

Mansons Properties (151 Victoria) Limited

and

Mansons TCLM Limited

and

Building A Graham Street Limited Partnership

First Refusal Deed in relation to 30 Graham Street, Auckland

Deed dated

12 May

2016

Parties

- 1 **Mansons Properties (151 Victoria) Limited** (registered company number 4403798) ("**Mansons**").
- 2 **Mansons TCLM Limited** (registered company number 1851464) ("**TCLM**")
- 3 **Building A Graham Street Limited Partnership** (registered limited partnership number 2640112) ("**Building A LP**").

Background

- A Mansons and Augusta Funds Management Limited ("**AFM**") are parties to the Building B Agreement and Mansons also owns the Walker Building.
- B In consideration for AFM fulfilling the condition in clause 19.1 of the Building B Agreement, Mansons has agreed to grant Building A LP a right of first refusal in respect of the Walker Building on the terms set out in this deed.
- C TCLM has agreed to guarantee the performance of Mansons' obligations in this deed.

Terms of this deed:

1 Interpretation

1.1 In this deed unless the context requires otherwise:

- (a) "**Building A Agreement**" means the agreement for sale and purchase between Mansons as vendor and AFM (and/or nominee) as purchaser with regards to Building A dated 16 February 2016, as varied by a deed of variation dated 31 March 2016.
- (b) "**Building B Agreement**" means the agreement for sale and purchase between Mansons as vendor and AFM (and/or nominee) as purchaser with regards to Building B and Building C dated 31 March 2016, as varied by a deed of variation dated 6 May 2016.
- (c) "**Building A**" means the land and buildings at 4 Graham Street, Auckland, being Lot 3 DP 490577 together with an undivided share in Lot 1 DP 490577, and comprised in computer freehold register 708753.
- (d) "**Building B and Building C**" means the land and buildings at 2 Graham Street and 5 Hardinge Street, Auckland, being Lots 2 and 4 DP 490577 each together with an undivided share in Lot 1 DP 490577, and comprised in computer freehold registers 708752 and 708754.
- (e) "**Walker Building**" means the land and building at 30 Graham Street, Auckland, being Lot 1 DP 43519 comprised in computer freehold register NA1335/28.

1.2 All other capitalised terms in this deed have the meanings ascribed to them under the Building A Agreement and/or the Building B Agreement.

2 Covenants

2.1 Mansons covenants that, where Mansons wishes to sell or otherwise permanently dispose of all or any part of the Walker Building it shall first offer it to Building A LP. The offer shall be given in writing to Building A LP and shall specify the proposed purchase price and any other particular terms such as the intended settlement date ("**Sale Offer**"). The Sale Offer must be subject to the following terms (unless otherwise agreed between the parties in writing):

- (a) A deposit shall be payable by Building A LP equal to 10% of the purchase price, which deposit will be payable on the date of acceptance of the Sale Offer;
 - (b) The balance of the purchase price is to be satisfied by payment in cash and in one lump sum on the agreed settlement date;
 - (c) The settlement date shall be no earlier than the date six (6) months after acceptance of the Sale Offer and no later than twelve (12) months after acceptance of the Sale Offer;
 - (d) The purchase price shall be plus GST if any; and
 - (e) The Sale Offer shall be open for acceptance by Building A LP for a period of twenty (20) working days from the date on which the Sale Offer is given to Building A LP.
- 2.2 If Mansons gives to Building A LP a Sale Offer and Building A LP does not give to Mansons within twenty (20) working days of the receiving of the Sale Offer (time being of the essence) written notice of its acceptance of the Sale Offer in accordance with clause 2.3, then:
- (a) Building A LP shall be deemed to have rejected the Sale Offer;
 - (b) Mansons shall be free to sell all or any of the Walker Building to any third party at a purchase price not less than that specified in the Sale Offer but otherwise on such terms as Mansons chooses; and
 - (c) Mansons shall not sell the Walker Building to a third party at a purchase price less than that specified in the Sale Offer without first giving to Building A LP a further offer pursuant to clause 2.1 at the proposed lesser purchase price, in which case such offer shall be deemed to be a Sale Offer and all of the provisions of this clause 2 shall apply to such offer, except the period of twenty (20) working days referred to in clause 2.1(e) shall be deemed to be ten (10) working days.
- 2.3 If Building A LP gives to Mansons written notice of Building A LP's acceptance of the Sale Offer within the time specified, then the parties shall promptly enter into an agreement for sale and purchase reflecting the agreed terms of sale, on the then-current form REINZ/ADLS agreement for sale and purchase.
- 2.4 This clause 2 shall not apply where Mansons wishes to transfer or sell the Walker Building to a Related Company (as that term is defined under the Companies Act 1993) or to any other entity within the Mansons group, provided that Mansons procures that its transferee and TCLM enter into a deed of covenant whereby the transferee covenants in favour of Building A LP on the same terms as this deed (including this clause 2) and TCLM guarantees the due performance by the transferee of its obligations under that deed.
- 3 Assignment**
- 3.1 The covenants contained in clause 2 may be assigned by Building A LP to any successor in title of Building A, provided that Building A LP (or the successor in title for the time being having the benefit of the covenants in clause 2) promptly notifies Mansons of any such assignment.
- 3.2 Where the covenants contained in clause 2 are assigned in accordance with this clause 3, all references in this deed to "Building A LP" shall be deemed to refer to, and shall be binding on, the

assignee (and for the avoidance of doubt, TCLM's guarantee in clause 5 shall be deemed to be in favour of, and for the benefit of, the assignee).

- 3.3 For the avoidance of doubt, the assignment of rights under this deed are to be whole and not partial, such that only one person at any one point of time shall be entitled to exercise those rights against Mansons.

4 Revocation

- 4.1 This deed and the provisions thereof shall automatically be revoked and rendered unenforceable against Mansons and TCLM (and any Related Company of Mansons contemplated under clause 2.4) in the event that the Building A Agreement is cancelled or terminated.

5 Confidentiality

- 5.1 This deed, and the arrangements incidental hereto which are disclosed in this deed, are commercially sensitive and accordingly shall be kept confidential between the parties. Neither party shall disclose the details of this deed or such arrangements without the prior consent of the other parties except:

- (a) As may be required to comply with any lawful requirement (including any disclosure that may be reasonably required in connection with AFM's intended syndication of Building A and/or (together) Building B and Building C);
- (b) Disclosure by Mansons to prospective financiers or purchasers of the Walker Building; or
- (c) Disclosure by AFM or a Related Company (as that term is defined under the Companies Act 1993) to its financiers or prospective purchasers of Building A and/or (together) Building B and Building C.

6 Guarantee

- 6.1 In consideration of AFM satisfying the condition in clause 19.1 of the Building B Agreement, TCLM guarantees to Building A LP by way of continuing obligation and as primary obligor, and not merely as surety, the due performance by Mansons of all of its obligations under this deed.

- 6.2 TCLM will not be discharged nor are TCLM's obligations to be affected by any matter or thing which, but for this clause, would or might have discharged TCLM or affected its obligations including:

- (a) the giving of time, credit or other indulgence or concession to Mansons, Building A LP or any other person;
- (b) anything done or omitted to be done by Mansons in the exercise or non-exercise of its rights and powers; or
- (c) any release, discharge, compromise or other arrangement given to or made with Mansons, Building A LP or any other person.

- 6.3 The parties intend that:

- (a) the guarantee and obligations of TCLM in this deed are to be absolute and unconditional; and
- (b) Building A LP is under no liability to TCLM for those matters listed in clause 6.2 of this deed even though TCLM's rights in subrogation may be prejudiced as a result.

7 General

- 7.1 This deed may be executed in any number of counterparts each of which when executed shall be an original and all the counterparts together shall constitute one and the same instrument.

- 7.2 Each party shall pay their own costs in relation to the negotiation, preparation and execution of this deed.
- 7.3 The obligations of the parties in this deed shall not merge or be extinguished by the occurrence of settlement under the Building A Agreement and/or Building B Agreement.
- 7.4 The covenants in this deed are not intended to constitute a registrable interest in the Walker Building and Building A LP shall not take any steps to register its interest in this deed of covenant.

Execution

Mansons Properties (151 Victoria) Limited by:



Signature of director/authorised signatory

Colum Alexander Manson

Name of director/authorised signatory

and witnessed by:



Signature of witness

~~Brooke Casey Finch~~
Name of witness

Solicitor

Auckland

City/town of residence

Occupation

Mansons TCLM Limited by:

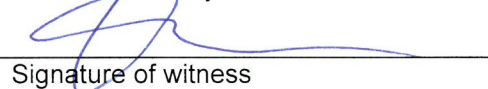


Signature of director/authorised signatory

Colum Alexander Manson

Name of director/authorised signatory

and witnessed by:



Signature of witness

~~Brooke Casey Finch~~
Name of witness

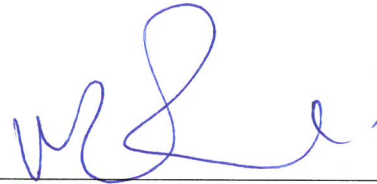
Solicitor

Auckland

City/town of residence

Occupation

Building A Graham Street Limited Partnership by its general partner
AFM GP (Building A Graham Street) Limited:

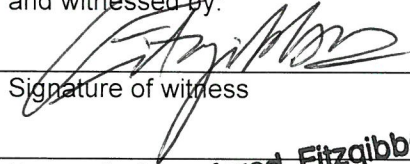


Signature of director/authorised signatory

MARK FRANCIS

Name of director/authorised signatory

and witnessed by:



Signature of witness

Name of witness **Luke Jared Fitzgibbon**

City/town of residence **Solicitor Auckland**

Occupation