

# AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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

DATE:

16 February 2016

VENDOR:

Mansons Properties (151 Victoria) Limited

PURCHASER: Augusta Funds Management Limited

and/or nominee

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

Yes/No

## PROPERTY

Address: Building A, 4 Graham Street, Auckland City

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

Legal Description:

Area (more or less):

Lot/Flat/Unit:

DP:

Unique Identifier or CT:

Lot 3 and 181/500 share in Lot 1 on Deposited Plan 490577, being computer freehold register 708753

## PAYMENT OF PURCHASE PRICE

Purchase price: \$115,700,000.00

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

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

GST date (refer clause 13.0):

Deposit (refer clause 2.0): \$3,000,000.00 in accordance with clause 20

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

(1) By payment in cleared funds on the settlement date which is defined in clause 18.2(w)

OR

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

Interest rate for late settlement: 16 % p.a.

## ~~CONDITIONS (refer clause 9.0)~~

Finance condition

LIM required: (refer clause 9.2)

Yes/No

Lender:

Building report required: (refer clause 9.3)

Yes/No

Amount required:

OIA Consent required: (refer clause 9.4)

Yes/No

Finance date:

Land Act/OIA date:

## TENANCIES (if any)

Name of tenant: See attached tenancy schedule

~~Bond:~~~~Rent:~~~~Term:~~~~Right of renewal:~~

SALE BY:

Private treaty

Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 1, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

## 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) "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 9.2(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.
- (31) 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 20(1) of the Electronic Transactions Act 2002, 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 5.0 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 5.2(3)(c) or avoided pursuant to subclause 9.8(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 incomings 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 incomings 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 incomings 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 incomings, 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.

## Deferment 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 8.2(3),
- then the vendor may extend the settlement date:
- (a) where there is a deferment 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 deferment 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
- the transfer of the property is to be registered against a new title yet to be issued; and
  - 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,
  - 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:
    - the vendor has given the purchaser notice that a search copy is obtainable; or
    - the requisitions procedure under clause 5.0 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 Risk and insurance**

- 4.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 4.2 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:
- if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
    - 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
    - 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;
  - 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;
  - 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
  - if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 7.4 for when an amount of compensation is disputed.
- 4.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

**5.0 Title, boundaries and requisitions**

- 5.1 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.
- 5.2 (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:~~
- ~~the tenth working day after the date of this agreement; or~~
  - ~~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:~~
- ~~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;~~
  - ~~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;~~
  - ~~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 5.2(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.~~
- 5.3 (1) ~~If the title to the property being sold is a cross lease title or a unit title and there are:~~
- ~~in the case of a cross lease title:~~
    - ~~alterations to the external dimensions of any leased structure; or~~
    - ~~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;~~
  - ~~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 5.2 requiring the vendor:~~
- ~~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~~
  - ~~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.~~
- 5.4 Except as provided by section 7 of the Contractual Remedies Act 1979, 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 7.1 but not otherwise, shall be made or given as the case may require.~~
- 5.5 ~~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.~~

**6.0 Vendor's warranties and undertakings**

- 6.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- received any notice or demand and has no knowledge of any requisition or outstanding requirement:
    - from any local or government authority or other statutory body; or
    - under the Resource Management Act 1991; or
    - from any tenant of the property; or
    - from any other party; or
  - given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 6.2 The vendor warrants and undertakes that at settlement:
- 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.
  - All electrical and other installations on the property are free of any charge whatsoever.
  - There are no arrears of rates, water rates or charges outstanding on the property.
  - 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.
  - Where the vendor has done or caused or permitted to be done on the property any works:
    - any permit, resource consent, or building consent required by law was obtained; and
    - to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
    - 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:
- 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;
  - the building has a current building warrant of fitness; and
  - 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:
- from any local or government authority or other statutory body; or
  - under the Resource Management Act 1991; or
  - from any tenant of the property; or
  - 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.
- 6.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 6.2(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:
- 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;
  - the building has a current building warrant of fitness; and
  - 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.
- 6.4 The vendor warrants and undertakes that on or immediately after settlement:
- 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.
  - 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.
  - 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.
  - 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.
- 6.5 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 5.4 and any right of equitable set-off.

## 7.0 Claims for compensation

- 7.1 If the purchaser claims a right to compensation either under subclause 5.4 or for an equitable set-off:
- the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
  - the notice must:
    - in the case of a claim for compensation under subclause 5.4, state the particular error, omission, or misdescription of the property or title in respect of which compensation is claimed;
    - in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
    - comprise a genuine pre-estimate of the loss suffered by the purchaser; and
    - be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 7.2 For the purposes of subclause 7.1(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 10.1.
- 7.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 7.4 If the amount of compensation is disputed:
- an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
  - the interim amount must be a reasonable sum having regard to all of the circumstances;
  - 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;
  - 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;
  - 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;
  - the amount of compensation determined to be payable shall not be limited by the interim amount; and
  - 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.
- 7.5 The procedures prescribed in subclauses 7.1 to 7.4 shall not prevent either party taking proceedings for the specific performance of the contract.

## 8.0 Unit title and cross lease provisions

### Unit Titles

- 8.1 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.
- 8.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
  - 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.
  - Not less than five working days before the settlement date, the vendor will provide:
    - a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and
    - 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.
  - There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.
  - There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
  - 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.
  - The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
    - the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or
    - any proceedings being instituted by or against the body corporate; or
    - 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.
  - 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.
  - 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.
  - No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
    - the transfer of the whole or any part of the common property;
    - the addition of any land to the common property;
    - the cancellation of the unit plan; or
    - 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.
  - As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.

- 8.3 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 8.2(2), 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.
- 8.4 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.
- 8.5 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

- 8.6 (1) Where structures (not stated in clause 5.0 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 5.2(3) and 5.2(4) shall apply with the purchaser's demand under subclause 8.6(1) being deemed to be an objection and requisition.

## 9.0 Conditions and mortgage terms

### Particular Conditions

- 9.1 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.
- 9.2 (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 9.8(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 9.8(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.
- 9.3 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 9.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 9.4 (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.
- 9.5 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.
- 9.6 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.
- 9.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

### Operation of Conditions

- 9.8 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

- 9.9 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.
- 9.10 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.

## 10.0 Notice to complete and remedies on default

- 10.1 (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; but.
- (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.
- 10.2 Subject to subclause 10.1(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.

- 10.3 (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 10.1.
- (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.
- 10.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 10.1(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 10.4(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.
- 10.5 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.
- 10.6 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.
- 10.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 10.8 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.

### 11.0 Non-merger

- 11.1 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.

### 12.0 Agent

- 12.1 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.
- 12.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

### 13.0 Goods and Services Tax

- 13.1 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).
- 13.2 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.
- 13.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.
- 13.4 (1) Without prejudice to the vendor's rights and remedies under subclause 13.1, 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 10.1.
- (3) The vendor may give a settlement notice under subclause 10.1 with a notice under this subclause.

### 14.0 Zero-rating

- 14.1 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.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 2 are correct at the date of this agreement.
- 14.3 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.
- 14.4 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.
- 14.5 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.
- 14.6 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.



- 14.7 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 14.3 and 14.4 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.

### 15.0 Supply of a Going Concern

- 15.1 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%.
- 15.2 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 13.0 of this agreement shall apply.

### 16.0 Limitation of Liability

- 16.1 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.

### 17.0 Counterparts

- 17.1 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

See attached



### SCHEDULE 1

List all chattels included in the sale  
(strike out or add as applicable)

~~Stove~~

~~Fixed floor coverings~~

~~Blinds~~

~~Curtains~~

~~Light fittings~~

## Further Terms of Sale

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## **18. Interpretation**

### **18.1. Entire agreement**

This agreement sets out the entire agreement and understanding between the parties in relation to the matters contemplated by this agreement and in particular supersedes any prior agreement, representation, correspondence, or undertaking made between them.

### **18.2. Defined terms**

In addition to the terms defined in clause 1.1 of the General Terms of Sale, in this agreement:

- (a) "Agreement to Lease" means any agreement to lease or licence entered into by the Vendor pursuant to clause 22 with any Replacement Tenant in respect of any premises, carparks and/or naming and signage rights the subject of any Mansons Lease.
- (b) "Authority" means any local authority or territorial authority having jurisdiction in relation to the Property or the Development.
- (c) "Authority Approvals" means all necessary approvals, consents, permissions and licences of any relevant Authority which must be obtained to carry out the Development Works.
- (d) "Bank Guarantees" means irrevocable on-demand bank guarantees from a registered New Zealand bank in favour of the Purchaser, in a form agreed pursuant to clause 19.1(c) in respect of the Vendor's obligations pursuant to the Mansons Leases, for the amount equal to the total amount of rent and licence fees payable throughout the entire initial term of the respective Mansons Leases.
- (e) "BMA" means the building ownership and management agreement which the Property is sold subject to which sets out the rights and obligations of the owners of component buildings in the Development and in particular the jointly owned lot (being Lot 1 on Deposited Plan 490577) and the allocation of parking spaces located in that lot to each owner, a copy of which is to be provided by the Vendor to the Purchaser during the period that this agreement is conditional in terms of 19.1(a).
- (f) "Confidential Information" means:
  - (i) The contents of the Development Agreements;
  - (ii) The contents of the Leases; and
  - (iii) Any information which is not public knowledge and which is obtained by one party to this agreement from another party to this agreement pursuant to or in the course of the negotiation of, giving effect to, or settlement of, this agreement.
- (g) "Deed of Assignment of Development Warranties" means the deed in the form attached to this agreement as Schedule 4.
- (h) "Deposit" means the deposit specified on the front page of this agreement.
- (i) "Defects and Capital Expenditure Warranty" means the deed of warranty in respect of defects and capital expenditure, to be granted by the Vendor and Mansons TCLM Limited in favour of the Purchaser in the form attached as Schedule 5.



- (j) "Development" means the commercial office development constructed on the Vendor's Land pursuant to certain Authority Approvals obtained by the Vendor.
- (k) "Development Agreements" means: the development agreements and agreements to lease between the Vendor and:
  - (i) Pernod Ricard Winemakers New Zealand Limited; and
  - (ii) The equity partners of Meredith Connell (law firm),
 copies of which will be provided to the Purchaser during the period that this agreement is conditional in terms of clause 19.1(a).
- (l) "Development Warranties" means the warranties which are obtained by the Vendor in respect of the Development.
- (m) "Development Works" means all those works either completed by the Vendor or contemplated by the Development Agreements as still to be completed by the Vendor in respect of the Development.
- (n) "Green Star Built Rating" means a 5 Star Office Built rating for the Development in accordance with the New Zealand Green Building Council's Green Star NZ rating system.
- (o) "Green Star Design Rating" means a 5 Star Office Design rating for the Development in accordance with the New Zealand Green Building Council's Green Star NZ rating system.
- (p) "Leases" means the leases and licences in respect of the Property as described in the Tenancy Schedule (including the NZME. Leases and the Mansons Leases) and where the context requires includes any new lease contemplated by clause 22.1.
- (q) "Mansons Lease" means any lease of premises, carparks and naming and signage rights referred to in the Tenancy Schedule as being leased to the Vendor, in the form provided by the Vendor to the Purchaser during the period that this agreement is conditional in terms of clause 19.1(a).
- (r) "NZME. Leases" means those Leases between the Vendor, APN Holdings NZ Limited and Wilson & Horton Limited.
- (s) "Property" means the land and buildings described on the first page of this agreement comprising:
  - (i) An estate in fee simple in all of those parts of the Development identified on Deposited Plan 490577 as Lot 3, comprising that part of the Development known as Building A); and
  - (ii) An undivided proportionate share in the fee simple estate in that part of the Development identified on Deposited Plan 490577 as Lot 1 (which comprises the common areas, plaza, and basement carparking areas of the Development).
- (t) "Related Company" has the meaning given to that term under the section 2(3) of the Companies Act 1993.
- (u) "Rentable Area" means the net rentable area of all premises forming part of the Development measured pursuant to clause 21.5.

- (v) "Replacement Tenant" means any third party which agrees to enter into an Agreement to Lease with the Vendor.
- (w) "Settlement Date" means the date 1 working day after the date upon which all conditions in clause 19 are fulfilled or waived.
- (x) "Settlement Documents" means:
  - (i) The deed of covenant contemplated by the BMA.
  - (ii) The Deed of Assignment of Development Warranties.
  - (iii) The Defects and Capital Expenditure Warranty.
  - (iv) Any deed of covenant, assignment or consent that may be required pursuant to any Agreement to Lease (as contemplated in clause 22).
  - (v) Any other document or thing reasonably necessary to fully effect the transfer of the Property and the benefit of the Leases to the Purchaser which the Purchaser may (by notice in writing to the Vendor not less than five working days before the Settlement Date) reasonably require.
  - (vi) The originals of any Leases which have commenced prior to the Settlement Date.
  - (vii) The Bank Guarantees.
- (y) "Tenancy Schedule" means the tenancy schedule attached to this agreement as Schedule 3.
- (z) "Tenants" means the lessees pursuant to the Leases as described in the Tenancy Schedule, and where the context requires includes any Replacement Tenant that is approved by the Purchaser pursuant to clause 22.

### 18.3. References

Unless expressly specified in this agreement otherwise, any reference in this agreement to a clause or schedule is a reference to a clause or schedule in this agreement.

### 18.4. Severability

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

### 18.5. Currency

All currency references are in New Zealand dollars.

### 18.6. Law

This agreement is governed by the laws of New Zealand.

## 19. Conditions

### 19.1. Purchaser's due diligence

- (a) This agreement is conditional upon the Purchaser completing and being satisfied in its sole discretion with the outcome of the Purchaser's due diligence investigation of the Property, the Development, the NZME. Leases, the Development Agreements, the Mansons Leases, the BMA, the transaction contemplated by this agreement, and all matters which the Purchaser in its sole discretion may consider relevant thereto.
- (b) Vendor's assistance with due diligence:
  - (i) The Vendor will provide to the Purchaser within two working days of the execution of this agreement copies of the Development Agreements, the NZME. Leases, the Manson Leases and the BMA.
  - (ii) The Vendor will promptly supply to the Purchaser such further information that the Purchaser may reasonably request in respect of the Purchaser's due diligence investigations, including, without limitation:
    - (A) Copies of all plans and specifications, engineering and structural reports held by the Vendor or available to the Vendor in respect of the Property or any of the improvements comprising the Property;
    - (B) All service agreements with respect to the Property including any arrangements in respect of fire alarms, pest control, security, sprinkler systems, refuse removal, cleaning, air conditioning maintenance; and
    - (C) Any draft property management agreement(s) with respect to the Property.
- (c) During the period that this agreement is conditional pursuant to clause 19.1(a), the parties shall endeavour to agree on the form of the Bank Guarantees.
- (d) The parties acknowledge that to enable the Purchaser to carry out its due diligence investigations, the Purchaser through its consultants, contractors, agents or employees will require access to the Property and the Vendor will, to the extent that the Vendor is entitled (whether under the terms of any Lease or otherwise), provide or cause to be provided 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. The Purchaser shall ensure that the consultants undertake their inspection and investigations of the Property, as far as practicable to cause the least possible interference to the tenants under the Lease and shall comply with any relevant provisions of the Leases in that regard.
- (e) The condition contained in clause 19.1(a) is inserted for the sole benefit of the Purchaser and may be waived at any time by the Purchaser giving written notice to the Vendor to that effect.
- (f) The parties acknowledge that the fulfilment or non-fulfilment of the condition in clause 19.1(a) is at the sole and absolute discretion of the Purchaser and the Purchaser will not be obliged to state any reason for the Purchaser's fulfilment or non-fulfilment as the case may be.
- (g) The date for fulfilment of the condition in clause 19.1(a) is the date that is 30 working days after execution of this agreement by both parties.

## 19.2. Syndication

- (a) This Agreement is further conditional upon the Purchaser completing a successful syndication in respect of the Property, by the date that is 40 working days following satisfaction of the condition in clause 19.1(a).
- (b) If the condition contained in clause 19.2(a) is not fulfilled by the date stated in that clause, then either party may avoid this agreement and the provisions of clause 9.8 shall apply.
- (c) The condition contained in clause 19.2(a) cannot be unilaterally waived by either party.

## **20. Deposit**

### **20.1. Payment of Deposit**

- (a) The Purchaser shall pay the Deposit to the Vendor on the date upon which the condition in clause 19.1(a) is fulfilled or waived.
- (b) The Deposit is not refundable and the Vendor shall be entitled to retain the Deposit in the event that the condition in clause 19.2(a) is not satisfied, or (for the avoidance of doubt) if for any other reason settlement does not occur (other than due to the Vendor's default).

## **21. Vendor's obligations prior to Settlement**

### **21.1. Vendor's completion of the Development Works**

- (a) The Vendor shall prior to the Settlement Date at its cost complete any remaining Development Works that are required (by the relevant Development Agreements) to be completed prior to the Settlement Date:
  - (i) In accordance with the Development Agreements;
  - (ii) In a good, professional, prompt and tradesperson-like manner.
  - (iii) To sound and acceptable architectural and engineering standards.
  - (iv) In accordance with all building consents applicable to the Development (other than building consents issued in respect of tenants' fitout (for which the relevant tenants are responsible)).
  - (v) In accordance with the Authority Approvals and all applicable regulatory requirements and legislation (including but not limited to the Building Act 2004 and the Resource Management Act 1991).
- (b) Notwithstanding clause 21.1(a), the Purchaser acknowledges that there may be some minor items of a finishing nature which are still to be completed, the completion of which will not affect occupation of premises in the Development by the tenants under the relevant Development Agreements.
- (c) The Vendor will comply with all of its obligations under the Development Agreements, and the Leases and will not agree to any variation of the Development Agreements or the Leases without the Purchaser's prior written approval (which shall not be unreasonably withheld or delayed) provided such changes will not have a material adverse effect on the value or quality of the Property.

### **21.2. Building consents and Code Compliance Certificates**

- (a) The Vendor warrants that it has obtained all resource consents required in respect of the Development Works.
- (b) The Vendor warrants that it has obtained all building consents required in respect of all building work carried out in respect of the Development Works to date, and that it will obtain all other building consents required in respect of any Development Works still to be completed (pursuant to Development Agreements or the like) prior to commencing those works.
- (c) Prior to the Settlement Date, the Vendor will obtain either code compliance certificates or certificates of public use under the Building Act 2004 relating to those parts of the Property which are intended to be used on or before the Settlement Date by members of the public. In the event a final code compliance certificate(s) in respect of all Development Works is not obtained prior to the Settlement Date, the Vendor shall obtain such code compliance certificates as soon as practicable thereafter. The Vendor shall provide a copy of all code compliance certificates or certificates of public use as soon as practicable after receiving the same from the relevant Authority.
- (d) The provisions of clauses 21.2(a) to 21.2(c) (inclusive) do not apply in respect of works carried out by tenants in fitting out their leased premises.

### 21.3. Vendor's management of the Property and the Leases

- (a) The Vendor shall:
  - (i) At the Vendor's cost, comply with and fulfil all of the obligations of the lessor under the Development Agreements that are to be completed under the relevant Development Agreements prior to the Settlement Date.
  - (ii) At the Vendor's cost, comply with and fulfil all of the obligations of the lessor under the Leases that are required to be complied with or fulfilled prior to the Settlement Date.
  - (iii) Take reasonable steps to ensure that the Property and the Leases are managed in accordance with good property management practice.
  - (iv) Promptly provide the Purchaser with copies of any notices the Vendor may receive from, or issue to, the Tenants relating to the Leases.
- (b) The Vendor shall not:
  - (i) Agree to any variation of any of the Leases or Development Agreements without the Purchaser's prior written consent (which consent the Purchaser may grant or withhold in its absolute discretion).
  - (ii) Waive any of the Vendor's rights under any of the Leases or Development Agreements.
  - (iii) Cancel or terminate any of the Leases (for breach or repudiation by the Tenants or otherwise).
  - (iv) Agree to any request that may be made by the Tenants pursuant to any of the Leases or Development Agreements without the Purchaser's prior written approval (which shall not be unreasonably withheld), but subject to clauses 21.3(b)(i)-(iii).



- (v) Except as provided in clause 22, enter into any new agreements to lease, deeds of lease, agreements to licence, deeds of licence, or other agreements to grant possession or occupation of premises within the Property, without the Purchaser's prior written consent (which consent the Purchaser may grant or withhold in its absolute discretion). The provisions of this clause 21.3(b)(v) do not apply in respect of any subleases, or assignments of any of the Leases, which the Vendor may be requested to consent to pursuant to the Leases, which requests are to be governed by clause 21.3(b)(iv).

#### 21.4. Green Star Design Rating

- (a) The Vendor has obtained the Green Star Design Rating.

#### 21.5. Final measure and adjustment of purchase price

- (a) The Vendor shall prior to the Settlement Date cause its surveyor to measure the net rentable area of all premises within the Development in accordance with the applicable methods of measurement specified in the 2013 revision of the Guide for Measurement of Rentable Areas published jointly by the Property Council of New Zealand and the Property Institute of New Zealand.
- (b) The Tenancy Schedule shall be revised prior to Settlement to correctly reflect the Rentable Area for each part of the premises, and any additional naming and signage rights granted to Tenants, as reflected in the Leases.
- (c) The Purchase Price shall be adjusted to reflect the revised Tenancy Schedule under clause 21.5(c)(i) such that the ratio between the adjusted Purchase Price and the total rent specified in the revised Tenancy Schedule is the same as the ratio between the Purchase Price specified on the front page of this Agreement and the total rent specified in the Tenancy Schedule attached to this Agreement.

### 22. Mansons Lease provisions

#### 22.1. Agreements to Lease

- (a) The Vendor may enter into Agreements to Lease with Replacement Tenants in relation to all or some of the premises, carparks and/or naming and signage rights to which any of the Mansons Leases relate in accordance with the provisions of this clause 22.1.
- (b) Each Agreement to Lease shall:
  - (i) Provide for rental rates, rent review mechanisms, and length of initial term which are the same as, or more favourable to the Purchaser than, those specified in the Tenancy Schedule in respect of the relevant component of the Property; and
  - (ii) Contemplate a deed of lease which is:
    - (A) In the same form and on the same terms as the relevant Mansons Lease (excepting for any provisions intended to benefit the Vendor only) with any minor amendments agreed between the Vendor and the Replacement Tenant that do not materially affect the Purchaser's rights and obligations under the relevant Mansons Lease, or which are otherwise approved by the Purchaser (such approval not to be unreasonably withheld); or

- (B) In such form as may be agreed between the Vendor and the Replacement Tenant and approved by the Purchaser (such approval not to be unreasonably withheld); and
- (iii) Otherwise be in such form and on such terms as are reasonably appropriate for such agreements and are agreed between the Vendor and the Purchaser (each acting reasonably).
- (c) All costs in respect of each Agreement to Lease (including commission, incentives, marketing costs etc) shall be the sole responsibility of the Vendor, whether or not such costs are accrued before or after Settlement.
- (d) If required by the Replacement Tenant, the Purchaser shall execute the Agreement to Lease in its capacity as the future owner of the Property.

## 22.2. Replacement Tenants

- (a) The assignment provisions of the relevant Mansons Lease shall apply in respect of such Replacement Tenant as if the Replacement Tenant was a proposed assignee of the relevant Mansons Lease, and in particular in assessing the Replacement Tenant's solvency, financial position, respectability, and suitability the Purchaser must act reasonably having regard to the nature of the premises under the relevant Mansons Lease and must not have regard to the comparative solvency, financial position, respectability, or suitability of the Vendor.
- (b) The Purchaser shall not be entitled to insist upon guarantees of the proposed Replacement Tenant's obligations if the proposed Replacement Tenant is:
  - (i) A company listed on the New Zealand stock exchange, or any stock exchange in any other country;
  - (ii) A subsidiary of a such company; or
  - (iii) Any other entity whose financial position and standing is such that a reasonable landlord of premises of the same quality as the relevant premises, carparks and/or naming and signage rights would not insist upon guarantees.

## 22.3. Effect of Agreements to Lease

- (a) In respect of Agreements to Lease which contemplate lease commencement prior to the Settlement Date:
  - (i) The relevant Mansons Leases shall be varied or surrendered to exclude the premises, carparks, and naming and signage rights (and all rent, operating expenses, and licence fees relating thereto) the subject of the Agreements to Lease; and
  - (ii) The Leases shall be deemed to include the leases contemplated by the Agreements to Lease.
- (b) In respect of Agreements to Lease which contemplate lease commencement after the Settlement Date:
  - (i) The Purchaser shall enter into or procure any deed of covenant, assignment or consent that may be contemplated by the Agreements to Lease, and such deed, assignment or consent shall constitute a Settlement Document.

- (ii) The relevant Mansons Leases shall be varied so that they are surrendered in respect of those premises, carparks, and naming and signage rights (and all rent, operating expenses, and licence fees relating thereto) which are the subject of the Agreements to Lease with effect from the commencement of the lease contemplated by the relevant Agreement to Lease.
- (iii) The Vendor shall remain responsible for any obligations of the landlord under any Agreements to Lease that are not obligations of the landlord under the lease contemplated by those Agreements to Lease.

#### 22.4. Development Agreements

- (a) In respect of any Development Agreement which contemplates lease commencement after the Settlement Date ("**Future Lease**"):
  - (i) The Vendor shall provide a Mansons Lease which commences on the Settlement Date, and which is otherwise on the same terms contemplated by the relevant Future Lease.
  - (ii) The relevant Mansons Lease under clause 22.4(a)(i) shall automatically terminate and be deemed surrendered with effect from the date that is the latter of:
    - (A) The commencement date of the Future Lease;
    - (B) The date on which the Vendor provides the Purchaser with the original Future Lease duly executed by all relevant parties; and
    - (C) Where applicable, the date on which the Vendor provides the Purchaser with any security contemplated by the Future Lease (eg original bank guarantee or cash security bond).

#### 22.5. Disputes in relation to clause 22

- (a) Any dispute between the Vendor and the Purchaser in respect of any matter contemplated by this clause 22 (including in particular the approval of a Replacement Tenant, or the form or terms of any Agreement to Lease and the deed of lease contemplated thereby) may at the request of either party be determined by an expert appointed by agreement between the parties or failing agreement on such appointment by the president of the New Zealand Law Society.
- (b) Such expert:
  - (i) Shall give the parties the opportunity to provide written submissions in respect of the dispute within 5 working days of the expert's appointment.
  - (ii) Shall proceed to determine the dispute promptly and according to such prompt procedure and taking into account such matters (including the expert's own knowledge, skill, and experience) as the expert considers appropriate.
  - (iii) Shall act as an expert and not as an arbitrator.
  - (iv) Shall give the expert's determination in writing and with reasons.
- (c) The parties shall be bound by the expert's determination.

### 23. Settlement

### 23.1. Preparation for settlement

- (a) Each of the Settlement Documents shall be on reasonable terms having regard to their subject matter as agreed between the Purchaser and the Vendor (acting reasonably), and in the event of a dispute in that regard such dispute shall be resolved by an expert appointed jointly by the parties (or failing agreement as to the appointment of the expert, by an expert appointed by the president or vice president of the Auckland District Law Society Incorporated).
- (b) The Vendor shall:
  - (i) Give to the Purchaser's solicitors not later than 10 working days prior to the Settlement Date the Settlement Documents for execution by the Purchaser.
  - (ii) Give to the Purchaser's solicitors not later than five working days prior to the Settlement Date a settlement statement particularising the apportionment of all incomings and outgoings and the net amount required to complete settlement. The Vendor shall account to or provide a credit to the Purchaser for all rent paid in advance, deposits received, and any bonds received from the Tenants
- (c) The Purchaser shall give to the Vendor's solicitors, not later than 5 working days prior to the Settlement Date, the Settlement Documents duly executed by the Purchaser.

### 23.2. Settlement requirements

- (a) The Vendor's obligations under clause 3.8(2) of the General Terms of Sale shall be deemed to include concurrently handing to the Purchaser:
  - (i) The originals of the Leases.
  - (ii) The as-built plans for the Development, and the operation and maintenance manuals for the Development relating to mechanical, hydraulic, fire, and electrical services.
  - (iii) Letters to each of the Tenants advising that the Property has been sold to the Purchaser and advising the Tenants to make all payments due under the Leases after the Settlement Date to the Purchaser.
  - (iv) The Settlement Documents duly executed by the Vendor and any required third parties.
  - (v) All keys, access cards, and particulars of any security codes, for the Development and which are in the Vendor's possession.
  - (vi) The Development Warranties.

## 24. Post-settlement obligations

### 24.1. Incomings and outgoings

- (a) The Vendor shall promptly pay to the Purchaser any rent or contribution to operating expenses which the Vendor may receive from the Tenants after the Settlement Date and which relates to any period after the Settlement Date.
- (b) The Purchaser shall promptly pay to the Vendor any rent or contribution to operating expenses which the Purchaser may receive from the Tenants and which relates to

any period prior to (and inclusive of) the Settlement Date and for which the Purchaser was not given credit on settlement.

#### 24.2. Green Star Built Rating

- (a) The Vendor shall at its cost and with all due diligence do all things necessary to obtain the Green Star Built Rating for the Development.
- (b) The Purchaser shall not do or permit to be done anything which prejudices the Vendor's ability to achieve the Green Star Built Rating, and shall provide reasonable co-operation that may be necessary to enable the Green Star Built Rating to be achieved (including the execution of documents which may require execution by the owner of the Development, the accommodation of inspections or the testing of facilities or equipment).

### 25. General

#### 25.1. Assignment

- (a) Except as provided in clause 25.1(d), no party is entitled to assign its interests under this agreement without the prior written consent of the other parties to this agreement (such consent not to be unreasonably withheld).
- (b) Any party assigning its interests under this agreement shall procure the assignee's execution of a deed in favour of the other parties to this agreement covenanting to observe and comply with all of the obligations under this agreement of the assigning party, in such form as may be reasonably required by the other parties to this agreement.
- (c) Neither an assignment of a party's interests under this agreement, nor the provision of the assignee's deed of covenant contemplated in clause 25.1(b), shall release the assigning party from its obligations and liability under this agreement (which shall continue notwithstanding the assignment and the assignee's covenant).
- (d) Nothing in clauses 25.1(a) and 25.1(b) shall apply in respect of the assignment by way of security of the Vendor's interest under this agreement to its financier, which the Vendor may do without the Purchaser's consent.

#### 25.2. Costs

The Vendor and the Purchaser shall each pay their own costs incurred in relation to the negotiation, preparation, and completion of this agreement.

#### 25.3. Further assurances

Each party shall do all acts and things including, without limitation, the execution of all relevant documents, as may be reasonable to implement and carry out its obligations under and contemplated by this agreement.

#### 25.4. Waiver

No waiver or failure to act by a party in respect of any breach by another party shall operate as a waiver or another breach.

#### 25.5. Confidentiality



- (a) Each party agrees that it will not without the prior written consent of the other disclose any Confidential Information to any person other than those of its officers, employees, financiers and advisers essential to the implementation of the provisions of this agreement.
- (b) Each party will use its best endeavours to ensure those of its officers, employees and advisers to whom Confidential Information is disclosed are aware of and comply with the confidentiality obligations imposed by this clause 25.5.
- (c) If a party is required by law to disclose any Confidential Information it will immediately, and prior to such disclosure, advise the other party.
- (d) The obligations under this clause will survive termination or cancellation of this agreement.
- (e) Except as required by law, neither of the parties will make any announcement or disclosure relating to the existence of this agreement or its subject matter or terms except in such form and manner, and at such time, as the parties agree.
- (f) Notwithstanding the provisions of clauses 25(a) to 25(e) (inclusive), the parties shall reach agreement (acting reasonably) on the form and contents of public announcements in respect of the fact of this agreement (including the parties thereto and the purchase price) which either party may wish to make after this agreement becomes unconditional.

#### 25.6. Dispute Resolution

- (a) If a dispute arises between the parties concerning any aspect of this agreement or the parties' performance or defaults hereunder (other than a dispute in relation to either clause 22 of this agreement, which shall be determined in accordance with clause 22.4), then the parties shall endeavour to negotiate a resolution to the dispute.
- (b) If the parties are unable to resolve the dispute by negotiation within 20 working days of the raising of the dispute, then either party may give notice to the other requiring the dispute to be submitted to the chief executive officers of each party for consideration and negotiation. If such a notice is given, then the chief executive officers of each party shall consider the dispute and shall endeavour to negotiate a resolution of the dispute.
- (c) If the dispute is not resolved pursuant to clause 25.6(b) within 20 working days of the notice given pursuant to clause 25.6(b), then either party may give notice to the other requiring the dispute to be submitted to arbitration. If such a notice is given, then:
  - (i) The parties shall jointly appoint one arbitrator within 5 working days of the giving of such notice.
  - (ii) If the parties fail to so appoint an arbitrator, then the arbitrator shall be appointed by the president for the time being of the Arbitrators and Mediators Institute of New Zealand.
  - (iii) The arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1996.

#### 25.7. Lowest Price

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

- (a) The purchase price (excluding any default interest) is the lowest price the parties would have agreed for the sale and purchase of 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.
- (b) The purchase price (excluding any default interest) is the value of the Property.

## **Schedule 2 – GST Information and Execution**

## SCHEDULE 2

### (GST Information – see clause 14.0)

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): 111-403-392	
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/ <del>No</del>
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/ <del>No</del>
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/ <del>No</del>

If the answer to either or both of questions 3 and 4 is "No", go to question 7

<del>5. The purchaser's details are as follows:</del>		
<del>(a) Full name:</del>		
<del>(b) Address:</del>		
<del>(c) Registration number (if already registered):</del>		
6.	<del>The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).</del>	Yes/ <del>No</del>
	<del><b>OR</b></del> <del>The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act.</del> <del>That part is:</del> <del>(e.g. "the main farmhouse" or "the apartment above the shop")</del>	Yes/ <del>No</del>
7.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/ <del>No</del>

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/ <del>No</del>
9.	The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/ <del>No</del>

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: TBA		
(b) Address: TBA		
(c) Registration number (if already registered): TBA		
11.	The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/ <del>No</del>
	<del><b>OR</b></del> The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop").	Yes/ <del>No</del>

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

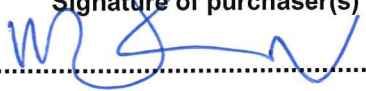
This is a binding contract. **Read the information set out on the back page before signing.**

#### 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)

  
 M. Francis - Director

Signature of vendor(s)

  
 E.C. Manson, director

### **Schedule 3 - Tenancy Schedule**



**Schedule 4 - Deed of Assignment of Development Warranties**

**Mansons Properties (151 Victoria) Limited**

**[purchaser]**

---

**Deed of Assignment of Warranties and Guarantees**

---

**Deed dated:****Parties**

- 1 Mansons Properties (151 Victoria) Limited ("Assignor")
- 2 [purchaser] ("Assignee")

**Background**

- A. The Assignor and the Assignee are parties to the Agreement.
- B. Pursuant to clause 22 of the Agreement the Assignor and the Assignee are required to enter into this deed.

**Operative provisions****1 Definitions**

In this deed, unless the context otherwise requires:

- (a) "Agreement" means the agreement for sale and purchase dated [insert date] between the Assignor as vendor and the Assignee as purchaser in respect of the Property.
- (b) "Assignment Date" means the date upon which settlement of the Agreement is completed.
- (c) "Contractor" means the party bound by the relevant Warranties and Guarantees, as specified in the schedule to this deed.
- (d) "Defect" means a defect in the building constructed on the Property which is due to defective workmanship or materials, arises after the Assignment Date, and is within the ambit of any of the Warranties and Guarantees.
- (e) "Property" means the property situated at 2 Graham Street, Auckland, New Zealand, and being freehold in [insert legal description] comprised and described in Identifier [insert title reference].
- (f) "Warranties and Guarantees" means the warranties and guarantees relating to the Property specified in the schedule to this deed.

**2 Assignment**

2.1 Pursuant to clause 24 of the Agreement the Assignor hereby:

- (a) Assigns all of the Assignor's rights and interests under the Warranties and Guarantees to the Assignee with effect from the Assignment Date.
- (b) Covenants to give written notice of such assignment to the other parties to the Warranties and Guarantees.

2.2 The Assignor shall use its best endeavours to obtain the consent of any Contractor to the extent such consent is required under the Warranties and Guarantees to enable assignment in accordance with this deed. Where the Assignor is unable to obtain the consent of any Contractor to the assignment of the Warranties and Guarantees and as a result is unable to lawfully assign such Warranties and Guarantees to the Assignee, the Assignor shall from

the Date of Assignment hold such interests on trust for the Assignee and shall enforce them at the request and cost, and for the benefit, of the Assignee.

**2.3 The Assignor shall:**

- (a) On the Assignment Date, deliver all documents connected with or evidencing the Warranties and Guarantees to the Assignee.
- (b) Do all acts and things, including the execution of all such documents, as may be required by the Assignee to give effect to the assignment contemplated by this deed.

**2.4 If a Defect arises then:**

- (a) The Assignee shall not require the Assignor to remedy, or compensate the Assignee in respect of, the Defect unless the Assignee has taken reasonable steps to procure the remedy of, or compensation for, the Defect pursuant to the relevant Warranties and Guarantees.
- (b) If the Assignee requires the Assignor to rectify, or compensate the Assignee in respect of, the Defect, the Assignor shall be entitled to enforce the relevant Warranties and Guarantees (and shall be entitled to the benefit of any compensation recovered from the relevant Contractor pursuant thereto) in the name of the Assignee.
- (c) The Assignor shall be released from any claim by or liability to the Assignee relating to any Defect to the extent that:
  - (i) The Defect is rectified, or the Assignee is compensated in respect of the Defect, pursuant to the relevant Warranties and Guarantees.
  - (ii) The ability to require the Contractor to rectify, or compensate in respect of, the Defect, is prejudiced by any act or omission of the Assignee.

**3 Warranties**

**3.1 The Assignor warrants that:**

- (a) It has the benefit of all the Warranties and Guarantees.
- (b) It has full power to assign the Warranties and Guarantees to the Assignee and where such power is subject to the consent of any Contractor it has obtained the Contractor's consent.

**3.2 The Assignee warrants that it will not do or omit to do, or permit any third party to do, anything that invalidates, or otherwise prejudices the ability to require a Contractor to remedy (or compensate in respect of) a Defect pursuant to, any of the Warranties and Guarantees.**

**4 General provisions**

**4.1 This deed will be governed by the laws of New Zealand.**

**4.2 Any dispute that may arise in respect of this deed and the matters contemplated by it shall be subject to the dispute resolution provisions of the Agreement.**

**Execution by the parties**

**Mansons Properties  
(151 Victoria) Limited by:**  
In the presence of:

\_\_\_\_\_  
Witness name

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

\_\_\_\_\_  
Witness occupation

\_\_\_\_\_  
Witness address

\_\_\_\_\_  
Director/Attorney name

\_\_\_\_\_  
Director/Attorney signature

**[purchaser]**  
by:

\_\_\_\_\_  
Director name

\_\_\_\_\_  
Director signature

\_\_\_\_\_  
Director name

\_\_\_\_\_  
Director signature

### **Schedule of Warranties and Guarantees**

<b>Works</b>	<b>Contractor</b>	<b>Period (years)</b>
	[insert details]	

**Note: the Period of each Warranty and Guarantee commences from the date of Practical Completion of the Development.**

**Schedule 5 - Defects and Capital Expenditure Warranty**

**Dated**

**2016**

**Mansons Properties (151 Victoria) Limited**

**Mansons TCLM Limited**

**[insert]**

---

**Deed of Warranty in respect of Building A, 2 Graham Street, Auckland**

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This deed is dated the                      day of                      2016

## Parties

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

## Background

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

## Operative Provisions

### 1        Definitions and Interpretation

#### 1.1      Definitions

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

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

- (d) **"Deed"** means this deed together with the attached schedule, and such other documents as this Deed expressly provides as being intended to comprise part of this Deed and any amendments or variations to this Deed from time to time agreed to in writing and signed by the parties.
- (e) **"Defects"** means any defects in the design, materials, or workmanship of any part of the buildings, fixtures, or fittings constructed or installed by Mansons (including its contractors and subcontractors) in the Development, but excluding any damage or deficiency attributable to matters beyond the reasonable control of Mansons, including a Damaging Event; improper use of the relevant part of the Development by the Purchaser, any tenant of the Development or any other person; or failure by the Purchaser to properly maintain the relevant part of the Development.
- (f) **"Development"** is the office complex located on the Land.
- (g) **"Land"** means the land situated at 2 Graham Street, Auckland City, comprised in computer freehold registers 708752 to 708754 (inclusive).
- (h) **"Mansons"** means Mansons and TCLM.
- (i) **"Property"** means Lot 3 and 181/500 share in Lot 1 on Deposited Plan 490577, being computer freehold register 708753 and known as Building A, 2 Graham Street, Auckland City.
- (j) **"Term"** means the term commencing on the date of this Deed and expiring on [insert date 10 years from date of the agreement].

## 1.2 Interpretation

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

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

## 1.3 Severability



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

#### **1.4 Conflict**

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

### **2 Defects Warranty**

**2.1** Mansons covenants in favour of the Purchaser that it will at Mansons' cost promptly:

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

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

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

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

### **3 Capital expenditure warranty**

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

### **4 General**

#### **4.1 No assignment**

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

#### **3.2 Notices**

- (a) Any notice permitted or required to be given under this Deed shall be in writing and shall either be:
  - (i) Delivered.
  - (ii) Sent by facsimile transmission; or
  - (iii) Sent by email;

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

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

Mansons and TCLM

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

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

Purchaser

Name: [insert]  
Address: [insert]  
[insert]

Attention: [insert]  
Email: [insert]

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

**EXECUTION**

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

\_\_\_\_\_  
Director's/attorney's name

\_\_\_\_\_  
Director's/attorney's signature

in the presence of:

Witness Name.....

Witness Occupation.....

Witness Address.....

Witness Signature.....

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

\_\_\_\_\_  
Director's/attorney's name

\_\_\_\_\_  
Director's/attorney's signature

in the presence of:

Witness Name.....

Witness Occupation.....

Witness Address.....

Witness Signature.....

**Signed by/on behalf of  
[insert] by:**

\_\_\_\_\_  
Name and designation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and designation

\_\_\_\_\_  
Signature

in the presence of:

Witness Name.....

Witness Occupation.....

Witness Address.....

Witness Signature.....

## BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
  - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
  - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
  - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
  - there is any doubt as to the position of the boundaries.
  - the purchaser wishes to check the 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 6.0 and 8.0:
  - are able to be complied with; and if not
  - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 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: 16 February 2016

### VENDOR:

Mansons Properties (151 Victoria) Limited

Contact Details:

### VENDOR'S LAWYERS:

Firm: Fortune Manning

Individual Acting: David Selkirk

Contact Details:

Level 12, Chorus House  
66 Wyndham Street, Auckland

T: +64 9 915 2421

F: +64 9 915 2402

E: david.selkirk@fortunemanning.co.nz

### PURCHASER:

Augusta Capital Limited

Funds Management

Contact Details:

### PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

### LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details: