

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 NOVEMBER 2020

VENDOR: Nautilus Properties Limited

PURCHASER: PMG Funds 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: Part 410 Eastern Hutt Road, Silverstream, Upper Hutt, as more particularly defined in the further terms of sale (Northpower lots)

Estate: FREEHOLD LEASEHOLD STRATUM IN FREEHOLD
 STRATUM IN LEASEHOLD GROSS-LEASE (FREEHOLD) GROSS-LEASE (LEASEHOLD)

If none of the above are deleted, the estate being sold is the first option of freehold.

Legal Description:
 Area (more or less): Lot/Flat/Unit: Record of Title (unique identifier):
 Refer to the definition of "Property" in the further terms of sale

PAYMENT OF PURCHASE PRICE
 Purchase price: \$ 14,500,000

Plus GST (if any) OR Inclusive of GST (if any) -
 (If either is deleted, the purchase price includes GST (if any).
 GST date (refer clause 13.0):

Deposit (refer clause 2.0): \$1,000,000, payable 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 26
 OR
 (2) in the manner described in the Further Terms of Sale. Interest rate for late settlement: 12 % p.a.

CONDITIONS (refer clause 9.0)

Finance required (subclause 9.1):	Yes/No	OIA consent required (subclause 9.6):	Yes/No
Finance date:		OIA date (subclause 9.8):	
LIM required (subclause 9.3):	Yes/No	Land Act consent required (subclause 9.7):	Yes/No
Building report required (subclause 9.4):	Yes/No	Land Act date (subclause 9.8):	
Toxicology report required (subclause 9.5):	Yes/No		

TENANCIES Yes/No-
 Name of Tenant(s): Refer to the tenancy schedule (Schedule 7)
 Particulars of any tenancies are set out in Schedule 3 or another schedule attached to this agreement by the parties.

SALE BY:

Capital Commercial (2013) Limited Bayleys Capital Commercial Level 14, The Bayleys Building, 35 Brandon Street Wellington 6011 Ph: 04 499 6022	Manager: Mark Hourigan Salesperson(s): Fraser Press 021 328 138	BAYLEYS
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Licensed Real Estate Agent under Real Estate Agents Act 2008

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

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) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.
- (3) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (7) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (8) "Cleared funds" means:
- An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - 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.
- (9) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (10) "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.
- (11) "Electronic Instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (12) "Going concern", "goods", "principal place of residence", "receptant", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (13) "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.
- (14) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (15) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.
- (16) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (17) "LINZ" means Land Information New Zealand.
- (18) "Local authority" means a territorial authority or a regional council.
- (19) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (20) "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.
- (21) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (22) "Property" means the property described in this agreement.
- (23) "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.
- (24) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (25) "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.
- (26) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (27) "Rules" means body corporate operational rules under the Unit Titles Act.
- (28) "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.
- (29) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under subclause 3.8.
- (30) "Settlement date" means the date specified as such in this agreement.
- (31) "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.
- (32) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (33) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (34) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.

- (35) "Unit title" means a unit title under the Unit Titles Act.
 (36) "Unit Titles Act" means the Unit Titles Act 2010.
 (37) "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 9.3(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.

1.2 Unless a contrary intention appears on the front page or elsewhere in this agreement:

- (1) 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
 (2) 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.

1.3 Time for Performance

- (1) Where the day nominated for settlement or the fulfillment of a condition is not a working day, then the settlement date or the date for fulfillment 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 1.3(2).

1.4 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 email; or
 (iv) 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 1.4(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 email:
 (i) when sent to the email address provided for the party or the party's lawyer on the back page; or
 (ii) any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
 (iii) if no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website;
 (d) 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;
 (e) in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
 (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

1.5 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

/Vendor's solicitor's trust account in accordance with clause 20 of the further terms of sale

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.

- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 ~~The person to whom the deposit is paid shall hold it as a stakeholder until:~~
- ~~(1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and~~
 - ~~(2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and~~
 - ~~(3) where the property is a unit title:

 - ~~(a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act, and~~
 - ~~(b) an additional disclosure statement under section 148 of the Unit Titles Act (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 to postpone the settlement date until after the disclosure statements have been provided; or~~
 - ~~(4) this agreement is:

 - ~~(a) cancelled pursuant to:

 - ~~(i) subclause 6.2(3)(c); or~~
 - ~~(ii) sections 36 or 37 of the Contract and Commercial Law Act 2017; or~~~~
 - ~~(b) avoided pursuant to subclause 9.10(5); or~~~~
 - ~~(5) 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, has cancelled this agreement pursuant to that section; or has elected not to cancel by giving notice to the vendor; or by completing settlement of the purchase;~~
- 2.5 ~~Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to subclause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008; but the agent must hold the deposit for the longer of those two periods; or such lesser period as is agreed between the parties in writing, as required by section 123 of the Real Estate Agents Act 2008; but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing after the effect of the same is explained to the purchaser by the agent or by the purchaser's lawyer or conveyancer.~~
- 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 no later than the day prior to the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property, 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 3.13, or for any deduction allowed to the purchaser under subclause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to subclause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to subclause 10.8);
 - (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, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.
- 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) If the parties are unable to agree upon any amount payable under this subclause 3.12, either party may make a claim under clause 10.0.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.13 (1) For the purposes of this subclause 3.13:
- (a) the default period means:
 - (i) in subclause 3.13(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 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.13(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 3.13(2)(b) during the default period. A purchaser in possession under this subclause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.13(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 3.13(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 3.13(2)(b) during the default period.
- (6) The provisions of this subclause 3.13 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) If the parties are unable to agree upon any amount payable under this subclause 3.13, either party may make a claim under clause 10.0.

Deferment of Settlement and Possession

- 3.14 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).
- 3.15 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.
- 3.16 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.14 or subclause 3.15; 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 3.14, 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 3.15, 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

- 3.17 ~~(1) Where~~
- ~~(a) the transfer of the property is to be registered against a new title yet to be issued; and~~
 - ~~(b) a search copy, as defined in section 60 of the Land Transfer Act 2017, 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~~
- ~~(i) the vendor has given the purchaser notice that a search copy is obtainable; or~~
 - ~~(ii) the requisitions procedure under clause 6.0 is complete.~~
- ~~(2) Subclause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.~~

4.0 Residential Land Withholding Tax

- 4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:
- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
 - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and

- (b) If the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
- (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
- (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
- (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
- (b) any costs payable by the vendor under subclause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 4.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
- (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 4.3 If pursuant to subclause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
- (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under subclause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
- (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.
- 5.0 Risk and Insurance
- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
- (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
- (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
- (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
- (3) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
- (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 10.8 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.
- 6.0 Title, boundaries and requisitions
- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
- (a) ~~the tenth working day after the date of this agreement; or~~
- (b) ~~the settlement date.~~

- (2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 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.
- 6.3 In the event of cancellation under subclause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.
- 6.4 (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 use covenant;
 - in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be);
 - 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.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not entitle for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.
- 7.0 Vendor's warranties and undertakings
- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- 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.
- 7.2 The vendor warrants and undertakes that at the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.
- 7.3 The vendor warrants and undertakes that at settlement:
- The chattels included in the sale listed in Schedule 2 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 to do so shall only create a right of compensation.
 - All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.
 - There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.
 - 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.
 - 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

- (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
- (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
- 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.
- 7.4 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.3(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.
- 7.5 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.
- ~~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 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 Unit Titles Act; and~~
 - ~~a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles 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 Unit Titles Act.~~
 - ~~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 Unit Titles Act.~~
 - ~~The vendor has no knowledge or notice of any fact which might result in:~~
 - ~~the owner or the purchaser incurring any other liability under any provision of the Unit Titles Act; 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 Unit Titles Act.~~
 - ~~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~~

- (d) ~~the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan, which has not been disclosed in writing to the purchaser.~~
- 8.3 ~~(1) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.~~
~~If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of subclause 8.2(3), then in addition to the purchaser's rights under sections 149 and 150 of the Unit Titles Act, 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) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(4)(d) of the Unit Titles 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 Unit Titles 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 Unit Titles 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.~~
- 8.6 ~~Unauthorised Structures - Cross Leases and Unit Titles~~
~~(1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:~~
~~(a) in the case of a cross-lease title, any required lessors' consent; or~~
~~(b) in the case of a unit title, any required body corporate consent,~~
~~the purchaser may demand within the period expiring on the earlier of:~~
~~(i) the tenth working day after the date of this agreement, or~~
~~(ii) the settlement date;~~
~~that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.~~
~~(2) Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in subclauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under subclause 6.6(1) being deemed to be an objection and requisition.~~
- 9.0 **Conditions and mortgage terms**
- 9.1 **Finance condition**
- (1) If the purchaser has identified that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date.
- (2) If the purchaser avoids this agreement for failing to arrange finance in terms of subclause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.
- 9.2 **Mortgage terms**
- (1) 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.
- 9.3 **LIM condition**
- (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 9.10(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 9.10(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.

- 9.4 Building report condition
- (1) 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 fifteenth 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.
 - (2) The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods and it must be in writing.
 - (3) 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.
 - (4) The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent.
 - (5) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 9.5 Toxicology report condition
- (1) If the purchaser has indicated on the front page of this agreement that a toxicology report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the fifteenth working day after the date of this agreement, a toxicology report on the property that is satisfactory to the purchaser, on the basis of an objective assessment.
 - (2) The purpose of the toxicology report shall be to detect whether the property has been contaminated by the preparation, manufacture or use of drugs including, but not limited to, methamphetamine.
 - (3) The report must be prepared in good faith by a suitably-qualified inspector using accepted principles and methods and it must be in writing.
 - (4) Subject to the rights of any tenants of the property, the vendor shall allow the inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of carrying out the testing and preparation of the report.
 - (5) The inspector may not carry out any invasive testing in the course of the inspection without the vendor's prior written consent.
 - (6) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the inspector's report.
- 9.6 OIA consent condition
- (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 OIA date shown on the front page of this agreement on terms and conditions that are satisfactory to the purchaser, acting reasonably, 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.
- 9.7 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date shown on the front page of this agreement.
- 9.8 If the Land Act date or 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, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or a date 20 working days from the date of this agreement, whichever is the sooner.
- 9.9 Resource Management Act condition
- (1) 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.
- 9.10 Operation of conditions
- 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.
- 10.0 Claims for compensation
- 10.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 10.0.
- 10.2 The provisions of this clause apply if:
- (1) the purchaser claims a right to compensation for:
 - (a) a breach of any term of this agreement; or
 - (b) a misrepresentation; or
 - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986; or
 - (d) an equitable set-off, or

- (2) there is a dispute between the parties regarding any amounts payable:
- (a) under subclause 3.12 or subclause 3.13; or
 - (b) under subclause 5.2.
- 10.3 To make a claim under this clause 10.0:
- (1) the claimant must serve notice of the claim on the other party on or before the last working day prior to the settlement date (except for claims made after the settlement date for amounts payable under subclause 3.12 or subclause 3.13, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
 - (2) the notice must:
 - (a) state the particular breach of the terms of the agreement, or the claim under subclause 3.12, subclause 3.13 or subclause 5.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set-off; and
 - (b) state a genuine pre-estimate of the loss suffered by the claimant; and
 - (c) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 10.4 If the claimant is unable to give notice under subclause 10.3 in respect of claims under subclause 10.2(1) or subclause 10.2(2)(b) by the settlement date by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under subclause 11.1.
- 10.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the purchaser on settlement.
- 10.6 If the purchaser makes a claim for compensation under subclause 10.2(1) but the vendor disputes the purchaser's right to make that claim, then:
- (1) the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under subclause 10.3, time being of the essence; and
 - (2) the purchaser's right to make the claim shall be determined by an experienced property lawyer or an experienced litigator appointed 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 appointee's costs shall be met by the party against whom the determination is made.
- 10.7 If the purchaser makes a claim for compensation under subclause 10.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 10.6, the vendor is deemed to have accepted that the purchaser has a right to make that claim.
- 10.8 If it is accepted, or determined under subclause 10.6, that the purchaser has a right to claim compensation under subclause 10.2(1) but the amount of compensation claimed is disputed, or if the claim is made under subclause 10.2(2) and the amount of compensation claimed is disputed, then:
- (1) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - (2) 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;
 - (3) the interim amount must be a reasonable sum having regard to all of the circumstances, except that where the claim is under subclause 3.13 the interim amount shall be the lower of the amount claimed, or 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;
 - (4) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under subclause 5.2, an experienced registered valuer or quantity surveyor 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;
 - (5) the amount of the claim determined to be payable shall not be limited by the interim amount;
 - (6) the stakeholder shall lodge the interim amount on an 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;
 - (7) 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;
 - (8) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.
- 10.9 Where a determination has to be made under subclause 10.6(2) or subclause 10.8(4) and the settlement date will have passed before the determination is made, the settlement date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these subclauses, the settlement date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations.
- 10.10 The procedures prescribed in subclauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of the contract.
- 10.11 A determination under subclause 10.6 that the purchaser does not have a right to claim compensation under subclause 10.2(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 10.12 Where a determination is made by a person appointed under either subclause 10.6 or subclause 10.8, that person shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination.

11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
- (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able, and willing to proceed to settle in accordance with clauses 3.0 and 10.0 or is not so ready, able, and willing to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to subclause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
- (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice with a notice under this subclause.
- (4) For the purpose of this subclause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
- (a) sue the purchaser for specific performance; or
- (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
- (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
- (ii) sue the purchaser for damages.
- (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
- (3) The damages claimable by the vendor under subclause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
- (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
- (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
- (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
- (4) Any surplus money arising from a resale shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
- (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

12.0 Non-merger

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

13.0 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
- (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 11.1.
 - (3) The vendor may give a settlement notice under subclause 11.1 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 and any particulars stated by the vendor in Schedule 1 are correct at the date of this agreement and will remain correct at settlement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 14.3 Where the particulars stated on the front page and in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 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 1 or they have altered.
- 14.5
- (1) If any of the particulars stated by the purchaser in Schedule 1:
 - (a) are incomplete; or
 - (b) alter between the date of this agreement and settlement,
 the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
 - (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.
 - (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered 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 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and
 - (2) that part is still being so used at the time of the supply under this agreement,
- then, 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 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
 - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in subclauses 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.
- 14.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of subclause 14.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:
- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of this agreement; and

- (2) If the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with subclause 14.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

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 in this agreement:
- (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 and 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, then 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").
- 16.2 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 and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 17.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 17.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.
- 17.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

18.0 Agency

- 18.1 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 has appointed as the vendor's agent according to an executed agency agreement.
- 18.2 The scope of the authority of the agent under subclause 18.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser's offer or counteroffer on the vendor's behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 18.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

19.0 Collection of Sales Information

- 19.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to the Real Estate Institute of New Zealand Incorporated (REINZ).
- 19.2 This information will be stored on a secure password protected network under REINZ's control and may include (amongst other things) the sale price and the address of the property, but will not include the parties' names or other personal information under the Privacy Act 1993.
- 19.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 19.4 Despite the above, if REINZ does come to hold any of the vendor or purchaser's personal information, that party has a right to access and correct that personal information by contacting REINZ at info@reinz.co.nz or by post or telephone.

FURTHER TERMS OF SALE

Refer to the further terms of sale attached



[Handwritten signatures]

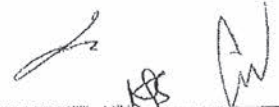
Further Terms of Sale

Background

- A. The Vendor is the registered owner of the Land.
- B. The Land is to be subdivided in accordance with the fee simple Subdivision. The nature of the Subdivision is that of an industrial business park.
- C. The Property is subject to the Tenancy specified in the tenancy schedule attached as Schedule 7.
- D. The parties wish to enter into this agreement to record the arrangements reached with regard to the sale and purchase of the Property.

1.0 Definitions, time for performance, notices and interpretation continued

- 1.1 (37a) "Agreement to Lease" means the Agreement to Lease between the Vendor and Northpower Limited in relation to the Property, and any lease entered into (or to be entered into) pursuant thereto.
- (38) "Authority" means any national, local or regional government authority or agency that has jurisdiction over the Land.
- (39) "Consents" in the context of the Subdivision means all necessary land use and/or resource consent(s) and any other statutory consents required from the Authority for the Vendor to complete the Subdivision, including all consents required pursuant to the Resource Management Act 1991.
- (40) "Land" means all of the Vendor's property situated at 410 Eastern Hutt Road, Silverstream, Upper Hutt being legally described as Lot 2 on Deposited Plan 387512 and being all of the land comprised and described in record of title 350250 (Wellington Registry).
- (40a) "lease" means any lease entered into (or to be entered into) pursuant to the Agreement to Lease.
- (41) "Preliminary Subdivision Plan" means the plan annexed to this agreement as Schedule 5.
- (42) "Property" means those parts of the Land shown on the Preliminary Subdivision Plan marked "Northpower" comprising 9,800m² more or less to be subdivided in accordance with clause 25.0.
- (43) "Subdivision" means the subdivision to be undertaken to the Land in accordance with clause 25.0.



(44) "Tenancy" means the tenancy in respect of the Property as set out in the tenancy schedule attached as Schedule 7;

(45) "Vendor's Balance Land" means the Land less the Property.

19A Conditions

19.1 Due Diligence

This agreement is conditional upon the Purchaser carrying out and completing a due diligence investigation to the satisfaction of the Purchaser in all respects, including in respect of the Property and its occupants, with the results of such due diligence investigation to be acceptable to the Purchaser in its sole and absolute discretion.

The date for fulfillment of the condition in this clause 19.1 is the date that is 20 working days after the date of this agreement. If, during that 20-working day period, Silverstream becomes subject to an Alert Level equal to or higher than 3.0 (in relation to New Zealand's COVID-19 alert system), then the number of working days during which the relevant Alert Level or Levels apply shall be added to the 20-working day period.

19.2 Without limiting its other obligations and warranties under this agreement, the Vendor shall promptly (and in any event, within 2 working days) provide the Purchaser with all information reasonably requested by the Purchaser, after the date of this agreement, that the Purchaser reasonably considers is relevant to its due diligence investigation, subject to the Vendor being in possession or control of that information. The Vendor shall also provide the Purchaser or its agent with access to the Property, at all reasonable times. In exercising such right of access, the Purchaser and its agent shall not unreasonably disrupt any lawful occupiers of the Property.

19.3 Board approval

This agreement is conditional upon the Purchaser's Board of Directors approving the Purchaser's entry into this agreement.

The date for fulfillment of the condition in this clause 19.3 is the date that is ²6 working days after the date upon which the condition in clause 19.1 is satisfied or waived.

19.4 Satisfaction and waiver of conditions

The conditions in clauses 19.1 and 19.3 are inserted for the sole benefit of the Purchaser and may, at any time prior to this agreement being avoided, be waived by the Purchaser by giving written notice of waiver to the Vendor. The satisfaction of the condition in clause 19.1 shall be at the sole and absolute discretion of the Purchaser. The satisfaction of the condition in clause 19.3 shall be at the sole and absolute discretion of the Purchaser's Board of Directors. The Purchaser shall not be required to give reasons for the non-satisfaction of either condition. In consideration for the



condition in clause 19.1 being inserted in this agreement for the sole benefit of the Purchaser, the Purchaser shall pay to the Vendor the sum of \$1.00 immediately upon demand being made by the Vendor.

20.0 Deposit

20.1 Immediately following this agreement becoming unconditional in all respects the Purchaser will pay to the Vendor's solicitor's trust account (via the Purchaser's solicitor's trust account) the deposit as specified on the front page of this agreement. The Vendor's solicitor shall hold the deposit as a stakeholder until such time as the Vendor becomes entitled to the funds when a search copy (as defined in section 60 of the Land Transfer Act 2017) of the records of title to the Property have issued.


21.0 Investment and Accounting for Deposit

21.1 The Vendor's solicitor to whom the deposit is paid will hold the deposit as stakeholder ("the Stakeholder") and the net interest earned on the deposit will be held on trust for the Vendor and the Purchaser on the following terms and conditions:

- (a) On the earlier of the Vendor being entitled to the deposit or the settlement date the deposit and all interest accrued on it, less the Vendor's withholding tax, bank and Stakeholder handling charges ("net interest") will be paid to the Vendor.
- (b) Subject always to the provisions of this agreement, in any other case the deposit and the net interest (calculated on a daily basis from the date of investment of the deposit by the Stakeholder until the date the deposit is uplifted by the Stakeholder from the stakeholder account for the purpose of payment) will be paid to the Purchaser.
- (c) The Stakeholder will authorise the Inland Revenue Department to credit the resident withholding tax to the Vendor's account with the Inland Revenue Department. If the net interest is paid to the Purchaser pursuant to subparagraph 21.1(b), the Vendor will do all things reasonably within its power to ensure that the resident withholding tax is credited to the Purchaser's benefit with the Inland Revenue Department.
- (d) The Vendor and the Purchaser irrevocably and unconditionally authorise the Stakeholder to make the payments referred to in subparagraph 21.1(a) (as the case may be) without further authority from, or reference to, them.

22.0 No Penalty Component

22.1 The Purchaser acknowledges that the entire deposit is in all respects to be regarded as a deposit on account of the Purchase price and does not include any penalty component, so that upon a cancellation entitling the Vendor to forfeit and retain the deposit, the entire deposit may be forfeited and retained, and if at the time of



cancellation only part of the deposit has been paid, the Vendor may among other remedies forfeit and retain that part and sue the Purchaser for the balance of the deposit.

23.0 Stakeholder

23.1 Subject always to the provisions of this agreement, the Stakeholder will hold the deposit as Stakeholder for the benefit of both parties. The Stakeholder is irrevocably authorised to make payment of any withholding tax payable on interest earned on the deposit to the Inland Revenue Department and to place the deposit for a term longer than thirty (30) days.

24.0 No Liability

24.1 The Stakeholder will not be liable to any party by reason of any delay in investing the deposit or any failure on the part of the bank with whom it is invested, or any costs deducted by the bank for handling the deposit or any interest, provided however that the Stakeholder will use reasonable endeavours to place the deposit on interest bearing deposit with a bank to be nominated by the Vendor as soon as reasonably practicable.

25.0 Subdivision

- 25.1 The parties acknowledge that the Vendor is to undertake a subdivision under the Resource Management Act 1991 generally in accordance with the Preliminary Subdivision Plan so as to obtain separate titles for the Property (one title for each of the allotments) and the Vendor's Balance Land (which may be comprised in one or more titles). The said subdivision is to be undertaken in accordance with this clause 25.0 and in accordance with all Consents.
- 25.2 Following this agreement becoming unconditional in all respects, but subject to the matters set out in clause 25.5(b), the Vendor shall, with all due expedition at its own cost in all respects, carry out such works and pay such money and do all such acts and things as are necessary to have a land transfer plan of subdivision which substantially conforms with the Preliminary Subdivision Plan ("the Plan") deposited with Land Information New Zealand so as to procure the issue of new titles for the Property and the Vendor's Balance Land.
- 25.3 The Property is sold subject to existing easements, building line restrictions or other encumbrances or rights.
- 25.4 The Vendor may grant, receive the benefit of, or take the burden of any easements, building line restrictions, encumbrances, covenants, consent notices or rights or obligations that:
- (a) are or have been necessary or desirable to obtain any required consents from the local authority or are necessary to satisfy any conditions of any consents



or to comply with the requirements of any statute, regulation or by-law of any relevant local authority; or

- (b) are necessary or desirable in the Vendor's reasonable opinion for the completion and better functioning of the Subdivision;

and the Purchaser shall take titles to the Property subject to, or with the benefit of the same.

25.5 Notwithstanding any other provision of this agreement, the Purchaser specifically acknowledges that:

- (a) as part of the Subdivision the Vendor may register any such documentation/ interest(s) as it sees fit which provide for future realignment of the access road to the Property. The Purchaser shall not be entitled to object to the registration of any such documentation/interest(s) as part of the Subdivision nor seek any compensation or adjustment to the purchase price as a result thereof provided that any such realignment does not result in the access road to the Property being located or relocated so as to be within (either wholly or partly) the Property; and
- (b) the Subdivision may be undertaken by the Vendor in one or more stages (at the Vendor's sole discretion in all things); and
- (c) the Vendor may (at its sole and absolute discretion) establish a business park administrator in the form of an association or company as part of the Subdivision, membership of which by the Purchaser will be mandatory. The purpose of the said administrator would be to (inter alia) enhance and manage the industrial business park, common areas (if any) and jointly owned roading within the Subdivision including (but not limited to) collecting any funds from the relevant owners for long term maintenance, street lighting and the like. The Purchaser acknowledges and accepts that a restrictive land covenant may be registered on the title to the Property in order to secure compliance with any obligations imposed by the said administrator in order to enhance, manage and protect the character and amenity values of the Subdivision as an Industrial business park.

25.6 The Purchaser shall not be entitled to a transfer(s) of the Property or call for titles to the Property until settlement. Neither party gives any warranty as to the date upon which the Plan will deposit.

25.7 The parties acknowledge that all measurements of area are approximate only and subject to variation which may be found necessary following survey or upon checking by the local authority and/or Land Information New Zealand. In such event, neither party will make any objection or requisition or claim for compensation by reason of any such variation(s) in the Plan provided that the use and enjoyment or the value of the Property is not materially affected.



- 25.8 Subject to the following subclause 25.9, the Property shall not be materially different from that shown on the Preliminary Subdivision Plan without the Purchaser's approval (such approval not to be unreasonably withheld or delayed).
- 25.9 Subject to the preceding subclause:
- (a) The Purchaser acknowledges that the Plan may contain variations from the Preliminary Subdivision Plan reflecting the final number, size, location and area of the Property and other allotments and/or sections on the Plan. The Vendor is free to make and determine such variations and the Purchaser will not make any objection or requisition or claim for compensation or an adjustment to the purchase price by reason of any such variation(s) in the Plan provided that:
 - (i) the use and enjoyment of the Property by the Purchaser or value of the Property is not materially affected; and
 - (ii) no such variations are carried out in breach of the Agreement to Lease.
 - (b) Without limiting the generality of the preceding paragraph, the use and enjoyment of the Property by the Purchaser and the value of the Property will be deemed not to be materially affected by any one or more of the following variations:
 - (i) a variation to the final size and/or location of the Property by not more than 5% (per allotment); and/or
 - (ii) any variation that may become necessary during the course of the Subdivision by reason of matters beyond the control of the Vendor, including (without limiting the generality thereof) that which may result from the requirements and directions of any Authority or the terms of any approvals that may be required; and/or
 - (iii) any variation relating to the number, size, location or area of any of the allotments and/or sections on the Plan other than the Property.
- 25.10 The Vendor shall keep the Purchaser regularly informed with respect to progress with the Subdivision. The Purchaser shall support, lend its name and execute all documents required to enable the Vendor to obtain the necessary consents for the Subdivision in a timely manner if required.

Handwritten signature and initials, possibly "MS" and "W", with a checkmark above them.

25A.0 Guarantees and warranties

- 25A.1 On settlement, the parties shall enter into a deed prepared by the Purchaser's solicitors and approved by the Vendor (such approval not to be unreasonably withheld or delayed) assigning to the Purchaser the benefit of all guarantees and warranties which are capable of being assigned to the Purchaser. Such assignment shall be subject to the consent (where required) of the relevant guarantors/warrantors (which the Vendor shall diligently pursue as soon as reasonably practicable). Immediately following settlement, the Vendor shall serve written notice of the assignment on the relevant guarantors/warrantors.
- 25A.2 Where any guarantees and warranties are not able to be assigned but are able to be enforced by the Vendor after settlement, the Vendor covenants with the Purchaser to hold those guarantees and warranties on trust for the Purchaser. The Vendor shall from time to time, when requested by the Purchaser, take reasonable steps to enforce such guarantees and warranties for the benefit of the Purchaser, subject to the Purchaser indemnifying the Vendor, on each occasion of enforcement, for all reasonable costs and expenses that the Vendor incurs in so doing.

25B.0 Lease back

- 25B.1 Prior to and as an essential condition of settlement, the Vendor (as tenant) shall enter into a lease ("the Lease Back") with the Purchaser (as landlord) on the terms set out in this clause 25B.
- 25B.2 The Lease Back shall relate to the billboard signage structure on the Property.
- 25B.3 The Lease Back shall be prepared by the Purchaser's solicitors, using the lease form set out in Schedule 8, completed and amended as required by this clause 25B. The Lease Back shall be submitted for signing by the Vendor a reasonable time prior to settlement.

26.0 Settlement

- 26.1 The settlement date shall be the latest of the following dates:
- (a) the date that is five (5) Working Days following the date that the Vendor notifies the Purchaser that search copies (as defined in section 60 of the Land Transfer Act 2017) of the records of title to the Property have issued;
 - (b) the date that all works to be carried out by the Vendor pursuant to the Agreement to Lease (including any sealing works) have been carried out in accordance with the Agreement to Lease, and any required Code Compliance Certificates have been issued for those works;
 - (c) 30 April 2021.
- 31 August 2021
- 26.2 If the settlement date has not arrived by ~~30 June 2021~~ (time being of the essence) the Purchaser may, without prejudice to its other remedies, cancel this agreement by written notice to the Vendor. Upon any such cancellation, the Vendor shall refund the



deposit to the Purchaser, and the net interest earned on the deposit will be paid to the Purchaser in accordance with clause 21.1(b).

27.0 Northpower Tenancy

27.1 The Vendor shall pay the Purchaser the difference between the rent payable under the Northpower Limited tenancy as set out in the Agreement to Lease (subject to any rent abatements as set out therein) and \$673,122.00 plus GST per annum from:

- (a) the day after settlement; or
- (b) the commencement date of the lease;

(whichever is the later) up to and including the end of year two (2) of the initial term of the Northpower Limited tenancy in accordance with the formula set out below.

Subject to the matters set out in clause 27.2 below, on settlement, the Vendor shall provide the Purchaser with a credit against the purchase price calculated as follows:

$$D = \left[\frac{B}{365} \times A \right] - C$$

- | | | |
|-----|-------------------------------|--|
| A = | Underwrite Period | Means the number of days in the period from the day after settlement, or the commencement date of the lease (whichever is the later), to the second anniversary of the commencement date under the Northpower Limited tenancy. |
| B = | Underwrite Rent | Means \$673,122.00 plus GST per annum for the Underwrite Period. |
| C = | Actual Rent | Means the rent payable pursuant to the lease in respect of the Northpower Limited tenancy for the full Underwrite Period (subject to any rent abatements as set out therein). |
| D = | Credit against purchase price | |

27.2 Notwithstanding any other provision of this agreement, the credit provided for in clause 27.1 will be dealt with as per clauses 27.2(a) and 27A below and the Vendor will instruct its solicitors to retain such sum as is equivalent to the said credit ("Northpower Retention Sum") of the balance of the purchase price paid by the Purchaser on settlement in its trust account as stakeholder and shall only disburse the Northpower Retention Sum in accordance with the following:

(a) The Vendor's solicitors shall pay monthly rent top-up payments to the Purchaser or their solicitor (as directed) in respect of the Northpower Limited tenancy on the first day of each month commencing on the first day of the month following settlement or the commencement date of the lease (whichever is the later) (together with payment for the broken period, if applicable) as if the annual rent payable thereunder for the stipulated period was \$673,122.00 plus GST per annum until the end of the year two (2) of the initial term of the lease taking into account the rent payable by the tenant Northpower Limited under the lease to the intent that the said monthly top-up payments to be made by the Vendor shall be the difference between the monthly annual rent payment due based on the rent being \$673,122.00 plus GST per annum and what the tenant is required to pay under the lease.

27.3 The annual rent payable by the tenant in respect of the Northpower Limited tenancy is subject to final measure and potential adjustment for variations in accordance with the Agreement to Lease. If, following the final measure being undertaken and any variations being agreed, there is a shortfall in the Northpower Retention Sum and the difference between two (2) years' annual rent at the rate of \$673,122.00 plus GST per annum and the actual rent under the Northpower Limited lease (subject to the rent abatements as set out in the Agreement to Lease), the Vendor will top-up the Northpower Retention Sum accordingly within ten (10) Working days of the rent having been calculated, finalised and agreed between the parties.

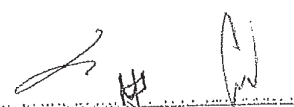
27.4 The Vendor acknowledges and agrees that its obligations pursuant to this clause 27 will continue to apply notwithstanding any termination or cancellation of the lease and that, for the purposes of this clause 27, the lease shall be deemed to be continuing on foot notwithstanding any such termination or cancellation.

27A.0 Retention Fund

27A.1 The parties acknowledge and agree that the Vendor's obligation to pay "top up" payments under clause 27 ("the Top Up Payments") is to be partly secured by way of:

- (a) a sum of money to be held in the Vendor's solicitors' trust account on interest-bearing deposit ("the Retention Fund"); and
- (b) an undertaking to be given by the Vendor's solicitors on settlement ("the Undertaking").

27A.2 For the purposes of calculating the quantum of the Retention Fund:



- (a) It will be assumed that the Northpower Tenancy (see clause 27) will commence on or before the settlement date; and
- (b) All amounts shall include the applicable GST.

27A.3 The Retention Fund will be calculated in accordance with the following table:

Area	Tenant	Clause	Rent Period	Annual Rent (plus GST)
Northpower Tenancy	Northpower	27	The period starting on the settlement date and ending on the second anniversary of the commencement date under the Northpower Tenancy.	To be calculated in accordance with clause 27

27A.4 The Undertaking shall be in the following form:

We irrevocably undertake to pay, in cleared funds, to [the Purchaser] and its successors and assigns, all moneys due to be paid by the vendor named in the agreement for sale and purchase of real estate dated [] ("the Agreement") pursuant to clause [27] of that Agreement, and to do so at the times for payment respectively stipulated in the Agreement, provided that we have first received, from the payee (in relation to each such payment):

- written confirmation that the relevant payment is due; and
- (where relevant) a valid tax invoice for any GST component of the relevant payment (which tax invoice may be, where appropriate, a perpetual tax invoice).

27A.5 One month prior to settlement the Vendor shall submit, for the Purchaser's consideration, the amount that the Vendor proposes as the quantum of the Retention

Fund (calculated as set out above) and such supporting information as the Purchaser may reasonably require.

27A.6 On settlement, the Vendor shall require its solicitors to:

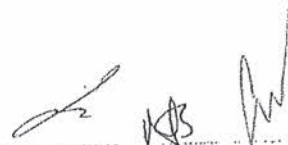
- (a) retain from the amount paid by the Purchaser on settlement an amount equal to the Retention Fund;
- (b) hold the Retention Fund as stakeholder for the Vendor and the Purchaser for their respective rights and interests;
- (c) apply the Retention Fund (and all accrued net interest) only on the terms set out in this Agreement; and
- (d) provide the Undertaking to the Purchaser.

This clause 27A.6 is an essential pre-condition of settlement.

27A.7 All amounts payable by the Vendor to the Purchaser pursuant to the Top Up Payments will be payable as and when required pursuant to the terms of clause 27. Where any such amount payable is greater than the corresponding component of the Retention Fund, the Vendor shall pay the balance on the relevant due date.

27A.8 If and when it is established that any particular component of the Retention Fund will no longer be required then the relevant amount (and the net interest accrued on that amount) shall be released from the Retention Fund and paid out to the Vendor.

27A.9 Once the final amount payable to the Purchaser from the Retention Fund is due, the net interest accrued on that part of the Retention Fund shall be payable to the Purchaser. The parties acknowledge and agree that the intention of this clause 27A.9 and clause 27A.8 is that net interest on the Retention Fund shall follow the application of the Retention Fund.



28.0 Apportionment of Rates

28.1 On settlement, the Purchaser will pay an amount for rates to the Vendor in respect of the Property based on the area of the Property in proportion to the area of the Land for the period from the settlement date until the end of the then current rating year.

29.0 Lowest Price – Accruals

29.1 The parties agree:

- (a) that they are independent parties dealing at arm's length with each other in relation to the sale and purchase contemplated by this agreement; and
- (b) for the purposes of subpart EW and particularly section EW32(3) of the Income Tax Act 2007, the parties confirm that the purchase price does not include any capitalised interest and it is the lowest price the parties would have agreed, on the date this agreement was entered into, if payment had been required in full at the time the first right in the Property was transferred.

30.0 Severability

30.1 If any term, clause, warranty or part of this agreement shall be unenforceable for any reason, including uncertainty, the parties agree that the unenforceable term, clause, warranty or part is severed from this agreement without affecting the enforceability of any of the remaining terms, clauses, warranties or parts. In the event of any such severance, the parties shall use their best endeavours to negotiate and agree upon a replacement term, clause, warranty or part with the intent that, to the greatest extent possible, the agreement shall achieve the economic, legal and commercial objectives of the unenforceable term, clause, warranty or part of this agreement.

31.0 Caveat

31.1 The Purchaser agrees with the Vendor not to register a caveat against the record(s) of title to the Property or land any of which the Property forms a part.

31.2 The Purchaser will be liable for all loss, costs and damages suffered or incurred by the Vendor as a result of the Purchaser registering a caveat in breach of the immediately preceding subclause. This will include, by way of example only, the costs of removal of the caveat, and any loss incurred directly or indirectly by any consequent delay due to the caveats present, or any other matter.

32.0 Further Assurances

32.1 Both parties shall do all acts and things, including the execution of all such documents, as may be reasonably required to give effect to the terms of this agreement and in a timely manner.



33.0 Confidentiality

33.1 Subject to subclause 33.2 the Purchaser and Vendor will treat the price, terms and conditions of this agreement and all Information made available by or on behalf of or at the request of either party in connection with this agreement as strictly private and confidential. If settlement does not proceed, the party in receipt of any such information will to the fullest extent possible return such information to the other party and will not divulge it to any third party or use it in any way for any advantage, unless:

- (a) The information becomes public knowledge otherwise than by the disclosure of the relevant information by the party receiving it; or
- (b) The party receiving the information is by law required to make the disclosure; or
- (c) The party originally supplying the relevant information has consented in writing to its disclosure.

33.2 Either party may disclose such material as is reasonably necessary for the purpose of carrying out any due diligence exercise that is reasonably required, to its legal advisers, financier and valuer provided that the legal adviser and valuer are advised that they are subject to the same obligations of confidentiality of the party engaged by them pursuant to the immediately preceding subclause.

34.0 **Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML Act")**
(Deleted)

35.0 Resolution of Disputes

35.1 Resolution of disputes

If any difference arises between the Vendor and the Purchaser as to the true intent and meaning of any of the terms and conditions contained in this agreement, then in those circumstances the particular matter will be referred for determination in writing to a person appointed in the manner set out in this clause 35.

35.2 Appointment of expert

The following provisions will apply to the appointment of an expert:

- (a) The appointed person or persons will act as experts and not as arbitrators;
- (b) An appointed person will have not less than ten years standing in his or her profession;



- (c) The written determination of the expert or experts will be conclusive and binding upon the parties;
- (d) The expert or experts will determine who should bear the costs and disbursements of the determination or, if appropriate, how they should be shared between the parties;
- (e) The expert or experts must agree in writing at the time of his, her or their appointment, to return a decision on the dispute within ten (10) Working Days of acceptance of the appointment and receipt of the information surrounding the dispute.

35.3 Type of expert

The nature of the matter in dispute will affect the type of expert appointed as set out below:

- (a) In a case of a matter of law to a practising barrister or solicitor appointed by the then President of the District Law Society in the area in which the Land is situated;
- (b) In the case of a financial or accountancy matter to a practising chartered accountant appointed by the then President of the New Zealand Institute of Chartered Accountants;
- (c) In any other case to a qualified person appointed by the senior officer for the time being of an appropriate association, institute, society or board; or
- (d) if appropriate, to a panel of experts representing more than one of the appropriate skills.

35.4 Agreement on appointment of experts

The parties must reach agreement on the appointment of the appropriate expert within ten (10) Working Days of any dispute arising. Upon being required so to do by the other party, a party will authorise the appointment of the expert in writing. If either the Vendor or the Purchaser fails to authorise the appointment in writing within the ten (10) Working Day period the other of them will be entitled alone to authorise the appointment of the expert, and the production of a copy of this clause and the request for appointment will be conclusive evidence of that authority.

36.0 Statutory Right of Cancellation

- 36.1 The Purchaser hereby waives the deemed conditions contained in sections 225(2) and (3) of the Resource Management Act 1991.



37.0 Purchaser Remain liable where Nominee Named

37.1 If the named Purchaser shall nominate any other person to be the Purchaser instead of or jointly with the named Purchaser the named Purchaser shall, notwithstanding such nomination, remain personally liable under this agreement (jointly and severally with the nominee) and although as between the nominee and the named Purchaser the latter may be a surety as between the Vendor and the nominee the latter shall be a principal contractor and shall not be released by anything which would release one liable only as a surety.

38.0 KiwiRail – Grants

38.1 The Vendor (as grantee) has entered into a grant of right of way with KiwiRail Limited (as grantor) in respect of a parcel of railway land at Silverstream as identified on the plan attached to the said grant, a copy of which is annexed to this agreement as Schedule 6 for the purpose of emergency access in respect of the Property ("ROW Grant").

38.2 The Vendor (as grantee) has entered into an agreement to grant right to have a 200mm watermain pipe at Fergusson Drive at Silverstream in respect of a parcel of railway land at Silverstream as identified on the plan attached to the said agreement, a copy of which is also annexed as Schedule 6 for the purpose of serving (inter alia) the Property ("Watermain Pipe Grant").

38.3 Subject to the matters set out in clause 40.0, prior to settlement the Vendor shall arrange with KiwiRail Limited to transfer a share/interest of the ROW Grant and the Watermain Pipe Grant to the Purchaser with effect from the settlement date. The Purchaser acknowledges that fees are payable to KiwiRail Limited pursuant to the ROW Grant and the Watermain Pipe Grant and that fees (to be confirmed) will be payable to KiwiRail Limited by the Purchaser in respect of the share/interest in the ROW Grant and the Watermain Pipe Grant that are transferred to the Purchaser pursuant to this clause.

38.4 The Purchaser acknowledges and accepts that payment of the Purchaser's share of the ROW Grant and the Watermain Pipe Grant fees may be secured by a restrictive land covenant registered against the title to the Property registered as part of the Subdivision.

39.0 Street Lighting

39.1 Subject to the matters set out in clause 40.0, the Purchaser acknowledges and accepts that there may be costs associated with any private street lighting installed within the Subdivision payable as an outgoing in respect of the Property payment of which may be secured by way of a restrictive land covenant registered against the title(s) to the Property as part of the Subdivision. The details of any such outgoing are yet to be finalised. The Vendor will keep the Purchaser updated as matters progress in this respect.



40.0 Council Vesting

40.1 The Purchaser acknowledges that the Vendor is currently in discussions with Upper Hutt City Council with regard to vesting the water infrastructure installed as part of the Subdivision (including the watermain pipe that is the subject of the Watermain Pipe Grant) and some or all of the street lighting in Upper Hutt City Council. Finalisation of those negotiations and any subsequent vesting may or may not be completed prior to settlement. In the event that those matters are not concluded prior to settlement, the Vendor will continue to progress matters with Upper Hutt City Council in that respect (for so long as it is the owner of the Vendor's Balance Land) and the Purchaser agrees to do all things necessary, in a timely and expedient manner, in order to positively assist the Vendor with such negotiations including (but not limited to) lending its name, signing all required documentation and obtaining all required consents (if any).

41.0 Power of Attorney

41.1 If called upon by the Vendor, either prior to settlement or at any time within three (3) months following the settlement date, the Purchaser will (at no cost to the Vendor) execute in favour of the Vendor or a nominee of the Vendor and deliver to the Vendor a power of attorney in a form prepared by the Vendor's solicitors and witnessed and registrable enabling the attorney to execute all such documents and do all such things as may be necessary or expedient to complete the Subdivision, including, without limitation, to sign all plans and make all applications for the issue of records of title, provided that no such documents or things may result in the Purchaser incurring any liability.

41.2 The Vendor's rights under a power of attorney provided pursuant to clause 41.1 shall expire six (6) months following the settlement date.

42.0 No Money to be Retained

42.1 On the settlement date, the Purchaser shall not be entitled (otherwise than as set out in clause 10) to retain any money for extras, set-off, deduction or otherwise, unless the Vendor consents to the same in writing.

43.0 Assignment

43.1 The Vendor shall be free to assign, transfer or otherwise dispose or alienate the benefit of this agreement to a third party (whether as security or otherwise) on such terms and conditions as it thinks fit provided that the Vendor is satisfied that such assignee, transferee or disponee can fulfil the terms of this agreement.

44.0 Restriction on Resale

44.1 The Purchaser agrees that it will not prior to the settlement date of this agreement enter into an agreement for sale and purchase for the on-sale of the Property nor advertise the Property or make any attempt to assign or transfer this agreement or otherwise deal with the Property to the intent that there shall be no competition in



respect of the Vendor selling the other lots in the Development of which the Property forms part.

45.0 Measurement

45.1 The Vendor shall, prior to settlement:

- (a) procure the rentable areas of each component of the Property to be measured by a surveyor using the PCNZ/PINZ Guide for the Measurement of Rentable Areas (June 2013) Revision; and
- (b) provide the results of that measurement (including the survey plan(s)) to the Purchaser.

46.0 Adjoining Tenancy

46.1 The Purchaser acknowledges that part of the Property is sole subject to the temporary occupation licence by the adjoining tenant, Elgas Limited annexed to this agreement which provides for (inter alia), a no build zone in respect of the licensed area.



SCHEDULE 1

(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 Vendor	
1(a) The vendor's registration number (if already registered): 096-889-155	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: _____ (e.g. "the main farmhouse" or "the apartment above the shop".)	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
Section 2 Purchaser	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)	
2(c) The purchaser's details are as follows:	
(i) Full name: PMG Funds Limited	
(ii) Address: c/- PMG Property Funds Management Limited, Level 1, 143 Durham Street, Tauranga 3110	
(iii) Registration number (if already registered): 104-425-488	
2(d) 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).	Yes/No
OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
That part is: _____ (e.g. "the main farmhouse" or "the apartment above the shop".)	
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) 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/No
OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act.	Yes/No
That part is: _____ (e.g. "the main farmhouse" or "the apartment above the shop".)	

SCHEDULE 2
List all chattels included in the sale
(strike out or add as applicable)

Stove	Rangehood	Wall oven	Cooktop
Dishwasher	Kitchen waste disposal	Light fittings	Smoke detector(s)
Burglar alarm	Heated towel rail(s)	Heat pump(s)	Garage door remote control(s)
Blinds	Curtains	Fixed floor coverings	

SCHEDULE 3
Residential Tenancies

Name of Tenant(s):

Rent: Term: Bond:

Commercial/Industrial Tenancies
(if necessary complete on a separate schedule)

1. Name of Tenant(s): Right of Renewal: Other:

Rent: Term: Right of Renewal: Other:

2. Name of Tenant(s): Right of Renewal: Other:

Rent: Term: Right of Renewal: Other:

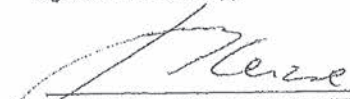
WARNING (This warning does not form part of this agreement)
This is a binding contract. Read the information set out on the back page before signing.

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 Authority.

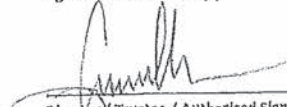
Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act.

Signature of Purchaser(s):




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

Signature of Vendor(s):



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



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

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

*If this agreement is signed under:
(i) a Power of Attorney – please attach a Certificate of non-revocation (available from ADLS: 4098WFP or REINZ); or
(ii) an Enduring Power of Attorney – please attach a Certificate of non-revocation and non-suspension of the enduring power of attorney (available from ADLS: 4997WFP or REINZ); or
(iii) where the attorney signs for a trustee, a Certificate in the relevant form in Schedule 4 to the Trustee Act 1956.

Also insert the following wording for the Attorney's Signature above:
Signed for [full name of the donor] by his or her Attorney [attorney's signature].

SCHEDULE 4

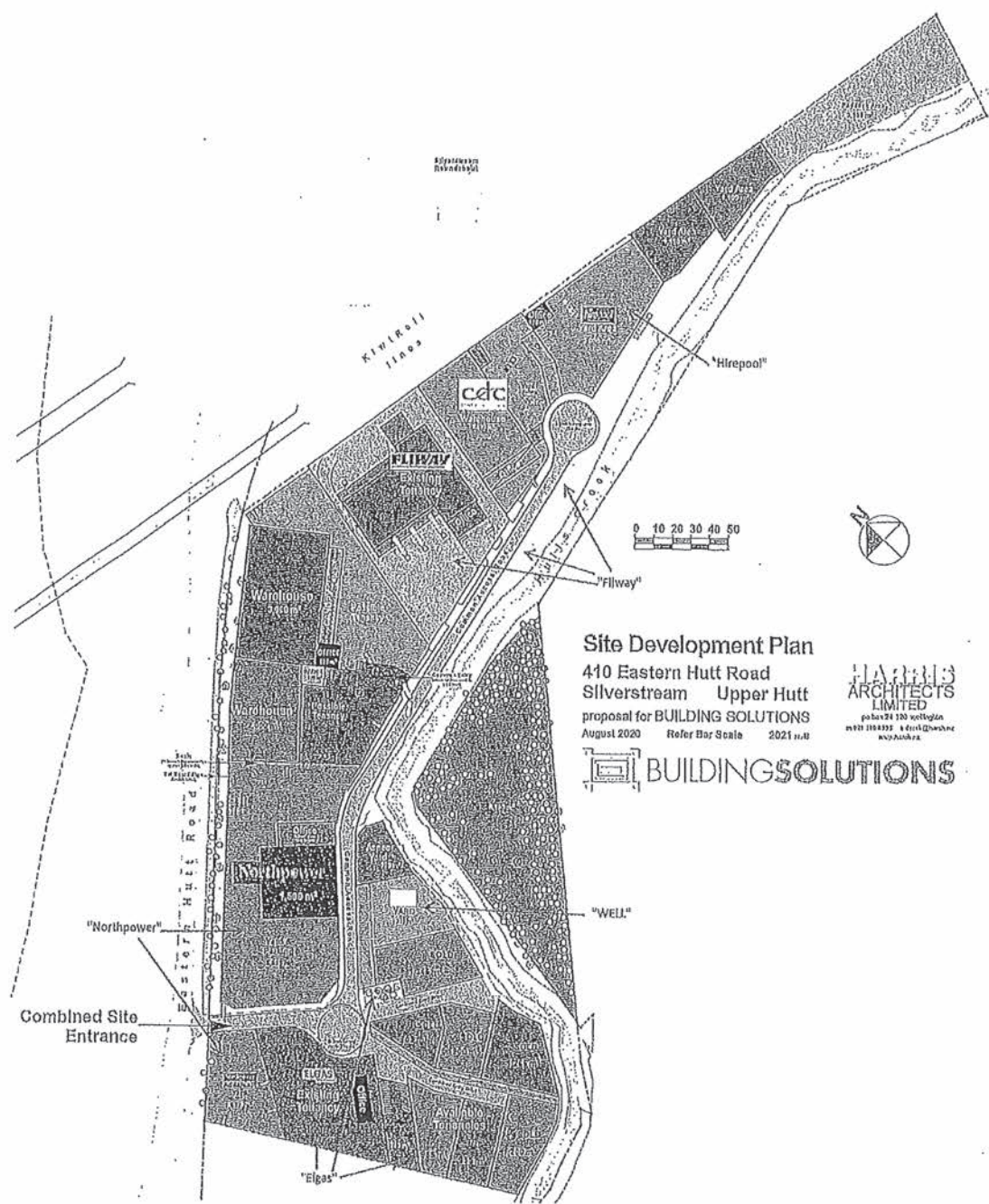
(not used)

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SCHEDULE 5

Preliminary Subdivision Plan

Handwritten signatures and initials in black ink, including a large signature and the initials 'AS' and 'M'.



Site Development Plan
410 Eastern Hutt Road
Silverstream Upper Hutt
proposal for BUILDING SOLUTIONS
August 2020 Refer Bar Scale 2021 H.A.

PARRELL ARCHITECTS LIMITED
pohatu 241 100 northgate
04 379 1000000 & 04 379 1000000
www.parrell.co.nz




BUILDINGSOLUTIONS

SCHEDULE 6

ROW Grant and Watermain Pipe Grant

18c

8671493.2



20 February 2019

Nautilus Properties Limited
PO Box 9270
Marion Square Postshop
Wellington, 6141

Dear Sir / Madam;

G90713/1 - 250MM WATERMAIN PIPE AT FERGUSSON DRIVE AT SILVERSTREAM
DATED 3 AUGUST 2017 (Grant)

G90713/3 - RIGHT OF WAY AT SILVERSTREAM (Variation)

We refer to previous correspondence in respect of this matter. This letter sets out the terms of the Grant to be varied.

Background

- a. KiwiRail Limited and Nautilus Properties Limited are parties to a grant dated 3 August 2017.
- b. KiwiRail Limited (KiwiRail) holds the grantor's interest in the Grant.
- c. Nautilus Properties Limited (Grantee) holds the Grantee's interest in the Grant.
- d. The parties have agreed that the Grant is varied in accordance with the provision of this agreement (Variation):

Agreement

1. In consideration of the payment of the Sum of \$3,818 by the Grantee to KiwiRail (the receipt of which sum is acknowledged), from and including the date of this Variation:
 - a. KiwiRail agrees to grant to the Grantee and the Grantee agrees to accept the grant of the additional rights as set out in Schedule 1 to this Variation;
2. Except as provided in this Variation, KiwiRail and the Grantee agree that they shall comply with the obligations imposed on them under the Grant as if those obligations had been repeated in full herein with such modification only as necessary to make them applicable to this Variation and in all other respects the provisions of the Grant are confirmed.
3. The Grantee shall pay KiwiRail's costs of and incidental to the preparation and execution of this Variation and counterpart copy.

4. The signatories to this agreement warrant that they have authority to enter into this agreement on behalf of the parties.

Please confirm Nautilus Properties Limited acceptance of the terms of this Variation by signing where indicated and returning the original to the address detailed below.

Yours Faithfully

Stephanie Campbell, General Manager, Strategic Land Use

For and on behalf of KiwiRail (Grantor)

Date: / /

In the presence of
Signature of Witness:

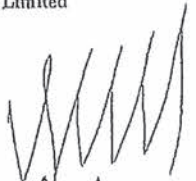
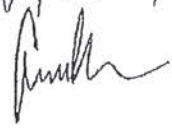
Name of Witness:
Occupation:
Address

for and on behalf of the Nautilus Properties Limited

Date: 7, 3, 19

In the presence of
Signature of Witness:

Name of Witness:
Occupation:
Address

 N. S. Awaraka
 G. Wilkinson

SCHEDULE 1

REFERENCE SCHEDULE



ITEM 1	Land:	The railway land at Silverstream as is identified on the plan G90713/3-1 attached at Schedule 2.
ITEM 2	Grant Area:	Means that part (or those parts) of the Land more particularly shown as a yellow line on the plan G90713/3-1 attached at Schedule 2.
ITEM 3	Term:	12 months
ITEM 4	Commencement Date:	1 March 2019
ITEM 5	Expiry Date:	28 February 2020
ITEM 6	Grant Fee:	\$5,443.00 plus GST per annum, subject to review in accordance with the terms of the Grant.
ITEM 7	Grant Fee payment frequency:	Annually in advance with the first payment to be made on the Commencement Date and thereafter in accordance with the terms of the Grant.
ITEM 8	Purpose:	To have and maintain a right of way at Silverstream.
ITEM 9	Grantee's Works:	To have a right of way at Silverstream.
ITEM 10	Special Conditions	<p>Erect emergency access only sign.</p> <p>Area needs to be left unfenced.</p> <p>Submit a risk assessment showing that using this access for vehicles would not increase risk to the railway</p> <p>Control measure may be considered are ensuring that each driver is briefed on importance of keeping clear of the railway siding, ensuring that each driver has the telephone number of train control easily to hand so that any clearance infringements can be reported straight away, consideration of placing a TL-2 concrete road barrier at the railway end of the easement in order to prevent accidental incursion onto the tracks.</p>

[Handwritten signature]



Upper Hut
Lower Hut

© OpenStreetMap (imp)
contributors, CC-BY-SA

<p>Legend</p> <p>Land (Railway Boundary) </p> <p>Grant/Right</p> <p>Note: Right does not extend beyond Railway/ Land Boundary</p>	<p>G90713/3 Right of Way at Silverstream</p> <p>KiwiRail </p>	<p>© 2018 KiwiRail LNZ data licensed under CC BY 2.0 NZ/Mapbox/Mapbox.com © OpenStreetMap contributors This data is made available for general use but its accuracy is not guaranteed</p>
<p>Scale: 1:2,000</p> <p>A4</p> <p>North Arrow</p>	<p>0 20 40 60 80 100</p> <p>Meters</p>	<p>G90713/3-1</p> <p>3/09/2018</p>

[Handwritten signatures]

KIWRail LIMITED
(KiwiRail)

NAUTILUS PROPERTIES LIMITED (1752210)
(Grantee)

AGREEMENT TO GRANT RIGHT TO HAVE A
200 250MM WATERMAIN PIPE AT FERGUSSON
DRIVE AT SILVERSTREAM

G90713

KiwiRail 

[Handwritten signature]

AGREEMENT dated 3 August 2017

BETWEEN

KIWI RAIL LIMITED ("KiwiRail")

AND

NAUTILUS PROPERTIES LIMITED ("Grantee")

BACKGROUND

- A. NZRC is a statutory corporation established under the New Zealand Railways Corporation Act 1981 ("NZRC Act").
- B. Pursuant to the NZRC Act, NZRC may grant interests, easements, privileges, or concessions in relation to railway land.
- C. By the Core Lease, the Crown and NZRC granted to New Zealand Rail Limited a lease of certain land owned by the Crown or owned, held, used, or occupied by NZRC. KiwiRail is now the lessee under the Core Lease.
- D. The Grantee has requested KiwiRail grant certain rights to the Grantee in respect of the Land as set out in Schedule 1 hereto.
- E. The parties enter into this Agreement to record the terms on which the above will occur.



EXECUTED AS AN AGREEMENT


Stephanie Campbell
General Manager Strategic Land Use

SIGNED by KIWIRAIL LIMITED as
Grantor by:



Authorised Signatory

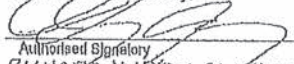
and witnessed by:

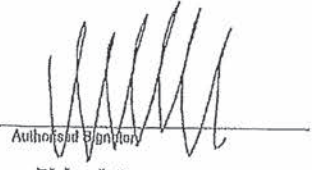

Signature of witness

Name of witness
Jessica Taylor
Occupation
Administrator

City/Town of residence
Wellington

SIGNED by NAUTILUS PROPERTIES
LIMITED as Grantee by:


Authorised Signatory
RICHARD JAMES BUXWELL
AS MANAGING DIRECTOR FOR
Name of Signatory GEORGE STUART
WILKINSON



Authorised Signatory
Richard James Buxwell
Name of Signatory Director

and witnessed by:

Signature of witness

Name of witness

Occupation

City/Town of residence



SCHEDULE 1
REFERENCE SCHEDULE

ITEM 1	Land:	The railway land between the two red lines at Silverstream as is identified on the plan G90713/1-2 attached at Schedule 3.
ITEM 2	Grant Area:	Means that part (or those parts) of the Land more particularly shown in yellow on the plan G90713/1-2 attached at Schedule 3.
ITEM 3	Initial Term:	12 months.
ITEM 4	Commencement Date:	1 August 2018
ITEM 5	Grant Fee:	\$3,818.00 plus GST per annum, subject to review in accordance with clause 6.
ITEM 6	Grant Fee payment frequency:	Annually in advance.
ITEM 7	Review Dates:	Each anniversary of the Commencement Date, a fixed increase of 2% added to the Grant Fee payable immediately prior to the Review Date. Market Review Date: Each fifth anniversary of the Commencement Date
ITEM 8	Default Interest Rate:	5% above Bank of New Zealand prime overdraft rate.
ITEM 9	Minimum Public Risk Cover:	\$5,000,000.00 or such greater amount as required from time to time by KiwiRail.
ITEM 10	Purpose:	To have and maintain a 200mm watermain pipe at a minimum depth of 1.50m from top of the rail at Ferguson Drive at Silverstream.
ITEM 11	Grantee's Works:	To trench a 200mm watermain pipe at Ferguson Drive at Silverstream.

SPECIAL CONDITIONS

A Service Locate must be undertaken prior to any construction or works being conducted in the rail corridor.

A Permit to Enter must be obtained before any work is carried out on this work site.

A set of as-built plans must be forwarded to this office no later than 3 months after this project is completed.

KiwiRail can review the installation methodology to ensure that we have no objection.

Installation methodology takes into account the ground type/parameters to ensure track movements are minimised.

If boring fluid is to be used during the installation progress, then the methodology must show that the fluid pressures will not cause fluid to flow up through the ballast below the track, or cause return of the fluid to the surface.

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SCHEDULE 2
OPERATIVE PROVISIONS

1. INTERPRETATION

In this Agreement unless the context indicates otherwise:

1.1 Definitions:

"Authority" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Land, the Grant Area or any part of it, or its use;

"Building Act" means the Building Act 2004;

"Commencement Date" means the date set out in Schedule 1;

"Core Lease" means the Memorandum of Lease dated 20 December 1991 entered into between the Crown and NZRC (as lessor), and New Zealand Rail Limited as lessee, as varied from time to time before the date of this Agreement;

"Crown" means Her Majesty the Queen in Right of New Zealand acting by and through her Ministers of Finance and State Owned Enterprises;

"Default Interest Rate" means the rate set out in Schedule 1;

"Fixed Review Date" means the fixed review dates set out in Schedule 1;

"Grant Area" means the area specified in Schedule 1 and shown on the plan attached at Schedule 3;

"Grantee" means the Grantee, its successors and permitted assigns, together with the Grantee's servants, agents, employees, workers, invitees and contractors with or without vehicles, machinery or equipment;

"Grantee's Property" means all equipment, chattels, partitions and fixtures and fittings installed by the Grantee in the Grant Area;

"Grantee's Works" means the works to be erected or constructed by the Grantee on or within the Grant Area as described in Schedule 1, such works being necessary or desirable for the Grantee's use and enjoyment of the Grant Area for the Purpose;

"Grant Fee" means the amount set out in Schedule 1;

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

"Initial Term" means the initial term of this Agreement as set out in Schedule 1;

"KiwRail" means KiwiRail Limited and includes KiwiRail's successors and assigns;

"Land" means all that land described in Schedule 1;

"Market Review Date" means the date set out in Schedule 1;

"NZRC" means the New Zealand Railways Corporation;

"Permit to Enter" means an access permit granted pursuant to section 76 of the Railways Act 2005;

"Purpose" means the purposes for which the Grantee shall be entitled to use the Grant Area specified in Schedule 1;

"Railway Infrastructure" means the definition given to that term in the Railways Act 2005;

"Railway Line" means the definition given to that term in the Railways Act 2005;

"Resource Management Act" means the Resource Management Act 1991;

"Review Dates" means the dates set out in Schedule 1;

"Service Locate" means the identification and marking of any underground services (whether operated by KiwiRail or any other person) prior to the commencement of any excavation that is undertaken as part of the Grantee's Works;

"Structure" means any structure constructed or erected on or within the Grant Area pursuant to the Grantee's Works including any supports incidental to such structure;

"Working Day" means any day of the year other than Saturdays, Sundays, the provincial anniversary as observed in Auckland, Wellington and the province where the Land is situated, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day and any day in the period commencing 24 December and ending on 5 January the next year (both days inclusive).

- 1.2 **Building Act:** The terms "building code", "building consent", "building work" and "code compliance certificate" have the meanings given to those terms in the Building Act.
- 1.3 **Defined Expressions:** Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background.
- 1.4 **Headings:** Section, clause and other headings are for ease of reference only and do not form any part of the context or affect this agreement's interpretation.
- 1.5 **Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- 1.6 **Persons:** References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.7 **Plural and Singular:** Singular words include the plural and vice versa.
- 1.8 **Sections and Clauses:** References to sections and clauses are references to this Agreement's sections and clauses.
- 1.9 **Statutes and Regulations:** References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.
- 1.10 **Implied Terms excluded:** To the fullest extent permitted by law the implied provisions of the Property Law Act 2007, Land Transfer Act 1952 and the Land Transfer Regulations 2002 are expressly excluded from this Agreement.

2. GRANT OF RIGHT

- 2.1 Grant of Right for Term: KwiRail grants to the Grantee the right to use the Grant Area for the Purpose during the term, upon payment of the Grant Fee and subject to the terms, covenants, conditions herein contained or implied and the provisions of section 36 of the New Zealand Railways Corporation Act 1981, and the Railways Act 2005. The Grantee accepts those rights and covenants with KwiRail to observe and perform the terms and stipulations set out in this Agreement.

3. TERM

- 3.1 The term of this Agreement shall commence on the Commencement Date and, subject to clauses 3.2 and 14, shall expire at the end of the Initial Term.
- 3.2 Subject to clause 14, at the end of the Initial Term the Agreement shall automatically renew in respect of the Grant Area for a further period of twelve months unless the Grantee has given to KwiRail not less than three months' written notice notifying KwiRail that the Grantee does not wish to renew the Agreement. The renewed agreement shall be on the same terms and conditions as this Agreement including this clause 3.2. For the avoidance of doubt, in the event that a termination notice has been validly served pursuant to either clause 14.1 or 14.3 of this Agreement but termination is not effective by the relevant renewal date, then the Agreement shall be renewed up until the termination date specified in the termination notice.

4. PAYMENT OF GRANT FEE

- 4.1 Payment: The Grantee must, during the term, pay the Grant Fee to KwiRail in the frequency specified in Schedule 1 commencing with a first payment on the Commencement Date and thereafter as follows:

- (a) If the payment frequency is annually, then on each anniversary of the Commencement Date; or
- (b) If the payment frequency is monthly, then by way of equal monthly instalments on the 1st day of each and every month during the term,

and such payments shall be in full without any deduction or set-off. The Grant Fee and any other payments to be made under this Agreement shall be paid to KwiRail by direct bank payment or as KwiRail may direct.

- 4.2 Default Interest: If the Grantee fails to pay any instalment of the Grant Fee or any other money payable under this Agreement for 10 Working Days after the due date for payment or the date of KwiRail's demand, if there is no due date, then the Grantee must pay on demand interest at the Default Interest Rate on the money unpaid from the due date or the date of KwiRail's demand (as the case may be) down to the date of payment.

5. GRANT FEE REVIEWS

- 5.1 Review of Grant Fee: The Grant Fee will be reviewed on each Review Date with such reviewed grant fee to be determined in accordance with the following formula:

$$A = B + (0.02 \times B)$$

Where:

A is the new Grant Fee,

B is the Grant Fee payable immediately prior to the Review Date,

and such new Grant Fee will be invoiced accordingly by KiwiRail for payment by the Grantee pursuant to clause 4.

- 5.2 **Cost review of Grant Fee:** Notwithstanding clause 5.1, if KiwiRail has reviewed and adjusted its standard fees, and the new standard fee applicable to this Grant ("New Standard Fee") is more than the new Grant Fee would be immediately following the next Review Date ("Upcoming Review Date");
- (a) KiwiRail may notify the Grantee in writing at any time prior to the Upcoming Review Date that the new Grant Fee immediately following the Upcoming Review Date will be equal to KiwiRail's New Standard Fee; and
 - (b) the Grant Fee will not be reviewed under clause 5.1 on the Upcoming Review Date.
- 5.3 **Market Review of Grant Fee:** The Grant Fee will be reviewed on the Market Review Date by KiwiRail giving written notice to the Grantee specifying the reviewed grant fee, determined by KiwiRail on its assessment of the current market fee of the Grant Area taking into account the highest and best use of the Grant Area as at the Market Review Date.
- 5.4 **Grantee may dispute reviewed fee:** If the Grantee disputes the proposed new fee, it must advise KiwiRail of this within 20 Working Days of receipt of the Review Notice by way of written notice ("Dispute Notice") which must also state the Grantee's assessment of the current market fee of the Grant Area (time being of the essence). If the Grantee does not serve the Dispute Notice within the specified timeframe, then the Grantee will be deemed to have accepted the new fee contained in the Review Notice. The new Grant Fee payable immediately following a Fixed Review Date shall be deemed correct and conclusive evidence of the new fee save in the case of manifest error.
- 5.5 **Resolution if reviewed fee disputed:** If the Grantee does serve the Dispute Notice within the timeframe set out in clause 5.4, then the parties must negotiate in good faith in order to agree the new fee. If the parties cannot agree the new fee within 10 Working Days of receipt of the Dispute Notice, then either party may elect to refer the dispute to arbitration in Auckland by serving written notice on the other party.
- 5.6 **Conduct of arbitration:** If the dispute is referred to arbitration, then the following provisions shall apply:
- (a) the arbitration shall be submitted to a single arbitrator if one can be agreed upon by the parties, or failing agreement being reached within 10 Working Days, referred to the President for the time being of the New Zealand Law Society (or his or her nominee) who will appoint the arbitrator who is a member of the Arbitrators and Mediators Institute of New Zealand;
 - (b) the arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996 as amended and replaced from time to time and the arbitrator shall in directing the processes to be followed, have regard to the value of the sum in dispute so as to ensure that the costs of the arbitration are proportionate to the subject matter of the arbitration;

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- (c) In determining the current market rent of the Grant Area, the arbitrator shall:
 - (i) have regard to:
 - (aa) the current market fee payable for comparable areas and uses as this Agreement at the Market Review Date;
 - (bb) any abnormal use by the Grantee of the Grant Area;
 - (cc) the provisions of this Agreement and, in particular, to any liability on the part of the Grantee under this Agreement to pay any additional charges; and
 - (dd) any other use to which the Grant Area may be lawfully put;
 - (ii) disregard:
 - (aa) any deleterious condition of the Grant Area, if such condition results from any breach of this Agreement by the Grantee;
 - (bb) that portion of the Term which has expired, and determine the current market fee for the Grant Area at the Market Review Date as if the term commenced on such date;
 - (cc) any restriction on the use of the Grant Area imposed by this Agreement; and
 - (dd) the value of any goodwill attributable to the business of the Grantee and the value of the fixtures and fittings on the Grant Area belonging to the Grantee;
- (d) all costs of any arbitration under this clause 5.4 shall be borne equally by the parties unless:
 - (i) the current market for the Grant Area as determined by the arbitrator is either equal to or greater than the fee specified in the Review Notice, in which event all costs shall be borne by the Grantee; or
 - (ii) it is decided by the arbitrator that because of some impropriety or lack of cooperation or unreasonableness on the part of one of the parties that such party shall bear the whole or some fraction of the costs in excess of one half in which case that party shall bear the proportion of costs determined by the arbitrator.

5.7 Grantee to pay reviewed fee pending resolution: If the Grantee validly serves the Dispute Notice, pending determination of the new fee in accordance with clause 5.4, the Grantee shall pay the new fee for the Grant Area as set out in the Review Notice from the Market Review Date. If the fee paid is more or less than the new fee payable following determination pursuant to clause 5.4, then an adjustment shall be made so that the correct fee has been paid as soon as practicable following such determination of the Grant Fee.

5.8 Grant Fee not to be reduced: Notwithstanding the foregoing provisions, the Grant Fee payable by the Grantee as a result of the review of the Grant Fee shall not be less than the Grant Fee payable by the Grantee immediately prior to the Market Review Date.

6. GRANTEE'S WORKS

- 6.1 No Works In the Railway Corridor: No works may be undertaken within 5 metres of the midline of the closest railway track to the Grant Area, without first obtaining from KiwiRail a Permit to Enter and in strict compliance with the terms of any Permit to Enter, and KiwiRail may in its absolute discretion:
- (a) approve the application on such terms as it sees fit, including as to KiwiRail supervision, train control and recovery of Costs;
 - (b) approve the work, but require it to be undertaken by KiwiRail or a contractor approved by KiwiRail with all Costs to be borne by the Grantee; or
 - (c) decline approval.
- 6.2 Preconditions to construction: The Grantee shall not proceed with construction or erection of the Grantee's Works including any Structure until and unless:
- (a) the Grantee has submitted to KiwiRail for its approval detailed plans and specifications of the Grantee's Works including any Structure (including plans and specifications for any temporary Structure) which are duly certified by a suitably qualified engineer of the applicable engineering practice area given the nature of the Grantee's Works with at least 5 years' current and continuous standing in the engineering profession;
 - (b) KiwiRail has provided written approval for the construction or erection of the Grantee's Works (which may be subject to any conditions KiwiRail impose), including (where relevant):
 - (i) the plans and specifications referred to in clause 6.2(a);
 - (ii) the location of any Structure; and
 - (iii) the required clearances from railway lines and other Railway Infrastructure; and
 - (c) the Grantee has made payment to KiwiRail of KiwiRail's reasonable costs for appraising and approving such plans and specifications.
- 6.3 Building Work: In addition to the provisions of clause 6.2, the Grantee must:
- (a) not carry out any building work on the Grant Area without first obtaining all building consents and resource consents required to enable that building work to be lawfully carried out. If KiwiRail is as owner of the land required to provide its consent to the relevant Authority to enable such building consent to be obtained, then such consent shall, if provided, be solely for the purposes of enabling the building consent to be obtained and shall not be taken as being approval pursuant to clause 6.1 or 6.2;
 - (b) carry out all building work strictly following the building code and the building consents issued for that building work (including conditions of those consents), and only while the building consents for that building work are current and otherwise in strict compliance with all conditions and requirements imposed by KiwiRail as part of providing its approval under clause 6.2(b);
 - (c) take all necessary steps to ensure that the Grantee's Works are carried out safely and do not disrupt rail services and KiwiRail's operation and use of the Land;

- (d) comply immediately with all notices issued by any Authority (including, without limitation, KiwiRail) relating to any building work carried out by the Grantee;
 - (e) obtain a code compliance certificate for any building work carried out by the Grantee on the Grant Area immediately on completion of that building work; and
 - (f) not do or allow anything to be done (including any building work) which would be a breach of any obligation under the Building Act, or which would constitute an offence under the Building Act.
- 6.4 Indemnify: The Grantee indemnifies KiwiRail against all notices, calls, orders, liabilities, actions, claims, demands, losses, proceedings, damages, costs (including legal costs) and expenses of any kind:
- (a) imposing a liability on KiwiRail;
 - (b) suffered or incurred by KiwiRail; or
 - (c) for which KiwiRail is or may become liable,
- arising from a breach by the Grantee or any person for whom the Grantee is responsible, of any obligations under the Building Act or the Resource Management Act.
- 6.5 Responsibility: Notwithstanding the provisions of clause 6.3, the Grantee acknowledges that the Grantee shall be solely responsible for the erection, construction and materials comprised in the Grantee's Works and for the design and safety of the Grantee's Works and any associated temporary works.
- 6.6 Supervision of works: Following satisfaction of the requirements in clause 6.2, the Grantee shall complete the Grantee's Works in accordance with the plans approved by KiwiRail pursuant to clause 6.2(b) at the Grantee's sole cost in accordance with the provisions of clause 6.3 (where relevant) and to the entire satisfaction of KiwiRail. KiwiRail shall be entitled to require that completion of the Grantee's Works shall either in whole or part be supervised by KiwiRail's appointed railway personnel in which case, the costs of such supervision shall be paid by the Grantee.
- 6.7 Variations to plans: If the Grantee wishes to vary the plans approved by KiwiRail in accordance with clause 6.1, the Grantee shall submit to KiwiRail revised plans for approval ("Revised Plans"). KiwiRail shall advise the Grantee within 20 Working Days of receipt whether:
- (a) the Revised Plans are approved;
 - (b) it requires further changes to be made to the Revised Plans; or
 - (c) the Revised Plans are rejected.
- 6.8 No nuisance: In the course of construction or maintenance of the Grantee's Works, the Grantee shall not unduly interfere with or obstruct any other lawful user of the Grant Area or the Land and shall carry out all work expeditiously and on completion of the work shall immediately restore the surface of any affected part of the Land or the Grant Area as nearly as possible to its former state and condition at the Grantee's sole cost and expense.
- 6.9 KiwiRail not liable for damage: The Grantee shall not hold KiwiRail liable for any accident or damage to the Grantee's Works however caused and must pay to KiwiRail the cost of removing or making any alteration to the position of any part of

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the Grantee's Works necessitated by any alteration or addition to the railway on the Land including all infrastructure, structural and other features comprised in the current or future operations of the railway on the Land.

- 6.10 Grantee liable for damage: The Grantee shall pay KiwiRail the cost of repairing any damage which may occur directly or indirectly to the railway, the Land or the Grant Area by the use of the Grant Area for the Purpose or caused as a result of any breakage, leakage or the existence or use of the Grantee's Works including any Structure.
- 6.11 Grantee liable for additional expenditure: The Grantee shall pay to KiwiRail the costs KiwiRail incurs in respect of the installation, maintenance, alteration or relocation of its own infrastructure necessitated by any alteration, addition or development to the Land including any Railway Infrastructure that it would not otherwise have incurred but for the existence or use of the Grantee's Works including any Structure.

7. LIMITATION ON RIGHTS

- 7.1 Security Interest: The Grantee must not grant or agree to grant any security interest (as defined in the Personal Property Securities Act 1999) in or over its interest this Agreement.
- 7.2 No Registration / Caveat: The Grantee acknowledges that this Agreement does not create a registrable interest in the Grant Area or the Land and that the Grantee must not register a caveat over the title(s) to the Land relating to the Grantee's interest under this Agreement.

8. ASSIGNMENT

- 8.1 No assignment: The Grantee acknowledges that the rights provided by this Agreement are in personam rights only and may not be assigned or transferred and the granting of the rights pursuant to this Agreement does not create a lease or an interest in land relating to the Grant Area or otherwise confer on the Grantee any rights of exclusive possession.
- 8.2 Change in shareholding: For the purposes of clause 8.1, where the Grantee is a company which is not listed on the main board of a public stock exchange, any change or re-arrangement of the beneficial ownership of the principal shareholding of the Grantee or the Grantee's holding company, and any change in the Grantee's shareholding altering the effective control of the Grantee will be treated as an assignment of this Agreement in breach of clause 8.1.

9. GENERAL PROVISIONS RELATING TO GRANT

- 9.1 Use of the Grant Area: The Grantee shall use the Grant Area only for the Purpose and such use shall comply with the requirements of the Resource Management Act 1991, or any other statutory provisions relating to resource management.
- 9.2 Structural alterations: The Grantee may not make any alterations to the Grantee's Works (including any Structure forming part of the Grantee's Works), or construct any building, undertake any excavation or earthmoving on the Grant Area without the written consent of KiwiRail which may be granted or withheld in KiwiRail's absolute discretion. Any consent granted by KiwiRail pursuant to this clause 9.2 shall, if KiwiRail determines necessary, be subject to the provisions of clause 6.

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9.3 Compliance: The Grantee must at all times and at its own cost comply with:

- (a) all statutes, ordinances, regulations, by-laws or other enactments affecting or relating to the use of the Grant Area and with all requirements which may be given by any Authority and all obligations and requirements exercised under statute or regulation from time to time, including in compliance with the requirements of all railway legislation;
- (b) all statutes, ordinances, regulations, by-laws or other enactments governing the design, erection, maintenance, use and construction of the Grantee's Works including any Structures and to submit to KiwiRail proof that any necessary consent or approval required from the relevant Authority has been obtained and continues to be held current including, but not limited to, consent and compliance certificates as required pursuant to the Building Act 2004; and
- (c) any rules or building regulations imposed by KiwiRail which apply to the control, safe use, security and protection of, access to, use and occupation of, improvements to and the operation of any equipment installed in the Grant Area and the Land.

9.4 Structures:

- (a) The Grantee shall at its own cost comply with all written requests by KiwiRail for the removal, alteration (including additions to) or relocation of any structures on the Grant Area, together with making good any damage caused thereby, owned by either KiwiRail, the Grantee or any other third party where such removal, alteration or relocation is:
 - (i) necessary for KiwiRail's use of the Land; or
 - (ii) required in order for the Grantee to comply with clause 9.3.
- (b) If the Grantee fails to carry out any work or make good any damage in accordance with any notice issued by KiwiRail in relation to clause 9.4(a) within the time specified, KiwiRail may at all reasonable times enter the Grant Area and (if applicable) the structures on the Grant Area bringing all necessary equipment and materials and execute all or any of the required work or repairs as KiwiRail shall think fit.
- (c) In addition to KiwiRail's other remedies, KiwiRail shall be entitled to recover from the Grantee all costs of such work or repairs pursuant to clause 9.4(b), including all fees and expenses for inspecting the Grant Area and (if applicable) any structure, the issue of the notice and all sums of money paid on account of any insurance or indemnities or otherwise with respect to such work or repairs, together with interest at the Default Interest Rate as if the same (including interest) were rent in arrears.

9.5 Compliance with easements: The Grantee shall perform and observe the obligations of KiwiRail in connection with any easement or 3rd party interest of any kind in the Land for the time being affecting the Grant Area.

9.6 Access by Grantee: The Grantee shall only access the Grant Area in the manner pre-approved by KiwiRail with such access being reasonable given the nature of the Purpose for which the Grantee has been granted rights in respect of the Grant Area.

9.7 Access by KiwiRail: KiwiRail reserves the right for KiwiRail together with KiwiRail's employees, agents, contractors and invitees to at all times;

- (a) pass and re-pass with or without vehicles, materials or implements of any kind over the Grant Area for the purpose of carrying out any works or inspections to the railway or the Grant Area; and
- (b) erect, construct and maintain advertising hoardings and/or drainage pipes and other works including telecommunications, electric power lines or cables on, over or within the Grant Area together with any necessary supports, and the Grantee will make no claim against KiwiRail on account of any such works; and

KiwiRail will use all reasonable endeavours to ensure that such works or access do not in KiwiRail's opinion materially adversely inhibit the Grantee's use of the Grant Area pursuant to this Agreement.

- 9.8 **No Interruption to KiwiRail's Activities:** The Grantee must not do or permit to be done in the Grant Area anything which may become a nuisance, disturbance or obstruction to KiwiRail.
- 9.9 **Core Lease:** The Grantee will comply with all of KiwiRail's obligations in the Core Lease insofar as they relate to the Grant Area (other than the covenants for payment of rent and other money under the Core Lease) as if all those obligations were set out in this Agreement as obligations on the Grantee.
- 9.10 **Responsibility for Loss or Damage:** KiwiRail is not responsible for or liable to the Grantee for:
 - (a) any loss or damage caused or sustained in any way to the Grant Area or any equipment, fixtures, fittings and chattels installed or located in the Grant Area; and
 - (b) the theft or loss of any of the Grantee's equipment, fixtures, fittings or chattels.
- 9.11 **Responsibility for rates:** The Grantee shall be responsible for the payment of all rates, charges, duties, taxes and assessments together with any GST which are or may be charged, levied assessed or imposed upon KiwiRail and KiwiRail shall be entitled to recover those sums from the Grantee where these are levied on KiwiRail as a result of or related in any way to this Grant.

10. SPECIFIC PROVISIONS RELATING TO GRANTEE'S WORKS

- 10.1 **Application:** The following additional provisions in clauses 10.2 shall apply where the Grantee's Works are specified to include such works.
- 10.2 **Below Ground Structures**
 - (a) **Markers:** The Grantee shall, unless otherwise directed by KiwiRail, erect and maintain to the entire satisfaction of KiwiRail, sufficient markers or signs on the Grant Area to indicate the location and nature of the Structure together with any warning or safe working information.

11. REPAIR AND MAINTENANCE

- 11.1 **Maintenance:** The Grantee shall be solely responsible for the cost of repairs and maintenance to the Grantee's Works and shall, subject to the provisions of clause 11.2, at all times keep and maintain the Grant Area and the Grantee's Works in and on the Grant Area in good and substantial repair, including making good any damage however caused to the Grant Area or the Grantee's Works, so as to ensure

no loss, cost or damage shall be caused to or suffered by KiwiRail as a result of any failure by the Grantee to keep the Grantee's Works in such condition. For the purposes of ensuring the Grantee complies with its repair and maintenance obligations, the Grantor shall be entitled subject to the provisions of clause 11.2 to conduct an engineering inspection of the Grantee's Works, including any Structure in the Grant Area not less frequently than annually and following such inspection(s) being completed will provide the Grantee with a copy of the finalised engineering report once available.

- 11.2 Access for maintenance and repairs: Prior to entering the Grant Area for the purposes of carrying out any repairs or maintenance to the Grantee's Works, the Grantee shall first obtain a Permit to Enter the Grant Area from KiwiRail. Any permit granted by KiwiRail pursuant to this clause 11.2 shall be subject to the provisions of clause 6.6 in relation to supervision.
- 11.3 KiwiRail may undertake repairs: KiwiRail may give notice in writing to the Grantee requiring the Grantee within a reasonable time to repair, maintain or clean the Grant Area, in accordance with the Grantee's liability under this Agreement. If the Grantee fails to carry out any work or make good any damage in accordance with any such notice within the time specified, KiwiRail may at all reasonable times enter the Grant Area and (if applicable) the structures on the Grant Area bringing all necessary equipment and materials and execute all or any of the required work or repairs as KiwiRail shall think fit.
- 11.4 Recovery of Costs: In addition to KiwiRail's other remedies, KiwiRail shall be entitled to recover from the Grantee all costs of such work or repairs pursuant to clause 11.3, including all fees and expenses for inspecting the Grant Area and (if applicable) any Structure, the issue of the notice and all sums of money paid on account of any insurance or indemnities or otherwise with respect to such work or repairs, together with interest at the Default Interest Rate as if the same (including interest) were rent in arrears.

12. INSURANCE

- 12.1 Public Risk Insurance: The Grantee must take out and keep current at all times during the term of this Agreement a public liability insurance policy for a sum not less than the Minimum Public Risk Cover for any one claim or series of claims arising out of one event (such policy to treat KiwiRail property as third party property) specified in Schedule 1 or such greater amount as is required by KiwiRail from time to time.
- 12.2 Disclosure to KiwiRail: The Grantee agrees to provide to KiwiRail promptly at the written request of KiwiRail details (including certificates of currency, schedules to policies, and policy wording) of all insurance effected by the Grantee from time to time as required under the terms of this Agreement and by all relevant legislation.
- 12.3 KiwiRail to be Noted as Interested Party: The Grantee agrees to procure that KiwiRail be noted as an interested party on all policies of insurance required under the terms of this Agreement and by all relevant legislation.
- 12.4 Grantee not to Invalidate Insurance: The Grantee agrees it shall not, by act or omission, invalidate or increase the cost of any insurance effected by KiwiRail for its own business assets and business operations from time to time.

13. SUITABILITY OF GRANT AREA

- 13.1 **Rail Use:** KiwiRail does not make any warranty or representation, express or implied, that the Grant Area is or will remain suitable or adequate for the Purpose. All warranties as to suitability and adequacy implied by law are expressly excluded to the fullest extent permitted by law. The Grantee acknowledges that trains may pass without warning at any time during the day or night and use of the Grant Area shall be at the sole risk of the Grantee. Where the Purpose specified in this Agreement includes use of the Grant Area as a right of way with or without a level crossing, such risk shall extend to all persons using the Grant Area pursuant to the Grantee's rights under this Agreement. The Grantee acknowledges that KiwiRail may not own or lease the Land and the Grant Area, and that third parties may have an interest in the Land, being, without limitation, an ownership or leasehold interest. KiwiRail makes no warranty or representation that third parties having an interest in the Land (if any) have consented to, or approved of, this Grant. The Grantee will conduct its own investigations in this regard and will obtain all necessary consents, permissions, or approvals to the entry into this Agreement.
- 13.2 **Safety Measures:** KiwiRail is not responsible for providing any safety measures to protect the Grantee's Works including any Structure from water damage, fire, explosion, storm, earthquake, hazard or potential hazard whether coming from inside the Grant Area (including equipment installed in the Grant Area) or from outside.

14. TERMINATION

- 14.1 **Termination by either party:** Either party may terminate this Agreement for any reason whatsoever at any time by giving the other party twelve (12) calendar months' written notice of such termination.
- 14.2 **Termination for breach by Grantee:** If:
- the Grantee fails to pay the Grant Fee or any other money payable under this Agreement to KiwiRail for 10 Working Days after either the due date for payment, or the date of KiwiRail's demand (if there is no due date) and the Grantee has failed to remedy that breach within 10 Working Days;
 - the Grantee fails to perform or observe any of the Grantee's other obligations under this Agreement for a reasonable period of time taking into account the nature of the breach and the process required to remedy such breach;
 - the Grantee assigns or attempts to assign the Grantee's rights under this Agreement, either in whole or part,
- then KiwiRail may terminate this Agreement by notice in writing served on the Grantee either immediately or at any later time.
- 14.3 **Termination by KiwiRail -- Railways Use:** The Grantee acknowledges that KiwiRail may terminate this Agreement upon 3 months' notice, where the Grant Area is required for railways use.
- 14.4 **No Compensation:** In the event of termination of this Agreement under clauses 14.1, 14.2 or 14.3 from whatsoever cause, no compensation shall be payable to the Grantee.

15. INDEMNITY

15.1 **Indemnity by Grantee:** The Grantee indemnifies KiwiRail, the Minister of Railways and the Government of New Zealand from and against:

- (a) any accident or injury to any person or for damage to any property arising out of or caused or contributed to either directly or indirectly by the use or existence of the Structure or anything connected therewith or by any defect in the construction or maintenance of the Structure;
- (b) all costs (including legal costs) and expenses incurred by KiwiRail in taking action to demand and/or recover any part of the Grant Fee or other money payable by the Grantee under this Agreement; and
- (c) all actions, proceedings, calls, costs (including legal costs), expenses, claims, demands, damages, losses or liabilities of any kind suffered or incurred by KiwiRail as a result of:
 - (i) the act or neglect of the Grantee or of any person for whom the Grantee is responsible relating to the use of the Grant Area (including any Structure forming part of the Grantee's Works on the Grant Area) or the use or operation of any equipment installed in the Grant Area;
 - (ii) the Grantee's breach of, or failure to comply with, the Grantee's obligations under this Agreement;
 - (iii) the Grantee's breach of, or failure to recognise, any 3rd party's interests in the Land; or
 - (iv) damage to the Land or improvements on the Land where the damage causes any 3rd party having an interest in the Land or improvements thereon to suffer a loss.

15.2 **Payment by Grantee:** The Grantee must pay on demand all amounts owing to KiwiRail as a result of the indemnity contained in clause 15.1, together with interest on those amounts at the Default Interest Rate calculated on a daily basis from the date KiwiRail incurs that liability until the Grantee pays the relevant amount.

16. REMOVAL OF GRANTEE'S WORKS ON EXPIRY OR TERMINATION

16.1 **Removal on Expiry or Termination:** The Grantee must remove all the Grantee's Works and the Grantee's Property (including any Structures forming part of the Grantee's Works and any other alterations or additions made to the Grant Area pursuant to clause 6), and repair any damage caused by that removal within 10 Working Days of the expiry of the term or termination of this Agreement.

16.2 **Failure to Comply:** If the Grantee fails to comply with clause 16.1 KiwiRail may remove the Grantee's Works (including Structures forming part of the Grantee's Works and any other alterations or additions made to the Grant Area pursuant to clause 6), the Grantee's Property and repair any damage caused by that removal and the Grantee must pay to KiwiRail on demand all costs incurred by KiwiRail in doing so.

16.3 **Removal by Grantee:** Notwithstanding the provisions of clause 16.2, KiwiRail may choose not to remove the Grantee's Works and the Grantee's Property, and then the Grantee's Works and the Grantee's Property will become KiwiRail's property

and KiwiRail will not have to pay compensation for the Grantee's Works or the Grantee's Property to the Grantee.

17. COSTS

- 17.1 Costs: The Grantee must pay to KiwiRail on demand all reasonable costs (including legal costs), charges and other expenses which KiwiRail may incur or for which KiwiRail may become liable relating to:
- (a) Preparation of Agreement: the negotiation, preparation and execution of this Agreement and of any variation of this Agreement;
 - (b) Grantee Fee Review: any documents evidencing a review of the Grant Fee;
 - (c) Renewal of Term: any documents evidencing a renewal or extension of the term;
 - (d) Remedying Breach: KiwiRail remedying the Grantee's breach of any term of this Agreement;
 - (e) Exercise of Powers: KiwiRail's exercise or attempted exercise or enforcement of any power, right or remedy conferred on KiwiRail by this Agreement; and
 - (f) Proposals: the consideration and approval (if given) of any proposals, including Permits to Enter, made to KiwiRail by the Grantee in respect of any matter contemplated by this Agreement (including costs incurred in employing consultants).

18. RESOLUTION OF DISPUTES

- 18.1 Disputes: If any dispute, difference or question arises between the parties about:
- (a) the interpretation of this Agreement;
 - (b) anything contained in or arising out of this Agreement;
 - (c) the rights, liabilities or duties of KiwiRail or the Grantee; or
 - (d) anything else relating to the relationship of KiwiRail and the Grantee under this Agreement (including claims in tort as well as in contract);

the parties may refer that matter to informal mediation, if both parties agree, having regard to the nature of the dispute or difference between them and the potential delays and costs which might arise if that matter is referred to arbitration.

- 18.2 Appointment of Mediator: The parties must try to agree on the mediator, who must be a senior solicitor or barrister practising in the district in which the Land is situated. If they cannot agree, the president of the New Zealand Law Society (or his or her nominee) will nominate the mediator on either party's application.
- 18.3 Arbitration: If the parties do not agree to refer the dispute, difference or question to mediation under clause 18.1 within 10 Working Days of that dispute, difference or question arising, then it will be referred to the arbitration of a single arbitrator under the Arbitration Act 1996.

- 18.4 Arbitrator: The parties must try to agree on the arbitrator. If they cannot agree, the president or any vice-president for the time being of the New Zealand Law Society (or his or her nominee) will nominate the arbitrator on either party's application.
- 18.5 Action at Law: The parties must go to arbitration under this section before they can begin any action at law (other than an application for injunctive relief or debt collection).

19. NOTICES

- 19.1 Service of Notices: Any notice to be given by KiwiRail under this Agreement shall be sufficient if the notice is signed in accordance with clause 19.2 and shall be validly given if sent by letter or facsimile addressed to the Grantee at the Grantee's last known residential or business address.
- 19.2 Signature of Notices: Any notice or document to be delivered or served under this Agreement must be in writing and may be signed by:
- the party giving or serving the notice;
 - any attorney, officer, employee or solicitor for the party serving or giving the notice; or
 - the solicitor or any director, officer, employee or any other person authorised by that party to give or serve the notice.
- 19.3 Time of Service: Any notice or other document will be treated as delivered or served and received by the other party:
- on personal delivery;
 - three Working Days after being posted by prepaid registered post to the addressee's last known residential or business address in New Zealand; or
 - on completion of an error free transmission, when sent by facsimile.

20. FIBRE OPTIC CABLE

- 20.1 Cable located on Land: Vodafone New Zealand Limited ("Vodafone") and KiwiRail have certain ownership, access and other rights in respect of a fibre optic system ("System") located on the Land by virtue of an agreement dated 28 September 1990 ("Fibre Optic Cable Agreement"). Where future extensions to the System are constructed on or under the Land, Vodafone's and KiwiRail's rights under the Fibre Optic Cable Agreement shall take precedence over the Grantee's rights under this Agreement to the extent of any conflict, and the Grantee acknowledges that this Agreement shall be subordinate to, and shall not derogate from, those rights.
- 20.2 Grantee's covenants in respect of the cable: The Grantee covenants and agrees:
- not to interfere with or disturb the System;
 - not to do anything which might cause increased maintenance or operating expenses of the System, or reduce the System's efficacy;

- (c) to indemnify Vodafone and KiwiRail for any liability, claim, damage or loss arising out of installation, maintenance or use by the Grantee of its facilities or interference with the use, operation or maintenance of the System or failure to comply with this clause of the Agreement;
 - (d) to reimburse Vodafone and KiwiRail for the costs of any relocation which Vodafone or KiwiRail carries out to meet the Grantee's requirements;
 - (e) that either Vodafone or KiwiRail shall be entitled to seek injunctive relief restraining any actual or threatened breach of this Agreement by the Grantee causing interference with or disturbance to the System; and
 - (f) that for the purpose of the Contracts (Privily) Act 1982, Vodafone and KiwiRail are each designated to benefit under this Agreement in respect of their respective rights under the Fibre Optic Cable Agreement.
- 20.3 Limitation of access: In respect of the two metre strip centred on the fibre optic cable of the System, the Grantee shall have no right of entry (except for normal use in passing over the strip (without obstructing it)) or excavation or subterranean activities, without notifying and obtaining the prior written consent of KiwiRail and Vodafone.

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SCHEDULE 8
PLAN OF GRANT AREA

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


G90713/1-2
24/07/2018

0 30 60 90 120 150
Meters

North Arrow
A4
1:3,000

G90713/1 Water Pipe at Silverstream
KiwiRail

Legend
Land (Railway Boundary) 
Grant/Right

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The information displayed here is indicative only
This map is made available in good faith but its accuracy or completeness is not guaranteed

SCHEDULE 7
Tenancy Schedule

18d

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Tenancy Schedule – Part 410 Eastern Hutt Road, Silverstream, Upper Hutt

Tenant	Premises (all areas more or less)	Lease Commencement Date	Rent per annum (all amounts plus GST)	Initial Term	Expiry Date of Initial Term	Rights of Renewal	Final Expiry Date (if all renewals exercised)	Rent Review Date (if any)
Nautilus Properties Limited	Double sided billboard	The settlement date	\$25,000.00 plus GST	9 years 2.5 years	2.5 That date being 2.5 years less one day from the settlement date.	Nil	2.5 That date being 2.5 years less one day from the settlement date.	Fixed 2% annual increases on the 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000
Northpower Limited	Office area (750m ²) Warehouse (1,500m ²) Yard 1 (5,855m ²) Yard 2 (1,697m ²) Areas subject to final measure in accordance with the agreement to lease	As per clause 7.8 of the agreement to lease	\$673,122.00 plus GST subject to amendment for costs for variations and final measure and incentive	10 years	That date being 10 years from the commencement date	2 of 5 years each	That date being 20 years from the commencement date	Fixed 2% annual increases on years 4-10, 12-15 and 17-20 Market rent reviews on each renewal date (subject to a hard ratchet)

SCHEDULE 8

Lease Back
(clause 25B)

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Signage Lease

Part 410 Eastern Hutt Road
Silverstream
Upper Hutt

Nautilus Properties Limited

(Landlord)

IPOH New Zealand Limited

(Tenant)

Morrison Kent | Lawyers

Morrison Kent
Lawyers
Wellington and Rotorua
Individual Acting: Jamie Nunns

Telephone: (04) 472-0020
Facsimile: (04) 472-7017
Office: Level 19,
105 The Terrace, Wellington
DX: SP20203
PO Box: 10-035, Wellington 6143

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Parties

1. **Nautilus Properties Limited** a duly incorporated company registered under company number 1752210 and having its registered office at Wellington (“**the Landlord**”)
2. **IPOH New Zealand Limited** a duly incorporated company registered under company number 591158 and having its registered office at Wellington (“**the Tenant**”)

Background

- A. The Landlord owns the property at 410 Eastern Hutt Road, Silverstream, Upper Hutt being all of the land currently comprised and described in record of title 350250 (Wellington Registry) (“**the Property**”).
- B. There is/will be on the Property a signage structure in the form of a double sided billboard, the location of which is set out in the First Schedule (“**the Structure**”).
- C. The parties have agreed, on the terms set out in this deed, that the Landlord will lease the Structure to the Tenant for signage purposes.

Covenants

1. Definitions and general construction

- 1.1 In this deed, unless the context requires otherwise:

“**GST**” means goods and services tax or any similar tax.

“**Landlord**” includes the successors, executors, administrators and assigns of the Landlord.

“**Month**” and “**monthly**” mean, respectively, calendar month and calendar monthly.

“**PLA**” means the Property Law Act 2007.

“**Property**” means the property referred to in recital A.

“**Structure**” means the structure referred to in recital B.

“**Tenant**” includes the successors, executors, administrators and permitted assigns of the Tenant.

“**Term**” means the term specified in the Second Schedule, and includes any renewal or extension of that term.

Words importing the singular include the plural and vice versa.

2. Grant of lease

2.1 The Landlord leases the Structure to the Tenant, and the Tenant takes the Structure on lease from the Landlord, from the commencement date, for the Term and at the rent specified in the Second Schedule.

2.2 The Landlord grants the Tenant the right of access over such parts of the Property to the extent necessary for the Tenant to have access to the Structure.

3. Rent

3.1 The Tenant shall pay the Landlord the annual rent by equal monthly payments in advance on the rent payment dates specified in the Schedule.

3.2 Appropriate adjustments shall immediately be made for any periods of less than one month at the commencement and expiry or sooner determination of the Term.

3.3 All rent shall be paid without deduction or set off of any kind and as directed by the Landlord.

4. Costs

4.1 The Tenant shall pay the Landlord’s legal costs (including costs as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Landlord’s rights under this lease. Each party shall pay their own legal costs relating to the preparation and completion of this lease.

5. GST

5.1 The Tenant shall pay to the Landlord the GST payable by the Landlord in respect of the rent and other moneys payable pursuant to this lease. The GST in respect of the rent shall be paid on the relevant rent payment dates. In respect of any other payment the GST shall be paid on demand.

5.2 If the Tenant defaults in payment of GST and the Landlord becomes liable to pay additional GST, the Tenant shall pay the Landlord the additional GST on demand.

6. Interest on unpaid money

6.1 If the Tenant defaults in payment of any moneys payable pursuant to this lease for 14 days, the Tenant shall pay on demand interest, at the default interest rate

specified in the Second Schedule, on the unpaid moneys from the due date for payment to the actual date of payment.

7. Maintenance

- 7.1 The Tenant shall maintain the Structure in a good, clean and tidy condition, and free of graffiti.
- 7.2 The Tenant shall immediately repair any damage caused to the Structure.
- 7.3 The Tenant shall not make any alteration or addition to the Structure without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed).

8. Signage

- 8.1 The Tenant may use the Structure only for the purposes of displaying signage that:
 - (a) shall not be contrary to any statute, regulation, ordinance, bylaw or other enactment;
 - (b) shall not be offensive or otherwise bring the Property, any tenant of the Property, or the Landlord into disrepute; and
 - (c) shall not ridicule or disparage any person, business, undertaking or other entity.

9. Assignment and subleasing

- 9.1 The Tenant shall not assign, sublease or otherwise part with possession of the whole or any part of the Structure, or grant to any third party any right to use all or any of the Structure, without on each occasion first obtaining the written consent of the Landlord. Such consent will not be unreasonably withheld if:
 - (a) there are no subsisting defaults under this lease;
 - (b) the Tenant proves to the Landlord's satisfaction that the proposed assignee or subtenant is (or, in the case of an unlisted company, the shareholders of the proposed assignee or subtenant are) respectable, responsible and financially sound;
 - (c) in the case of an assignment, a deed of covenant in a form prepared or approved by the Landlord is duly executed and delivered to the Landlord;
 - (d) in the case of an assignment to an unlisted company, a deed of guarantee in a form prepared or approved by the Landlord is duly executed by the

principal shareholders and (if required by the Landlord) by the directors, and delivered to the Landlord;

- (e) the Tenant pays the Landlord's costs and disbursements of and incidental to the assignment or subleasing (which costs and disbursements shall be paid by the Tenant whether or not the proposed assignment or subleasing proceeds to completion).

9.2 No subtenant shall be permitted to deal with its sublease in any way in which the Tenant is restrained from dealing without consent.

10. Compliance with requirements

10.1 Subject to the provisions of this lease, the Tenant shall comply with:

- (a) the provisions of all statutes, ordinances, regulations, by-laws, regional and district plans, and regional and district rules for the time being in force;
- (b) the requirements of all authorities (including compliance with regional and district rules and, if applicable, the obtaining of any resource consent or other authorisation, approval, certificate of compliance or permit);
- (c) all notices and all requisitions issued made or given by any authority;
- (d) the conditions of any resource consent, licence or permit; and
- (e) the provisions of any enforcement order;

in any way relating to or affecting the Structure or the use of the Structure. The Tenant shall forthwith after receipt of any requisition or notice supply a copy to the Landlord.

11. No warranty

11.1 The Landlord does not warrant that the Structure is or will remain suitable.

12. Own risk

12.1 The Tenant will use the Structure at its own risk in all respects.

13. Default

13.1 Failure to punctually pay rent or other moneys payable pursuant to this lease shall be a breach going to the essence of the Tenant's obligations under this lease. The Landlord shall be entitled to recover damages from the Tenant for such breach or for any loss or damage suffered by the Landlord by reason of any act or

omission of the Tenant constituting a repudiation of this lease or the Tenant's obligations pursuant to this lease. Such entitlement shall subsist notwithstanding any determination of this lease and shall be in addition to any other rights of the Landlord.

- 13.2 The acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligations to make such payments.
- 13.3 Any signage or other display erected in breach of this lease may be removed or concealed by the Landlord, at the Tenant's cost and expense in all things and without prejudice to the Landlord's other rights and remedies.
- 13.4 If the Tenant breaches this lease, the Landlord may terminate this lease, provided that the Landlord complies with the applicable requirements of the Property Law Act 2007.

14. Arbitration

- 14.1 Any disputes that arise between the parties out of this lease including the interpretation of it must be submitted to the arbitration of a single arbitrator agreed on between the parties or in default of agreement, to be nominated by the President of the New Zealand Law Society.
- 14.2 The arbitration shall be conducted in accordance with the Arbitration Act 1996. The parties expressly include the provisions of the Second Schedule of the Act and reserve the right to appeal to the High Court on any question of law arising out of an award.
- 14.3 In respect of any time periods prescribed in relation to any arbitration time shall be of the essence.
- 14.4 No submission to arbitration shall prevent the Landlord from suing the Tenant for arrears of rent or other moneys payable by the Tenant.

15. No implied terms

- 15.1 The covenants, conditions and powers implied in leases by virtue of the PLA (whether pursuant to Schedule 3 of that Act or otherwise) shall not apply to and are excluded from this lease, to the extent legally permissible.
- 15.2 Sections 224 and 266(1)(b) of the PLA shall not apply to and are excluded from this lease. This clause does not affect the operation of sections 225 to 229 of the PLA.

16. Counterparts

16.1 This deed may be executed in 2 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 the other party, including by fax or email.

In witness of which this deed has been executed.

Signed by the Landlord
Nautilus Properties Limited
in the presence of:

Signature of Landlord

Witness Signature

Print Full Name
(For a Company specify Description
Director/Attorney/Authorised Signatory)

Witness Name

Witness Occupation

Signature of Landlord

Witness Address

Print Full Name
(For a Company specify Description
Director/Attorney/Authorised Signatory)

Note: This document must be executed by a company according to its Constitution. If two directors sign, no witnessing is necessary. If only one director or a director and secretary or authorised signatory(ies) or attorney sign, signatures must be witnessed.

Signed by the Tenant
IPOH New Zealand Limited
in the presence of:

Signature of Tenant

Witness Signature

Print Full Name
(For a Company specify Description
Director/Attorney/Authorised Signatory)

Witness Name

Witness Occupation

Signature of Tenant

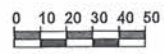
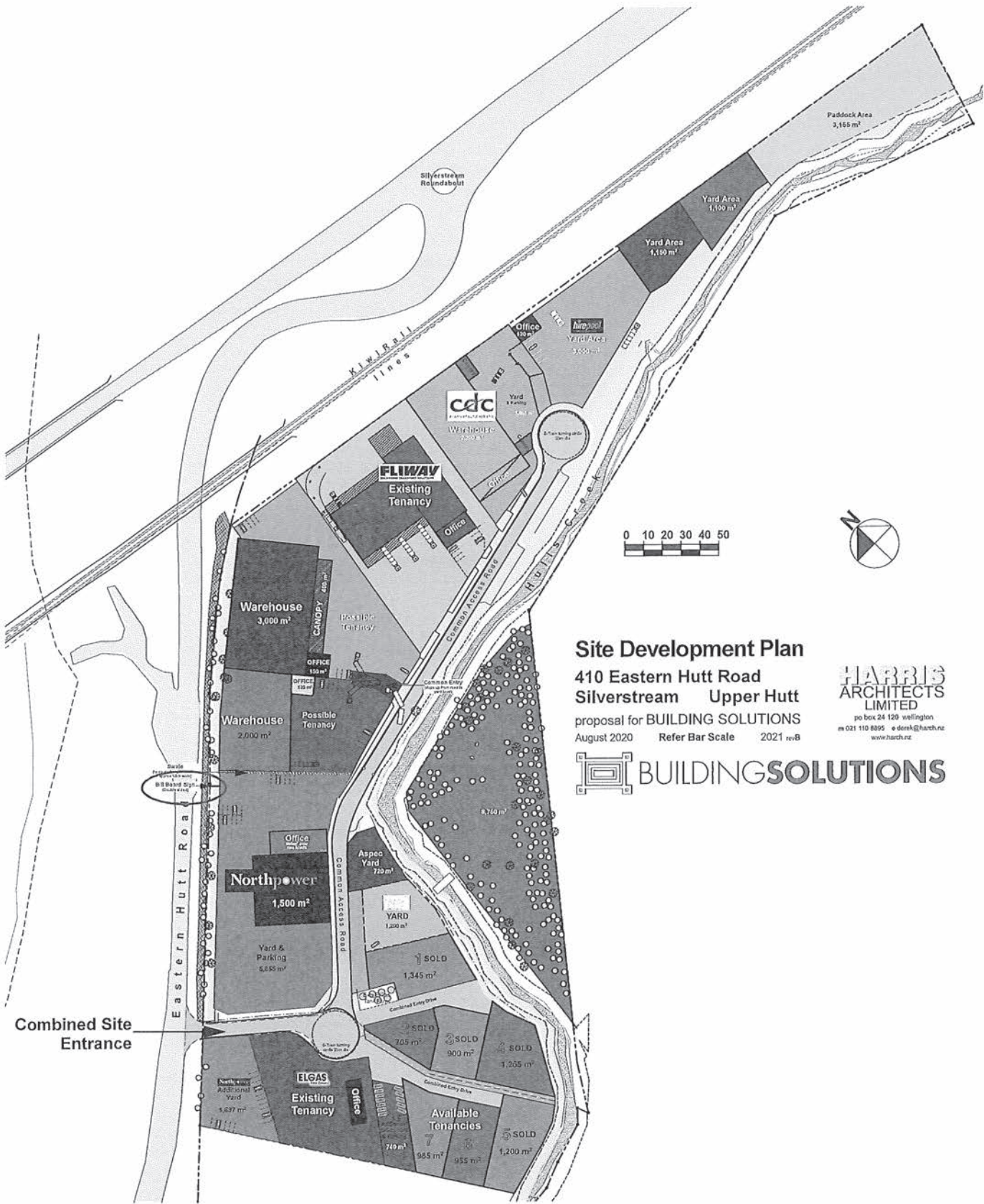
Witness Address

Print Full Name
(For a Company specify Description
Director/Attorney/Authorised Signatory)

Note: This document must be executed by a company according to its Constitution. If two directors sign, no witnessing is necessary. If only one director or a director and secretary or authorised signatory(ies) or attorney sign, signatures must be witnessed.

First Schedule

Structure Location



Site Development Plan

410 Eastern Hutt Road
Silverstream Upper Hutt

proposal for BUILDING SOLUTIONS
August 2020 Refer Bar Scale 2021 revB

HARRIS
ARCHITECTS
LIMITED
po box 24 126 wellington
m 021 110 8895 e derek@harris.nz
www.harris.nz

 **BUILDINGSOLUTIONS**

Combined Site Entrance

Second Schedule

Commencement date:	[The settlement date in respect of the Northpower Lots]
Term:	2 years and 6 months
Annual rent	\$25,000.00 plus GST
Monthly rent:	\$2,083.33 plus GST
Rent payment dates:	The 1 st day of each month, starting on the commencement date
Default interest rate:	12% per annum

BEFORE SIGNING THE AGREEMENT

- Note: the purchaser is entitled to a copy of any signed offer at the time it is made.
- 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.
 - the purchaser is not a New Zealand citizen. There are strict controls on the purchase of a property in New Zealand by persons who are not New Zealand citizens.
 - 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 weather-tightness and soundness of construction of any dwellings or other buildings on the land.
- Both parties may need to have customer due diligence performed on them by their lawyer or conveyancer in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 which is best done prior to the signing of this agreement.
- 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;
 - 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 repair of, or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 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 2 is accurate.
- 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.

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AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE:

VENDOR:
Nautilus Properties Limited
Contact Details:

VENDOR'S LAWYERS:
Firm: Morrison Kent
Individual Acting: Jamie Nums
Email: Jamie.nums@morrisonkent.com
Contact Details:
PO Box 10035
The Terrace, Wellington 6143

Ph: 04 495 8912

Email Address for Service of Notices:
(clause 1.4)
jamie.nums@morrisonkent.com

PURCHASER:
PMG Funds Limited
Contact Details:

PURCHASER'S LAWYERS:
Firm: Dentons Kensington Swan
Individual Acting: Ish Fraser
Email: ish.fraser@dentons.com
Contact Details:
PO Box 10246
The Terrace, Wellington 6143

Ph: 04 498 0868

Email Address for Service of Notices:
(clause 1.4)
ish.fraser@dentons.com

LICENSED REAL ESTATE AGENT:

Agent's Name:
Manager:
Salesperson:
Contact Details:

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **NATASHA LEE STOCKS** of Tauranga, New Zealand, Accountant, certify that:

1. By deed dated 6 November 2020 **PACIFIC PROPERTY FUND LIMITED** of Tauranga, New Zealand appointed me as its attorney.
2. I have not received notice of any event revoking the power of attorney and to the best of my knowledge and belief no such notice has been received by **PACIFIC PROPERTY FUND LIMITED** or by any employee or agent of **PACIFIC PROPERTY FUND LIMITED**.

SIGNED at TAURANGA this 10th day of November 20 20



N L STOCKS

Temporary Occupation Licence

410 Eastern Hutt Road
Silverstream
Upper Hutt

Nautilus Properties Limited
(Licensor)

Elgas Limited
(Licensee)

Morrison Kent
Lawyers

Morrison Kent
Lawyers
Wellington
Individual Acting: Jamie Nunns

Telephone: (04) 472-0020
Facsimile: (04) 472-7017
Office: Level 19, 105 The Terrace, Wellington
DX: SP20203
PO Box: 10-035, Wellington 6143

Deed made this 24th day of March, 2020

Parties

NAUTILUS PROPERTIES LIMITED a duly incorporated company having its registered office at Wellington and being registered under company number 1752210 ("the Licensor")

ELGAS LIMITED a duly incorporated company having its registered office at Auckland and being registered under company number 2201983 ("the Licensee")

General Conditions of this Licence

Background

- A. The Licensor is the registered owner of the Property.
- B. The Licensee leases certain premises at the Property pursuant to the Lease.
- C. The Licensee undertakes LPG operations from the premises demised under the Lease which (inter alia) involves the use of a hazardous substance on site for the purposes of the Regulations.
- D. As part of the Licensee's obligations under the Regulations, the Licensee is required to maintain a separation distance from the boundary of its premises demised under the Lease. It is for that purpose that this Licence is entered into.

Licence

1. In consideration of the Licensee paying to the Licensor the licence fee referred to in clauses 6-9 of this Licence and the Licensee agreeing to be bound by the terms of this Licence, the Licensor hereby licences to the Licensee and the Licensee takes on licence the Licence Area.
2. The Licensee acknowledges and agrees that this Licence is non-exclusive to the Licensee.

Term of Licence

3. The Licence shall commence on the Commencement Date and (unless terminated pursuant to the provisions of clause 4 or 17 or 18) shall continue for the term set out in Item 5 of the First Schedule.
4. This Licence shall automatically determine on expiry of the Lease and/or in the event that the Lease is terminated and upon any such expiration or termination of the Lease (as the case may be) the term shall absolutely cease and determine but without prejudice to the remedies of either party against the other in respect of any antecedent claim or breach of covenant.

5. If the Licensor permits the Licensee to use the Licence Area after the expiration or sooner determination of the Term, the use shall be a periodic use terminable by at least twenty (20) Working Days notice, given at any time with this Licence terminating on the expiry of the notice at the Licence Fee then payable and otherwise on the same covenants and agreements as expressed or implied under this Licence. This clause 5 is subject in all respects to the matters set out in clause 17.

Licence Fee

6. The Licensee will pay to the Licensor for the use of the Licence Area the Licence Fee as set out in Item 6 of the First Schedule (free of all deductions or set-off).
7. In addition to the Licence Fee, the Licensee will also pay all Goods and Services Tax or any similar tax in substitution therefor payable in respect of the Licence Fee or the supply of the Licence Area to the Licensee.
8. The Licensee will pay the Licence Fee to the Licensor by equal monthly payments in advance to be made on the first day of every month with a first payment on the Commencement Date **provided** that if the Commencement Date shall be other than the first day of a month then on the Commencement Date the Licensee shall pay to the Licensor a proportionate part of the Licence Fee (calculated on an annual daily basis) from the Commencement Date through to the end of that month.
9. Unless otherwise stipulated, the Licensee will pay the Licence Fee by way of automatic bank authority/direct debit authority to such bank account as may be directed by the Licensor from time to time.

Use of Licence Area

10. The Licensee agrees to use the Licence Area for the use specified in Item 3 of the First Schedule and for no other purpose.

Acknowledgements and Compliances

11. The Licensee shall not be permitted to assign nor sublet the Licence Area under this Licence.
12. The Licensee will comply with any reasonable requirements imposed by the Licensor in respect of security, safety and the orderly operation of the Licence Area.
13. The Licensee acknowledges that the Licensee uses the Licence Area at the Licensee's own risk in all respects.
14. The Licensor acknowledges that should the Licensor, at any time during the Term of Licence, physically alter the configuration of any building(s) or property that share a common boundary with the Licence Area, which the Licensor is entitled to do, that the Licensor may reasonably expect that the Licensee shall make every reasonable endeavour to ensure full compliance in regard to the location of the subject of

hazardous substances as soon as practicable and in accordance with the controls set out in the Regulations.

15. The Licensor further acknowledges that by entering into this Licence it can reasonably expect that it is not placing its building(s), property or persons within its building(s) or property at any further risk or undue risk having regard to the location of the of the subject hazardous substances.

Licensee to Indemnify Licensor

16. The Licensee will indemnify the Licensor in respect of any legal liability, loss, expense, claim or proceeding in respect of any damage to any property or any damage or loss of any kind sustained by the Licensor due to the use of the Licence Area by the Licensee other than in compliance with the terms of this Licence and the Licensee shall pay to the Licensor on demand the cost of repairing any damage to the Licence Area caused by the Licensee and/or its use thereof.

Licensor's Right to Terminate

17. Notwithstanding any other provision of this Licence, the Licensor may terminate this Licence on five (5) Working Days' written notice to the Licensee.

Default

Licensor's Right to Terminate for Default

18. If the Licence Fee or any part thereof shall remain unpaid for a period of five (5) Working Days after the due date for payment (whether or not the same shall have been legally or formally demanded) or if the Licensee defaults in observing or performing any of the Licensee's covenants expressed or implied in this Licence then, subject to the Licensor having first served notice on the Licensee requiring such default to be rectified, the default has not been rectified following the expiry of the period for rectification specified by the Licensor in its notice the Licensor may immediately terminate this Licence and upon such termination the term of this Licence shall cease but without releasing the Licensee from liability for payment of the Licence Fee due up to the date of termination or for any antecedent breach of covenant.

No Waiver

19. No consent or waiver, expressed or implied, by the Licensor to or of any breach of any covenant of the Licensee shall be construed as a consent or waiver to or of any other breach of the same or any other covenant. No waiver of any breach by the Licensee shall be implied from the Licensor's failure to exercise any of its right in respect of such breach. The acceptance by the Licensor of arrears or of any late payment of the Licence Fee shall not constitute a waiver of the essential character of the Licensee's continuing obligation to pay the Licence Fee during the term of this Licence.

Interest Rate for Late Payment

20. Without prejudice to the other rights of the Licensor under this Licence, if the Licence Fee or any part thereof shall remain unpaid for seven (7) days after the due date for payment (whether or not the same shall have been legally or formally demanded) such moneys shall bear interest compounded on monthly rests and computed from due date until the date of payment in full of such moneys at a rate calculated under Item 7 of the First Schedule and such interest shall be recoverable in the same manner as the Licence Fee in arrears.

Definitions and Interpretation

21. Throughout this Licence where not repugnant to the context:
- (a) "Commencement Date" means the date shown in Item 4 of the First Schedule;
 - (b) "Lease" means the agreement to lease between the Licensor as landlord and the Licensee as tenant in respect of part of the Property as more particularly described therein dated 30 November 2016 together with all variations thereto (if any);
 - (c) "Licence Area" means that part of the Property described in Item 1 of the First Schedule;
 - (d) "Licence Fee" means the licence fee shown in Item 6 of the First Schedule and is deemed to include both the licence fee and any tax thereon;
 - (e) "Licensor" and "Licensee" shall be deemed to include the employees, agents, invitees and successors of those parties and in the case of "Licensor" the term shall extend to include also its manager or managing agent (if applicable);
 - (f) "Property" means the property referred to in Item 1 of the First Schedule;
 - (g) "Regulations" means the Health and Safety at Work (Hazardous Substances) Regulations 2017;
 - (h) "Working Day" has the meaning given to that term under the Property Law Act 2007.

Singular and Plural

22. Words in the singular shall be deemed to include the plural and vice versa.

Costs

- 23. The costs of any necessary enforcement of this Licence by the Licensor shall be payable by the Licensee.

Notices

- 24. Any notice required to be given in terms of this Licence shall be directed to the relevant address shown in Item 8 of the First Schedule.

Application of Statutes

- 25. To the extent permissible by law, the provisions of any Statutes, Regulations or rules of law which relate or might relate to this Licence are hereby expressly negated.

In Witness Whereof this deed has been executed on the date set out above.

Signed by the Licensor
Nautilus Properties Limited
in the presence of:



Witness Signature

James Keefe

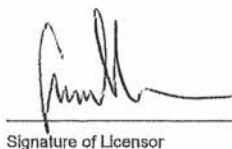
Witness Name

Financial Controller

Witness Occupation

Lot 3, 24 Wilkes St

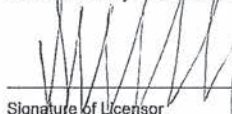
Witness Address



Signature of Licensor

Craig Stuart Wilkinson

Print Full Name
(For a Company specify Description
Director/Attorney/Authorised Signatory)



Signature of Licensor

RICHARD BURNELL

Print Full Name
(For a Company specify Description
Director/Attorney/Authorised Signatory)

Note: This document must be executed by a company according to its Constitution. If two directors sign, no witnessing is necessary. If only one director or a director and secretary or authorised signatory(ies) or attorney sign, signatures must be witnessed.

Signed by the Licensee
Elgas Limited
in the presence of:



Witness Signature

James Cone

Witness Name

Property Manager

Witness Occupation


10 Julius Ave North Ryde

Witness Address

Signature of Licensee

Print Full Name

(For a Company specify Description
Director/Attorney/Authorised Signatory)



Signature of Licensee

Anthony Cilbert
Print Full Name

(For a Company specify Description
Director/Attorney/Authorised Signatory)

Note: This document must be executed by a company according to its Constitution. If two directors sign, no witnessing is necessary. If only one director or a director and secretary or authorised signatory(ies) or attorney sign, signatures must be witnessed.

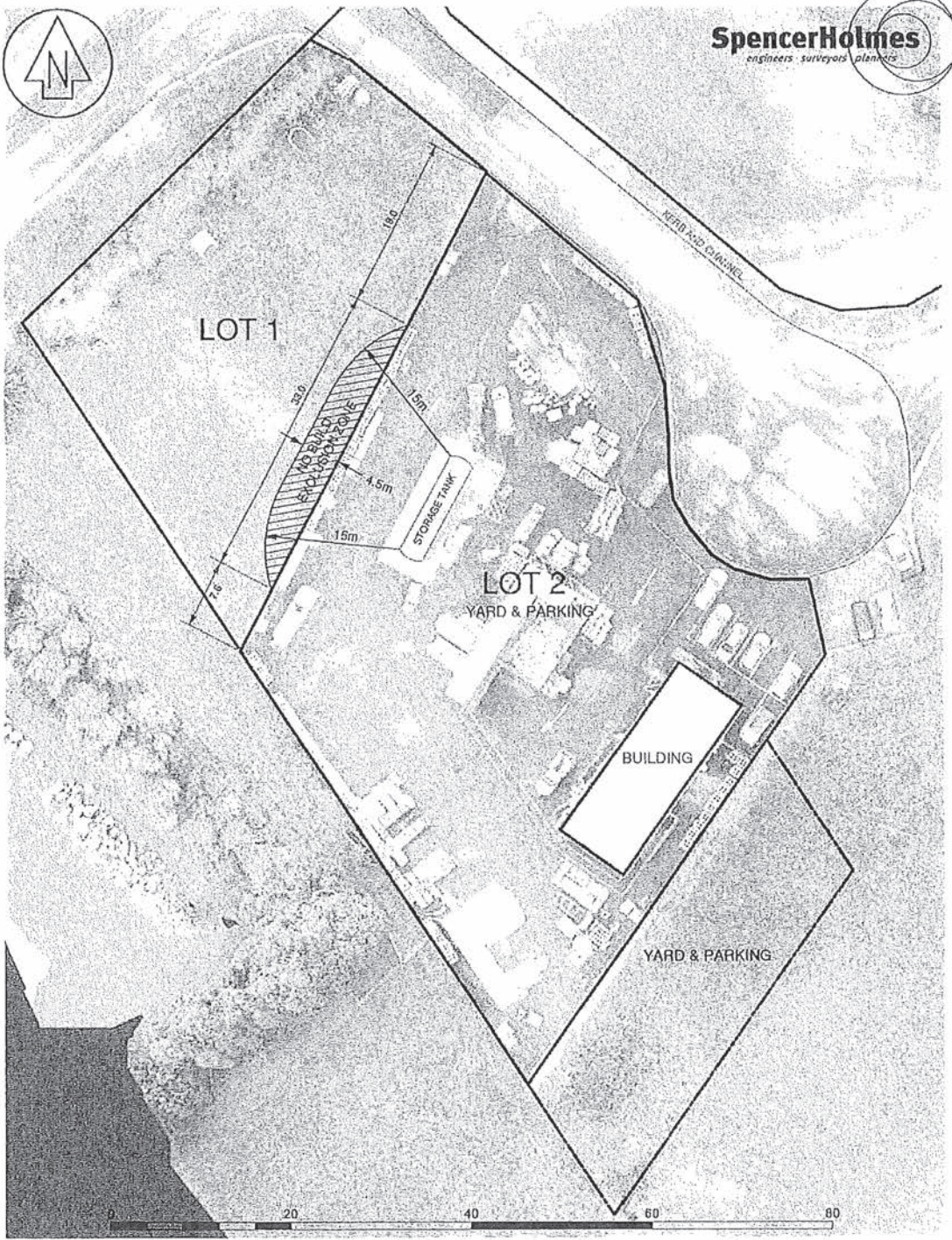
First Schedule

- Item 1 Property**
- All of the Licensor's property situated at 410 Eastern Hutt Road, Silverstream, Upper Hutt being legally described as Lot 2 on Deposited Plan 387512 being all of the land comprised and described in record of title 350250 (Wellington Registry).
- Item 2 Licence Area**
- That part of the Property shown for identification purposes only diagonally hatched in red on the attached plan.
- Item 3 Use**
- Separation zone for the purposes of the Regulations.
- Item 4 Commencement Date**
- 1 March 2020
- Item 5 Term of Licence**
- Four (4) months
- Item 6 Licence Fee**
- The initial Licence Fee for the Licence Area shall be \$500.00 plus GST per week.
- Item 7 Default Interest Rate**
- 16% per annum
- Item 8 Address For Service Of Notices**
- Licensor**
Nautilus Properties Limited
c/- Building Solutions Limited
PO Box 9270
Wellington 6141
- Licensee**
Elgas Limited
988 Great South Road
Penrose
Auckland

Licence Area Plan



SpencerHolmes
engineers · surveyors · planners



Spencer Holmes Ltd
 Level 6 - 8 Willis Street Ph (04) 472 2261
 PO Box 588 Fax (04) 471 3372
 Wellington NZ admin@spencerholmes.co.nz

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LOT 1 EXCLUSION ZONE
410 EASTERN HUTT RD
SILVERSTREAM

CAD FILE S18 1051 E2 - S18 1051 E2	
DATE 13 February 2020	
SCALE 1:400 @A3	
DRAWING NUMBER	REV
S18-1051-EZ	A