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Bruce Binley

THIS DEED made the 29<sup>th</sup> day of APRIL 1987

BETWEEN PREBYTERIAN CHURCH PROPERTY TRUSTEES at Wellington (hereinafter together with its successors and assigns called "the Owner") of the one part AND the WELLINGTON CITY COUNCIL being a local authority under the Local Government Act 1974 (hereinafter called "the Council") of the other part

- WHEREAS
- (a) The Owner is the registered proprietor of the land described in the schedule hereto (hereinafter called "the Site").
  - (b) Buildings on the Site include St. John's Church, Spinks Cottage and a Hall complex and there are no outstanding requirements to strengthen the buildings for earthquake resistance.
  - (c) The Wellington District Scheme Review Appendix 1A includes the Site and the said buildings thereon in "Class 1, National Importance".
  - (d) St. John's Church and Spinks Cottage have both been accorded a "B" classification by the New Zealand Historic Places Trust under the provisions of the Historic Places Act 1980.
  - (e) By virtue of Ordinance 10C.5-3 of the Wellington District Scheme Review the Site being one registered as a place of special interest is deemed for the purpose of the Ordinance to have a plot ratio of 5.5.
  - (f) The total area of buildings currently on the Site is 1812m<sup>2</sup> and the total Site area is 2925m<sup>2</sup> so that the plot ratio required for all of the existing buildings is 0.6194.



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(g) The total area of the Site is 2925m<sup>2</sup> so the Development Right being surplus floor area entitlement which may be transferred under Ordinance 10C.5-3 is 14,291.55m<sup>2</sup> calculated as follows:-

Plot ratio entitlement	5.5
Actual plot ratio of all buildings on site	<u>0.619</u>
	4.881
Area of site	<u>2925m<sup>2</sup></u>
Development Right	<u>14,276.925m<sup>2</sup></u>

(h) The Owner intends to sell or assign the Development Right or the right to transfer the Development Right to any other development or site nominated by the purchaser of the Development Right pursuant to Ordinance 10C.5-3.

NOW THEREFORE the parties agree as follows:-

1. (a) THE Site's Development Right which may be transferred pursuant to Ordinance 10.5-3 is 14,276.925m<sup>2</sup>.

2. (a) THE Owner may sell all or part of the Development Right to any other person ("the Purchaser") for transfer to another property or development in accordance with the terms of this Agreement.

2 (b) THE Owner may sell or assign to the Purchaser the right to nominate the property or development to which all or part of the Development Right is to be transferred pursuant to Ordinance 10C.5-3 (or any Ordinance in substitution therefor) and in accordance with the terms of this Agreement.

2 (c) THE Parties record that pursuant to Ordinance 10C.5-3 transfer of a Development Right is only completed when the property or development to which it is to be transferred has been nominated. If



the Owner sells or assigns to a Purchaser the right to nominate the property or development to which all or part of the Development Right is to be transferred then the Council shall comply with the exercise of these rights by the Purchaser as if it had been exercised by the Owner provided the Purchaser acts in accordance with this Agreement.

3. UPON all or part of the Development Right being transferred to another property:

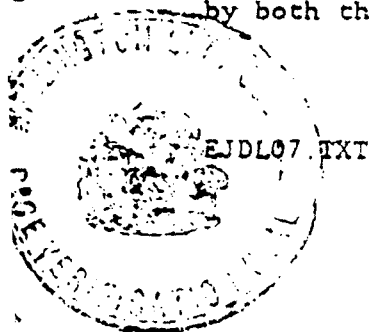
- (a) The Council shall be notified in writing of the transfer.
- (b) The area of plot ratio entitlement actually transferred shall be deducted for all time from the otherwise lawfully available and usable plot ratio for the Site.

4. THE Council shall record the transfer of all or part of the bonus from the Site and shall record it in respect of the land to which it is transferred, when a building permit is issued that incorporates the Development Right.

5. NO transfer will allow any building on the proposed transferee-land to be erected in breach of any other (non-plot-ratio) Ordinance of the District Scheme relating to maximum height, location, side-yard, or frontage set-back requirements for buildings.

6. NOTHING in this Deed shall prevent the Council from notifying any Scheme change notwithstanding that such change may affect the Ordinances relating to plot-ratio and their bonus or transfer provisions, nor to prevent the Owner from duly objecting to the same PROVIDED THAT no District Scheme Change may affect any bonus already sold by the Owner.

7. (a) ONCE the Council has recorded a transfer under Clause 2 hereof, it may be revoked if the development in respect of which the owner had proposed to make it available, does not proceed, upon the Council receiving a written request and notification thereof, signed by both the Owner and the person to whom planning consent for the said



development had been granted. That part of the Development Right shall thereupon be made available for re-transfer.

7. (b) ANY Purchaser who acquires from the Owner or its successors all or part of the Development Right or the right to nominate the property or development and to which all or part of the Development Right is to be transferred shall have the same rights mutatis mutandis as the Owner to sell or assign its rights in respect of that part of the Development Right and this right shall enure to the benefit of any subsequent purchaser.

8. IF the Owner without the consent of the Council makes unlawful use of the registered buildings on the site, or wilfully or negligently destroys them or alters them in such a way that they no longer have the physical state in respect of which they were registered in the District Scheme, or permits them to become of such a state that they cannot reasonably be occupied for any normal use or cannot be allowed to remain erect, then so much of this Development Right as has not been transferred may be cancelled on the resolution of the Council.

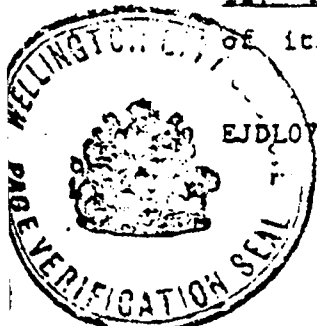
*Use & maintenance of Buildings*

9. If the Owner intends to erect a new building on the Site, then so much of the Development Right as has by then been duly transferred, shall be excluded from the calculation of the extent to which any new building may lawfully be erected on the Site.

10. THE Owner hereby agrees that this Deed shall be construed to confer an interest in land pursuant to which the Council may at any time register a Caveat or Compensation Certificate against the Site (limited to the protection of the interest conferred by this Deed over the Site), or upon the request of Council, will execute a registerable Memorandum of Encumbrance in the sum of \$100.00 per annum for one hundred years, from the date of registration against the Site.

11. THAT the Owner will not sell, agree to sell or otherwise dispose of its interest in the Site or any part of it without it first

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procuring the execution of a Deed in terms identical in effect to this Deed by any proposed Purchaser, or other assignee as aforesaid at the expense of the Owner in all things.

12. THAT if any Purchaser or other assignee of the site, not having been required to execute a Deed in terms identical to this present Deed, shall make any claim or demand against the Council, in any way resulting from the Council's enforcement of the provisions of this Deed, or its powers under the District Scheme for the time being in force, then any Owner or previous Owner who has failed to require such subsequent execution of such a similar Deed, will fully indemnify and protect the Council in respect of and to the extent of any such claim or demand.

13. THE Council acknowledges that the relevant buildings on the site meet the structural requirements of the City Engineer.

14. THAT the Owner will pay the legal costs for the preparation and stamping of this Deed and of any registration carried out pursuant to it.



SCHEDULE

1. All that parcel of land containing  $2,504m^2$  more or less situate in the city of Wellington being part of section 168 on the Public Map of the town of Wellington being all the land and certificate of title volume 340 folio 79 (Wellington Registry) Subject to:-
  - (a) Order and Council number 905 exempting Dixon Street Street from section 117 of the Public Works Act 1908.
  - (b) Order and Council number 1077 exempting western side of Willis Street from section 117 of the Public Works Act 1908.
  - (c) Limited as to parcels.
  
2. All that parcel of land containing  $421m^2$  more or less situate in the city of Wellington being part of section 166 of the town of Wellington being all the land contained in the certificate of title volume 414 folio 211 (Wellington Registry) subject to:-
  - (a) Order and Council number 905 exempting Dixon Street from the provisions of section 117 of the Public Works Act 1908.
  - (b) Order and Council number 1296 exempting MacDonald Crescent from the provisions of section 117 of the Public Works Act 1908 subject to a condition as to buildings.
  - (c) K25588



THE COMMON SEAL of THE )  
PRESBYTERIAN CHURCH )  
PROPERTY TRUSTEES as )  
~~OWNERS~~ was hereunto )  
affixed ~~in xxxxxxxxxx~~ )



and these presents signed by three of  
the said Trustees:-

*[Handwritten Signature]*  
..... Trustee  
*[Handwritten Signature]*  
..... Trustee  
*[Handwritten Signature]*  
..... Trustee

THE COMMON SEAL of the )  
WELLINGTON CITY COUNCIL )  
was hereunto affixed in )  
the presence of: )

*[Handwritten Signature]*  
DEPUTY TOWN CLERK