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**First NZ Properties Limited**

**Superstore Properties Limited**

**Springs Road Property Limited**

**FSS Management Limited**

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This agreement is dated

## **PARTIES**

**First NZ Properties Limited  
(FNZL)**

**Superstore Properties Limited  
(SPL)**

**Springs Road Property Limited  
(SRPL)**

**FSS Management Limited  
(Company)**

## **BACKGROUND**

- A. The Company is a company which carries on or proposes to carry on the Business.
- B. The Shareholders are the shareholders of the Company.
- C. The parties wish to enter into this agreement to record their relationship as shareholders in the Company.

## **AGREEMENT**

### **1 Definitions and interpretation**

#### **1.1 Definitions:** In this agreement, unless the context otherwise requires:

**Board** means the board of directors of the Company from time to time.

**Business** means the business of the Company, being the provision of management services to the Shareholders and their Related Companies.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Nelson, New Zealand.

**Companies Act** means the Companies Act 1993.

**Company** means FSS Management Limited.

**Confidential Information** means all commercial, financial, technical, legal and other information of a confidential or sensitive nature concerning the Company, the Business and the parties made available at any time (whether in written or electronic form or orally) by any party.

**Constitution** means the constitution of the Company as amended or replaced from time to time.

**Directors** means directors of the Company from time to time and, where appropriate, includes alternate directors.

**Event of Default** means an event specified in clause 11.2.

**FNZL Property Value** means the total market value of the properties held by FNZL (and its Related Companies).

**Related Party** means, in relation to a Shareholder:

- a. a spouse (which includes any person with whom the relevant person is living in a relationship in the nature of marriage), father, mother, son or daughter of that Shareholder;
- b. a trustee for a trust, the settlor or beneficiary of which is that Shareholder or any spouse (which includes any person with whom the relevant person is living in a relationship in the nature of marriage), father, mother, son or daughter of that Shareholder;
- c. any person which is a related company of that Shareholder in terms of section 2(3) of the Companies Act (read as if the expression **company** in that subsection included body corporate); or
- d. any person which Controls that Shareholder, is Controlled by that Shareholder or is Controlled by the same person who controls the Shareholder (and for the avoidance of doubt includes any shareholder of the Shareholder).

**Shareholders** means the shareholders of the Company from time to time.

**Shareholding Percentage** means, in relation to a Shareholder, the proportion of Shares (expressed as a percentage) that Shareholder owns in the Company as a proportion of the total number of Shares.

**Shares** means the issued shares of the Company.

**SPL Property Value** means the total market value of properties held by SPL (and its Related Properties).

**SPRL Property Value** means the total market value of properties held by SPRL (and its Related Companies).

**Total Property Value** means the total of the FNZL Property Value, the SPL Property Value and the SRPL Property Value .

**1.2 Interpretation:** In this agreement, unless the context otherwise requires:

- 1.2.1 References to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental and other regulatory bodies or authorities and other entities, in each case whether having separate legal personality.
- 1.2.2 Reference to a party will include that party's executors, administrators, successors and permitted assigns.
- 1.2.3 Reference to a statute or regulation will include all amendments and re-enactments thereof and any subordinate legislation made thereunder.
- 1.2.4 Reference to one gender includes each other gender.
- 1.2.5 Singular will include plural and vice versa.
- 1.2.6 Any provision requiring performance of two or more parties shall bind those parties jointly and severally.
- 1.2.7 The term **including** means **including without limitation**.

- 1.3 **Capitalised terms:** In this agreement, any capitalised term not defined in clause 1.1 or elsewhere in this agreement has the same meaning as given to that term in the Companies Act.

## 2 Term

- 2.1 **Term:** This agreement will commence on the date of this agreement and continue in force until the earlier of:
- 2.1.1 the date on which all the Shareholders agree to terminate this agreement;
  - 2.1.2 the date on which one Shareholder owns all of the Shares; or
  - 2.1.3 the date on which the Company is liquidated.
- 2.2 **Cessation:** Notwithstanding clause 2.1, a Shareholder will cease to be a party upon the transfer by that Shareholder of all of the Shares recorded in the Company's share register as being held by that Shareholder.
- 2.3 **Reservation:** Termination of this agreement is without prejudice to any rights and remedies arising as a consequence of any such termination or which have accrued or arisen prior to termination.

## 3 Business

- 3.1 **Primary object:** The primary object of the Company is to carry on the Business.
- 3.2 **No other business:** The Company will not engage in any business activity other than the Business or any business activity which is reasonably incidental to the Business.
- 3.3 **Shareholder actions:** Each Shareholder will act honestly and in good faith towards each other Shareholder in all matters relating to this agreement and will exercise their respective rights as shareholder in the Company to ensure (insofar as they lawfully can) that the provisions of this agreement are given effect.

## 4 Constitution

- 4.1 **Adoption:** On the date of this agreement, the Shareholders will adopt a new Constitution in the form set out in schedule 2 and it will replace any existing Constitution.
- 4.2 **Consistency:** In the event of any inconsistency between this agreement and the Constitution, this agreement will (as between the parties) prevail over the Constitution to the extent of the inconsistency and the Shareholders will take such steps necessary to resolve the inconsistency.

## 5 Share structure and other arrangements

- 5.1 **Initial Shareholders and shareholdings:** On or immediately following the date of this agreement, the Shareholders will own the Shares as follow:

Shareholder	Number of Shares	Shareholding Percentage
FNZL	450	45%
SPL	410	41%

SRPL	140	14%
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- 5.2 **Pari passu:** Except as otherwise specifically provided in this Agreement or in the Constitution, all shares rank pari passu and have the rights and privileges attached to them as set out in section 36(1) of the Companies Act.
- 5.3 **Subsequent shareholding:** The Shareholders acknowledge that their initial shareholdings reflect the value of property held by each Shareholder (being the FNZL Property Value, SRPL Property Value or SPL Property Value (as applicable)), in proportion to the Total Property Value (**Proportional Value**). Prior to 31 March in each year, the Shareholders will ensure that their shareholdings in the Company reflect the Proportional Value and will undertake such transfers of Shares required to effect this.
- 5.4 **Issue of further Shares:** The Company may issue new Shares, securities that are convertible or exchangeable for Shares or options to acquire Shares. Section 45 of the Companies Act will not apply to the issue of Shares.
- 5.5 **Accession:** Any person issued Shares who is not a party to this agreement will enter into and execute a deed acceding to the terms of this agreement together with the Company and other Shareholders prior to or on completion of the issue.
- 6 Directors**
- 6.1 **Initial Directors:** On or immediately following the date of this agreement, the Directors will be as follows:
- 6.1.1 John Noel Murray; and
- 6.1.2 Damien Michael Prendergast
- 6.2 **Subsequent Directors:** The Shareholders acknowledge that the initial Directors are the same as those directors on the boards of the Shareholders. The Shareholders agree that the Directors will comprise of those directors on the boards of the Shareholders unless unanimously agreed between the Shareholders otherwise. The Shareholders will appoint and remove Directors by ordinary resolution.
- 6.3 **No casting vote:** No chair or other person will have a casting vote.
- 6.4 **Board meetings:** The Board will meet at regular intervals, but not less frequently than four times per year, at such times and places as the Board may determine from time to time. The Board will keep written minutes of the meetings.
- 6.5 **Voting:** Each Director will have one vote at Board meetings. A resolution is passed if a majority of votes cast is in favour of the resolution.
- 6.6 **Quorum:** The quorum for a meeting of the Board will be the presence of a majority of Directors. Any meeting at which a quorum is not present will be adjourned to the same time and place two Business Days later at which time those Directors in attendance will constitute a quorum.
- 6.7 **Indemnity:** The Company will, if requested by any Director, enter into a deed indemnity with such Director, which deed will provide for indemnification of the Director and access to Company books by the Director for the purpose of defending an action against the Director and be on such other terms agreed between the Company and the Director.
- 6.8 **Regulation of procedure:** Subject to this agreement, the Board will regulate its proceedings as it sees fit.

## 7 Management

- 7.1 **Board:** Subject to the Companies Act and this agreement, the Board will have overall authority and responsibility for the management of the Company and will determine all policy guidelines for the Company.
- 7.2 **Delegation:** Subject to the Companies Act and this agreement, the Board may delegate any aspects of the management of the Company to such officers, managers and/or committees appointed for the purposes of managing the Business.
- 7.3 **Decision-making:** Subject to the Companies Act, the Board will determine questions before them by majority decision.

## 8 Shareholders

- 8.1 **Quorum:** The quorum for a meeting of Shareholders will be the presence either in person or by proxy or by representative of Shareholders who together hold a simple majority of the Shares with full voting rights. Any meeting at which a quorum is not present will be adjourned to the same time and place five Business Days later at which time the Shareholders or their representatives present at such meeting will constitute a quorum.
- 8.2 **Written resolution:** A resolution in writing or by email of facsimile signed and approved in writing or by email or facsimile by both of the Shareholders will be as valid and effective for all purposes as a resolution of the Shareholders duly passed at a meeting of the Shareholders duly convened, held and constituted.

## 9 Restrictions on Share transfers

- 9.1 **Restrictions on share transfers:** No Shareholder will sell, transfer or otherwise dispose of the legal or beneficial ownership of any or all of its Shares (or any interest in Shares) otherwise than in accordance with this agreement or as unanimously agreed between the Shareholders.

## 10 Accounting and financial

- 10.1 **Maintaining records:** The Company will keep and maintain proper accounting records which accurately records all business and other transactions of the Company and will prepare and distribute all reports and financial statements required to be prepared under the Financial Reporting Act 2013 and any other applicable laws and regulations.
- 10.2 **Auditor:** The financial statements will not be audited unless section 207K of the Companies Act applies.

## 11 Default

- 11.1 **Default:** If an Event of Default occurs in relation to a Shareholder (**Defaulting Shareholder**), the other Shareholders (**non-Defaulting Shareholders**) may, at their option, while that Event of Default continues, provide written notice to the Defaulting Shareholder requiring that:
- 11.1.1 the Defaulting Shareholder offers all of its Shares to the non-Defaulting Shareholders, in proportion to their then current shareholding for nominal consideration, in which case each non-Defaulting Shareholder may require the Defaulting Shareholder to transfer the relevant number of Shares to the non-Defaulting Shareholder within five Business Days of the non-Defaulting Shareholder so requiring it; or
- 11.1.2 the Company be liquidated, in which case clause 12 will apply.
- 11.2 **Events of Default:** The following constitute Events of Default:

11.2.1 a Shareholder commits a material breach of this agreement and that breach, if capable of remedy, is not rectified within 20 Business Days or such longer period as is agreed by the non-Defaulting Shareholders after a written notice of that breach has been given to the Defaulting Shareholder requesting the breach be remedied;

11.2.2 a Shareholder is a company and:

- (a) has ceased to pay its debts or becomes insolvent or would be presumed by the Court to be insolvent within the meaning of section 4 of the Companies Act;
- (b) has an application presented against it, an order made, a resolution passed or a meeting summoned or convened for the purpose of considering a resolution for its liquidation;
- (c) has a receiver, receiver and manager, liquidator, administrator or statutory supervisor appointed in respect of its assets or undertaking or any material part of them;
- (d) has any execution or other process of any Court or authority issued against or levied upon any of its material assets;
- (e) has entered into or resolved to enter into an arrangement, composition or compromise with or assignment for the benefit of its creditors generally or any class of creditors; or

11.2.3 a Shareholder becomes insolvent or is adjudged bankrupt.

11.3 **Board determination:** The Board will have the power to conclusively determine if an Event of Default has occurred, including whether there has been a material breach of this agreement. The Board will be entitled to take advice from appropriately qualified professionals in reaching its determination.

## 12 Liquidation

12.1 **Liquidation** - If pursuant to any provision of this Agreement the Company is required to be liquidated, the Shareholders will without undue delay (and, in any event, within one month of the relevant event) take all necessary steps to ensure that a special resolution of Shareholders is passed appointing as liquidator of the Company a person agreed by the Shareholders, or failing agreement, chosen on the application of any Shareholder by the President for the time being of New Zealand Law Society or his or her nominee.

## 13 Confidentiality

13.1 **Obligation:** Each party will maintain as confidential information all Confidential Information and will not at any time, directly or indirectly:

13.1.1 disclose or permit any such Confidential Information to be disclosed to any person; or

13.1.2 use such Confidential Information to the detriment of the Company or the party from whom it was received,

except:

13.1.3 to the extent required by law or any stock exchange having jurisdiction over a party or any of its Related Parties; or

13.1.4 to the extent the Confidential Information is already known to the recipient on the date of receipt or is already public knowledge without a breach of this clause 13; or



13.1.5 as is authorised in writing by each other party; or

13.1.6 as is reasonably necessary to give effect to this agreement or for the conduct of the Company's affairs.

13.2 **Survival:** This clause 13 will survive termination and continue to bind persons who cease to be party.

## 14 Notices

14.1 **Notices:** Any notice given pursuant to this agreement will be deemed to be validly given if:

14.1.1 personally delivered;

14.1.2 posted; or

14.1.3 sent by electronic means (commonly known as email),

to the address or email address of the party set out in schedule 1 or to such other address or email address as the party to be notified may designate by written notice given to all the other parties.

14.2 **Deemed notice:** Any notice given pursuant to this agreement will be deemed to be validly given:

14.2.1 in the case of delivery, when received;

14.2.2 in the case of posting, on the second day following the date of posting; or

14.2.3 in the case of electronic transmission by email, at the time specified in the email transmission which was not returned as undeliverable or as containing any error.

14.3 **Out of hours:** If the delivery or transmission of any notice given under this agreement is on a day which is not a Business Day of the addressee, or occurs after 5.00 p.m. on any Business Day, the notice will be deemed to be received on the next following day which is a Business Day.

## 15 General

15.1 **No relationship:** Nothing in this agreement will be construed as constituting any of the Shareholders a partner, agent or representative of the others. No Shareholder shall have any fiduciary obligation to the others arising out of this agreement or their ownership of the Shares.

15.2 **No authority:** Unless expressly provided for in this agreement, nothing in this agreement will be construed as giving any Shareholder any right or authority to act for or represent or otherwise assume any obligation on behalf of or in the name of the other and each Shareholder agrees to indemnify and hold harmless each of the other Shareholders from and against any claims, losses or damages whatsoever arising in respect of liabilities incurred as a result of an unauthorised act or representation or assumption on behalf of or in the name or names of the others.

15.3 **Costs:** Each of the parties will bear its own legal and accounting costs and other expenses of and incidental to the preparation, negotiation and execution of this agreement.

15.4 **Assignment:** No party will assign or purport to assign (whether in part or in whole) their interest in this agreement without the prior written consent of the other parties.

15.5 **Waiver:** No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by or on behalf of each party to be bound thereby.

- 15.6 **Further acts:** The parties agree to execute all such documents and do all such acts or things as may reasonably be required in order to give effect to the terms of this agreement.
- 15.7 **Failure:** Any failure by a party to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this agreement.
- 15.8 **Entire agreement:** This agreement constitutes the entire agreement, arrangement and understanding (express and implied) amongst the parties in respect of the matters contained in this agreement, to the exclusion of all other agreements, arrangements, understandings or representations, whether express or implied, and therefore supersedes any prior agreements, arrangements, understandings and representations between the parties in respect of such matters of any nature whatsoever.
- 15.9 **Governing laws:** This agreement will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 15.10 **Counterparts:** This agreement may be executed and exchanged in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is to be deemed an original, but all of which together are to constitute a binding and enforceable agreement between the parties.

**Executed** as an agreement

SIGNED by  
**First NZ Property Limited**

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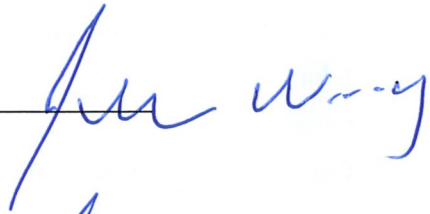
  
Director



SIGNED by  
**Superstore Properties Limited**

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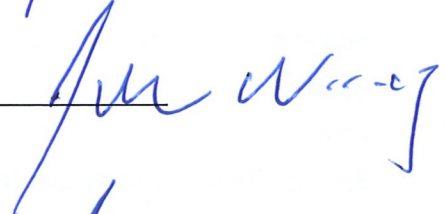
  
Director



SIGNED by  
**Springs Road Property Limited**

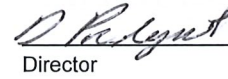
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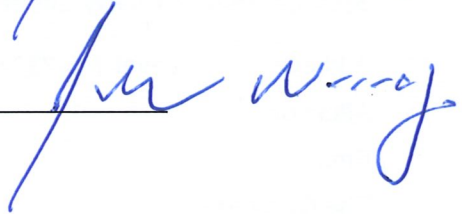
  
Director



SIGNED by  
**FSS Management Limited**

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)

  
Director



## SCHEDULE 1

### Notices

#### **NZ First Property Limited**

Address Level 1, 3/237 Queen Street, Richmond

Attention

Email

#### **Superstore Properties Limited**

Address Level 1, 3/237 Queen Street, Richmond

Attention

Email

#### **Springs Road Property Limited**

Address Level 1, 3/237 Queen Street, Richmond

Attention

Email

#### **The Company**

Address c/- Duncan Cotterill, 197 Bridge Street, Nelson

Attention

Email

## **SCHEDULE 2**

### **Constitution**

See attached.

