backfilling around new foundations with compacted hardfill.

#### **Concrete Work**

- Pad and strip foundations for floor slab and portal frame.
- F4 finish to exposed foundations
- 125mm reinforced concrete slab on damp proof membrane (thickened to Compact Storage Area)
- Sawn and formed construction joints to limit shrinkage cracking.

#### **Structural Steel**

- Steel UB portal frame
- Steel PFC joinery support and SHS frame
- Galvanised DHS purlins.

#### **Metal Windows and Doors**

- Exterior windows, Fairview Aluminium ASL front glaze 100 system - (powder coat colour: Grey Friars) with double glazed/IGU (Clear Double Glazing) with square profile glazing bead and clear double glazing complete with all seals and flashing to suite wind zone.
- Exterior doors, (Fairview Aluminium ASL front glaze 100 system (powder coat colour: Grey Friars) with double glazed/IGU (Clear Double Glazing ) with square profile glazing bead and clear double glazing with square profile glazing bead and clear double glazing complete with all seals and flashing to suite wind zone

#### **Metal Profile Roof**

- Colorsteel Endura 0.55mm BMT
- ST963 profile roofing
- Foil underlay
- Galvanised netting
- Colorsteel flashing to provide weatherproof building fabric
- Compressible foam seals at all roof and barge junctions to completely exclude birds, vermin and insects.
- Matching Coloursteel Endura 0.55 BMT, fascia's, and flashings
- 185mm Polyester Batts to achieve required R2.9 rating
- PVC downpipes.

#### **Metal Cladding**

- Colorsteel Endura 0.4mm BMT
- Trimline profile.
- H3.2 drained cavity battens
- Colour matched flashings.

- Building wrap underlay.
- Polyester Batts to achieve R1.9.

#### External Framing

- 140 x 45 MSG8 H1.2 studs @ 600 centres, to portal frame.
- 7mm Ecoply bracing.

#### 9mm Fibre Cement Cladding & Soffits

- 9mm Villaboard / Eterpan fibre cement cladding with expressed joints to soffits and end walls. Fixed to cavity battens as per PBS PX40 Xpress Clad system or similar approved

#### Architectural Metal Work

- Handrails, 32mm diameter painted galvanised steel handrails and painted galvanised steel brackets to entry steps (main entry, back entry and production warehouse entry), and ramp.

#### New Office Building Internal Carpentry

##### Internal Walls

- 64mm USG Steel Studs (65 x 0.5) @ 600 centres and timber framed walls to ceiling height, to Internal Office walls.
- 13mm standard Gib board to non-wet areas
- 13mm Aqualine to all wet areas, bathroom, kitchen, and tea room
- Acoustic insulation: 60mm polyester acoustic Batts to wall cavity.
- Acoustic Insulation - above ceiling: lay 60mm polyester acoustic blanket laid over the suspended ceiling 1m either side of all interior walls (except walls between store room and open plan office/staff tea area)

##### Interior Aluminium Joinery

- Glazed partitions: Full height Fairview Aluminum ASL 75mm or Potter Interior Systems A Series 105 (105mm x 15mm) Aluminium Partitioning System
- Interior Office System with clear laminate glass, with 50mm wide silver frosted film safety manifestation strip at 900mm above floor level.

##### Joinery Fittings

- Kitchen bench unit and overhead cupboards to Staff Tea Area.
- Kitchen bench unit, overhead cupboards, and island bench to Factory Staff Room
- Laminate bench (vanity) in bathroom.
- Note: all carcasses, shelves, door/drawer fronts to be Melteca

##### Timber Doors

- Timber solid core flush faced doors
- Painted timber frames
- Painted facing panels.

- Other Doors in Aluminium frames

#### Hardware

- Lockwood 570 series range, satin chrome or similar.
- Selected Stainless Steel main entry door pull.

#### Suspended Ceilings

- Office area: 1200 x 600 exposed grid Asona tiles or similar approved.
- Bathroom/Toilet (Wet areas): 1200 x 600 Asona tiles or similar approved suitable for wet areas in ceiling grid.

#### Floor Coverings

- Office: Carpet tiles, INZIDE Commercial 'Flow Flux' and with selected 'Cubic Colours' as accent to office area, with 30 x 3mm Aluminum trim at vinyl/concrete threshold.
- Staff room, Bathroom, Tea Area Sink, Corridor and Link : Vinyl (Selected Armstrong Sheet Vinyl ' Accolade Safe' Colour : 'Black Rock' or similar approved), 100mm high coving to walls.
- Entrance Lobby & Reception: Polished Concrete/Exposed Aggregate floor with clear sealer to provide non-slip resistance to NZBC requirements.
- Entry Floor Mats: Advanced Flooring "Coral Thread" low profile entry matt, or similar, to main and rear entry.
- Exterior Entry Steps, Ramp, Landings: Exposed aggregate concrete steps and ramp with contrasting nosings to steps

#### Mechanical Services

- New HVAC plant with supply and return ducts as required by the Mechanical Sub-contractor.
- All HVAC to be concealed in the ceiling cavity and Outdoor Units to service space between the new office building and Building E

#### Electrical Services

- **Lighting:**
  - New recessed Florescent or LED with opal acrylic diffusers, fittings to provide 400 lux to work surface 720mm above floor level.
  - Dimmable lights for meeting and teleconference rooms.
  - Illuminated exit signs as required.
  - Exterior Lights: Main & Rear entry, selected recessed Florescent or LED downlights to ceiling soffit.
  - Emergency Lighting
- **Power:**
  - Meeting & Conference rooms: Flush recessed floor box in slab for power & data.(Modempak Shallow Recessed Floor Box 245 x 245 x 64mm or similar)
  - Power Outlets: Allow for outlets as per the Electrical/Data/Furniture Plans.
  - Power supply for new Mechanical Services.

### Fire Protection

- Fire protection services to comply with Holmes Fire, Fire Engineering Strategy report.
- Single water supply Fire Sprinkler System to NZS 4541:2013
- Fire alarm system in accordance with New Zealand Fire Alarm Standard NZS 4512:2013 & 4512:2010

### Sanitary Plumbing & Drainage

- Sanitary plumbing services provided in accordance with New Zealand Building Code Requirements
- Sanitary fittings as specified
- Sanitary sewer drainage to connect to existing system.
- New Colorsteel eave gutter, PVC downpipes, to connect to existing storm water system.

### Siteworks and Yard Pavement

- Pavement and drainage works will be carried out as part of Stage 1B, New Truck Canopy, Pedestrian Canopy and Yard.

### Exclusions

- Data /Security
- Soft Fitout
- Kitchen Appliances.
- In floor data and electrics to board room.
- Perimeter trunking.
- Window blinds

### Stage 1B : Alterations and Additions to Buildings D and DX

- **Scope of Work :**
  - New Truck Canopy: Construct a new truck canopy for the outward goods dispatch to existing Finished Goods Warehouse (Building D) with adjacent lower staff/pedestrian canopy
  - New Roller Door Opening and new single side door existing North Wall of Building DX
  - Infill wall to existing roller door opening to the west side of Building D
  - New west and north walls to Building DX
  - Alterations to Service Yard
    - Adjust ground levels and drainage of new yard area which includes the canopy area, the area adjacent to the new truck canopy area (shown in orange) and the new car parking area
    - asphalt paving to car parking.
    - Concrete to the canopy truck area and truck turning area shown in orange on Plan A-023 Premise Area Plan.
    - New painted carpark markings for new car parking area.

- By lessee carpark markings in areas outside 1a and 1b on Plan A002
- **New Outwards Goods Truck Canopy:**
  - Construct a new truck canopy for the outward goods dispatch adjacent to the existing Finished Goods Warehouse (Building D/DX) comprising a steel frame and concrete foundations with Colorsteel Endura profiled metal roofing together with Colorsteel gutters and downpipes connected to the stormwater drains
  - Canopy to provide minimum 5 metre clearance for trucks
  - Provide selected exterior lighting under the canopy to give 150 lux
- **New staff/pedestrian canopy**
  - Construct a new staff/pedestrian canopy (approx 2.7m high) between the new truck canopy and Building E comprising a steel frame and concrete foundations with Colorsteel Endura profiled metal together with Colorsteel gutters and PVC downpipes connected to the stormwater drains
  - Provide selected exterior lighting under the canopy to give 150 lux
- **New Roller Door Opening**
  - Form a new roller door opening complete with roller door and new single side door existing north wall of Building DX to allow goods access to new outwards goods truck canopy. Lessee to install existing Rapid Action Roller Door to suit
- **Exterior Infill Wall to Building D**
  - Construct an exterior 3 hour Fire Rated infill wall (Speedwall or similar) complete with fire rated steel structure and 200mm high concrete upstand wall to existing roller door opening and adjacent timberframed walls to the west side of Building D to align with the existing adjacent walls
- **New Walls to Building DX**
  - West Wall: Construct a new exterior 3 hour Fire Rated wall (Speedwall or similar) complete with fire rated steel structure and 200mm high concrete upstand wall
  - North Wall: Construct a new exterior wall of steel girts fixed to existing Steel Portal frame with 200mm high concrete upstand wall and clad with profiled Colorsteel Endura and flashings/trim or block work
- 
- 
- **Gate And Fences**
  - New gate and operating system by lessee. Any make good to existing fences by lessee.
  - On completion of Stage 2 drive, the landlord to erect the fence from building DX to the right of way

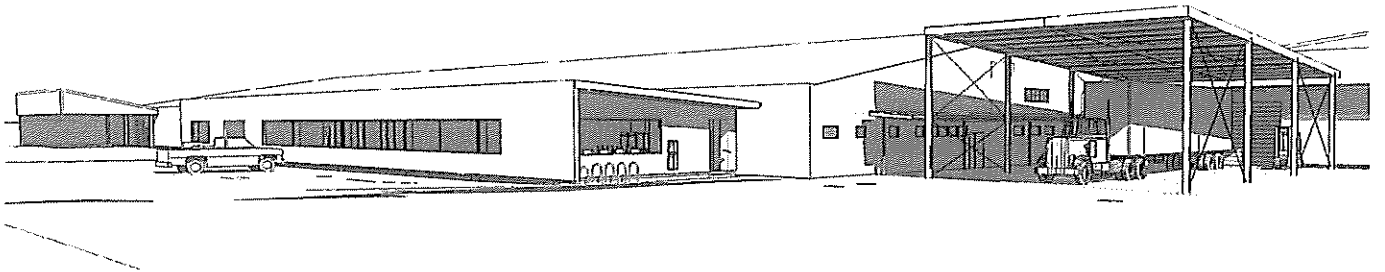
#### Existing Staff Amenities - Alterations and Additions to Building E

- **Scope of Work :**

The proposed work involves alterations and upgrade to existing staff amenities (toilets/locker rooms, corridors, stair and staffroom) located in existing production warehouse (Building E) as noted below:

- **Ground level (retaining the existing):**
  - Male and Female Bathroom/Locker rooms
    - Repaint walls/ceilings
    - New floor finishes: sheet vinyl, Accolade Safe Colour Black Rock or similar approved
  - Main walkway
    - Repaint walls/ceilings
    - New floor finishes: sheet vinyl, Accolade Safe Colour Black Rock or similar approved
  - Stairs
    - Repaint steel handrails
    - New floor finishes: clean treads and nosings
  - Office: no change
  - Platemaking Room: no change
- **Level 1 :**
  - Staffroom
    - New window to modified perimeter west wall by lessor
  - Convert office to allow for an IT/Server room over the transformer room by lessee (Bruce Rennie's suggestion)
  - Repaint walls/ceilings by lessor
  - Lighting: upgrade with LED down lights or similar to 1 metre above the floor to 400 lux by lessor
  - New floor finishes by lessee
  - Old Hallway :
    - Repaint new walls by lessor
    - Retain existing flooring
  - Existing Offices/Store rooms:
    - Repaint existing 2 offices
    - No other changes

Check all Dimensions on site before construction.  
Copyright of drawings belongs to Ken Davis Architects.  
All work to comply with NZ Building Code and  
relevant NZ Standards.



Alterations and Additions to Existing Factory/Warehouse/Offices at:

862 Great South Road  
Penrose  
Auckland

For Penrith Holdings LTD  
Tenant: Graphic Packaging International (NZ) LTD

Stage 1A and 1D Works  
Graphic Packaging  
Alteration/Additions  
862 Great South Road

**KEN DAVIS ARCHITECTS**  
170 Victoria Road, Auckland  
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Project No:  
862 Great South Road  
862 Great South Road, Penrose, Auckland

Scale:  
Cover Sheet

Scale: 1:100 Date: 15 Dec 2017  
Drawing: A-00 Project No:

Check all Dimensions on site before construction.  
 Copyright of drawings belongs to Ken Davis Architects.  
 All works to comply with NZ Building Code and  
 relevant NZ Standards.

Drawing List	
Sheet Number	Sheet Name
A-000	Location Plan
A-001	Existing/Demolition - Birds Eye Views From North West
A-002	Proposed Stage 1 - Birds Eye View From North West
A-011	Existing/Demolition Site Plan
A-012	Proposed Stage 1 - Site Plan
A.E140/B	Electrical/Data/Furniture Plans
A.E311	Cross Section 2



1 Existing - Location Plan  
 A-000 1:5000 © A3

Stage 1A and 1B Works  
 Graphic Packaging  
 Alteration/Additions  
 862 Great South Road

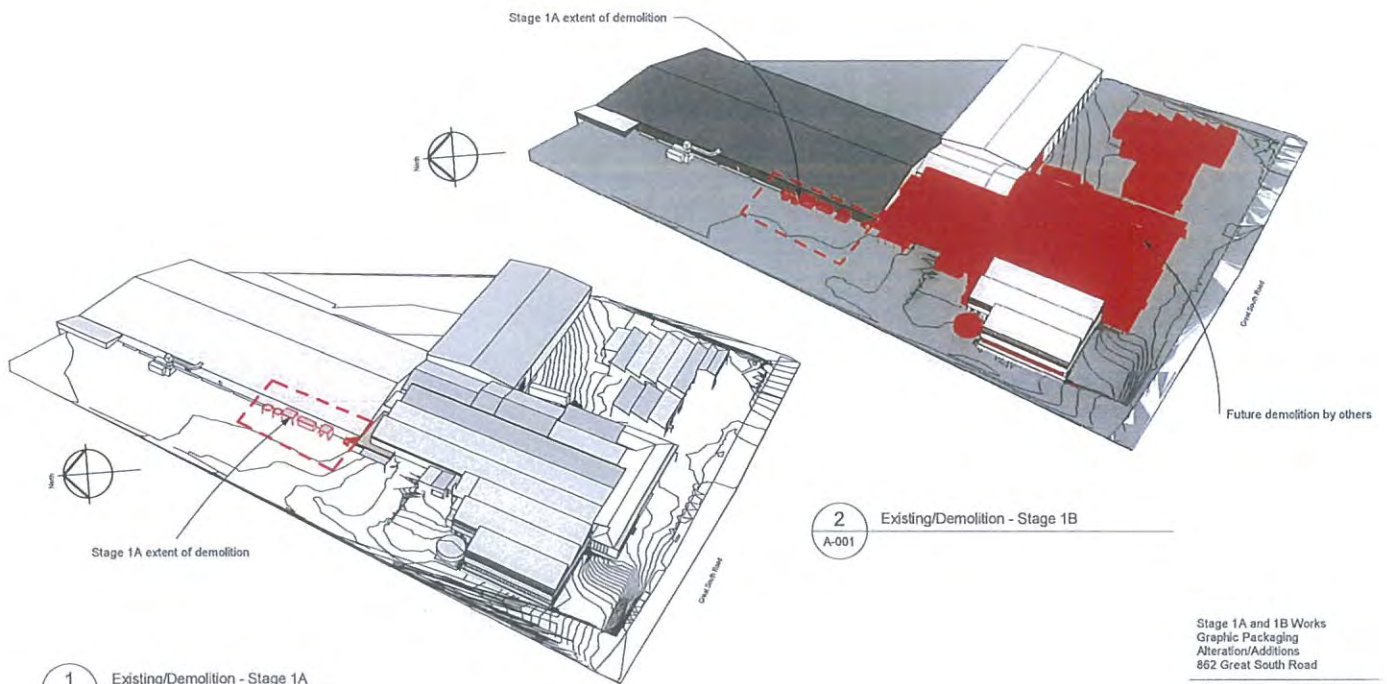
**KEN DAVIS ARCHITECTS**  
 106/107A, P2 Enbridge, Great South Road  
 Auckland

862 Great South Road  
 Porirua, Auckland

Location Plan

Scale: 1:5000 © A3 Date: 15 Dec 2017  
 Sheet: A-000 Frame: 1

Check all Dimensions on site before construction.  
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All work to comply with NZ Building Code and  
relevant NZ Standards.



2 Existing/Demolition - Stage 1B  
A-001

1 Existing/Demolition - Stage 1A  
A-001

Stage 1A and 1B Works  
Graphic Packaging  
Alteration/Additions  
862 Great South Road

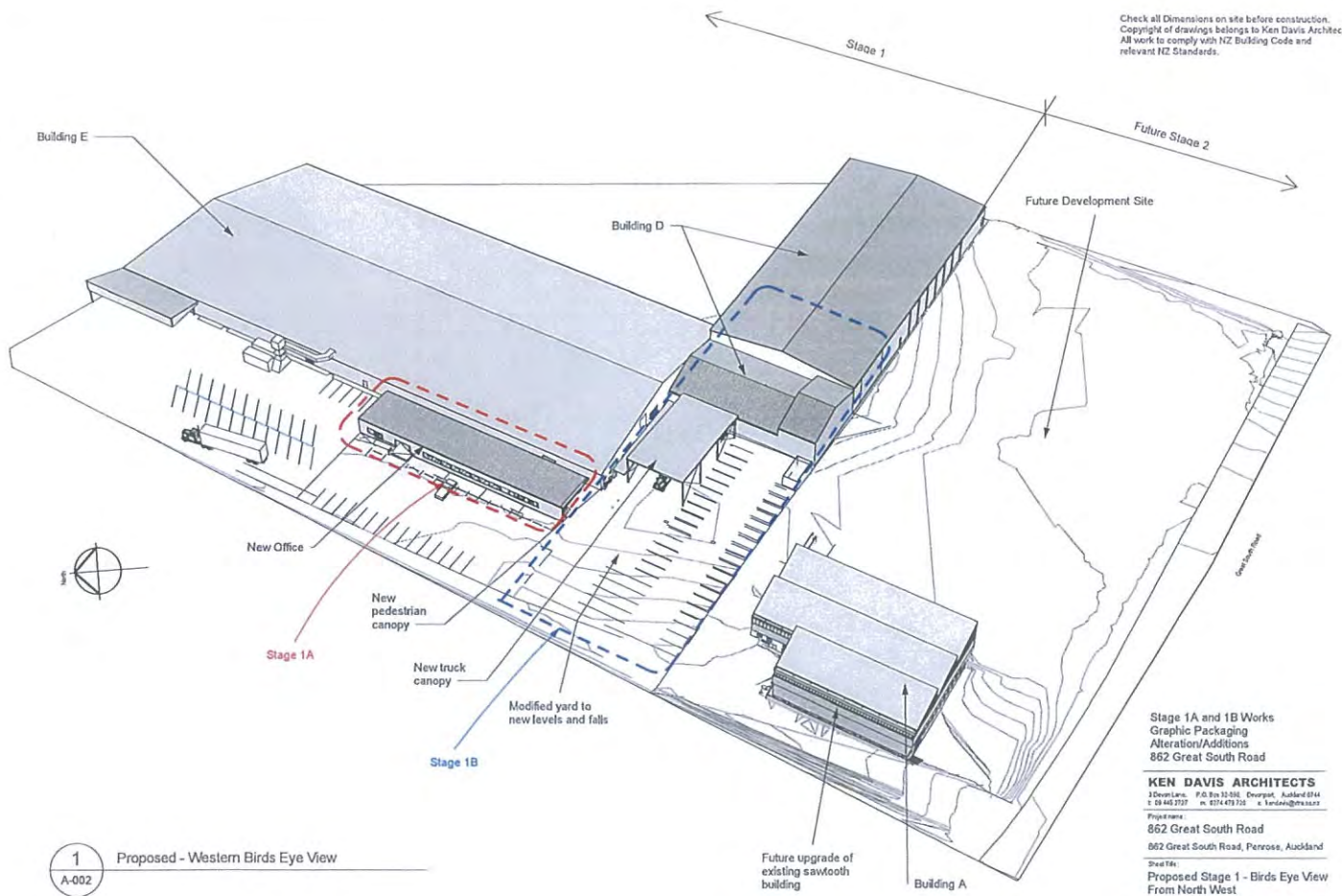
**KEN DAVIS ARCHITECTS**  
1 Devon Lane, P.O. Box 12 950, Devonport, Auckland 0614  
t. 09 462 3727 e. 021 479 720 k.davis@kda.co.nz

Project name:  
862 Great South Road  
862 Great South Road, Penrose, Auckland

Sheet title:  
Existing/Demolition - Birds Eye Views  
From North West

Scale: @ A3 Date: 15 Dec 2017  
Sheet No. A-001 Revision:

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 relevant NZ Standards.



1 Proposed - Western Birds Eye View  
 A-002

Stage 1A and 1B Works  
 Graphic Packaging  
 Alteration/Additions  
 862 Great South Road

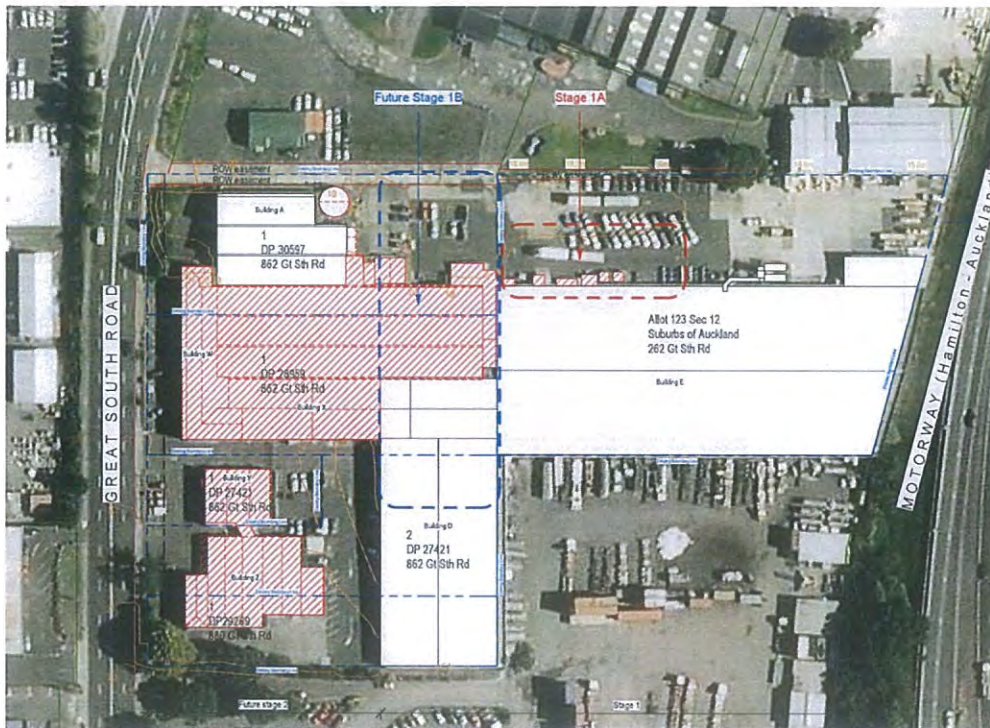
**KEN DAVIS ARCHITECTS**  
 3 Devon Lane, P.O. Box 12-588, Devonport, Auckland 0614  
 T: 09 445 2727 M: 0274 479 726 E: kendar@kda.co.nz

Project Name:  
 862 Great South Road  
 862 Great South Road, Penrose, Auckland


Sheet Title:  
 Proposed Stage 1 - Birds Eye View  
 From North West


Scale: @ A3 Date: 15 Dec 2017  
 Drawn by: A-002 Project No.:


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Legend

 Extent of Demolition

 Extent of Building Footprint



Stage 1A and 1B Works  
 Graphic Packaging  
 Alteration/Additions  
 862 Great South Road

**KEN DAVIS ARCHITECTS**  
 1 Devon Lane, P.O. Box 10 590, Devonport, Auckland 0614  
 t: 09 442 2337 m: 021 4 478 725 e: ken.davis@kda.co.nz

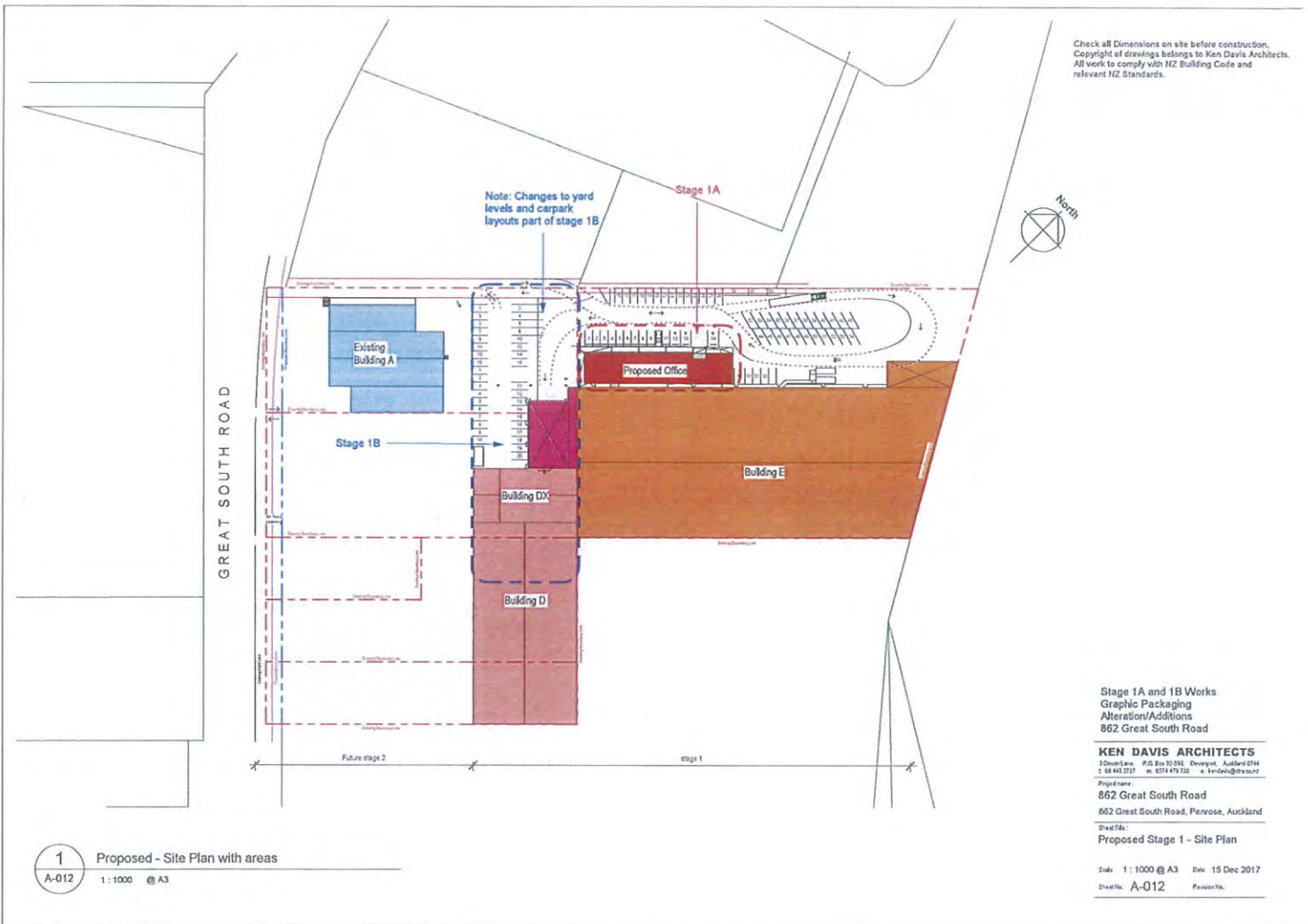
Project name:  
 862 Great South Road  
 862 Great South Road, Penrose, Auckland

Draw Title:  
 Existing/Demolition Site Plan

Scale: As Indicated @ A3 Date: 15 Dec 2017  
 Draw No.: A-011 Revision No.:

1 Existing/Demolition - Site Plan  
 A-011 1:1000 @ A3

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Note: Changes to yard levels and carpark layouts part of stage 1B

Stage 1A



GREAT SOUTH ROAD

Stage 1B

Proposed Office

Building E

Building DX

Building D

Future stage 2

stage 1

Stage 1A and 1B Works  
Graphic Packaging  
Alterations/Additions  
862 Great South Road

**KEN DAVIS ARCHITECTS**  
10 Devon Lane, P.O. Box 10, 2980, Devonport, Auckland 0614  
t: 09 482 3733 e: ken@kdv.co.nz

Project name:  
**862 Great South Road**  
862 Great South Road, Penrose, Auckland

Sheet No:  
**Proposed Stage 1 - Site Plan**

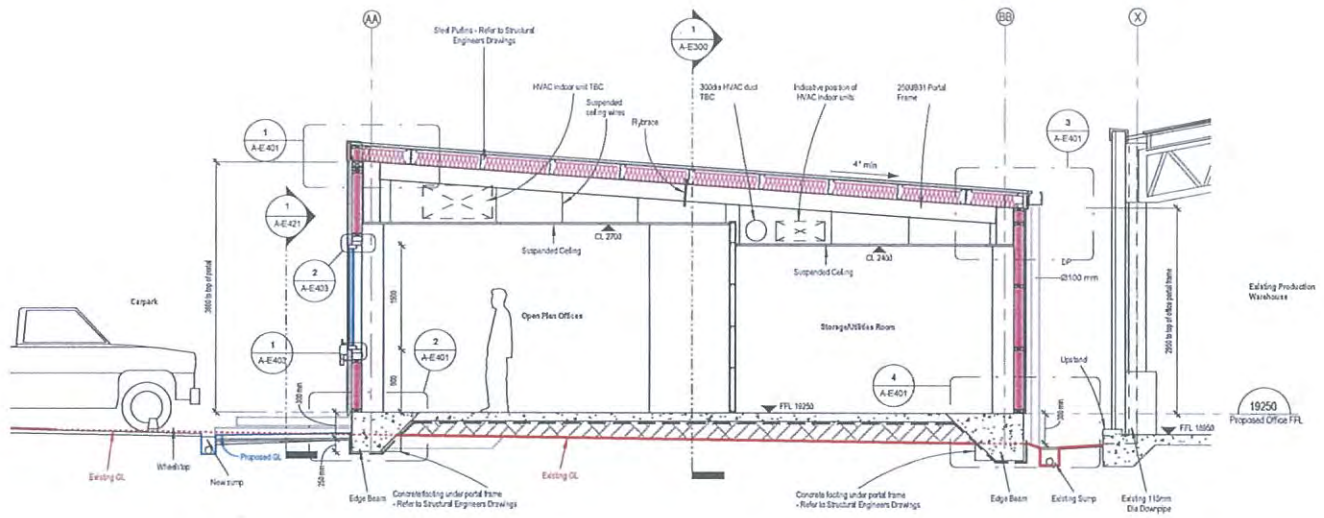
Scale: 1:1000 @ A3 Date: 15 Dec 2017

Sheet No. **A-012** Revision No.

1 Proposed - Site Plan with areas  
A-012 1:1000 @ A3



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1 Proposed Office - Cross Section 2  
 A-E311 1:50 @ A3

Stage 1A and 1B Works  
 Graphic Packaging  
 Alteration/Additions  
 862 Great South Road

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 1 Devon Lane, P.O. Box 10108, Devonport, Auckland 0614  
 T: 09 840 2137 M: 0274 479 726 E: kendaris@kenadavis.com

Project Name:  
 862 Great South Road  
 862 Great South Road, Penrose, Auckland  
 Sheet Title:  
 Cross Section 2

Scale: 1:50 @ A3 Date: 15 Dec 2017  
 Drawing No.: A-E311 Revision No.:

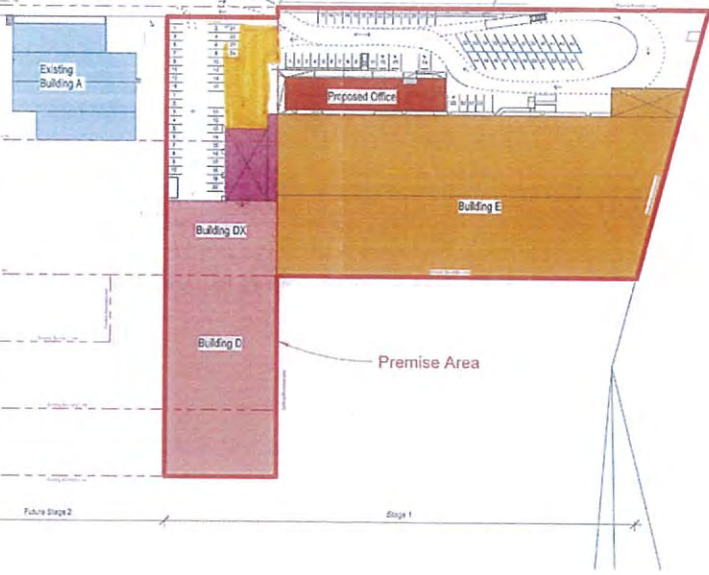
**ANNEXURE B**  
**Tenant's Works**

**Site Plan/s**

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GREAT SOUTH ROAD



Premise Area  
Graphic Packaging  
Alteration/Additions  
862 Great South Road

**KEN DAVIS ARCHITECTS**  
11 Greenlane, P.O. Box 25 588, Edenbrook, Auckland 1141  
T: 09 444 2222 F: 09 444 4197 P: 6 Wainuiomata

Project Name  
862 Great South Road  
862 Great South Road, Penrose, Auckland

Drawn By:  
Premise Area

Scale: 1:1000 @ A3 Date: 6 Nov 2017  
Sheet No: A-023

1 Proposed - Site Plan Premises Area  
A-023 1:1000 @ A3





**AUGUSTA**  
FUNDS MANAGEMENT

**SCHEDULE 2**

**Demolition Quote  
(see attached)**





**AUGUSTA**  
FUNDS MANAGEMENT

### SCHEDULE 3

#### UNDERWRITE

1. AFM intends to establish an industrial fund (structured as a company) (the *Fund*) to effect settlement of the purchase of a number of industrial properties (including the Property).
2. PHL agrees to underwrite \$12 million of the equity to be raised by the Fund (the *Equity*) on and subject to the following paragraphs:
  - a. The Equity is being underwritten in the following manner:
    - i. Augusta Capital Limited will underwrite the first \$30-35 million of the Shortfall (the final amount being at its election but to be no less than \$30 million) (the *Tranche A Shortfall*); and
    - ii. PHL and other third parties will underwrite any Shortfall above the Tranche A Shortfall (the *Tranche B Shortfall*).

*Shortfall* means the difference between the equity that the Fund sets as the minimum it wishes to raise and the actual amount of equity raised by the Fund.

- b. Where the Shortfall is greater than \$35 million, PHL's share of the Tranche B Shortfall (the *Purchaser's Share*) will be calculated on a proportionate basis having regard to its underwritten amount of \$12 million relative to the amounts underwritten by all underwriters other than Augusta Capital Limited.
- c. Following notification in writing by AFM of the Shortfall and the Purchaser's Share (which must occur prior to settlement), PHL must, within two working days of such notification:
  - i. complete the Fund's application form and provide an executed copy to AFM; and
  - ii. pay its proportionate share of the Shortfall to a bank account nominated by AFM or give notice to AFM that it may set-off the PHL's liability against the amount owed under this paragraph against the Purchase Price.
- d. On receipt of the amount owed by PHL under paragraph 2.c, AFM will procure that the Fund issues to PHL a number of shares in the Fund which reflects the Purchaser's Share.
- e. No fee will be payable by AFM to the Vendor for the underwrite provided in paragraph 2 above.
- f. PHL agrees that AFM and/or nominee may set off its obligation to pay the Purchase Price at settlement against PHL's obligation to pay its proportionate share of the Shortfall under paragraph 2.c.
- g. AFM agrees that:
  - i. it will use reasonable endeavours to sell down any shares in the Fund that are issued to PHL as part of its underwriting commitment; and
  - ii. will procure that Augusta Capital Limited does not sell down any shares in the Fund that are issued to Augusta Capital Limited until such time as all shares acquired by PHL and any other underwriter are sold.

Penrith Holdings Limited

12 April 2018

882-880 GREAT SOUTH ROAD, PENROSE, AUCKLAND – Second Variation Letter

1. We refer to the agreement for sale and purchase dated 8 December 2017 between Penrith Holdings Limited (*PHL*) and Augusta Funds Management Limited (*AFM*) and/or nominee (*Agreement*) and the letter from AFM to PHL dated 22 December 2017 which set out variations to the Agreement (*Variation Letter*).
2. The parties agree to further vary the Agreement and the Variation Letter as set out in paragraph 3 below.

These further variations (as included in this letter) are conditional on PHL and AFM obtaining the consent of the Tenant pursuant to the Agreement to Lease (*ATL*) to the following amendments being made to the ATL:

- i. the "Due Date for Practical Completion" is amended to 30 November 2018;
- ii. the "Estimated Works Completion Date" is amended to 30 November 2018; and
- iii. the second sentence of clause 12.1 of the ATL is amended so the parties may agree that the Due Date for Practical Completion may be extended to 28 February 2019 provided that the Landlord has provided the Tenant with reasonable evidence that it has made significant progress towards Practical Completion and that such progress indicates that the Practical Completion Date will occur on or before 28 February 2019.
- iv. If AFM agrees to pay compensation to the Tenant in exchange for the Tenant agreeing to vary the ATL as set out in this clause, AFM will be solely responsible for that payment and hereby indemnifies PHL in that regard.

The date for satisfaction of the condition in this paragraph 2 is 5 working days from the date that the terms of this letter are accepted by PHL.

The condition in this paragraph 2 is for the benefit of both parties. Either party can terminate this variation on written notice to the other if the condition is not satisfied by the due date, in which case the Agreement and Variation Letter will continue to apply.

3. The variations referred to in paragraph 2 above are as follows and modify paragraph 3 of the Variation Letter:
  - a. The settlement date is revised to 15 June 2018.
  - b. Paragraph 3(b) of the Variation Letter is amended by deleting the requirements of 3(b)(i), (ii), (iii) and (v).
  - c. Paragraph 3(c) of the Variation Letter is deleted and replaced with the following:

AFM will enter into a construction contract with Ebert Construction Limited (*Contractor*) based on NZS3910:2013 and subject to the following (*Construction Contract*):

- i. The works to be completed pursuant to the Construction Contract are the works shown in the plans and specifications attached to the ATL and required by the terms of the issued building consent for stage 1 and the building consent for stage 1B which is still to be issued by Auckland Council (but **excluding** the works described in clauses 3(d) and (e) below) (*Works*).



AUGUSTA  
FUNDS MANAGEMENT

- ii. The Construction Contract must be a fixed price contract (subject to any required variations except for variations requested by AFM) and otherwise be on terms approved by AFM and PHL (such approvals not to be unreasonably withheld or delayed) and AFM's financier.
- d. PHL will use reasonable endeavours to complete the following works prior to settlement:
- i. The works described in clause 22 of the Agreement relating to the demolition works; and
  - ii. The asbestos removal and re-roofing works in accordance with clause 23.1 of the ATL and the plans and specifications attached to the ATL but **excluding** the asbestos removal and re-roofing in respect of Building A (as shown on Plan A-002),

(together *PHL Works*).

If PHL does not complete the PHL Works prior to settlement, then:

- iii. AFM will complete the PHL Works;
  - iv. PHL must assign all agreements and documents relating to the PHL Works to AFM to enable AFM to complete the PHL Works;
  - v. PHL will be responsible for 100% of the costs of and associated with the PHL Works; and
  - vi. Clause 24 of the Agreement will apply to the PHL Works. The value of the Outstanding Works will be certified by an independent quantity surveyor in accordance with clause 24.4(a).
- e. AFM acknowledges that PHL has arranged for the following works to be **excluded** from the Construction Contract, notwithstanding that those works are shown on the plans and specifications attached to the ATL:
- i. fire protection works; and
  - ii. works to the high voltage power line, (together *Excluded Works*).

AFM will complete the Excluded Works described in this paragraph and the parties agree that:

- iii. PHL must assign all agreements and documents relating to the Excluded Works to AFM to enable AFM to complete the Excluded Works;
  - iv. Costs that AFM incurs in connection with the fire protection works (as contracted in the accepted terms with FCSL) will comprise part of the Costs (as defined in paragraph 3(g)(i) below) and will be dealt with in accordance with paragraph 3(g).
  - v. AFM will be 100% responsible for all costs that AFM incurs in connection with the works to the high voltage power line.
- f. AFM may commence the Works, the PHL Works and the Excluded Works prior to settlement. PHL will provide AFM with access to the Property to commence the Works the PHL Works and the Excluded Works prior to settlement, subject to the terms of the lease of the Property.
- g. The parties agree as follows in relation to the cost of the Works:
- i. AFM will be responsible for all costs that it has incurred in connection with the Works and the fire protection works referred to in paragraph 3(e)(i) (including all of its consultants costs associated with any further design of the Works and the fire protection works (which is not covered by the existing consultants terms of engagement (being Sylvester Clark Limited and Ken Davis Architects))),



AUGUSTA  
FUND MANAGEMENT

but excluding observation and monitoring of the Works and the fire protection works by the project manager, and including all of its costs associated with obtaining and complying with the issued building consent for stage 1 and the consent for the stage 1b which is still to be issued (*Costs*) up to a maximum of \$2,100,000 plus GST (if any).

- ii. AFM and PHL will each be responsible for 50% of the *Costs* to the extent that the *Costs* exceed \$2,100,000 plus GST (if any) but are equal to or less than \$2,500,000 plus GST (if any) including PDP's consultants' fees for soil evaluation.
  - iii. PHL will be responsible for 100% of the *Costs* to the extent that the *Costs* exceed \$2,500,000 plus GST (if any).
  - iv. PHL must pay to AFM any amounts required to be paid pursuant to this paragraph within 5 working days of receipt of an appropriate tax invoice from AFM. If PHL fails to pay any amounts within this timeframe, interest on the amount owing will be payable by PHL at AFM's usual overdraft rate.
- h. The parties agree that the *Costs* will only include:
- i. the cost of any variations that are strictly required to comply with:
    1. the terms of the ATL;
    2. the terms of all necessary consents, and/or
    3. any variation legally claimed by the Contractor in accordance with the terms of the Construction Contract or the contractor pursuant to the contract for the fire protection works
  - ii. the cost of relocating the fire main if and to the extent that such relocation is required in order to comply with the terms of the ATL (but, provided that the fire main is compliant with all relevant statutes, regulations and consents, only to the extent required to connect the existing supply to the new Valve House and not running the a new main from the road to the new valve House). For clarity:
    1. PHL confirms to AFM that the existing supply is compliant and runs under part of the floor of Building X (as shown on the attached plan) and to this extent, the affected part of the floor of Building X will not be demolished, so that the existing supply remains supported "in situ". The parties acknowledge and agree that clause 24 applies in relation to the part of the floor of Building X that PHL does not demolish prior to settlement (as this demolition forms part of the PHL Works);
    2. should any upgrading work be required to either the existing fire main and/or the new relocated fire main, any costs in that regard fall outside the *Costs*, and shall be met by AFM.
- i. AFM will instruct a project manager to oversee the Works, the PHL Works and the Excluded Works and to report to both AFM and PHL on progress with those works. If any instructions are required to be given to the project manager, such instructions are to firstly be agreed between the parties (acting reasonably) and then given jointly by AFM and PHL. The costs of the project manager will be met by AFM.
- j. The intent of the parties is that any soil that can be categorised as clean-fill for the purposes of disposal will be disposed of on-site. The parties will work together in good faith to enable on-site disposal, provided that any contaminated soil on the Property can be treated and the Property (or any part of it) can be built on and developed. If any contaminated soil can't be treated or the Property (or any part of it) can't be built on and developed due to contaminated soil, the contaminated soil will be disposed of off-site following consultation



AUGUSTA  
FUNDS MANAGEMENT

with PHL. In any event, disposal of any contaminated soil whether on-site or off-site will form part of the Works in respect of which the provisions of paragraph 3(g) apply (including all consultants fees, Resource Consent fees etc.).

- k. If, for any reason, PHL fails to settle the sale of the Property in accordance with the Agreement and the Agreement is legitimately cancelled, then PHL must reimburse AFM for all costs incurred by AFM in relation to the Property (including all costs incurred in accordance with paragraph 3(g)), such costs to be payable within 5 working days of a written demand from AFM. If PHL fails to pay any amounts within this timeframe, interest on the amount owing will be payable by PHL at the Default Interest Rate.
4. If the above terms are accepted, please countersign and return a duplicate copy of this letter to us.

Yours faithfully

Bryce Barnett

We confirm our acceptance of the above terms:

For and on behalf of Penrith  
Holdings Limited

Date:

# Deed of Nomination Agreement for sale and purchase of 862-880 Great South Road, Penrose, Auckland

Augusta Funds Management Limited (Nominator)

Augusta Industrial Fund No. 2 Limited (Nominee)



**DEED OF NOMINATION - AGREEMENT FOR SALE AND PURCHASE OF 862-880  
GREAT SOUTH ROAD, PENROSE, AUCKLAND**

Date: 30 April 2018

**PARTIES**

**Augusta Funds Management Limited** (the *Nominator*)

**Augusta Industrial Fund No. 2 Limited** (the *Nominee*)

**BACKGROUND**

- A By an agreement for sale and purchase dated 8 December 2017, as varied by letters dated 22 December 2017 and 12 April 2018 (together the *Agreement*) made between the Nominator as purchaser and Penrith Holdings Limited as vendor (*Vendor*), the Nominator has agreed to purchase and the Vendor has agreed to sell the property situated at 862-880 Great South Road, Penrose, Auckland (*Property*).
- B The Nominator wishes to nominate the Nominee as the purchaser under the Agreement.
- C The Nominee wishes to accept the nomination.

**THE PARTIES AGREE** as follows:

**1 NOMINATION**

The Nominator nominates the Nominee as the purchaser under the Agreements with effect from the date of this deed (*Nomination Date*), and the Nominee accepts the nomination.

**2 NOMINATOR'S UNDERTAKING AND INDEMNITY**

**2.1 The Nominator:**

- (a) undertakes to fulfil the purchaser's obligations under the Agreement up to and including the Nomination Date; and
- (b) indemnifies the Nominee against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Nominee as a direct or indirect result of any breach by the Nominator of the Nominator's undertaking in this clause 2.1.

**3 NOMINEE'S UNDERTAKING AND INDEMNITY**

**3.1 The Nominee:**

- (a) undertakes to fulfil the purchaser's obligations under the Agreement with effect from the Nomination Date; and



- (b) indemnifies the Nominator against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Nominator as a direct or indirect result of any breach by the Nominee of the Nominee's undertaking in this clause 3.1.

#### **4 NOMINEE'S COVENANT WITH NOMINATOR**

##### **4.1 The Nominee covenants with the Nominator:**

- (a) that it is a registered person as that term is defined in the Goods and Services Tax Act 1985 (*GST Act*); and
- (b) that the Nominee's details are as follows:  
  
Address: Level 2, 30 Gaunt Street, Wynyard Quarter, Auckland 1010  
  
Registration Number: 125-732-402
- (c) that the Nominee intends at settlement to use the goods supplied under the Agreements for making taxable supplies; and
- (d) that the Nominee does not intend at settlement to use the Property (or part of the Property) as a principal place of residence by the Nominee or a person associated with the Nominee under s2A(1)(c) of the GST Act; and
- (e) to pay the GST (if any) payable under the Agreements on any supply evidenced by the Agreements.

#### **5 NOMINEE TO REIMBURSE NOMINATOR**

##### **5.1 On the Nomination Date the Nominee will reimburse the Nominator for:**

- (a) all money, including interest and goods and services tax (if any) paid by the Nominator pursuant to the Agreements; and
- (b) the Nominator's reasonable legal and other costs and disbursements relating to the Agreements.

#### **6 NOTICE OF PROVISIONS OF AGREEMENT**

##### **6.1 The Nominee acknowledges that the Nominee has executed this deed with full notice of all provisions contained or implied in the Agreements.**

#### **7 COUNTERPARTS ELECTRONIC DELIVERY ALLOWED**

##### **7.1 This deed may be executed in any number of counterparts, all of which will together constitute one and the same instrument, and the parties may execute this deed by signing any such counterpart. Without limiting any other mode of delivery, the parties agree to allow delivery of this deed by transmission, in electronic form by any means of electronic communication (including facsimile or email of a scanned**



copy) of an original of this deed executed by a party, to the other party or its solicitors.

**EXECUTED AND DELIVERED AS A DEED**

**Executed by Augusta Funds Management Limited** by its directors/authorised signatories in the presence of:

  
 \_\_\_\_\_  
 Witness signature

\_\_\_\_\_  
 Print Name **Luke Jared Fitzgibbon**

\_\_\_\_\_  
 Occupation **Solicitor**

\_\_\_\_\_  
 Address **Auckland**

  
 \_\_\_\_\_  
 Director/Authorised Signatory

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Director/Authorised Signatory

\_\_\_\_\_  
 Print Name


**Executed by Augusta Industrial Fund No. 2 Limited** by its directors/authorised signatories in the presence of:

  
 \_\_\_\_\_  
 Witness signature

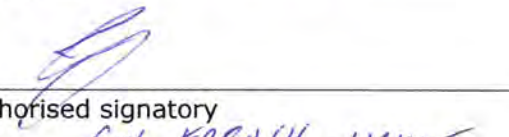
\_\_\_\_\_  
 Print Name **Luke Jared Fitzgibbon**

\_\_\_\_\_  
 Occupation **Solicitor**

\_\_\_\_\_  
 Address **Auckland**

  
 \_\_\_\_\_  
 Authorised signatory

\_\_\_\_\_  
 Print Name **MARK FRANCIS**

  
 \_\_\_\_\_  
 Authorised signatory

\_\_\_\_\_  
 Print Name **GUY FRENCH - WRIGHT**