

Link Drive and Hannover Place, Rolleston

Amendments to Agreement for Sale and Purchase dated 20 February 2020

Settlement date: The settlement date is amended to 30 April 2020.

Further Terms of Sale, Schedule 3 and the Tenancy Schedule: The Further Terms of Sale, Schedule 3 and the Tenancy Schedule are amended as shown on the attachment. (N.B: The amendments include the hand-written amendments already included in the Agreement for Sale and Purchase as signed, albeit that some of those hand-written amendments are further amended on the attachment).

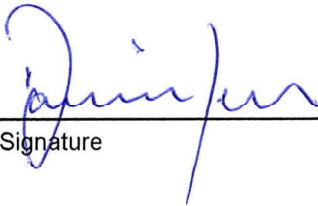
SIGNED for and on behalf of the vendor,
Gibraltar Shelf No. 56 Limited



Signature

Date

SIGNED for and on behalf of the purchaser,
PMG Funds Limited



Signature

Date

3-4-2020

FURTHER TERMS OF SALE

19 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 fulfilment of the condition in this clause 19.1 is 3 April 2020.

- 19.2 Without limiting its other obligations and warranties under this agreement, the vendor shall promptly 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 of that information.

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 fulfilment of the condition in this clause 19.3 is the date that is 2 working days after the date of satisfaction or waiver of the condition in clause 19.1.

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 DEPOSIT

20.1 Payment of deposit

On the date at which both of the conditions in clauses 19.1 and 19.3 have been satisfied and/or waived, such that this agreement is unconditional, the purchaser shall pay the deposit.

- 20.2 The purchaser shall pay the deposit (once payable) to the vendor's solicitors' trust account. The deposit will be immediately released to the vendor.

21 PROVISION OF INFORMATION

21.1 Vendor to provide information

The vendor shall promptly provide all information that is in its possession or control and is reasonably requested by the purchaser at any time from the date of this agreement until settlement, including:

- (a) regular updates as to arrears (and any other tenant defaults);
- (b) monthly management reports;
- (c) information regarding changes to building services; and
- (d) information (in relation to the period ending on the settlement date) that will be required to enable the purchaser to produce building warrants of fitness in respect of the buildings when such warrants are next due.

22 WARRANTIES

22.1 Additional warranties

In addition to the warranties contained in the General Terms of Sale and these Further Terms of Sale, the vendor warrants to the purchaser as provided for in Schedule 3.

22.2 Purchaser acknowledgements

Notwithstanding clause 22.1, the purchaser acknowledges that:

- (a) it will be carrying out its own investigations of the property and, in entering into this agreement, it has not relied on any information provided by the vendor as comprising all of the information that may be relevant to the property;
- (b) it will rely upon its own judgement as to its interpretation and evaluation of any information provided by the vendor in relation to the property; and
- (c) the vendor built the buildings on the property and therefore only third party and manufacturers' warranties that are capable of being assigned or passed over shall be assigned or passed over (as the case may be) to the purchaser on settlement.

For clarity, except as set out in clause 22.2(c), there are no warranties as to materials or workmanship being provided by the vendor however the vendor will comply with its obligations under clause 6.10 (3 month Defects In Construction) of the Development Agreement it has with PGG Wrightson Limited dated 25 November 2019 (**Development Agreement**) and will be responsible for the cost of any remedial work required under the Development Agreement.

22.3 Exceptions

The warranties in this agreement are given on the basis that they:

- (a) are true and correct only to the best of the vendor's knowledge and belief; and

- (b) will take effect subject to:
 - (i) anything noted or recorded in any publicly available registers (including any such records held by the relevant district land registry and the territorial and regional authorities);
 - (ii) anything noted or recorded in a LIM for the property;
 - (iii) anything that would be apparent on a physical inspection of the property;
 - (iv) any act, matter, or thing disclosed to the purchaser; and
 - (v) the acknowledgements in clause 22.2.

23 LEASES AND MANAGEMENT OF THE PROPERTY

23.1 Leases

The vendor does not warrant the accuracy of the Tenancy Schedule. It is solely for the purchaser to satisfy itself as to the terms and details of the Leases through its due diligence investigations.

23.2 Property sold subject

The property is sold subject to, but with the benefit of, the leases noted in the Tenancy Schedule ("**the Leases**").

23.3 Vendor's obligations

- (a) From the date of this agreement and up to and including the date of settlement, the vendor shall:
 - (i) comply with its obligations under the Leases in respect of the period up to and including the date of settlement;
 - (ii) initiate and carry out any rent reviews or adjustments under the Leases, in full consultation with the purchaser;
 - (iii) manage the property in a reasonable manner;
 - (iv) provide to the purchaser all new material information relating to the administration and management of the Leases and the property (including any tenancy dispute or rent review); and
 - (v) keep the purchaser fully informed regarding any legal proceeding, arbitration or other means of dispute resolution threatened or commenced by the vendor, or by any person against the vendor, in any matter relating to any Lease or the property, and deal with all such matters having regard to the best interests of the purchaser.
- (b) From the date of this agreement, the vendor shall not (except to the extent that the vendor is obliged to under any Lease or at law) without the prior written consent of the purchaser:

- (i) approve any assignment, subletting, renewal, surrender or variation of any Lease;
 - (ii) approve any tenant works;
 - (iii) approve the annual or monthly rent payable on a review of the rent under any Lease or take any material steps in connection with any such rent review;
 - (iv) grant any new Lease of any part of the property;
 - (v) cancel any Lease or take any steps to cancel any Lease;
 - (vi) commence or take any material steps in connection with any legal proceedings, arbitration or dispute resolution in connection with the property;
 - (vii) give any consent or waiver in relation to any application under the Resource Management Act 1991 that directly or indirectly affects the property;
 - (viii) grant or create any easements, covenants, encumbrances or other rights in respect of the property; or
 - (ix) enter into any agreement in relation to the property or the Leases that will subsist beyond the date of settlement.
- (c) In respect of each request for the written consent of the purchaser under clause 23.3(b), the purchaser shall:
- (i) not unreasonably or arbitrarily withhold or delay its consent; and
 - (ii) use all reasonable endeavours to respond to the vendor within sufficient time to enable the vendor to meet any obligations under any Lease or other relevant agreement.

24 GUARANTEES AND WARRANTIES

24.1 Assignment of guarantees/warranties

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 that are capable of being assigned to the purchaser. Such assignment shall be subject to the consent (where required) of the relevant guarantors/warrantors (which consent 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.

24.2 **Vendor to hold on trust**

Where any guarantees and warranties are not able to be assigned but are able to be enforced by the vendor after settlement, the vendor shall hold those guarantees and warranties on trust for the purchaser. The vendor shall from time to time, when requested by the purchaser, take all 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 costs and expenses that the vendor incurs in so doing.

25 LEASES BACKS AND TOP UPS

25.1 For the purposes of this clause 25, and clause 26, unless the context requires otherwise:

- (a) **Development Agreement** means the development agreement as defined in clause 22.2;
- (b) **Future Lease Back** means any lease back pursuant to clauses 25.2(e), 25.3(d) or 25.4(b);
- (c) **Hiltons Lease 1** means the lease to Hiltons of Building 1 at 25 Link Drive;
- (d) **Hiltons Lease 2** means the lease to Hiltons of Building 2 at 25 Link Drive;
- (e) **Hiltons Lease 3** means the lease to Hiltons of Building 3 at 31 Link Drive;
- (f) **Lease Back** means any lease back pursuant to clauses 25.2(c), 25.3(b), 25.4(b) or 26.7(b).
- (g) **Lease Back Form** means a lease form:
 - (i) prepared by the purchaser's solicitors, using the Auckland District Law Society Inc. Deed of Lease Sixth Edition 2012 (5) attached to this agreement, completed and amended as required by the relevant provisions of this agreement;
 - (ii) including the following variables and information in the First Schedule:

Rights of renewal:	Nil
Renewal dates:	Not applicable
Rent payment dates:	The 1 st day of each month
Rent review dates:	<i>[As set out in clauses 25.2(c)(v), 25.2(e)(iv), 25.3(b)(v), 25.3(d)(iv) or 25.4(b)(iv), as applicable]</i>
Default interest rate:	12% per annum

Business use:	Any use suitable for the premises and permitted under the relevant District Plan
Landlord's insurance:	<p>(1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake and volcanic activity, on the following basis:</p> <p>(a) Full replacement and reinstatement (including loss, damage or destruction of windows and other glass);</p> <p>OR, at the Landlord's option</p> <p>(b) Indemnity to full insurable value (including loss, damage or destruction of windows and other glass).</p> <p>(2) Cover for the following additional risks:</p> <p>(a) 24 months indemnity in respect of consequential loss of rent and outgoings;</p> <p>(b) Loss, damage or destruction of any of the Landlord's fixtures, fittings and chattels; and</p> <p>(c) Public liability.</p>
No access period:	9 months

- (h) **PGGW Lease** means the lease to be entered into pursuant to the Development Agreement (it being acknowledged and agreed that while the Development Agreement refers to 31 Link Drive, the new building in question will also be known as 13 Hannover Place);
- (i) **Renewed** includes extended;
- (j) **Retention Fund** has the meaning set out in clause 26.1(a)(iii);
- (k) **Top Up Payments** means any top up payments required pursuant to clauses 25.2(d), 25.3(c) or 25.4(c);
- (l) **Undertaking** has the meaning set out in clause 26.1(a)(iv); and
- (m) Time shall be of the essence in respect of all dates and time periods.

25.2 **Hiltons Lease 1:** The parties acknowledge and agree as follows in relation to Hiltons Lease 1:

- (a) The lease expired on 15 January 2020, and contains no remaining rights of renewal. The Tenant is holding over.
- (b) Notwithstanding that there are no remaining rights of renewal, it is possible that the lease will be renewed (subject, however, to clause 23).
- (c) If, by 20 April 2020, the lease has not been renewed for a term beyond 30 April 2020 then, if required by the purchaser, the vendor (as tenant) will, prior to and as an essential pre-condition of settlement, enter into a lease with the purchaser (as landlord) on the following terms:
 - (i) **Premises:** As described in Hiltons Lease 1
 - (ii) **Term:** 6 years
 - (iii) **Commencement date:** 1 May 2020
 - (iv) **Initial annual rent:** \$385,608.00 plus GST
 - (v) **Rent reviews:** 1 May 2023
 - (vi) **Other terms:** As per the Lease Back Form.
- (d) If, by 20 April 2020, the lease has been renewed for a term beyond 30 April 2020, then the vendor shall pay the purchaser, in accordance with clause 26.6, any and all amounts by which \$385,608.00 exceeds (in relation to any given 12-month period):
 - (i) the GST-exclusive annual rent payable under the renewed lease or any subsequent lease; or
 - (ii) \$0, in relation to any period during which there is no lease in place.Such excess (if any) shall be calculated separately in respect of each year of the 6-year period starting on 1 May 2020 and ending on 30 April 2026. The vendor shall also pay all GST applicable (if any) on these payments.
- (e) If, by 20 April 2020, the lease has been renewed, but for a term expiring prior to 30 April 2026 then, if required by the purchaser, the vendor (as tenant) will, on the later of expiry of the renewed lease or the date on which the tenant ceases to occupy the premises, enter into a lease with the purchaser (as landlord) on the following terms:
 - (i) **Premises:** As described in Hiltons Lease 1
 - (ii) **Term:** A term commencing on the day after the later of expiry of the renewed lease or the date on which the tenant ceases to occupy the premises and ending on 30 April 2026

(iii) **Initial annual rent:**

(a) The GST-exclusive annual rent under the renewed lease immediately prior to the expiry of the renewed lease; or

(b) \$385,608.00;

whichever is higher

(iv) **Rent reviews:**

(A) If the lease starts prior to 1 May 2023:

1 May 2023

(B) If the lease starts on or after 1 May 2023:

Nil

(v) **Other terms:** As per the Lease Back Form.

25.3 **Hiltons Lease 2:** The parties acknowledge and agree as follows in relation to Hiltons Lease 2:

(a) The lease expired on 15 January 2020, and contains no remaining rights of renewal. The Tenant is holding over. Notwithstanding that there are no remaining rights of renewal, it is possible that the lease will be renewed (subject, however, to clause 23).

(b) If, by 20 April 2020, the lease has not been renewed for a term beyond 30 April 2020 then, if required by the purchaser, the vendor (as tenant) will, prior to and as an essential pre-condition of settlement, enter into a lease with the purchaser (as landlord) on the following terms:

(i) **Premises:** As described in Hiltons Lease 2

(ii) **Term:** 6 years

(iii) **Commencement date:** 1 May 2020

(iv) **Initial annual rent:** \$320,760.00 plus GST

(v) **Rent reviews:** CPI rent review on 1 May 2022 and market rent review on 1 May 2023

(vi) **Other terms:** As per the Lease Back Form.

(c) If, by 20 April 2020, the lease has been renewed for a term beyond 30 April 2020, then the vendor shall pay the purchaser, in accordance with clause 26.6, any and all amounts by which \$320,760.00 exceeds (in relation to any given 12-month period):

(i) the GST-exclusive annual rent payable under the renewed lease or any subsequent lease; or

(ii) \$0, in relation to any period during which there is no lease in place.

Such excess (if any) shall be calculated separately in respect of each year of the 6-year period starting on 1 May 2020 and ending on 30 April 2026. The vendor shall also pay all GST applicable (if any) on these payments.

(d) If, by 20 April 2020, the lease has been renewed, but not for a term beyond 30 April 2026 then, if required by the purchaser, the vendor (as tenant) will, on the later of the expiry of the renewed lease and the date on which the tenant ceases to occupy the premises, enter into a lease with the purchaser (as landlord) on the following terms:

(i) **Premises:** As described in Hiltons Lease 2

(ii) **Term:** A term commencing on the day after the later of the expiry of the renewed lease and the date on which the tenant ceases to occupy the premises and ending on 30 April 2026

(iii) **Initial annual rent:**

(a) The GST-exclusive annual rent under the renewed lease immediately prior to the expiry of the renewed lease; or

(b) \$320,760.00;

whichever is higher

(iv) **Rent reviews:**

(A) If the lease starts prior to 1 May 2022:

(i) CPI rent review on 1 May 2022

(ii) Market rent review on 1 May 2023

(B) If the lease starts on or after 1 May 2022 but before 1 May 2023:

Market rent review on 1 May 2023

(C) If the lease starts on or after 1 May 2023:

Nil

(v) **Other terms:** As per the Lease Back Form.

25.4 **Hiltons Lease 3:** The parties acknowledge and agree as follows in relation to Hiltons Lease 3:

(a) The lease is scheduled to expire on 18 May 2021, and contains 3 rights of renewal, each for a term of 5 years.

(b) If, by 18 May 2021, that right of renewal has not been exercised then, if required by the purchaser, the vendor (as tenant) will enter into a lease with the purchaser (as landlord) on the following terms:

- (i) **Premises:** As described in Hiltons Lease 3
 - (ii) **Term and commencement date:** A term starting on 19 May 2021 and ending on 30 April 2026
 - (iii) **Initial annual rent:**
 - (a) The GST-exclusive annual rent under the lease immediately prior to 19 May 2021; or
 - (b) \$311,750.00;

whichever is higher
 - (iv) **Rent reviews:** CPI rent review on each anniversary of the commencement date
 - (v) **Other terms:** As per the Lease Back Form.
- (c) The vendor shall pay the purchaser, in accordance with clause 26.6, any and all amounts by which \$311,750.00 exceeds (in relation to any given 12-month period):
- (i) the GST-exclusive annual rent payable under the lease, any renewal of the lease, or any subsequent lease; or
 - (ii) \$0, in relation to any period during which there is no lease in place.

Such excess (if any) shall be calculated separately in respect of each year of the 6-year period starting on 1 May 2020 and ending on 30 April 2026. The vendor shall also pay all GST applicable (if any) on these payments.

25.5 For the purposes of calculating any Top Up Payments, no account shall be taken of any cancellation or any other termination of any lease.

25.6 Where any Top Up Payments are required, the vendor shall also pay the purchaser all applicable GST.

25.7 **PGGW Lease:** The parties acknowledge and agree as follows in relation to the PGGW Lease:

- (a) Notwithstanding that the Tenancy Schedule records a lease commencement date of 1 July 2019, the lease commencement date has not been fixed, but is a variable date (as set out in the definition of 'Commencement Date' in clause 1.1 of the Development Agreement) that depends, in part, on the timing of the issue of a code compliance certificate for the building works to be carried out by the vendor pursuant to the Development Agreement ("**the PGGW CCC**").
- (b) Clause 2.1.6 of the Development Agreement provides for a rent holiday for a period of 2 months from the lease commencement date ("**the Rent Holiday**").

- (c) Subject to the Rent Holiday, the annual rent payable from the lease commencement date is \$353,190.00 plus GST, as recorded in clause 2.1.4 of the Development Agreement.
- (d) (deleted – see clause 33)
- (e) If the lease commencement date is a date that is earlier than the settlement date, or is the settlement date itself, then on the settlement date the vendor, as an essential condition of settlement, shall pay the purchaser an amount that is equivalent to the rent that would have been payable, but for the Rent Holiday, for the period starting on the day after the settlement date and ending on the last day of the Rent Holiday period (both days included).
- (f) If the lease commencement date is a date that is after the settlement date, then on the settlement date the vendor, as an essential condition of settlement, shall pay the purchaser \$58,865.00, being 2 months' rent at the initial rate payable under the lease (ignoring the Rent Holiday). See also clause 25.7(h).
- (g) The intention of clauses 25.7(e) and (f) is that the vendor shall account to the purchaser, on settlement, for the rent that is not payable to the purchaser, by the tenant under the lease, because of the Rent Holiday.
- (h) If the PGGW CCC has not been issued by the settlement date, then once the lease commencement date has been established the vendor shall, in addition to the obligations set out in clauses 25.7(f) and 33.1(b), pay to the purchaser:
 - (i) rent (at the rate of \$353,190.00 plus GST per annum) for the period starting on the day after the settlement date and ending on the day immediately prior to the lease commencement date (both days included); and
 - (ii) outgoings (at the rate of \$20.00 plus GST per annum per square metre of the rentable area of the premises subject to the lease) for the period starting on the day after the settlement date and ending on the day immediately prior to the lease commencement date (both days included).
- (i) The intention of clause 25.7(h) is that the vendor shall account to the purchaser for the rent and estimated outgoings that the purchaser will forego (otherwise than because of the Rent Holiday) if the lease commencement date is a date later than the settlement date.
- (j) The vendor shall pay to the purchaser all GST payable in relation to the amounts payable by the vendor pursuant to this clause 25.7.

26 RETENTION FUND AND UNDERTAKING

26.1 The parties acknowledge and agree that:

- (a) the vendor's obligations to pay:
 - (i) rent and outgoings under any Leases Back or Future Leases Back;
 - (ii) Top Up Payments; and
 - (iii) any amounts payable to the purchaser pursuant to clause 26.10;

are to be partly secured by way of a sum of money ("**the Retention Fund**").

The Retention Fund shall be equivalent to the total of the following amounts:

- (A) The net rent (and the applicable GST) payable under each of the Leases for the 14-month period starting on 1 May 2020, ignoring any rent reviews that may occur during that period. Such sum shall be calculated on the assumption that as at 1 May 2020:
 - (aa) Hiltons Lease 1 has been renewed for a term expiring no earlier than 30 April 2021, at an initial annual rent of no less than \$385,608.00 plus GST; and
 - (bb) Hiltons Lease 2 has been renewed for a term expiring no earlier than 30 April 2021, at an initial annual rent of no less than \$320,760.00 plus GST.
- (B) The outgoings (and the applicable GST) payable under each of the Leases for the 14-month period starting on 1 May 2020. Such sum shall be calculated on the assumption that as at 1 May 2020:
 - (aa) Hiltons Lease 1 has been renewed for a term expiring no earlier than 30 April 2021;
 - (bb) Hiltons Lease 2 has been renewed for a term expiring no earlier than 30 April 2021; and
 - (cc) the outgoings under each of the Leases, for the 14-month period starting on 1 May 2020, are payable at the rate of \$20.00 plus GST per annum per square metre of the rentable area of the relevant premises.

The Retention Fund is to be held in the vendor's solicitors' trust account on interest-bearing deposit, and accompanied by an undertaking to be given by the vendor's solicitors on settlement ("**the Undertaking**").

Notwithstanding any other provision of this agreement, on the date that is 14 months after the settlement date, the Retention Fund is to be reduced to an amount that would have been the amount had the references in this clause 26.1(a) to a 14-month period been references to a 12-month period. The sum representing this reduction in the Retention Fund is to be released to the vendor on the date 14 months after the settlement date.

- (b) Except as set out in this clause 26, the Retention Fund is not to be used for payment of rent and outgoings under any Leases Back or Future Leases Back, or for Top Up Payments.
- (c) 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 clauses 25 and 26 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).

26.2 Ten days 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.

26.3 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 interest) only on the terms set out in this agreement; and
- (d) provide the Undertaking to the purchaser.

This clause 26.3 is an essential pre-condition of settlement.

26.4 On written request of the purchaser but no more than twice in any 12-month period, the vendor will provide a certificate from the vendor's accountant recording that the net asset position of the vendor is not less than the amount of the Retention Fund and the vendor can meet its obligations under this agreement.

26.5 All amounts payable by the vendor to the purchaser pursuant to the Leases Back will be payable as and when required pursuant to the terms of the Leases Back.

- 26.6 Where, in relation to any particular tenancy, any Top Up Payments are required, the vendor shall pay monthly Top Up Payments (including the applicable GST) to the purchaser on the first day of each month, commencing on the first day of the month following settlement (together with payment for any broken period of less than one month, if applicable) until the end of the relevant Top Up Payment period. On each anniversary of settlement, the parties shall calculate:
- (a) the Top Up Payments (if any) made by the vendor in relation to the 12-month period then ended; and
 - (b) the Top Up Payments (if any) actually required in relation to the 12-month period then ended, having regard to clauses 25.2(d), 25.3(c) and 25.4(c).

If there is any difference between the amounts set out in clauses 26.6(a) and (b), then the parties shall, within 10 working days, make between them whatever financial adjustment as is necessary so that the correct amount of Top Up Payments has been made in relation to the relevant 12-month period.

- 26.7
- (a) During the term of any Lease Back the vendor has the ability to present a suitable tenant to the purchaser. If the purchaser deems the proposed tenant and the relevant lease terms to be suitable, in its sole discretion acting reasonably, the purchaser shall enter into a lease with the proposed tenant and release the vendor from its obligations under the relevant Lease Back, provided that such release shall not apply to any default by the vendor prior to the start of the new lease.
 - (b) If the term of the lease to the proposed tenant is less than the balance of the Lease Back term then the vendor will lease the premises for the remainder of the Lease Back term. By way of example, for a Lease Back term of 6 years, if at the end of year 2 of the Lease Back, the purchaser enters into a lease with a proposed tenant for a term of 2 years, the vendor will enter into a lease with the purchaser for the last 2 years of the Lease Back term.
 - (c) For the avoidance of doubt any obligation to make Top Up Payments under this agreement will continue to be payable by the vendor on the terms of this agreement.
 - (d) The parties acknowledge and agree that the tenant under any Lease Back or Future Lease Back may assign or sublease, subject to complying with the provisions of clause 33 of the Lease Back Form.

26.8 From the point in time at which the maximum liability of the vendor to pay:

- (a) rent and outgoings under any Leases Back or Future Leases Back; and
- (b) Top Up Payments;

can be quantified at a sum that is less than the Retention Fund, then the vendor shall apply the Retention Fund towards payment of:

- (c) rent and outgoings under any Leases Back or Future Leases Back; and
- (d) Top Up Payments;

as and when the relevant amounts become due, provided that if after that point in time it is established that any particular component of the Retention Fund will no longer be required (because, for example, one of the Leases Back is surrendered) then the relevant amount (and the interest accrued on that amount) shall be released from the Retention Fund and paid out to the vendor.

26.9 Once the final amount payable to the purchaser from the Retention Fund is due in relation to any one or more of:

- (a) the Leases Back;
- (b) the tenancies subject to the Top Up Payments;

the interest accrued on that part of the Retention Fund attributable to the relevant Lease Back, or tenancy subject to the Top Up Payments (as the case may be), shall be payable to the purchaser. The parties acknowledge and agree that the intention of clause 26.8 and this clause 26.9 is that interest on the Retention Fund shall follow the application of the Retention Fund.

26.10 (a) If, during the 14-month period immediately following settlement, there is default, by any tenant under any of the Leases, Lease Backs or Future Lease Backs, in payment of rent and/or outgoings due under any of the Leases, Lease Backs or Future Lease Backs, then the vendor shall, within 5 working days after written demand is made by the purchaser, pay the unpaid amounts (and any applicable GST) to the purchaser.

(b) If, following the expiry of the 14-month period immediately following settlement, there is default, by the vendor, in payment of:

- (i) rent and/or outgoings under any of the Lease Backs or Future Lease Backs; or
- (ii) Top Up Payments;

then the vendor shall, within 10 working days after written demand is made by the purchaser, pay the unpaid amounts (and any applicable GST) to the purchaser.

(c) For the purposes of this clause 26.10(c), the term "**Rent**" means rent and outgoings. The vendor shall, in its absolute discretion, be entitled prior to the settlement date, to agree a rent abatement with any of the Tenants due to the inability of the Tenants to access their premises during the coronavirus epidemic national lockdown and/or State of Emergency (Rent Abatement). The term "Rent Abatement" also applies where there is any contractual entitlement of a Tenant, under its Lease, to an abatement of rent. If there is any Rent Abatement which will be in effect after the settlement date, the vendor shall pay to the purchaser the difference between the full rent that would have been payable by the relevant Tenant pursuant to its Lease (but for the Rent Abatement) and the rent payable as at that time due to the Rent Abatement for the period between the settlement date and the date on which the Rent Abatement ceases (Rent Difference). For the avoidance of doubt the vendor's obligation to pay the Rent Difference only applies to any Rent Abatement period that commenced before settlement and does not apply to any further

rent abatement agreed to by the purchaser. The parties acknowledge and agree that Rent Abatement does not constitute "default" as referred to in clause 26.10(a).

27 VENDOR'S SETTLEMENT OBLIGATIONS

27.1 Delivery of documentation

On the date of settlement, the vendor shall hand to the purchaser, or to the purchaser's building manager or such other representative of the purchaser, as the purchaser directs:

- (a) original executed copies of the Leases to the extent that they are held by or on behalf of the vendor (or copies if the originals have been lost) including deeds of lease, deeds of variation, deeds of consent, deeds of rent review, deeds of renewal, deeds of assignment and other material documentation relating to the Leases within the possession and/or control of the vendor (including all relevant bank guarantees);
- (b) letters to all tenants under the Leases signed by or on behalf of the vendor, advising that the property has been sold and that they are to pay all rent and outgoings and any other amounts to the purchaser from the date of settlement;
- (c) copies of the compliance schedule and current building warrants of fitness held at the property and all associated reports, service records and manuals relating to:
 - (i) the buildings; and
 - (ii) the vendor's fixtures and fittings;
- (d) copies of guarantees and warranties held by the vendor; and
- (e) duly executed deeds of assignment to be given under clause 24.1, or any other relevant provision of this agreement.

27.2 The vendor shall use all reasonable endeavours to ensure that all documentation referred to in clause 27.1 is fully executed by all relevant parties prior to settlement, and that all outstanding Leases are completed as required and fully executed by all relevant parties prior to settlement.

28 GENERAL

28.1 Public announcements

Prior to the date upon which this agreement becomes unconditional, neither party shall make any public announcements nor communicate the existence of this agreement or of its terms (including the purchase price) to any third party, other than:

- (a) its legal advisers, consultants and financiers who have a "need to know" in relation to this agreement; or

- (b) where necessary, to comply with any applicable law or the requirements of any regulatory body, the rules of any stock exchange or its obligations under this agreement;

without the prior written approval of the other party to this agreement. Such approval shall not be unreasonably or arbitrarily withheld or delayed.

28.2 Purchaser relies on own judgement

The purchaser acknowledges that the purchaser has entered into this agreement in reliance on the purchaser's own judgement and, apart from the vendor's express warranties or representations set out in this agreement, not in reliance on any warranties or representations made by or on behalf of the vendor.

28.3 Entire agreement

This agreement constitutes the entire understanding and agreement of the parties relating to this agreement, and supersedes and extinguishes all prior agreements.

28.4 Amendments

No amendment to this agreement shall be effective unless it is in writing and signed by the vendor and the purchaser.

28.5 Partial invalidity

The illegality, invalidity or unenforceability of a provision of this agreement under any law shall not affect the legality, validity or enforceability of that provision under any other law, or the legality, validity or enforceability of any other provision.

28.6 Further assurances

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

29 SETTLEMENTS INTERDEPENDENT

29.1 Settlement of the sale of each of the properties that constitute 'the property' for the purposes of this agreement shall not take place independently of settlement of the sale of the other of the properties.

29.2 Any cancellation of this agreement shall apply to each of the properties subject to this agreement.

30 ASSIGNMENT

30.1 The vendor acknowledges and agrees that the purchaser may, after settlement, assign its rights under this agreement subject to the purchaser providing the vendor with a signed deed of assignment from the purchaser's assignee in a form acceptable to the vendor acting reasonably.

31 RISK AND INSURANCE

31.1 Clauses 5.2(1) and 5.2(2) of the General Terms of Sale are amended to read as follows:

- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, or if the destruction or damage has, in relation to any one or buildings on the property (each, a "**Building**") either demolished that Building or so damaged that Building that it is uneconomic to repair that Building, 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 immediately return to the Purchaser 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, and if clause 5.2(1) does not otherwise apply in relation to any Building, 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.

32 DEFINITIONS

32.1 Definitions

In this agreement, unless the context requires otherwise:

- (a) **Building** means the buildings and all other improvements situated on the property.
- (b) **Lease** means any current tenancy, lease, agreement to lease, licence to occupy or other right of occupation (including oral arrangements) in relation to the whole or any part of the property. The term Lease also includes any document, letter, deed or agreement recording, varying or relating to such tenancy, lease, licence to occupy or other right of occupation, and the PGGW Lease. See also clause 23.2.
- (c) **Purchaser** includes any post-settlement assignee of the Purchaser's rights under this agreement.
- (d) **Tenancy Schedule** means the Tenancy Schedule that is attached to this agreement.

- (e) The singular includes the plural, and vice versa.

33 CODE COMPLIANCE CERTIFICATES

33.1 The parties acknowledge and agree as follows:

- (a) There are outstanding Code Compliance Certificates (each a “**CCC**”) in relation to the following Building Consents:
 - (i) 181802 (Stage 1 of the warehouse extension at 13 Hannover Place / 31 Link Drive);
 - (ii) 191065 (Stage 2 of the warehouse extension at 13 Hannover Place / 31 Link Drive);
 - (iii) 191760 (Stage 3 of the warehouse extension at 13 Hannover Place / 31 Link Drive); and
 - (iv) 141086 (site works for a new grain store).
- (b) If, in relation to any particular CCC, the CCC has not been issued by the settlement date, then:
 - (i) The vendor shall procure that \$70,000 of the purchase price (a “**CCC Retention**”) will be held in the vendor’s solicitors’ trust account.
 - (ii) The vendor shall use all reasonable endeavours to procure the issue of the CCC as soon as practicably possible after settlement.
 - (iii) As soon as the CCC has been issued, the vendor shall provide it to the purchaser.
 - (iv) Subject to clauses 33.1(c) and 35.1, once the CCC has issued, and been provided to the purchaser, the CCC Retention shall be released to the vendor.
- (c) If, in relation to any particular CCC, the CCC has not been issued by the date that is 6 months after the settlement date, then the vendor shall procure that the relevant CCC Retention shall be paid out to the purchaser. This clause is subject to clause 36.1.

34 SEISMIC WORKS

34.1 The parties acknowledge and agree as follows:

- (a) Connor Consulting Limited has identified the need for certain works to be carried out to the Buildings, in order to improve the seismic ratings of the Buildings.
- (b) A copy of the relevant report from Connor Consulting Limited, dated 17 March 2020 (“**the CCL Report**”), is attached.
- (c) The vendor shall procure that \$80,000 of the purchase price (“**the Vendor’s Works Retention**”) will be held in the vendor’s solicitors’ trust account.

- (d) The vendor shall carry out the works referred to in the CCL Report ("**the Vendor's Works**").
- (e) The vendor shall carry out the Vendor's Works:
 - (i) as soon as reasonably practicable following the date that this agreement becomes unconditional;
 - (ii) using only good quality materials and workmanship; and
 - (iii) in accordance with all applicable lawful or contractual requirements.
- (f) For the purposes of this clause 34.1, "**Completion of the Vendor's Works**" means that the vendor has both:
 - (i) effected completion of the Vendor's Works in compliance with clause 34.1(e); and
 - (ii) procured, and provided to the purchaser, all required Producer Statements (acceptable to the Selwyn District Council) and Code Compliance Certificates in relation to the Vendor's Works.
- (g) Subject to clauses 34.1(h) and 35.1, once Completion of the Vendor's Works has been achieved, the Vendor's Works Retention shall be released to the vendor.
- (h) If Completion of the Vendor's Works has not been achieved by the date that is 6 months after the settlement date, then the vendor shall procure that the Vendor's Works Retention shall be paid out to the purchaser. This clause is subject to clause 36.1.

35 APPLICATION OF RETENTIONS

35.1 If, at the time that any CCC Retention, or the Vendor's Works Retention, is due for release to the vendor (but for this clause 35.1), any moneys are owing by the vendor to the purchaser pursuant to clause 25.7, then the vendor shall procure its solicitors to apply the relevant Retention (or Retentions, as the case may be) first in (or towards, as the case may be) payment of any moneys owing by the vendor to the purchaser pursuant to clause 25.7.

36 COVID-19

36.1 The parties acknowledge and agree that:

- (a) as at 1 April 2020, New Zealand was under Alert Level 4, being the New Zealand Government's response to the COVID-19 outbreak ("**Alert Level 4**"); and
- (b) if Alert Level 4 has not been lifted by 31 May 2020, then the 6-month period referred to in each of clauses 33.1(c) and 34.1(h) shall be extended by the number of days in the period starting on 1 June 2020 and ending on the day on which Alert Level 4 is lifted (both days included).



17 March 2020

PMG Funds Limited
PO Box 99 334,
Newmarket
Auckland 1149

Attn: Daniel Lem

Dear Sir

RE: Rolleston Warehouses ISA Review

The following is our response to Ruamoko Solution's ISA dated 9 March 2020 relating to the warehouse buildings at 25, 27 and 31 Link Drive and 13 and 19 Hannover Place, Rolleston.

27 Link Drive

The bracing between the roof and the wall panel does not have a positive connection to the wall panel. We will have the existing bracing replaced so that it goes down to the top of the concrete wall panel. The lower south end of the bracing will be connected to the existing corner column which is welded to a cast in weld plate within the wall panel. The lower north end of the bracing will be connected to a new cleat that will have bolts epoxy grouted into the top of the wall panel. This remedial work will all be designed to achieve 100%NBS.

31 Link Drive

We have reviewed the design of the hold down bolts of the braced columns in accordance with the latest amendment to NZS3101. We have found they have insufficient capacity with the current arrangement.

The west wall can be strengthened to 100% NBS by installing an additional brace in the bays each side of the existing bracing. These will go from mid-level Grid E to low level Grid D and mid-level Grid G to low level Grid H. This will reduce the shear and tension loads on the hold down bolts so they are within capacity. The footings of all columns on this wall are the same so there are no foundation concerns.

The north and south walls can be strengthened to 100% NBS by installing an additional low level brace in each wall from the lower strut height of the western braced column to the base of the Grid 2 column. The Grid 2 foundations are sufficient to resist the additional uplift loads. Also, epoxy grouted bolts will be installed between the concrete dado wall and the north and south wall braced columns. These bolts will carry an uplift force in shear reducing the tension in the hold down bolts.

31 Link Drive Extension

We agree that there is a buckling issue with this cleat. This was caused by the fabricated strut being shorter than shown on our drawings and the cleat being extended. This can be corrected by installing stiffeners to all affected cleats.

We have reviewed the design of the hold down bolts of the braced columns in accordance with the latest amendment to NZS3101. We have found they have insufficient capacity with the current arrangement. We have designed strengthening which will reduce the loads on the bolts. This comprises installing additional wall bracing between Grids E and F and installing epoxy grouted bolts between the concrete dado wall and the Grid D and G columns. These additional bolts will carry the uplift force in shear resulting in no tension in the hold down bolts.

13 / 19 Hannover Drive

We have reviewed the design of the hold down bolts of the braced columns in accordance with the latest amendment to NZS3101. We have found they have insufficient capacity with the current arrangement. This building can be strengthened to 100% NBS by installing an additional brace in the bays each side of the existing bracing on the north and south walls. These will go from high level Grid 4 to low level Grid 3 and high level Grid 8 to low level Grid 9. This will reduce the shear and tension loads on the hold down bolts so they are within capacity. We confirm there is sufficient concrete weight available to resist uplift with the dado wall and the 350mm thick slab. The larger concrete pads at Grids 4 and 8 are not required.

The above proposed strengthening is preliminary and we are still to finalise our design. Once we have done this will arrange with the owner for the above strengthening works to be undertaken to bring the buildings up to 100%NBS. It is very unlikely that this work will be complete by your 20 March deadline. We suggest you make completion of this work a condition of the sale.

We trust this is clear. Please call / email if you have any comments or queries.

Yours faithfully



Peter Hampton

Connor Consulting Ltd

SCHEDULE 3 – ADDITIONAL VENDOR WARRANTIES

Subject to the exceptions and limitations contained in clause 22.3, the vendor warrants to the purchaser (to the best of the vendor's knowledge and belief) as follows:

1 Leases

- 1.1 As at the date of this agreement, there are no arrears in the payment of rent or other monies under the Leases that have not been disclosed to the purchaser in writing.
- 1.2 The vendor has complied with its obligations in relation to any pre-emptive rights granted to the tenants under the Leases, whether those rights relate to purchasing, leasing or any other type of transaction.

2 Litigation

- 2.1 Each of the following statements are accurate at the date of this agreement:
 - (a) There is no current litigation by any person claiming an estate or interest in the property or that affects the property or the capacity of the vendor to complete this agreement;
 - (b) There is no unsatisfied judgment, order or writ of execution that affects the property or the vendor's ability to convey the title to the property;
 - (c) There is no order of a court or other competent authority affecting the ability of the vendor to complete this agreement;
 - (d) No notice has been issued by a competent authority or proceedings instituted in a court pursuant to any statute whereby the interest of the vendor in the property may be rendered liable to forfeiture to the Crown.

3. No Liquidation

- 3.1 The vendor warrants that it will not be liquidated until the earlier of 31 July 2026 or the release of its obligations under the Leases Back and Retention Fund provisions under this agreement.

TENANCY SCHEDULE

GIBRALTAR SHELF NO 56 LIMITED

IZONE ROLLESTON PROPERTIES

Building Address	Area m2	Tenant	Term	Existing		Review	Lease Type	Current Rent	Guarantee Rent	Market Rent
				Commencement Date	Further Terms					
25 Link Drive - Building 1	3826	Hiltons	3years	16-Jan-17			Net	\$342,000	385,608	385,608
25 Link Drive - Building 2 (Grainstore)	2744	Hiltons	3 years	16-Jan-17	1x2 Years	2 yearly	Net	\$281,020	320,760	320,760
31 Link Drive - Building 3	3058	Hiltons	5 years	1-Jun-16 19-May-16	3x5 years	5 yearly	Net	\$279,521	279,521	311,750
19 Hanover Place - Building 4	5500	Coda	5 years	1-Aug-18	1x5 years	2 yearly	Net	\$598,370	598,370	598,370
13 Hanover Place - Building 5	2700	PGGW	7 years	1-Jul-15	3x5 years	2 yearly	Net	\$353,190	353,190	353,190
Totals	17828							\$1,854,101	\$1,937,449	\$1,969,678

An initial term expiring on 18 May 2026

ANNEXURE SCHEDULE TO FRONT PAGE

Particulars of Property

25 Link Drive, Rolleston, Christchurch

Legal Description	Area (more or less)	Record of Title
Lot 631 on Deposited Plan 459900	9,413m ²	601865 (Canterbury Registry)
Lot 655 on Deposited Plan 459900	9,652m ²	601866 (Canterbury Registry)

13 Hannover Place, Rolleston, Christchurch

Legal Description	Area (more or less)	Record of Title
Lot 643 on Deposited Plan 468876	1.1213ha	630163 (Canterbury Registry)

19 Hannover Place, Rolleston, Christchurch

Legal Description	Area (more or less)	Record of Title
Lot 644 on Deposited Plan 468876	8,581m ²	630164 (Canterbury Registry)

Handwritten signatures and initials in the bottom right corner of the page.

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (15) "Property" means the property described in this agreement.
- (16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (20) "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.
- (21) "Settlement date" means the date specified as such in this agreement.
- (22) "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.
- (23) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (24) "Unit title" means a unit title under the Unit Titles Act 2010.
- (25) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (26) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (27) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
- (28) The term "title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (29) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (30) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (31) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (32) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (33) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of subclause 10.2(2) the 15th day of January) in the following year, both days inclusive; and
 - (d) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (34) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
 - (b) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.2 Time for Performance

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

1.3 Notices

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

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by facsimile; or
 - (iv) by email; or
 - (v) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
 - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

- (e) In the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
- (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 222 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

1.4 Interpretation

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the Inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:
 - (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and
 - (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
 - (3) where the property is a unit title:
 - (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and
 - (b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2)),
 have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
 - (4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.8(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.

3.0 Possession and Settlement

Possession

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

Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
 - 3.6 The purchaser's lawyer shall:
 - (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
 - (b) certify and sign the transfer instrument.
 - 3.7 The vendor's lawyer shall:
 - (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
 - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
 - 3.8 On the settlement date:
 - (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.14);
 - (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
 - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.
 - 3.9 All obligations under subclause 3.8 are interdependent.
 - 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.
- Last Minute Settlement
- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
 - (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
 - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
 - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).
- 3.13 Where subclause 3.12(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:
- (1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
 - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
 - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (6) the amount determined to be payable shall not be limited by the interim amount; and
 - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.14 (1) For the purposes of this subclause 3.14:
- (a) the default period means:
 - (i) in subclause 3.14(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in subclause 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.14(5), the period from the settlement date until the date when settlement occurs; and
 - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
 - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
 - (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period. A purchaser in possession under this subclause 3.14(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.14(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 3.14(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period.
- (6) The provisions of this subclause 3.14 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) Where the parties are unable to agree upon any amount payable under this subclause 3.14:
- (a) an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined;
 - (b) the interim amount shall be the lower of:
 - (i) the amount claimed; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date.
 - (c) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (d) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (e) the amount determined to be payable shall not be limited by the interim amount; and
 - (f) if the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Deferment of Settlement and Possession

- 3.15 If
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.16 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.17 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 9.2(3),
- (4) then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (b) where there is a deferment of the settlement date pursuant to subclause 3.16, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision

3.18 (1) Where

- (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;
 - (c) then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
 - (i) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (ii) the requisitions procedure under clause 6.0 is complete.
- (2) Subclause 3.18(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

4.0 Residential Land Withholding Tax

- 4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:
- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
 - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
 - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
 - (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
 - (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
 - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
 - (b) any costs payable by the vendor under subclause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 4.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
 - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 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 untenantable and it is untenantable 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 untenantable 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 untenantable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
 - (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 8.4 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

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

- (2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.
- 6.4 Except as provided by sections 36 to 42 of the Contract and Commercial Law Act 2017, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 6.1 but not otherwise, shall be made or given as the case may require.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

7.0 Vendor's warranties and undertakings

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

8.0 Claims for compensation

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

9.0 Unit title and cross lease provisions

Unit Titles

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

Unauthorised Structures – Cross Leases and Unit Titles

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

10.0 Conditions and mortgage terms

Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
 - (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
 - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - (c) this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.
- If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement, that date shall be the settlement date or a date 95 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.
- 10.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

Operation of Conditions

10.8 If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:

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

Mortgage Terms

10.9 Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.

10.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

11.0 Notice to complete and remedies on default

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

12.0 Non-merger

12.1 The obligations and warranties of the parties in this agreement shall not merge with:

- (1) the giving and taking of possession;
- (2) settlement;
- (3) the transfer of title to the property;
- (4) delivery of the chattels (if any); or
- (5) registration of the transfer of title to the property.

13.0 Agent

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

14.0 Goods and Services Tax

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
 (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
 (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
 (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 (b) any default GST;
 (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

- 14.4 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice under subclause 11.1 with a notice under this subclause.

15.0 Zero-rating

- 15.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement is correct at the date of this agreement.
- 15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 15.3 Where the particulars stated on the front page and in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 15.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 1 or they have altered.
- 15.5 If any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 1 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 15.6 If
- (1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and
 - (2) that part is still being so used at the time of the supply under this agreement,
- the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 15.7 If
- (1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
 - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in subclauses 15.3 and 15.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.

16.0 Supply of a Going Concern

- 16.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated herein:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 16.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 14.0 of this agreement shall apply.

17.0 Limitation of Liability

- 17.1 If any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that:
 - (a) the person has power to enter into this agreement under the terms of the trust;
 - (b) the person has properly signed this agreement in accordance with the terms of the trust;
 - (c) the person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this agreement;
 - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

18.0 Counterparts

- 18.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

FURTHER TERMS OF SALE

See insert pages



JOB

FURTHER TERMS OF SALE

19 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 fulfilment of the condition in this clause 19.1 is the date that is 20 working days after the date of this agreement.

- 19.2 Without limiting its other obligations and warranties under this agreement, the vendor shall promptly 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 of that information.

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 fulfilment of the condition in this clause 19.3 is the date that is 2 working days after the date of satisfaction or waiver of the condition in clause 19.1.

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 DEPOSIT

20.1 Payment of deposit

On the date at which both of the conditions in clauses 19.1 and 19.3 have been satisfied and/or waived, such that this agreement is unconditional, the purchaser shall pay the deposit.

- 20.2 The purchaser shall pay the deposit (once payable) to the vendor's solicitors' trust account. The deposit will be immediately released to the vendor.

21 PROVISION OF INFORMATION

21.1 Vendor to provide information

The vendor shall promptly provide all information that is in its possession or control and is reasonably requested by the purchaser at any time from the date of this agreement until settlement, including:

- (a) regular updates as to arrears (and any other tenant defaults);
- (b) monthly management reports;
- (c) information regarding changes to building services; and
- (d) information (in relation to the period ending on the settlement date) that will be required to enable the purchaser to produce building warrants of fitness in respect of the buildings when such warrants are next due.

22 WARRANTIES

22.1 Additional warranties

In addition to the warranties contained in the General Terms of Sale and these Further Terms of Sale, the vendor warrants to the purchaser as provided for in Schedule 3.

22.2 Purchaser acknowledgements

Notwithstanding clause 22.1, the purchaser acknowledges that:

- (a) it will be carrying out its own investigations of the property and, in entering into this agreement, it has not relied on any information provided by the vendor as comprising all of the information that may be relevant to the property;
- (b) it will rely upon its own judgement as to its interpretation and evaluation of any information provided by the vendor in relation to the property; and
- (c) the vendor built the buildings on the property and therefore only third party and manufacturers' warranties that are capable of being assigned or passed over shall be assigned or passed over (as the case may be) to the purchaser on settlement.

For clarity, except as set out in clause 22.2(c), there are no warranties as to materials or workmanship being provided by the vendor however the vendor will comply with its obligations under clause 6.10 (3 month Defects In Construction) of the Development Agreement it has with PGG Wrightson Limited dated 25 November 2019 (**Development Agreement**) and will be responsible for the cost of any remedial work required under the Development Agreement.

22.3 Exceptions

The warranties in this agreement are given on the basis that they:

- (a) are true and correct only to the best of the vendor's knowledge and belief; and

- (b) will take effect subject to:
 - (i) anything noted or recorded in any publicly available registers (including any such records held by the relevant district land registry and the territorial and regional authorities);
 - (ii) anything noted or recorded in a LIM for the property;
 - (iii) anything that would be apparent on a physical inspection of the property;
 - (iv) any act, matter, or thing disclosed to the purchaser; and
 - (v) the acknowledgements in clause 22.2.

23 LEASES AND MANAGEMENT OF THE PROPERTY

23.1 Leases

The vendor does not warrant the accuracy of the Tenancy Schedule. It is solely for the purchaser to satisfy itself as to the terms and details of the Leases through its due diligence investigations.

23.2 Property sold subject

The property is sold subject to, but with the benefit of, the leases noted in the Tenancy Schedule (“**the Leases**”).

23.3 Vendor’s obligations

- (a) From the date of this agreement and up to and including the date of settlement, the vendor shall:
 - (i) comply with its obligations under the Leases in respect of the period up to and including the date of settlement;
 - (ii) initiate and carry out any rent reviews or adjustments under the Leases, in full consultation with the purchaser;
 - (iii) manage the property in a reasonable manner;
 - (iv) provide to the purchaser all new material information relating to the administration and management of the Leases and the property (including any tenancy dispute or rent review); and
 - (v) keep the purchaser fully informed regarding any legal proceeding, arbitration or other means of dispute resolution threatened or commenced by the vendor, or by any person against the vendor, in any matter relating to any Lease or the property, and deal with all such matters having regard to the best interests of the purchaser.
- (b) From the date of this agreement, the vendor shall not (except to the extent that the vendor is obliged to under any Lease or at law) without the prior written consent of the purchaser:

- (i) approve any assignment, subletting, renewal, surrender or variation of any Lease;
 - (ii) approve any tenant works;
 - (iii) approve the annual or monthly rent payable on a review of the rent under any Lease or take any material steps in connection with any such rent review;
 - (iv) save for the leases referred to in clause 25, grant any new Lease of any part of the property;
 - (v) cancel any Lease or take any steps to cancel any Lease;
 - (vi) commence or take any material steps in connection with any legal proceedings, arbitration or dispute resolution in connection with the property;
 - (vii) give any consent or waiver in relation to any application under the Resource Management Act 1991 that directly or indirectly affects the property;
 - (viii) grant or create any easements, covenants, encumbrances or other rights in respect of the property; or
 - (ix) enter into any agreement in relation to the property or the Leases that will subsist beyond the date of settlement.
- (c) In respect of each request for the written consent of the purchaser under clause 23.3(b), the purchaser shall:
- (i) not unreasonably or arbitrarily withhold or delay its consent; and
 - (ii) use all reasonable endeavours to respond to the vendor within sufficient time to enable the vendor to meet any obligations under any Lease or other relevant agreement.

24 GUARANTEES AND WARRANTIES

24.1 Assignment of guarantees/warranties

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 that are capable of being assigned to the purchaser. Such assignment shall be subject to the consent (where required) of the relevant guarantors/warrantors (which consent 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.

24.2 Vendor to hold on trust

Where any guarantees and warranties are not able to be assigned but are able to be enforced by the vendor after settlement, the vendor shall hold those guarantees and warranties on trust for the purchaser. The vendor shall from time to time, when requested by the purchaser, take all 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 costs and expenses that the vendor incurs in so doing.

25 LEASES BACKS AND TOP UPS

25.1 For the purposes of this clause 25, and clause 26, unless the context requires otherwise:

- (a) **Development Agreement** means the development agreement as defined in clause 22.2;
- (b) **Future Lease Back** means any lease back pursuant to clauses 25.2(e) or 25.3(d);
- (c) **Hiltons Lease 1** means the lease to Hiltons of Building 1 at 25 Link Drive;
- (d) **Hiltons Lease 2** means the lease to Hiltons of Building 2 at 25 Link Drive;
- (e) **Hiltons Lease 3** means the lease to Hiltons of Building 3 at 31 Link Drive;
- (f) **Lease Back** means any lease back pursuant to clauses 25.2(c), 25.3(b), 25.4(b) or 26.7(b).
- (g) **Lease Back Form** means a lease form:
 - (i) prepared by the purchaser's solicitors, using the Auckland District Law Society Inc. Deed of Lease Sixth Edition 2012 (5) attached to this agreement, completed and amended as required by the relevant provisions of this agreement;
 - (ii) including the following variables and information in the First Schedule:

Rights of renewal:	Nil
Renewal dates:	Not applicable
Rent payment dates:	The 1 st day of each month
Rent review dates:	<i>[As set out in clauses 25.2(c)(v), 25.2(e)(iv), 25.3(b)(v), 25.3(d)(iv) or 25.4(b)(iv), as applicable]</i>

Default interest rate:	12% per annum
Business use:	Any use suitable for the premises and permitted under the relevant District Plan
Landlord's insurance:	<p>(1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake and volcanic activity, on the following basis:</p> <p>(a) Full replacement and reinstatement (including loss, damage or destruction of windows and other glass);</p> <p>OR, at the Landlord's option</p> <p>(b) Indemnity to full insurable value (including loss, damage or destruction of windows and other glass).</p> <p>(2) Cover for the following additional risks:</p> <p>(a) 24 months indemnity in respect of consequential loss of rent and outgoings;</p> <p>(b) Loss, damage or destruction of any of the Landlord's fixtures, fittings and chattels; and</p> <p>(c) Public liability.</p>
No access period:	9 months

- (h) **PGGW Lease** means the lease to be entered into pursuant to the Development Agreement;
- (i) **Renewed** includes extended;
- (j) **Retention Fund** has the meaning set out in clause 26.1(a)(iii);
- (k) **Top Up Payments** means any top up payments required pursuant to clauses 25.2(d), 25.3(c) or 25.4(c);
- (l) **Undertaking** has the meaning set out in clause 26.1(a)(iv); and
- (m) Time shall be of the essence in respect of all dates and time periods.

25.2 **Hiltons Lease 1:** The parties acknowledge and agree as follows in relation to Hiltons Lease 1:

- (a) The lease is scheduled to expire on 15 January 2020, and contains no rights of renewal.
- (b) Notwithstanding that there are no rights of renewal, it is possible that the lease will be renewed (subject, however, to clause 23).
- (c) If, by 20 March 2020, the lease has not been renewed for a term beyond 31 March 2020 then, if required by the purchaser, the vendor (as tenant) will, prior to and as an essential pre-condition of settlement, enter into a lease with the purchaser (as landlord) on the following terms:
 - (i) **Premises:** As described in Hiltons Lease 1
 - (ii) **Term:** 6 years
 - (iii) **Commencement date:** 1 April 2020
 - (iv) **Initial annual rent:** \$385,608.00 plus GST
 - (v) **Rent reviews:** 1 April 2023
 - (vi) **Other terms:** As per the Lease Back Form.
- (d) If, by 20 March 2020, the lease has been renewed for a term beyond 31 March 2020, then the vendor shall pay the purchaser, in accordance with clause 26.6, any and all amounts by which \$385,608.00 exceeds (in relation to any given 12-month period):
 - (i) the GST-exclusive annual rent payable under the renewed lease or any subsequent lease; or
 - (ii) \$0, in relation to any period during which there is no lease in place.

Such excess (if any) shall be calculated separately in respect of each year of the 6-year period starting on 1 April 2020 and ending on 31 March 2026. The vendor shall also pay all GST applicable (if any) on these payments.
- (e) If, by 20 March 2020, the lease has been renewed, but for a term expiring prior to 31 March 2026 then, if required by the purchaser, the vendor (as tenant) will, on the later of expiry of the renewed lease or the date on which the tenant ceases to occupy the premises, enter into a lease with the purchaser (as landlord) on the following terms:
 - (i) **Premises:** As described in Hiltons Lease 1
 - (ii) **Term:** A term commencing on the day after the later of expiry of the renewed lease or the date on which the tenant ceases to occupy the premises and ending on 31 March 2026



(III) **Initial annual rent:**

(a) The GST-exclusive annual rent under the renewed lease immediately prior to the expiry of the renewed lease; or

(b) \$385,608.00;

whichever is higher

(IV) **Rent reviews:**

(A) If the lease starts prior to 1 April 2023:

1 April 2023

(B) If the lease starts on or after 1 April 2023:

Nil

(V) **Other terms:** As per the Lease Back Form.

25.3 **Hiltons Lease 2:** The parties acknowledge and agree as follows in relation to Hiltons Lease 2:

- Handwritten notes:*
 - "no" above "one rights"
 - "the lease has not been renewed for a term beyond 31 March 2020" with arrows pointing to "then, if" and "right of renewal has not been exercised"
 - "the lease has not been renewed for a term beyond 31 March 2020" with arrows pointing to "then the" and "right of renewal has been exercised"
 - "subject, however, to clause 23)"
 - "lease has been renewed for a term beyond 31 March 2020"
 - "notwithstanding that there are no rights of renewal, it is possible that the lease will be renewed"
 - "one rights"
 - "the lease has not been renewed for a term beyond 31 March 2020"
 - "notwithstanding that there are no rights of renewal, it is possible that the lease will be renewed"
 - "subject, however, to clause 23)"
 - "then, if"
 - "right of renewal has not been exercised"
 - "then the"
 - "right of renewal has been exercised"
 - "lease has been renewed for a term beyond 31 March 2020"
 - "notwithstanding that there are no rights of renewal, it is possible that the lease will be renewed"
 - "subject, however, to clause 23)"
 - "then, if"
 - "right of renewal has not been exercised"
 - "then the"
 - "right of renewal has been exercised"
 - "lease has been renewed for a term beyond 31 March 2020"
- (a) The lease is scheduled to expire on 15 January 2020, and contains ~~one~~ ^{no} rights of renewal, ~~for a term of 3 years.~~ ^{notwithstanding that there are no rights of renewal, it is possible that the lease will be renewed (subject, however, to clause 23)).}
- (b) If, by 20 March 2020, ~~that right of renewal has not been exercised~~, then, if ^{the lease has not been renewed for a term beyond 31 March 2020} required by the purchaser, the vendor (as tenant) will, prior to and as an essential pre-condition of settlement, enter into a lease with the purchaser (as landlord) on the following terms:
- (I) **Premises:** As described in Hiltons Lease 2
 - (II) **Term:** 6 years
 - (III) **Commencement date:** 1 April 2020
 - (IV) **Initial annual rent:** \$320,760.00 plus GST
 - (V) **Rent reviews:** CPI rent review on 1 April 2022 and market rent review on 1 April 2023
 - (VI) **Other terms:** As per the Lease Back Form.
- (c) If, by 20 March 2020, ~~the right of renewal has been exercised~~, ^{lease has been renewed for a term beyond 31 March 2020} then the vendor shall pay the purchaser, in accordance with clause 26.6, any and all amounts by which \$320,760.00 exceeds (in relation to any given 12-month period):
- (I) the GST-exclusive annual rent payable under the renewed lease or any subsequent lease; or
 - (II) \$0, in relation to any period during which there is no lease in place.

Handwritten signature: [Signature]

Such excess (if any) shall be calculated separately in respect of each year of the 6-year period starting on 1 April 2020 and ending on 31 March 2026. The vendor shall also pay all GST applicable (if any) on these payments.

(d) If, by 20 March 2020, the lease has been renewed, but not for a term beyond 31 March 2026 then, if required by the purchaser, the vendor (as tenant) will, on the later of the expiry of the renewed lease and the date on which the tenant ceases to occupy the premises, enter into a lease with the purchaser (as landlord) on the following terms:

(i) **Premises:** As described in Hiltons Lease 2

(ii) **Term:** A term commencing on the day after the later of the expiry of the renewed lease and the date on which the tenant ceases to occupy the premises and ending on 31 March 2026

(iii) **Initial annual rent:**

(a) The GST-exclusive annual rent under the renewed lease immediately prior to the expiry of the renewed lease; or

(b) \$320,760.00;

whichever is higher

(iv) **Rent reviews:**

(A) If the lease starts prior to 1 April 2022:

(i) CPI rent review on 1 April 2022

(ii) Market rent review on 1 April 2023

(B) If the lease starts on or after 1 April 2022 but before 1 April 2023:

Market rent review on 1 April 2023

(C) If the lease starts on or after 1 April 2023:

Nil

(v) **Other terms:** As per the Lease Back Form.

25.4 **Hiltons Lease 3:** The parties acknowledge and agree as follows in relation to Hiltons Lease 3:

(a) The lease is scheduled to expire on 31 May 2021, and contains one right of renewal, for a term of 5 years.

(b) If, by 31 May 2021, that right of renewal has not been exercised then, if required by the purchaser, the vendor (as tenant) will enter into a lease with the purchaser (as landlord) on the following terms:

- (i) **Premises:** As described in Hiltons Lease 3
 - (ii) **Term and commencement date:** A term starting on 1 June 2021 and ending on 31 March 2026
 - (iii) **Initial annual rent:**
 - (a) The GST-exclusive annual rent under the lease immediately prior to 1 June 2021; or
 - (b) \$311,750.00;

whichever is higher
 - (iv) **Rent reviews:** CPI rent review on each anniversary of the commencement date
 - (v) **Other terms:** As per the Lease Back Form.
- (c) The vendor shall pay the purchaser, in accordance with clause 26.6, any and all amounts by which \$311,750.00 exceeds (in relation to any given 12-month period):
- (i) the GST-exclusive annual rent payable under the lease, any renewal of the lease, or any subsequent lease; or
 - (ii) \$0, in relation to any period during which there is no lease in place.

Such excess (if any) shall be calculated separately in respect of each year of the 6-year period starting on 1 April 2020 and ending on 31 March 2026. The vendor shall also pay all GST applicable (if any) on these payments.

- 25.5 For the purposes of calculating any Top Up Payments, no account shall be taken of any cancellation or any other termination of any lease.
- 25.6 Where any Top Up Payments are required, the vendor shall also pay the purchaser all applicable GST.
- 25.7 **PGGW Lease:** The parties acknowledge and agree as follows in relation to the PGGW Lease:
- (a) Notwithstanding that the Tenancy Schedule records a lease commencement date of 1 July 2019, the lease commencement date has not been fixed, but is a variable date (as set out in the definition of 'Commencement Date' in clause 1.1 of the Development Agreement) that depends, in part, on the timing of the earlier of the issue of a certificate of public use or a code compliance certificate ("**the Certificate**") for the building works to be carried out by the vendor pursuant to the Development Agreement
 - (b) Clause 2.1.6 of the Development Agreement provides for a rent holiday for a period of 2 months from the lease commencement date ("**the Rent Holiday**").

- (c) Subject to the Rent Holiday, the annual rent payable from the lease commencement date is \$353,190.00 plus GST, as recorded in clause 2.1.4 of the Development Agreement.
- (d) If the Code Compliance Certificate ("**the CCC**") has not been issued by the settlement date, then:
- (i) The vendor shall procure that \$70,000.00 of the purchase price ('the Retention') will be held in the vendor's solicitors' trust account.
 - (ii) The vendor shall use all reasonable endeavours to procure the issue of the CCC as soon as practically possible after settlement.
 - (iii) As soon as the CCC has been issued, the vendor shall provide it to the purchaser.
 - (iv) Subject to clause 25.7(k), once the CCC has issued, and been provided to the purchaser, the Retention shall be released to the vendor.

See also clause 25.7(h).

- (e) If the lease commencement date is a date that is earlier than the settlement date, or is the settlement date itself, then on the settlement date the vendor, as an essential condition of settlement, shall pay the purchaser an amount that is equivalent to the rent that would have been payable, but for the Rent Holiday, for the period starting on the day after the settlement date and ending on the last day of the Rent Holiday period (both days included).
- (f) If the lease commencement date is a date that is after the settlement date, then on the settlement date the vendor, as an essential condition of settlement, shall pay the purchaser \$58,865.00, being 2 months' rent at the initial rate payable under the lease (ignoring the Rent Holiday). See also clause 25.7(h).
- (g) The intention of clauses 25.7(e) and (f) is that the vendor shall account to the purchaser, on settlement, for the rent that is not payable to the purchaser, by the tenant under the lease, because of the Rent Holiday.
- (h) If the CCC has not been issued by the settlement date, then once the lease commencement date has been established the vendor shall, in addition to the obligations set out in clauses 25.7(d) and (f), pay to the purchaser:
- (i) rent (at the rate of \$353,190.00 plus GST per annum) for the period starting on the day after the settlement date and ending on the day immediately prior to the lease commencement date (both days included); and
 - (ii) outgoings (at the rate of \$20.00 plus GST per annum per square metre of the rentable area of the premises subject to the lease) for the period starting on the day after the settlement date and ending on the day immediately prior to the lease commencement date (both days included).

- (i) The intention of clause 25.7(h) is that the vendor shall account to the purchaser for the rent and estimated outgoings that the purchaser will forego (otherwise than because of the Rent Holiday) if the lease commencement date is a date later than the settlement date.
- (j) The vendor shall pay to the purchaser all GST payable in relation to the amounts payable by the vendor pursuant to this clause 25.7.
- (k) If, at the time the Retention is due for release to the vendor (but for this clause 25.7(k)), any moneys are owing by the vendor to the purchaser pursuant to this clause 25.7, then the vendor shall procure its solicitors to apply the Retention first in (or towards, as the case may be) payment of any moneys owing by the vendor to the purchaser pursuant to this clause 25.7.

26 RETENTION FUND AND UNDERTAKING

26.1 The parties acknowledge and agree that:

- (a) the vendor's obligations to pay:
 - (i) rent and outgoings under any Leases Back or Future Leases Back; and
 - (ii) Top Up Payments;
 are to be partly secured by way of:
 - (iii) a sum of money ("**the Retention Fund**") equivalent to the total of the following amounts:
 - (A) The net rent (and the applicable GST) payable under each of the Leases for the 12-month period starting on 1 April 2020, ignoring any rent reviews that may occur during that period. Such sum shall be calculated on the assumption that as at 1 April 2020:
 - (aa) Hiltons Lease 1 has been renewed for a term expiring no earlier than 31 March 2021, at an initial annual rent of no less than \$385,608.00 plus GST; and
 - (bb) Hiltons Lease 2 has been renewed for a term expiring no earlier than 31 March 2021, at an initial annual rent of no less than \$320,760.00 plus GST.
 - (B) The outgoings (and the applicable GST) payable under each of the Leases for the 12-month period starting on 1 April 2020. Such sum shall be calculated on the assumption that as at 1 April 2020:
 - (aa) Hiltons Lease 1 has been renewed for a term expiring no earlier than 31 March 2021;
 - (bb) Hiltons Lease 2 has been renewed for a term expiring no earlier than 31 March 2021; and

- (cc) the outgoings under each of the Leases, for the 12-month period starting on 1 April 2020, are payable at the rate of \$20.00 plus GST per annum per square metre of the rentable area of the relevant premises.

The Retention Fund is to be held in the vendor's solicitors' trust account on interest-bearing deposit; and

- (iv) an undertaking to be given by the vendor's solicitors on settlement ("**the Undertaking**").
- (b) Except as set out in clause 26.8, the Retention Fund is not to be used for payment of rent and outgoings under any Leases Back or Future Leases Back, or for Top Up Payments.
- (c) 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 clauses 25 and 26 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).

26.2 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.

26.3 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 interest) only on the terms set out in this agreement; and
- (d) provide the Undertaking to the purchaser.

This clause 26.3 is an essential pre-condition of settlement.

- 26.4 On written request of the purchaser but no more than twice in any 12 month period, the vendor will provide a certificate from the vendor's accountant recording that the net asset position of the vendor is not less than the amount of the Retention Fund and the vendor can meet its obligations under this agreement.
- 26.5 All amounts payable by the vendor to the purchaser pursuant to the Leases Back will be payable as and when required pursuant to the terms of the Leases Back.
- 26.6 Where, in relation to any particular tenancy, any Top Up Payments are required, the vendor shall pay monthly Top Up Payments (including the applicable GST) to the purchaser on the first day of each month, commencing on the first day of the month following settlement (together with payment for any broken period of less than one month, if applicable) until the end of the relevant Top Up Payment period. On each anniversary of settlement, the parties shall calculate:
- (a) the Top Up Payments (if any) made by the vendor in relation to the 12-month period then ended; and
 - (b) the Top Up Payments (if any) actually required in relation to the 12-month period then ended, having regard to clauses 25.2(d), 25.3(c) and 25.4(c).

If there is any difference between the amounts set out in clauses 26.6(a) and (b), then the parties shall, within 10 working days, make between them whatever financial adjustment as is necessary so that the correct amount of Top Up Payments has been made in relation to the relevant 12-month period.

- 26.7
- (a) During the term of any Lease Back the vendor has the ability to present a suitable tenant to the purchaser. If the purchaser deems the proposed tenant and the relevant lease terms to be suitable, in its sole discretion acting reasonably, the purchaser shall enter into a lease with the proposed tenant and release the vendor from its obligations under the relevant Lease Back, provided that such release shall not apply to any default by the vendor prior to the start of the new lease.
 - (b) If the term of the lease to the proposed tenant is less than the balance of the Lease Back term then the vendor will lease the premises for the remainder of the Lease Back term. By way of example, for a Lease Back term of 6 years, if at the end of year 2 of the Lease Back, the purchaser enters into a lease with a proposed tenant for a term of 2 years, the vendor will enter into a lease with the purchaser for the last 2 years of the Lease Back term.
 - (c) For the avoidance of doubt any obligation to make Top Up Payments under this agreement will continue to be payable by the vendor on the terms of this agreement.
 - (d) The parties acknowledge and agree that the tenant under any Lease Back or Future Lease Back may assign or sublease, subject to complying with the provisions of clause 33 of the Lease Back Form.

From the point in time at which the maximum liability of the vendor to pay:

- (a) rent and outgoings under any Leases Back or Future Leases Back; and
- (b) Top Up Payments;

can be quantified at a sum that is less than the Retention Fund, then the vendor shall apply the Retention Fund towards payment of:

- (c) rent and outgoings under any Leases Back or Future Leases Back; and
- (d) Top Up Payments;

as and when the relevant amounts become due, provided that if after that point in time it is established that any particular component of the Retention Fund will no longer be required (because, for example, one of the Leases Back is surrendered) then the relevant amount (and the interest accrued on that amount) shall be released from the Retention Fund and paid out to the vendor.

26.9 Once the final amount payable to the purchaser from the Retention Fund is due in relation to any one or more of:

- (a) the Leases Back;
- (b) the tenancies subject to the Top Up Payments;

the interest accrued on that part of the Retention Fund attributable to the relevant Lease Back, or tenancy subject to the Top Up Payments (as the case may be), shall be payable to the purchaser. The parties acknowledge and agree that the intention of clause 26.8 and this clause 26.9 is that interest on the Retention Fund shall follow the application of the Retention Fund.

27 VENDOR'S SETTLEMENT OBLIGATIONS

27.1 Delivery of documentation

On the date of settlement, the vendor shall hand to the purchaser, or to the purchaser's building manager or such other representative of the purchaser, as the purchaser directs:

- (a) original executed copies of the Leases to the extent that they are held by or on behalf of the vendor (or copies if the originals have been lost) including deeds of lease, deeds of variation, deeds of consent, deeds of rent review, deeds of renewal, deeds of assignment and other material documentation relating to the Leases within the possession and/or control of the vendor (including all relevant bank guarantees);
- (b) letters to all tenants under the Leases signed by or on behalf of the vendor, advising that the property has been sold and that they are to pay all rent and outgoings and any other amounts to the purchaser from the date of settlement;
- (c) copies of the compliance schedule and current building warrants of fitness held at the property and all associated reports, service records and manuals relating to:
 - (i) the buildings; and
 - (ii) the vendor's fixtures and fittings;
- (d) copies of guarantees and warranties held by the vendor; and

(e) duly executed deeds of assignment to be given under clause 24.1, or any other relevant provision of this agreement.

27.2 The vendor shall use all reasonable endeavours to ensure that all documentation referred to in clause 27.1 is fully executed by all relevant parties prior to settlement, and that all outstanding Leases are completed as required and fully executed by all relevant parties prior to settlement.

28 GENERAL

28.1 Public announcements

Prior to the date upon which this agreement becomes unconditional, neither party shall make any public announcements nor communicate the existence of this agreement or of its terms (including the purchase price) to any third party, other than:

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

without the prior written approval of the other party to this agreement. Such approval shall not be unreasonably or arbitrarily withheld or delayed.

28.2 Purchaser relies on own judgement

The purchaser acknowledges that the purchaser has entered into this agreement in reliance on the purchaser's own judgement and, apart from the vendor's express warranties or representations set out in this agreement, not in reliance on any warranties or representations made by or on behalf of the vendor.

28.3 Entire agreement

This agreement constitutes the entire understanding and agreement of the parties relating to this agreement, and supersedes and extinguishes all prior agreements.

28.4 Amendments

No amendment to this agreement shall be effective unless it is in writing and signed by the vendor and the purchaser .

28.5 Partial invalidity

The illegality, invalidity or unenforceability of a provision of this agreement under any law shall not affect the legality, validity or enforceability of that provision under any other law, or the legality, validity or enforceability of any other provision.

28.6 Further assurances

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

29 SETTLEMENTS INTERDEPENDENT

- 29.1 Settlement of the sale of each of the properties that constitute 'the property' for the purposes of this agreement shall not take place independently of settlement of the sale of the other of the properties.
- 29.2 Any cancellation of this agreement shall apply to each of the properties subject to this agreement.

30 ASSIGNMENT

- 30.1 The vendor acknowledges and agrees that the purchaser may, after settlement, assign its rights under this agreement subject to the purchaser providing the vendor with a signed deed of assignment from the purchaser's assignee in a form acceptable to the vendor acting reasonably.

31 RISK AND INSURANCE

- 31.1 Clauses 5.2(1) and 5.2(2) of the General Terms of Sale are amended to read as follows:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, or if the destruction or damage has, in relation to any one or buildings on the property (each, a "**Building**") either demolished that Building or so damaged that Building that it is uneconomic to repair that Building, 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 immediately return to the Purchaser 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, and if clause 5.2(1) does not otherwise apply in relation to any Building, 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.

32 DEFINITIONS

32.1 Definitions

In this agreement, unless the context requires otherwise:

- (a) **Building** means the buildings and all other improvements situated on the property.



- (b) **Lease** means any current tenancy, lease, agreement to lease, licence to occupy or other right of occupation (including oral arrangements) in relation to the whole or any part of the property. The term Lease also includes any document, letter, deed or agreement recording, varying or relating to such tenancy, lease, licence to occupy or other right of occupation. See also clause 23.2.
- (c) **Purchaser** includes any post-settlement assignee of the Purchaser's rights under this agreement.
- (d) **Tenancy Schedule** means the Tenancy Schedule that is attached to this agreement.
- (e) The singular includes the plural, and vice versa.

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'JDS' with a flourish above it, and the initials 'JDS' are written below it.

SCHEDULE 1
(GST Information – see clause 15.0)

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

Section 1

1.	The vendor's registration number (if already registered):	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/ No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/ No
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/ No

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

5. The purchaser's details are as follows:

(a) Full name: PMG FUNDS LIMITED

(b) Address: c/- PMG Property Funds Management, Level 1, 143 Durham Street, Tauranga 3110

(c) Registration number (if already registered): 104-425-488

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")

The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").

Yes/~~No~~

If the answer to question 7 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

8. The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.

Yes/~~No~~

9. The purchaser expects the nominee at settlement to use the property for making taxable supplies.

Yes/~~No~~

If the answer to either or both of questions 8 and 9 is "No", there is no need to complete this Schedule any further.

10. The nominee's details (if known to the purchaser) are as follows:

(a) Full name:

(b) Address:

(c) Registration number (if already registered):

11. The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).

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~~ ~~Fixed floor coverings~~ ~~Blinds~~ ~~Curtains~~ ~~Light fittings~~

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

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

Acknowledgements

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

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

Signature of Purchaser(s):

Signature of Vendor(s):

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


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

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

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

*If this agreement is signed under:

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

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

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

SCHEDULE 3 – ADDITIONAL VENDOR WARRANTIES

Subject to the exceptions and limitations contained in clause 22.3, the vendor warrants to the purchaser (to the best of the vendor's knowledge and belief) as follows:

1 Leases

- 1.1 As at the date of this agreement, there are no arrears in the payment of rent or other monies under the Leases that have not been disclosed to the purchaser in writing.
- 1.2 The vendor has complied with its obligations in relation to any pre-emptive rights granted to the tenants under the Leases, whether those rights relate to purchasing, leasing or any other type of transaction.

2 Litigation

- 2.1 Each of the following statements are accurate at the date of this agreement:
 - (a) There is no current litigation by any person claiming an estate or interest in the property or that affects the property or the capacity of the vendor to complete this agreement;
 - (b) There is no unsatisfied judgment, order or writ of execution that affects the property or the vendor's ability to convey the title to the property;
 - (c) There is no order of a court or other competent authority affecting the ability of the vendor to complete this agreement;
 - (d) No notice has been issued by a competent authority or proceedings instituted in a court pursuant to any statute whereby the interest of the vendor in the property may be rendered liable to forfeiture to the Crown.

3. No Liquidation

- 3.1 The vendor warrants that it will not be liquidated until the earlier of 30 June 2026 or the release of its obligations under the Leases Back and Retention Fund provisions under this agreement.

Handwritten signature and initials in the bottom right corner of the page.

TENANCY SCHEDULE

GIBRALTAR SHELF NO 56 LIMITED

IZONE ROLLESTON PROPERTIES

Building Address	Existing						Current Rent	Guarantee Rent	Market Rent
	Area m2	Tenant	Term	Date	Further Terms	Review			
25 Ink Drive - Building 1	3076	Hiltens	3 years	16-Jan-17			\$342,600	385,608	385,608
25 Ink Drive - Building 2 (Grainstore)	2744	Hiltens	3 years	16-Jan-17	1x5 years	2 yearly	\$281,020	320,760	320,760
31 Ink Drive - Building 3	3058	Hiltens	5 years	1-Jun-16	2x5 years	5 yearly	\$279,521	279,521	311,750
19 Hanover Place - Building 4	5500	Coda	5 years	1-Aug-18	1x5 years	2 yearly	\$598,370	598,370	598,370
13 Hanover Place - Building 5	2700	PGGW	7 years	1-Jul-19	2x5 years	2 yearly	\$353,190	353,190	353,190
Totals	<u>17828</u>						<u>\$1,854,101</u>	<u>\$1,937,449</u>	<u>\$1,969,678</u>

over ABC ✓
over ABC ✓

[Handwritten signature]

DEED OF LEASE

Sixth Edition 2012 (5)

GENERAL address of the premises:

DATE:

LANDLORD:
[The Purchaser]

TENANT:
Gibraltar Shelf No. 56 Limited

GUARANTOR:

THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

SIGNED by the Landlord

in the presence of:

Signature of Landlord

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Landlord

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

SIGNED by the Tenant

in the presence of:

Signature of Tenant

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Tenant

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Note: If signing by a company or as an Attorney - please refer to the notes on page 3

Act 1993, to ensure it is binding as a deed. In general, this means:

- (a) if there are two or more directors of the company, two directors must sign and no witnessing is necessary;
- (b) if there is only one director of the company, that director signs and the signature must be witnessed.

Other methods of signing may be permitted by the company's constitution or if an attorney has been appointed.

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FIRST SCHEDULE

PREMISES:

CAR PARKS:

TERM:

COMMENCEMENT DATE:

RIGHTS OF RENEWAL: Nil

RENEWAL DATES: Not applicable

FINAL EXPIRY DATE: 2026

8.	ANNUAL RENT: (Subject to review if applicable)	Premises \$ Car Parks \$ TOTAL \$	plus GST plus GST plus GST
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9.	MONTHLY RENT:	e	plus GST
----	----------------------	---	----------

10.	The 1 st day of each month commencing on the 1 st day of 20
-----	--

11.	RENT REVIEW DATES: (Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)	1. Market rent review dates: 2. CPI rent review dates:
-----	---	---

12.	DEFAULT INTEREST RATE: (subclause 5.1)	12 % per annum
-----	--	----------------

13.	BUSINESS USE: Any use suitable for the premises and permitted under the relevant District Plan (subclause 16.1)
-----	---

14. LANDLORD'S INSURANCE:
(subclause 23.1)
(Delete or amend extent of cover as appropriate)

(Delete either (a) or (b); if neither option is deleted, then option (a) applies)

(1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:

(a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass);

OR

(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).

(Delete option (i) and complete option (ii), if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

(2) Cover for the following additional risks:

(a) ~~(i) 12 months~~

OR

(ii) 24 months

indemnity in respect of consequential loss of rent and outgoings.

(b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.

(c) Public liability

15. NO ACCESS PERIOD:
(subclause 27.6)

(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)

(1) 9 months

OR

(2)

16. PROPORTION OF OUTGOINGS:
(subclause 3.1)

% which at commencement date is estimated to be \$ Plus GST per annum

~~**17. LIMITED LIABILITY TRUSTEE:**~~
(subclause 45.2)

18. OUTGOINGS:
(clause 3)

- (1) Rates or levies payable to any local or territorial authority.
- (2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
- (3) Rubbish collection and recycling charges.
- (4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
- (5) Any insurance excess (but not exceeding \$2,000) in respect of a claim and insurance premiums and related valuation fees (subject to subclause 23.2).
- (6) Service contract charges for air conditioning, lifts, other building services and security services.
- (7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.
- (8) The provisioning of toilets and other shared facilities.
- (9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
- (10) Yard and car parking area maintenance and repair charges but excluding charges for repaving or resealing.
- (11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.
- (12) Management expenses (subject to subclause 3.7).
- (13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

SECOND SCHEDULE

TENANT'S PAYMENTS

Rent

- 1.1 The Tenant shall pay the annual rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.

Market Rent Review

- 2.1 The annual rent payable as from each market rent review date (except for a market rent review date that is a renewal date) shall be determined as follows:
- Either party may not earlier than 3 months prior to a market rent review date and not later than the next rent review date (regardless of whether the next rent review date is a market or CPI rent review date) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant market rent review date.
 - If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with subclause 2.2.
 - If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
 - Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable as at the commencement date of the then current lease term.
 - The annual rent agreed, determined or imposed pursuant to subclause 2.1 shall be the annual rent payable as from the relevant market rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to subclause 2.3 and 2.4.
 - The market rent review at the option of either party may be recorded in a deed.

Rent Determinations

- 2.2 Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:
- By one party giving written notice to the other requiring the new rent to be determined by arbitration; or
 - If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent.
 - If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.
 - The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.
 - The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert.
 - Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
 - The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.
 - If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 2.2.

When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.

Interim Market Rent

- 2.3 Pending determination of the new rent, the Tenant shall from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:
- If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
 - If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
 - If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date, but in no circumstances shall the interim rent be less than the rent payable as at the commencement date of the then current lease term.
- The interim rent shall be payable with effect from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 2.4, shall not be subject to adjustment.
- 2.4 Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.

CPI Rent Review

- 2.5 The annual rent payable from each CPI rent review date shall be determined as follows:
- (a) The Landlord shall adjust the annual rent on the basis of increases (and not decreases) in the CPI by giving notice to the Tenant of the increase (if any) using the formula:
- $$A = B \times (C+D)$$
- Where:
- A = the CPI reviewed rent from the relevant CPI rent review date
- B = the annual rent payable immediately before the relevant CPI rent review date
- C = CPI for the quarter year ending immediately before the relevant CPI rent review date
- D = CPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date, the commencement date of the then current term of the lease (and in the case where A is the CPI reviewed rent for a renewal date then the last rent review date of the immediate preceding lease term or if there is no rent review date the commencement date of the preceding term)
- where (C+D) shall not be less than 1.
- (b) If the CPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the CPI, or a resetting of the CPI, an appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement to be determined by an expert appointed by the president or vice president of the New Zealand Law Society will be used.
- (c) If the relevant CPI is not published at the relevant CPI rent review date, as soon as the CPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant CPI rent review date.
- (d) Notwithstanding any other provision of subclause 2.5, the annual rent payable as from the relevant CPI rent review date shall not be less than the annual rent payable immediately preceding the CPI rent review date (and in the case where the relevant CPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).
- 2.6 The new rent determined pursuant to subclause 2.5 shall be payable from the relevant CPI rent review date once it is determined by the Landlord giving notice under that subclause. Pending determination of the new rent, the Tenant will pay the rent that applies prior to the CPI rent review date. On determination of the new rent, the Tenant will immediately pay any shortfall to the Landlord.

Outgoings

- 3.1 The Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion of it as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.
- 3.2 The Landlord shall vary the proportion of any outgoing payable to ensure that the Tenant pays a fair proportion of the outgoing.
- 3.3 If any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then that outgoing shall not be payable by the Tenant.
- 3.4 The outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.
- 3.5 The outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of a reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.
- 3.6 After the 31st March in each year of the term or other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand.
- 3.7 Any profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not comprise part of the management expenses payable as an outgoing.

Goods and Services Tax

- 4.1 The Tenant shall pay to the Landlord or as the Landlord shall direct the GST payable by the Landlord in respect of the rental and other payments payable by the Tenant under this lease. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.
- 4.2 If the Tenant shall make default in payment of the rental or other moneys payable under this lease and the Landlord becomes liable to pay Default GST then the Tenant shall on demand pay to the Landlord the Default GST in addition to interest payable on the unpaid GST under subclause 5.1.

Interest on Unpaid Money

- 5.1 If the Tenant defaults in payment of the rent or other moneys payable under this lease for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.
- 5.2 Unless a contrary intention appears on the front page or elsewhere in this lease the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

Costs

- 6.1 Each party will pay their own costs of the negotiation and preparation of this lease and any deed recording a rent review or renewal. The Tenant shall pay the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any matter contemplated by this lease, and the Landlord's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights remedies and powers under this lease.

LANDLORD'S PAYMENTS**Outgoings**

- 7.1 Subject to the Tenant's compliance with the provisions of clause 3 the Landlord shall pay all outgoings in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

MAINTENANCE AND CARE OF PREMISES**Tenant's Obligations**

8.1 The Tenant shall be responsible to:

(a) **Maintain the premises**

In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises in the same clean order repair and condition as they were in at the commencement date of this lease (or where the lease is renewed, the commencement date of the initial term of this lease) and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. The premises condition report (if completed) shall be evidence of the condition of the premises at the commencement date of this lease. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use.

(b) **Breakages and minor replacements**

Repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.

(c) **Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated as at the commencement date of this lease (or where the lease is renewed the commencement date of the initial term of this lease) when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld.

(d) **Floor coverings**

Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.

(e) **Damage or Loss**

Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.

8.2 Where the Tenant is leasing all of the property, the Tenant shall:

(a) **Care of grounds**

Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition.

(b) **Water and drainage**

Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.

(c) **Other works**

Carry out those works maintenance and repairs to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.

8.3 Notwithstanding subclause 8.1(a) the Tenant shall not be liable for the maintenance or repair of any building services but this subclause shall not release the Tenant from any obligation to pay for the cost of any service maintenance contract or charges in respect of the maintenance or repair of the building services if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.

8.4 Notwithstanding any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises nor to pay any outgoings incurred by the Landlord in remedying any inherent defect.

8.5 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.

Toilets

9.1 The toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

Rubbish Removal

10.1 The Tenant shall regularly cause all of the Tenant's rubbish and recycling to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.

Landlord's Maintenance

11.1 The Landlord shall keep and maintain the building, all building services and the car parks in good order and repair and weatherproof but the Landlord shall not be liable for any:

(a) Repair or maintenance which the Tenant is responsible to undertake.

(b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord.

(c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks.

(d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing of that from the Tenant and has not within a reasonable time after that taken appropriate steps to remedy the same.

11.2 The Landlord shall keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other building services supplied by the Landlord. Whenever building services cannot be maintained in good order and repair through regular maintenance, the Landlord will if reasonably required replace the services with services of a similar type and quality.

11.3 The Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract pursuant to subclauses 11.1 and 11.2 if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.

Notification of Defects

12.1 The Tenant shall give to the Landlord prompt written notice of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.

Landlord's Right of Inspection

- 13.1 The Landlord and the Landlord's employees contractors and invitees may at all reasonable times and after having given prior written notice to the Tenant (except in the case of emergencies) enter upon the premises to view their condition.

Landlord may Repair

- 14.1 If default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the premises to execute the works. Any moneys expended by the Landlord in executing the works shall be payable by the Tenant to the Landlord upon demand together with interest on the moneys expended at the default interest rate from the date of expenditure to the date of payment.

Access for Works

- 15.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out works to the premises or adjacent premises and to install inspect repair renew or replace any services where they are not the responsibility of the Tenant or are required to comply with the requirements of any statutes, regulations, by-law or requirement of any competent authority. All repairs inspections and works shall be carried out with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4.
- 15.2 If the Tenant's business use of the premises is materially disrupted because of the Landlord's works provided for in subclause 15.1, then during the period the works are being carried out a fair proportion of the rent and outgoings shall cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligation, under subclause 15.1, to cause the least possible inconvenience to the Tenant.
- 15.3 If in the Landlord's reasonable opinion, the Landlord requires the Tenant to vacate the whole or part of the premises to enable the works referred to in subclause 15.1 to be carried out, the Landlord may give the Tenant reasonable written notice requiring the Tenant to vacate the whole or part of the premises and specifying a reasonable period for which the Landlord requires possession. On the expiry of the notice the Landlord may take possession of the premises or the part specified in the notice. A fair proportion of the rent and outgoings shall cease to be payable during the period the Tenant vacates the premises as required by the Landlord.
- 15.4 The Landlord shall act in good faith and have regard to the nature, extent and urgency of the works when exercising the Landlord's right of access or possession in accordance with subclauses 15.1 and 15.3.

USE OF PREMISES**Business Use**

- 16.1 The Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any use other than the business use. The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use which is:
- not in substantial competition with the business of any other occupant of the property which might be affected by the use; and
 - reasonably suitable for the premises; and
 - compliant with the requirements of the Resource Management Act 1991 or any other statutory provisions relating to resource management.
- If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium.
- 16.2 If any change in use requires compliance with sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 114 and 115 of the Act and to pay all compliance costs.
- 16.3 If the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.

Lease of Premises and Car Parks Only

- 17.1 The tenancy shall relate only to the premises and the car parks (if any) and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation to it other than the rights of use under this lease.

Neglect of Other Tenant

- 18.1 The Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property.

Signage

- 19.1 The Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building without the prior approval in writing of the Landlord but approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned in connection with the signage.

Additions, Alterations, Reinstatement and Chattels Removal

- 20.1 The Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. If the Landlord authorises any alterations or additions which are made before the commencement date or during the term of this lease the Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the premises. Ownership of the alterations or additions that are not removed by the end or earlier termination of the lease may at the Landlord's election pass to the Landlord without compensation payable to the Tenant. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstalling the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant.
- 20.2 The Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Landlord.

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- 20.3 The Tenant may at any time before and will if required by the Landlord no later than the end or earlier termination of the term remove all the Tenant's chattels. In addition to the Tenant's obligations to reinstall the premises pursuant to subclause 20.1 the Tenant will make good at the Tenant's own expense all resulting damage and if the chattels are not removed by the end or earlier termination of the term ownership of the chattels may at the Landlord's election pass to the Landlord or the Landlord may remove them from the premises and forward them to a refuse collection centre. Where subclause 27.5 applies, the time by which the Tenant must remove the chattels and to make good all resulting damage will be extended to 5 working days after access to the premises is available.
- 20.4 The cost of making good resulting damage and the cost of removal of the Tenant's chattels shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant.

Compliance with Statutes and Regulations

- 21.1 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant provided that:
- The Tenant shall not be required to make any structural repairs, alterations or additions nor to replace or install any plant or equipment except where required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.
 - The Tenant shall not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as an occupier of the premises.
 - The Tenant will promptly provide the Landlord with a copy of all requisitions and notices received from a competent authority under this subclause.
- 21.2 If the Landlord is obliged by any legislation or requirement of any competent authority to expend moneys during the term of this lease or any renewed term on any improvement, addition or alteration to the property which is not the Tenant's responsibility under subclause 21.1 and the expenditure would be an unreasonable amount then the Landlord may determine this lease. Any dispute as to whether or not the amount to be expended by the Landlord is unreasonable shall be determined by arbitration.
- 21.3 The Landlord warrants that allowing the premises to be open to members of the public and allowing the use of the premises by members of the public at the commencement date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the premises by the Tenant.
- 21.4 The Tenant, when undertaking any building work to the premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the premises to be open to members of the public or allow use of the premises by members of the public if that would be in breach of section 363 of the Building Act 2004.
- 21.5 During the term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the premises to be open to members of the public and allowing the use of the premises by members of the public.

No Noxious Use

- 22.1 The Tenant shall not:
- Bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery, goods or things of an offensive, noxious, illegal or dangerous nature, or of a weight, size or shape as is likely to cause damage to the building or any surfaced area.
 - Contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical, chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991.
 - Use the premises or allow them to be used for any noxious, illegal or offensive trade or business.
 - Allow any act or thing to be done which may be or grow to be a nuisance, disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean, quiet and orderly manner free from damage, nuisance, disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

INSURANCE

Landlord shall insure

- 23.1 The Landlord shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. If insurance cover required under this subclause becomes unavailable during the term of this lease or any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant.
- 23.2 The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule.

Tenant not to void insurance

- 24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:
- Shall make void or voidable any policy of insurance on the property.
 - May render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.
- 24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

When Tenant to have benefit of Landlord's insurance

- 25.1 Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obligated to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:
- (a) The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or
 - (b) The destruction or damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
 - (1) occurred on or about the property; and
 - (2) constitutes an imprisonable offence; or
 - (c) Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.

DAMAGE TO OR DESTRUCTION OF PREMISES**Total Destruction**

- 26.1 If the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged:
- (a) as to render the premises untenantable then the term shall at once terminate from the date of destruction or damage; or
 - (b) In the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage give the Tenant 20 working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.
- Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

Partial Destruction

- 27.1 If the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenantable and:
- (a) the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
 - (b) all the necessary permits and consents are obtainable,
- the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises or the building but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.
- 27.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.
- 27.4 If any necessary permit or consent shall not be obtainable or the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

No Access in Emergency

- 27.5 If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:
- (a) a prohibited or restricted access cordon applying to the premises; or
 - (b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
 - (c) restriction on occupation of the premises by any competent authority,
- then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases.
- 27.6 This subclause 27.5 applies where subclause 27.5 applies and the premises or building of which the premises form part are not totally or partially destroyed or damaged resulting in the lease being cancelled as provided for in subclauses 26.1 or 27.4. Either party may terminate this lease by giving 10 working days written notice to the other if:
- (a) the Tenant is unable to gain access to the premises for the period specified in the First Schedule; or
 - (b) the party that terminates this lease can at any time prior to termination establish with reasonable certainty that the Tenant is unable to gain access to the premises for that period.
- Any termination shall be without prejudice to the rights of either party against the other.

DEFAULT**Cancellation**

- 28.1 The Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007, cancel this lease by re-entering the premises at the time or at any time after that:
- (a) If the rent shall be in arrears 10 working days after any rent payment date and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007.
 - (b) In case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this lease (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
 - (c) If the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors.
 - (d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant.

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- (e) If the Tenant shall suffer execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of five thousand dollars (\$5,000).

The term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

Essentiality of Payments

- 29.1 Failure to pay rent or other moneys payable under this lease on the due date shall be a breach going to the essence of the Tenant's obligations under the lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. This entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.
- 29.2 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 obligation to pay rent and other moneys.

Repudiation

- 30.1 The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

QUIET ENJOYMENT

- 31.1 The Tenant paying the rent and performing and observing all the covenants and agreements expressed and implied in this lease shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

RENEWAL OF LEASE

- 32.1 If the Tenant has given to the Landlord written notice to renew the lease at least 3 calendar months before the end of the term and is not at the date of the giving of the notice in breach of this lease then the Landlord will grant a new lease for a further term from the renewal date as follows:
- If the renewal date is a market rent review date the annual rent shall be the current market rent which if not agreed on shall be determined in accordance with subclause 2.2 but the annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term.
 - If the renewal date is a CPI rent review date, the annual rent shall be determined in accordance with subclause 2.5.
 - Subject to the provisions of paragraphs (a) and (b) the new lease shall be upon and subject to the covenants and agreements expressed and implied in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date.
 - The annual rent shall be subject to review during the term of the new lease on the rent review dates specified in the First Schedule.
 - The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice or the security of a bank guarantee that has been given.
 - If the renewal date is a market rent review date, pending the determination of the rent, the Tenant shall pay an interim rent in accordance with subclauses 2.3 and 2.4.
 - Notwithstanding anything contained in subclause 32.1(f) the interim rent referred to in that subclause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term.
 - The parties will not be released by the renewal of the lease from any liability for any breach under this lease.

ASSIGNMENT OR SUBLETTING

- 33.1 The Tenant shall not assign sublet or otherwise part with the possession of the premises, the car parks (if any) or any part of them without first obtaining the written consent of the Landlord which the Landlord shall not unreasonably withhold or delay if the following conditions are fulfilled:
- The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease and in the case of the subtenant the subtenant's commitments under the sublease. The Tenant shall give the Landlord any additional information reasonably required by the Landlord.
 - All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.
 - In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord.
 - In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease is provided to the Landlord.
 - The Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds.
- 33.2 Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 33.3 Where any Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Landlord which will not be unreasonably withheld or delayed.

UNIT TITLE PROVISIONS

34.1 Clause 34 applies where the property is part of a unit title development.

Body Corporate

34.2 The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 (in subclauses 34.2 to 34.7 "the Act") in respect of the property.

Act and Rules Paramount

34.3 This lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

Insurance

34.4 Unless the Body Corporate has resolved that the Landlord is to insure the building the Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance cover in accordance with the Act.

Landlord's Obligations

34.5 The Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

Tenant's Obligations

34.6 The Tenant shall comply with the rules of the Body Corporate and the provisions of the Act to the extent that they apply to the Tenant's use of the property.

Consents

34.7 Where in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to the matter would be necessary under its rules or the Act.

CARPARKS

35.1 The Tenant shall have the right to exclusive possession of the leased car parks, but when any car park is not being used by the Tenant other persons shall be entitled to pass over the same.

35.2 The Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to subclauses 26.1 or 27.3.

35.3 The Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access to them and in particular shall only use the car parks for the parking of one motor vehicle per parking space.

35.4 The provisions of the Second Schedule shall apply to the car parks as appropriate.

GENERAL

Holding Over

36.1 If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, the occupation shall be a periodic tenancy only terminable by at least 20 working days notice given at any time with the tenancy terminating on the expiry of the notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as expressed or implied under this lease.

Access for Re-Letting or Sale

37.1 The Tenant will during the term permit the Landlord, the Landlord's representatives and prospective tenants or purchasers to have access to inspect the premises provided that:

- (a) Any such inspection is at a time which is reasonably convenient to the Tenant and after reasonable written notice.
- (b) The inspection is conducted in a manner which does not cause disruption to the Tenant.
- (c) If the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

Suitability

38.1 No warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

Affirmation

39.1 A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

Waiver

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

Land Transfer Title or Mortgagee's consent

41.1 The Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest under this lease.

Notices

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

- (a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (b) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
 - (1) In the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (2) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

- 42.2 In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:
- In the case of personal delivery, when received by the addressee.
 - In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
 - In the case of facsimile transmission, when sent to the addressee's facsimile number.
 - In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- 42.3 In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- 42.4 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 42.5 Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).
- 42.6 Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

Arbitration

- 43.1 The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
- 43.2 Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.
- 43.3 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 43.4 The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

No Implied Terms

- 44.1 The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

Limitation of Liability

- 45.1 If any person enters into this lease as trustee of a trust, then:
- That person warrants that:
 - that person has power to enter into this lease under the terms of the trust; and
 - that person has properly signed this lease in accordance with the terms of the trust; and
 - that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this lease; and
 - all of the persons who are trustees of the trust have approved entry into this lease.
 - If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
- 45.2 Notwithstanding subclause 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).

Counterparts

- 46.1 This lease may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same lease. A party may enter into this lease by signing a counterpart copy and sending it to the other party, including by facsimile or email.

DEFINITIONS AND INTERPRETATION

- 47.1 In this lease:
- "building services" means all services provided by the Landlord as an integral part of the building for the general use and enjoyment of the building by its tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.
 - "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.
 - "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord 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 lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.
 - "emergency" for the purposes of subclause 27.5 means a situation that:
 - is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic, failure of or disruption to an emergency service; and
 - causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and
 - the event is not caused by any act or omission of the Landlord or Tenant.

- (e) "GST" means the 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.
- (f) "premises" includes all the Landlord's fixtures and fittings provided by the Landlord and those set out in the Fifth Schedule.
- (g) "premises condition report" means the report as set out in the Sixth Schedule.
- (h) "renewal" means the granting of a new lease as provided for in subclause 32.1.
- (i) "rules" in clause 34 means the Body Corporate operational rules under the Unit Titles Act 2010 and any amendments to those rules or replacement rules.
- (j) "structural repair" means a repair, alteration or addition to the structure or fabric of the building but excluding building services.
- (k) "term" includes, where the context requires, a further term if the lease is renewed.
- (l) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers.
- (m) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant.
- (n) "the property" and "the building" mean the land, building(s) or improvements of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.
- (o) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees.
- (p) "working day" has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.
- (q) A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (r) A reference to the words "include" or "including" are to be interpreted without limitation.
- (s) If any inserted term (including any Further Term in the Third Schedule) conflicts with the covenants in the First, Second and Fourth Schedules, the inserted term will prevail.
- (t) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
- (u) Where the context requires or admits, words importing the singular shall import the plural and vice versa.
- (v) Where the Landlord's consent or approval to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:
 - (1) must not unreasonably withhold consent or approval, and
 - (2) must, within a reasonable time of the Landlord's consent or approval being requested:
 - (i) grant that consent or approval; or
 - (ii) notify the Tenant in writing that the consent or approval is withheld.

THIRD SCHEDULE

FURTHER TERMS (if any)

FOURTH SCHEDULE

GUARANTEE

IN CONSIDERATION of the Landlord entering into the lease at the Guarantor's request the Guarantor:

- (a) Guarantees payment of the rent and the performance by the Tenant of the covenants in the lease.
- (b) Indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

THE GUARANTOR covenants with the Landlord that:

1. No release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
2. As between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.
3. The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.
4. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.
5. Should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several.
6. The Guarantee and indemnity shall extend to any holding over by the Tenant.

FIFTH SCHEDULE

LANDLORD'S FIXTURES AND FITTINGS

(Subclause 47.1(f))



SIXTH SCHEDULE

Dated

Between
[The Purchaser]

Landlord

and
Gibraltar Shelf No. 56 Limited

Tenant

and

Guarantor

DEED OF LEASE

General address of the premises:

BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - the purchaser is not a New Zealand citizen. There are strict controls on the purchase of 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 weathertightness 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 2010;
 - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 and 9.0:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 2 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

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

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

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

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AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE: 20 February 2020

VENDOR:

GIBRALTAR SHELF NO, 56 LIMITED

Contact Details:

VENDOR'S LAWYERS:

Firm: Duncan Cotterill

Individual Acting: Paul Dorrance

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Mob: +64 21 226 3537

paul.dorrance@duncancotterill.com

PURCHASER:

PMG FUNDS LIMITED

Contact Details:

PURCHASER'S LAWYERS:

Firm: Dentons Kensington Swan

Individual Acting: Ish Fraser

Contact Details:

PO Box 10-246

Wellington

Ph: 04 498 0868

Mob: 021 797 522

Email: ish.fraser@dentons.com

LICENSED REAL ESTATE AGENT:

Agent's Name: NAI Harcourts - Holmwood Commercial Manager:

Salesperson: Mike Drummond / Penelope Shrimpton

Contact Details:

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Mike: 021 237 4606

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