

# AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.

DATE:

**VENDOR:**

Roskill South Whare Tupu Limited Partnership

**PURCHASER:**

and/or nominee

The vendor is registered under the GST Act in respect of the transaction and/or will be so registered at settlement:

Yes/~~No~~

If "Yes", Schedule 1 must be completed by the parties.

Purchase price allocation (PPA) is relevant to the parties for income tax and/or GST purposes:

Vendor Yes/~~No~~

If both parties answer "Yes", use of the PPA addendum for this agreement is recommended.

Purchaser/Purchaser's Nominee Yes/~~No~~

**PROPERTY**

Address: 5 Maea Lane, Mt Roskill, Auckland

Estate: **FREEHOLD**

~~LEASEHOLD~~

~~STRATUM IN FREEHOLD~~

~~STRATUM IN LEASEHOLD~~

~~CROSS LEASE (FREEHOLD)~~

~~CROSS LEASE (LEASEHOLD)~~

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

**Legal Description:**

Area (more or less):  
square metres

Lot/Flat/Unit:  
Lot 29

DP:  
586221

Record of Title (unique identifier):  
1107839

**PAYMENT OF PURCHASE PRICE**

Purchase price: \$

~~Plus GST (if any)~~ OR **Inclusive of GST (if any)**

If neither is deleted, the purchase price includes GST (if any).

**GST date** (refer clause 13.0):

**Deposit** (refer clause 2.0): \$ A Deposit (5% of the Purchase Price) to be paid to the Vendor's Solicitor (via the Purchaser's Solicitor) immediately on satisfaction of the Purchaser's Condition in clause 21

**Balance of purchase price to be paid or satisfied as follows:**

(1) By payment in cleared funds on the settlement date which is: 15 working days after acceptance of conditions

OR

(2) In the manner described in the Further Terms of Sale.

**Interest rate for late settlement:**

14% p.a.

**CONDITIONS** (refer clause 9.0)

**Finance required** (clause 9.1):

Yes/~~No~~

**Finance date:** 15 working days

**LIM required** (clause 9.3):

Yes/~~No~~

**LIM date:**

**Building report required** (clause 9.4):

Yes/~~No~~

**Building report date:**

**Toxicology report required** (clause 9.5):

Yes/~~No~~

**Toxicology report date:**

**OIA consent required** (clause 9.6):

Yes/~~No~~

**OIA date** (clause 9.8):

**Land Act consent required** (clause 9.7):

Yes/~~No~~

**Land Act date** (clause 9.8):

**TENANCIES**

Yes/~~No~~

Particulars of any tenancies are set out in Schedule 3 or another schedule attached to this agreement by the parties.

It is agreed that the vendor sells and the purchaser purchases the property, and any chattels listed, on the terms and conditions of this agreement.

Release date: 9 May 2023

# GENERAL TERMS OF SALE

## 1.0 Definitions, time for performance, notices and interpretation

### 1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.
- (3) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (7) "Building report date" means the building report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (8) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (9) "Cleared funds" means an electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines.
- (10) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (11) "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.
- (12) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (13) "Finance date" means the finance date stated on the front page of this agreement, or if no date is stated, means the tenth working day after the date of this agreement.
- (14) "Going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (15) "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.
- (16) "Land Act date" means the Land Act date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (17) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (18) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.
- (19) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (20) "LIM date" means the LIM date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement, taking into account clause 1.1(45)(c).
- (21) "LINZ" means Land Information New Zealand.
- (22) "Local authority" means a territorial authority or a regional council.
- (23) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (24) "OIA date" means the OIA date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (25) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the New Zealand Law Society Property Law Section Guidelines, issued by the New Zealand Law Society.
- (26) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (27) "Property" means the property described in this agreement.
- (28) "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.
- (29) "Purchase price allocation" means an allocation of the purchase price, and (if applicable) any other consideration for the property and the chattels included in the sale, to the property, chattels or any part thereof that affects a person's tax position under the Income Tax Act 2007 and/or the GST Act.
- (30) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (31) "REINZ" means the Real Estate Institute of New Zealand Incorporated.
- (32) "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 clause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (33) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (34) "Rules" means body corporate operational rules under the Unit Titles Act.

- (35) "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.
- (36) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under clause 3.8.
- (37) "Settlement date" means the date specified as such in this agreement.
- (38) "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.
- (39) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (40) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (41) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (42) "Toxicology report date" means the toxicology report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (43) "Unit title" means a unit title under the Unit Titles Act.
- (44) "Unit Titles Act" means the Unit Titles Act 2010.
- (45) "Working day" means any day of the week other than:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
  - if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
  - 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 the LIM date, ending on the 15th day of January) in the following year, both days inclusive;
  - the day observed as the anniversary of any province in which the property is situated;
  - the day on which a public holiday is observed to acknowledge Matariki, pursuant to the Te Kāhui o Matariki Public Holiday Act 2022; and
  - any other day that the Government of New Zealand declares to be a public holiday.

A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

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

- (1) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
- (2) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.3 Time for Performance

- (1) Where the day nominated for settlement or the 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 clause 1.3(2).

1.4 Notices

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

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
  - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
  - (b) on the party or on the party's lawyer:
    - (i) by personal delivery; or
    - (ii) by posting by ordinary mail; or
    - (iii) by email; or
    - (iv) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in clause 1.4(3)(b), a notice is deemed to have been served:
  - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
  - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
  - (c) in the case of email:
    - (i) when sent to the email address provided for the party or the party's lawyer on the back page; or
    - (ii) any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
    - (iii) if no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website;
  - (d) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
  - (e) in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

- 1.5 Interpretation and Execution
- (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.
  - (6) Reference to a party's lawyer includes reference to a conveyancing practitioner (as defined in the Lawyers and Conveyancers Act 2006), engaged by that party, provided that all actions of that conveyancing practitioner (including without limitation any actions in respect of any undertaking or in respect of settlement) must strictly accord with the PLS Guidelines.

## 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 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 the latest of those of the following matters which are applicable to this agreement:
- ~~(1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and/or~~
  - (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/or
  - (3) where the property is a unit title:
    - (a) a pre-contract disclosure statement that complies with section 146 of the Unit Titles Act, and a pre-settlement disclosure statement that complies with section 147 of the Unit Titles Act, have been provided to the purchaser by the vendor within the times prescribed in those sections; and/or
    - (b) all rights of delay or cancellation under sections 149, 149A, 151, or 151A of the Unit Titles Act that have arisen have been waived or have expired without being exercised; and/or
    - (c) this agreement is cancelled pursuant to sections 149A or 151A of the Unit Titles Act; and/or
  - (4) this agreement is:
    - (a) cancelled pursuant to clause 6.2(3)(c); and/or
    - (b) avoided pursuant to clause 9.10(5).
- 2.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to clause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008, but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing.

## 3.0 Possession and Settlement

### Possession

- 3.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 3.2 If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
- (1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
  - (2) to re-enter the property no later than the day prior to the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property, the chattels and the fixtures.
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 3.4 On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.

### Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date. If the property is a unit title, the vendor's settlement statement must show any periodic contributions to the operating account that have been struck prior to the settlement date (whether or not they are payable before or after the settlement date) and these periodic contributions to the operating account shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.

- 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 clause 3.12 or 3.13, or for any deduction allowed to the purchaser under clause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to clause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to clause 10.8);
  - (2) the vendor's lawyer shall immediately thereafter:
    - (a) release or procure the release of the transfer instrument and the other instruments mentioned in clause 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 clause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
    - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.
- 3.9 All obligations under clause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement in accordance with the PLS Guidelines. Where the purchaser considers it is necessary or desirable to tender settlement, this may be effected (in addition to any other valid form of tender) by the purchaser's lawyer providing to the vendor's lawyer a written undertaking that:
- (1) the purchaser is ready, willing, and able to settle;
  - (2) the purchaser's lawyer has certified and signed the transfer instrument and any other instruments in the Landonline Workspace for the transaction that must be signed on behalf of the purchaser; and
  - (3) the purchaser's lawyer holds in their trust account in cleared funds the amount that the purchaser must pay on settlement.

#### **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 clause, 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 clause 3.12(1).
  - (3) If the parties are unable to agree upon any amount payable under this clause 3.12, either party may make a claim under clause 10.0.

#### **Vendor Default: Late Settlement or Failure to Give Possession**

- 3.13 (1) For the purposes of this clause 3.13:
- (a) the default period means:
    - (i) in clause 3.13(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and

- (ii) in clause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
- (iii) in clause 3.13(5), the period from the settlement date until the date when settlement occurs; and
- (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
  - (a) the vendor shall pay the purchaser, at the purchaser's election, either:
    - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
    - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
  - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
    - (i) any withholding tax; and
    - (ii) any bank or legal administration fees and commission charges; and
    - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 3.13(2)(b) during the default period. A purchaser in possession under this clause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of clause 3.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of clause 3.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 3.13(2)(b) during the default period.
- (6) The provisions of this clause 3.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) If the parties are unable to agree upon any amount payable under this clause 3.13, either party may make a claim under clause 10.0.

#### Deferment of Settlement and Possession

- 3.14 If:
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
  - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.16 If:
- (1) the property is a unit title; and
  - (2) the settlement date is deferred pursuant to either clause 3.14 or clause 3.15; and
  - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with clause 8.3,

then the vendor may extend the settlement date:

- (a) where there is a deferment of the settlement date pursuant to clause 3.14, to the tenth working day after 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 clause 3.15, to the tenth working day after the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

#### New Title Provision

- 3.17 ~~(4) Where:~~
- ~~(a) the transfer of the property is to be registered against a new title yet to be issued; and~~
  - ~~(b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,~~
- ~~then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day after 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) Clause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.

#### 4.0 Residential Land Withholding Tax

- 4.1 ~~If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:~~
- (1) ~~the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:~~
- ~~(a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and~~  
~~(b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;~~
- (2) ~~the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and~~
- (3) ~~any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:~~
- ~~(a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and~~  
~~(b) any costs payable by the vendor under clause 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 clause 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 clause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.~~
- 4.3 ~~If pursuant to clause 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 clause 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 clause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and~~  
(2) ~~the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.~~

#### 5.0 Risk and insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
- (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
- (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
- (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
- (3) if the property is zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
- (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in clause 10.8 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

## 6.0 Title, boundaries and requisitions

- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title ~~except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:~~  
~~(a) the tenth working day after the date of this agreement; or~~  
~~(b) the settlement date.~~
- (2) ~~Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.~~
- (3) ~~If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:~~  
~~(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.~~
- 6.3 ~~In the event of cancellation under clause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.~~
- 6.4 (1) ~~If the title to the property being sold is a cross lease title or a unit title and there are:~~  
~~(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 use 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 clause 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.~~
- 6.5 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 the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.
- 7.3 The vendor warrants and undertakes that at settlement:
- (1) The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted).
- (2) All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.
- (3) There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.



- (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.

~~7.4 If the property is or includes part only of a building, the warranty and undertaking in clause 7.3(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:~~

- (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.~~

7.5 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 outgoing 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.

## 8.0 Unit title and cross-lease provisions

### Unit Titles

~~8.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement and a pre-settlement disclosure statement in accordance with the Unit Titles Act. The requirements of this clause 8 are in addition to, and do not derogate from, the requirements of that Act.~~

~~8.2 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as follows as at the date of this agreement:~~

- (1) ~~The information in the pre-contract disclosure statement provided to the purchaser was complete and correct to the extent required by the Unit Titles Act.~~
- (2) ~~Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate.~~
- (3) ~~There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.~~
- (4) ~~No order or declaration has been made by any Court or Tribunal against the body corporate or the vendor under any provision of the Unit Titles Act.~~
- (5) ~~The vendor has no knowledge or notice of any fact which might result in:~~
  - (a) ~~the vendor or the purchaser incurring any other liability under any provision of the Unit Titles Act; 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 vendor under any provision of the Unit Titles Act.~~
- (6) ~~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.~~
- (7) ~~No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property.~~

- ~~(8) 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;~~
  - ~~(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; or~~
  - ~~(e) any change to utility interest or ownership interest for any unit on the unit plan.~~

~~8.3 If the property is a unit title, not less than five working days before the settlement date, the vendor will provide:~~

- ~~(1) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act; and~~
- ~~(2) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act.~~

~~8.4 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as at the settlement date:~~

- ~~(1) Other than contributions to the operating account, long term maintenance fund, contingency fund, or capital improvements fund that are shown in the pre-settlement disclosure statement, there are no other amounts owing by the vendor under any provision of the Unit Titles Act.~~
- ~~(2) All contributions and other moneys payable by the vendor to the body corporate have been paid in full.~~
- ~~(3) The warranties at clause 8.2(2), (3), (4), (5), (6), (7), and (8) are repeated.~~

~~8.5 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of clause 8.3, then in addition to the purchaser's rights under sections 150, 151 and 151A of the Unit Titles Act, the purchaser may:~~

- ~~(1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or~~
- ~~(2) elect that settlement shall still take place on the settlement date, such election to be a waiver of any other rights to delay or cancel settlement under the Unit Titles Act or otherwise.~~

~~8.6 If the property is a unit title, each party specifies that:~~

- ~~(1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act; and~~
- ~~(2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Unit Titles Act.~~

~~8.7 Unauthorized Structures—Cross Leases and Unit Titles~~

- ~~(1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:~~
  - ~~(a) in the case of a cross lease title, any required lessors' consent; or~~
  - ~~(b) in the case of a unit title, any required body corporate consent,~~

~~the purchaser may demand within the period expiring on the earlier of:~~

  - ~~(i) the tenth working day after the date of this agreement; or~~
  - ~~(ii) the settlement date,~~

~~that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.~~
- ~~(2) Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in clauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under clause 8.6(1) being deemed to be an objection and requisition.~~

## 9.0 Conditions and mortgage terms

9.1 Finance condition

- (1) If the purchaser has indicated that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date.
- (2) If the purchaser avoids this agreement for failing to arrange finance in terms of clause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.

9.2 Mortgage terms

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

9.3 LIM condition

- (1) ~~If the purchaser has indicated on the front page of this agreement that a LIM is required:~~
  - ~~(a) that LIM is to be obtained by the purchaser at the purchaser's cost; and~~
  - ~~(b) this agreement is conditional upon the purchaser approving that LIM by the LIM date, 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 LIM date 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 LIM date and the vendor does not give an extension when requested, then unless the purchaser waives this condition, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.~~

- (3) ~~The vendor shall give notice to the purchaser ("the vendor's notice") on or before the third 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 fifth 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 clause 9.10(5) shall apply.~~
- (5) ~~If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.~~

#### 9.4 Building report condition

- (1) ~~If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the building report date a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment.~~
- (2) ~~The report must be prepared in good faith by a suitably qualified building inspector in accordance with accepted principles and methods and it must be in writing.~~
- (3) ~~Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report.~~
- (4) ~~The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent.~~
- (5) ~~If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.~~

#### 9.5 Toxicology report condition

- (1) ~~If the purchaser has indicated on the front page of this agreement that a toxicology report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the toxicology report date, a toxicology report on the property that is satisfactory to the purchaser, on the basis of an objective assessment.~~
- (2) ~~The purpose of the toxicology report shall be to detect whether the property has been contaminated by the preparation, manufacture or use of drugs including, but not limited to, methamphetamine.~~
- (3) ~~The report must be prepared in good faith by a suitably qualified inspector in accordance with accepted principles and methods and it must be in writing.~~
- (4) ~~Subject to the rights of any tenants of the property, the vendor shall allow the inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of carrying out the testing and preparation of the report.~~
- (5) ~~The inspector may not carry out any invasive testing in the course of the inspection without the vendor's prior written consent.~~
- (6) ~~If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the inspector's report.~~

#### 9.6 OIA consent condition

- (1) ~~If the purchaser has indicated on the front page of this agreement that OIA consent is required, this agreement is conditional upon OIA consent being obtained on or before the OIA date on terms and conditions that are satisfactory to the purchaser, acting reasonably, the purchaser being responsible for payment of the application fee. This condition is inserted for the benefit of both parties, but (subject to clause 9.6(2)) may not be waived by either party, and the vendor is not required to do anything to enable this condition to be fulfilled.~~
- (2) ~~If the purchaser has indicated on the front page of this agreement that OIA consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA consent.~~

#### 9.7 ~~If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date.~~

#### 9.8 ~~If the Land Act date or OIA date is not shown on the front page of this agreement that date shall be the settlement date or that date 65 working days after 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 that date 20 working days after the date of this agreement, whichever is the sooner.~~

#### 9.9 Resource Management Act condition

If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

#### 9.10 Operation of conditions

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

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

- (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

## 10.0 Claims for compensation

- 10.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 10.0.
- 10.2 The provisions of this clause apply if:
- (1) the purchaser claims a right to compensation (and in making such a claim, the purchaser must act reasonably, but the vendor taking the view that the purchaser has not acted reasonably does not affect the purchaser's ability or right to make such a claim) for:
    - (a) a breach of any term of this agreement;
    - (b) a misrepresentation;
    - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986;
    - (d) an equitable set-off, or
  - (2) there is a dispute between the parties regarding any amounts payable:
    - (a) under clause 3.12 or clause 3.13; or
    - (b) under clause 5.2.
- 10.3 To make a claim under this clause 10.0:
- (1) the claimant must serve notice of the claim on the other party on or before the last working day prior to the settlement date, time being of the essence (except for claims made after the settlement date for amounts payable under clause 3.12 or clause 3.13, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
  - (2) the notice must:
    - (a) state the particular breach of the terms of this agreement, or the claim under clause 3.12, clause 3.13 or clause 5.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set-off; and
    - (b) state a genuine pre-estimate of the loss suffered by the claimant; and
    - (c) be particularised and quantified to the extent reasonably possible as at the date of the notice; and
  - (3) the claimant must not have made a prior claim under this clause 10.0 (to the intent that a claimant may make a claim under this clause 10.0 on only one occasion, though such claim may address one or more of the elements in clause 10.2).
- 10.4 If the claimant is unable to give notice under clause 10.3 in respect of claims under clause 10.2(1) or clause 10.2(2)(b) on or before the date that notice is due under clause 10.3(1) by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under clause 11.1, time being of the essence.
- 10.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the purchaser on settlement.
- 10.6 If the purchaser makes a claim for compensation under clause 10.2(1) but the vendor disputes that the purchaser has a valid or reasonably arguable claim, then:
- (1) the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under clause 10.3, time being of the essence; and
  - (2) the purchaser's right to make the claim (on the basis that such claim is valid or reasonably arguable) shall be determined by an experienced property lawyer or an experienced litigator appointed by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the Auckland District Law Society. The appointee's costs shall be met by the party against whom the determination is made or otherwise as determined by the appointee.
- 10.7 If the purchaser makes a claim for compensation under clause 10.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 10.6, the vendor is deemed to have accepted that the purchaser has a valid or reasonably arguable claim.
- 10.8 If it is accepted, or determined under clause 10.6, that the purchaser has a right to claim compensation under clause 10.2(1) but the amount of compensation claimed is disputed, or if the claim is made under clause 10.2(2) and the amount of compensation claimed is disputed, then:
- (1) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
  - (2) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the Auckland District Law Society;
  - (3) the interim amount must be a reasonable sum having regard to the circumstances, except that:
    - (a) where the claim is under clause 3.13 the interim amount shall be the lower of the amount claimed, or an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date;
    - (b) neither party shall be entitled or required to undertake any discovery process, except to the extent this is deemed necessary by the appointee under clause 10.8(4) for the purposes of determining that the requirements of clauses 10.3(2)(b)-(c) have been met.
  - (4) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under clause 5.2, an experienced registered valuer or quantity surveyor appointed by the parties. The appointee's costs shall be met equally by the parties, or otherwise as determined by the appointee. 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 Auckland District Law Society;
  - (5) the amount of the claim determined to be payable shall not be limited by the interim amount;

- (6) the stakeholder shall lodge the interim amount on an interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
  - (7) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount; and
  - (8) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.
- 10.9 Where a determination has to be made under clause 10.6(2) or clause 10.8(4) and the settlement date will have passed before the determination is made, the settlement date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these clauses, the settlement date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations. However, the settlement date will only be deferred under this clause 10.9 if, prior to such deferral, the purchaser's lawyer provides written confirmation to the vendor's lawyer that but for the resolution of the claim for compensation, the purchaser is ready, willing and able to complete settlement.
- 10.10 The procedures prescribed in clauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of this agreement.
- 10.11 A determination under clause 10.6 that the purchaser does not have a valid or reasonably arguable claim for compensation under clause 10.2(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 10.12 Where a determination is made by an appointee under either clause 10.6 or clause 10.8, that appointee:
- (1) shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination; and
  - (2) may make an order that one party must meet all or some the reasonable legal costs of the other party, and in making such an order the appointee may without limitation take into account the appointee's view of the reasonableness of the conduct of the parties under this clause.

#### 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 in all material respects ready, willing, and able to proceed to settle in accordance with this agreement, or is not so ready, willing, and able 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 clause 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 clause shall be deemed the settlement date for the purposes of clause 11.1.
- (3) The vendor may give a settlement notice with a notice under this clause.
- (4) For the purposes of this clause 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 clause 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 clause 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;
    - (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
    - (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
  - (4) Any surplus money arising from a resale shall be retained by the vendor.

- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
  - (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready, willing, and able to settle upon the expiry of that notice.

## 12.0 Non-merger

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

## 13.0 Goods and Services Tax and Purchase Price Allocation

- 13.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement, then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
  - (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
  - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
    - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
    - (b) any default GST;
  - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
  - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to clause 3.8(1).
- 13.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 13.3
- (1) Without prejudice to the vendor's rights and remedies under clause 13.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
  - (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 11.1.
  - (3) The vendor may give a settlement notice under clause 11.1 with a notice under this clause.
- 13.4 Each party warrants that their response to the statement on the front page regarding purchase price allocation being relevant to the vendor or purchaser/purchaser's nominee for income tax and/or GST purposes is correct.

## 14.0 Zero-rating

- 14.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 1 are correct at the date of this agreement and will remain correct at settlement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 14.3 Where the particulars stated on the front page and in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
  - (2) the recipient is and/or will be at settlement a registered person;
  - (3) the recipient intends at settlement to use the property for making taxable supplies; and
  - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 14.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 1 or they have altered.
- 14.5
- (1) If any of the particulars stated by the purchaser in Schedule 1:
    - (a) are incomplete; or
    - (b) alter between the date of this agreement and settlement,the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
  - (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.

- (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement, if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.

14.6 If

- (1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and
- (2) that part is still being so used at the time of the supply under this agreement,
- then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.

14.7 If

- (1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
- (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in clauses 14.3 and 14.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.

14.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of clause 14.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:

- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of this agreement; and
- (2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with clause 14.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest rate for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

## 15.0 Supply of a Going Concern

15.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated in this agreement:

- (1) each party warrants that it is a registered person or will be so by the date of the supply;
- (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
- (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
- (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.

15.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 13.0 of this agreement shall apply.

## 16.0 Limitation of Liability

16.1 If a person enters into this agreement as trustee of a trust and is not a beneficiary of the trust, then that person will be known as an "independent trustee" and clauses 16.2 and 16.3 will apply.

16.2 The liability of an independent trustee under this agreement is limited to the extent of the indemnity from the assets of the trust available to the independent trustee at the time of enforcement of that indemnity.

16.3 However, if the entitlement of the independent trustee to be indemnified from the trust assets has been lost or impaired (whether fully or in part) by reason of the independent trustee's act or omission (whether in breach of trust or otherwise), then the limitation of liability in clause 16.2 does not apply, and the independent trustee will be personally liable up to the amount that would have been indemnified from the assets of the trust had the indemnity not been lost.

## 17.0 Counterparts

17.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).

17.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.

17.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.

17.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

## 18.0 Agency

18.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor has appointed as the vendor's agent according to an executed agency agreement.

18.2 The scope of the authority of the agent under clause 18.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser's offer or counteroffer on the vendor's behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.

18.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

**19.0 Collection of Sales Information**

- 19.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to REINZ.
- 19.2 This information will be stored on a secure password protected network under REINZ's control and may include (amongst other things) the sale price and the address of the property, but will not include the parties' names or other personal information under the Privacy Act 2020.
- 19.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 19.4 Despite the above, if REINZ does come to hold any of the vendor's or purchaser's personal information, that party has a right to access and correct that personal information by contacting REINZ at info@reinz.co.nz or by post or telephone.

**20.0 COVID-19 / Pandemic Provisions**

- 20.1 The parties acknowledge that the Government of New Zealand or a Minister of that Government may, as a result of public health risks arising from a Pandemic, order restrictions on personal movement pursuant to the COVID-19 Public Health Response Act 2020 (or other legislation), and the effect of such restrictions may be that personal movement within or between particular regions is unlawful for the general population of those regions.
- 20.2 Where such a legal restriction on personal movement exists either nationally or in the region or district where the property is located:
  - (1) The date for satisfaction of any condition that has not yet been satisfied or waived will be the later of:
    - (a) the date that is 10 working days after the restriction on personal movement in the region or district in which the property is located is removed; or
    - (b) the date for satisfaction of the condition as stated elsewhere in this agreement.
  - (2) The settlement date will be the later of:
    - (a) the date that is 10 working days after all conditions are satisfied or waived; or
    - (b) the date that is 10 working days after the date on which the restriction on personal movement in the region or district in which the property is located is removed; or
    - (c) the settlement date as stated elsewhere in this agreement.
  - (3) Nothing in the previous provisions of this clause is to have the effect of bringing forward a date specified in this agreement.
- 20.3 Clause 20.2 applies whether such legal restriction on personal movement exists at, or is imposed after, the date of this agreement, and on each occasion such restriction is imposed.
- 20.4 Neither party will have any claim against the other for a deferral of a condition date or the settlement date under this clause 20.0.
- 20.5 For the purposes of this clause 20.0, "Pandemic" means the COVID-19 pandemic, or such other pandemic or epidemic that gives rise to Government orders restricting personal movement.



## FURTHER TERMS OF SALE

### 21.0 Due Diligence

21.1 This agreement is conditional on the purchaser being satisfied in all respects and entirely at the purchaser's own discretion with the outcome of the purchaser's due diligence investigation into all aspects of the property and its suitability for the purchaser. This condition is to be satisfied within fifteen (15) working days of the signing of this agreement by both parties. This clause is inserted for the sole benefit of the purchaser and the vendor shall not be entitled to enquire into the purchaser's exercise of discretion under this clause.

### 22.0 Independent 10-Year Building Guarantee

22.1 The vendor will transfer the Independent 10-year Building Guarantee, Master build or similar to the purchaser on or shortly after settlement at the vendor's expense.

### 23.0 KiwiBuild Application

23.1 This agreement is conditional on the purchaser being satisfied in the approval of KiwiBuild application. This condition is to be satisfied within fifteen (15) working days of the signing of this agreement by both parties.



## Further Terms of Sale

### Contents

23. Further Definitions.....	2
24. Conditions and Force Majeure.....	2
25. Residents Association.....	3
26. Power of Attorney.....	3
27. Assignment of Warranties.....	4
28. General Terms.....	4
29. General Provisions.....	4
30. Guarantee .....	5

## 23. Further Definitions

- 23.1 The definitions in clause 1 of the General Terms apply (except where the meaning or intent of the word use requires otherwise).
- 23.2 If there is a conflict between the provisions of the General Terms these Further Terms of Sale, then these Further Terms of Sale shall take precedence.
- 23.3 In this Agreement the following terms will have the following meanings:  
**Association** means Whakato Residents Association Incorporated established under the Incorporated Societies Act 1908 or 2022 (as the case may be) for purposes relating to the control, management, administration, use and enjoyment of the Development generally, in accordance with the Constitution.  
**Bylaws** are incorporated into, and form part of, the Constitution.  
**Constitution** means the constitution of the Association.  
**Covenants** means the land covenants registered against the title to the Property in favour of the Association.  
**Development** means the Vendor's staged development that includes Whakato located at Freeland Ave Mt. Roskill Auckland.  
**Encumbrance** means the encumbrance in favour of the Association registered against the title to the Property.  
**General Terms** is reference to the attached General Terms of Sale forming part of the standard form of Agreement for Sale and Purchase of Real Estate Eleventh Edition 2022 as approved by the Real Estate Institute of New Zealand and the Auckland District Law Society.  
**KiwiBuild Deed of Covenant** means the Deed of Covenant in the form provided.  
**KiwiBuild Home means** a home on the Land that forms part of the KiwiBuild programme.  
Land means the Vendor's freehold interest in part of the land comprised in Record of Title 584177 and includes any further land brought in to the Development by the Vendor and excludes any part of the Land taken out of the Development by the Vendor.

## 24. Conditions and Force Majeure

- 24.1 **KiwiBuild – Purchaser Verification:**  
If the Purchaser has not verified (via the KiwiBuild portal ([www.KiwiBuild.govt.nz](http://www.KiwiBuild.govt.nz))) that the Purchaser is an Eligible Purchaser, this Agreement is conditional on the Purchaser confirming such verification within 10 working days of the date of this Agreement. The Purchaser warrants to the Vendor that as at the date of the Agreement the Purchaser is an Eligible Purchaser. For the sake of clarification, this condition cannot be waived by the Purchaser.
- 24.2 **KiwiBuild – Vendor Verification:** This Agreement is conditional on the Vendor being satisfied that the Purchaser has been pre-qualified as an Eligible Purchaser within 10 working days of the date of this Agreement. For the sake of clarification, this condition cannot be waived by the Vendor.
- 24.3 **Purchaser Condition:** If the Purchaser has indicated in the Reference Schedule that this Agreement is conditional upon:  
a. Purchaser's Finance; and/or  
b. Purchaser's Due Diligence,  
this Agreement is conditional on the Purchaser confirming satisfaction of same within the time stated next to such condition in the Reference Schedule. This condition is for the sole benefit of the Purchaser.

## **25. Residents Association**

- 25.1 The Vendor has, as part of the Development, established an incorporated society known as Whakato Residents Association Incorporated to administer the Constitution and Bylaws setting out certain controls as to use, design standards, maintenance standards and the conduct of residents and occupiers.
- 25.2 The Purchaser, by virtue of ownership of the Property, will be required to be a member of the Association for the term of ownership and must comply with the obligations of membership as set out in the Covenants, the Constitution and the Bylaws.
- 25.3 The Association has the power to charge an annual levy for the Property's share of facility expenses and for general Association and management expenses in each year, as set out in the Constitution. Payment of such levies (and other monies due to the Association from time to time) is secured by the Encumbrance.
- 25.4 The Vendor warrants that it will not unreasonably exercise the rights and powers preserved to it, as the Principal Member, under the Constitution. For the purposes of this clause, the Vendor will not be deemed to have acted unreasonably if such action is reasonably necessary for the continuation or completion of the Development.
- 25.5 The Constitution and Bylaws may be amended from time to time in accordance with the terms of the Constitution.
- 25.6 The Purchaser, for the Purchaser and the Purchaser's successors in title, covenants with, and for the benefit of, the Vendor (so as to bind the Property in favour of each of the properties within the Development) and in favour of the Association that the Purchaser will:
- a. comply with the terms of the Encumbrance;
  - b. join as a member of the Association and remain a member while owning the Property, and fulfil and continue to fulfil the obligations of a member of the Association as set out in the Constitution (including ensuring that any transferee of the Property executes a deed of covenant in favour of the Association at the cost of the Purchaser) and agrees to be bound by the Constitution and the Bylaws as a member of the Association.
- 25.7 The Vendor reserves the right to amend or vary the form of the covenants registered against the title to the Property so long as the amendment or variation is necessary or desirable in the Vendor's opinion for the completion and/or operation of the Development and/or the operation of the Association.
- 25.8 The Vendor will as a precondition of Settlement require the Purchaser to enter into and deliver on Settlement:
- a. a separate power of attorney appointing the Vendor the attorney of the Purchaser for the purposes set out in clause 26;
  - b. a separate deed of covenant whereby the Purchaser and the Purchaser's successors in title covenant in favour of the Association to comply with the terms of the Constitution and Bylaws, such documents will be prepared by the Vendor (using form/s determined by the Vendor's lawyers acting reasonably and in their professional capacity) and provided to the Purchaser's lawyer for signing prior to Settlement.

## **26. Power of Attorney**

- 26.1 In consideration of the Vendor entering into this Agreement, the Purchaser irrevocably and unconditionally nominates, constitutes and appoints the Vendor or a nominee of the Vendor to be the true and lawful attorney of the Purchaser for the purposes of executing all documents, plans, consents and to perform all acts, matters and things as may be necessary to:
- a. complete the Development;
  - b. apply for, consent to and execute all necessary consents or applications which may be necessary for the purposes of the Development and conduct all appeals (if any) which are necessary or desirable to obtain such consents;

- c. execute all resolutions (including Association resolutions), consents and other documents and exercise all powers necessary to sign, approve and lodge with any Relevant Authority all plans for the Development or any part of it;
- d. appoint the Vendor's nominee to be the proxy of the Purchaser entitling the Vendor's nominee to attend and vote at any meeting of the Association in relation to any motion for a resolution to implement or give effect to any of the matters referred to in this Agreement;
- e. act as the Purchaser's proxy or exercise the Purchaser's voting rights in the Association until such time as the Development has been completed;
- f. execute all other documents required for the continuation and completion of the Development, including any adjacent development, redevelopment, subdivision or reallocation and transfer of carparks;
- g. do any other things necessary or desirable (at the Vendor's discretion) to continue and complete the Development.

26.2 The Power of Attorney is given for valuable consideration and will operate and continue and will be irrevocable until such time as the Vendor or its assignee resigns as the attorney or completion of the Development, whichever is the first to occur.

26.3 The Vendor may appoint in its place one or more attorney/s to exercise any or all of the powers and authorities conferred in this clause 26 and from time to time to revoke any such appointment and appoint any further one or more attorney/s in place of such attorney.

26.4 The Vendor will:

- a. meet all costs associated with the use of the Power of Attorney;
- b. act reasonably in the exercise of the Power of Attorney;
- c. consult with the Purchaser if the use of the Power of Attorney is likely to have a material effect on the use or value of the Property which would not have been reasonably contemplated by the Purchaser given the scale and style of the Development.

## 27. Assignment of Warranties

27.1 The Vendor shall assign to the Purchaser the benefit of all warranties and guarantees relating to the supply of services, materials and equipment incorporated or installed in the Property and which are capable of assignment. If any warranties or guarantees are incapable of assignment, the Vendor shall hold such warranties and guarantees on trust, at the direction of and for the benefit of the Purchaser.

## 28. General terms

28.1 The General Terms are amended as follows:

- a. Clauses 2.1, 2.4(1) are deleted;
- b. Clause 3.17 is deleted;
- c. Clause 4 is deleted
- d. Clauses 6.2, 6.3 are deleted other than the words in clause 6.2(1) "The purchaser is deemed to have accepted the vendor's title";
- e. Clauses 7.3(8), 7.4 are deleted;
- f. Clause 8 is deleted;
- g. Clauses 9.3, 9.4, 9.5, 9.6, 9.7, 9.8 are deleted; and
- h. Clause 11.4(1)(b) the words "but not exceeding in all 10% of the purchase price" are deleted.

## 29. General Provisions

29.1 **Kiwibuild:** The Purchaser warrants to the Vendor that the Purchaser will execute and deliver the Deed of Covenant to KiwiBuild prior to settlement.

29.2 **Agreed lowest price:** The purchase price is the lowest price (within the meaning of section EW 32(3) of the Income Tax Act 2007) that the parties would have agreed on for the property under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis no income and expenditure arises under those rules.

29.3 **Confidentiality:** The Vendor and the Purchaser covenant and agree that at no time will either of them disclose the purchase price or any of the terms and conditions of this Agreement to any third party without the consent in writing of the other party save and except as required by law or for a necessary disclosure to legal advisors, valuers, bankers, surveyors and other professional advisors.

**30. Guarantee**

30.1 In consideration of the Vendor entering into this Agreement at the request of the Guarantor (which request the Guarantor admits and declares) the Guarantor:

- a. guarantees the payment of all monies to be paid by the Purchaser under this Agreement and the performance of the Purchaser's obligations both at the time and in the manner required; and
- b. indemnifies the Vendor against any loss the Vendor might suffer should the agreement be lawfully disclaimed by any liquidator or receiver on behalf of the Purchaser.

30.2 For the aforesaid consideration the Guarantor covenants with the Vendor that:

- a. no release delay or other indulgence given by the Vendor to the Purchaser shall release prejudice or affect the liability of the Guarantor as a guarantor or indemnifier;
- b. as between the Guarantor and the Vendor the Guarantor may for all purposes be treated as the Purchaser and the Vendor shall be under no obligation to take proceedings against the Purchaser before taking proceedings against the Guarantor; and
- c. this guarantee shall bind all persons named as Guarantor both jointly and several.

**Executed by the Guarantors:**

.....

## SCHEDULE 1

### (GST Information – see clause 14.0)

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

<b>Section 1 Vendor</b>	
1(a) The vendor’s registration number (if already registered): 133-695-214	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. “the main farmhouse” or “the apartment above the shop”)	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
<b>Section 2 Purchaser</b>	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	
<b>If the answer to either or both of questions 2(a) and 2(b) is “No”, go to question 2(e)</b>	
2(c) The purchaser’s details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
<b>OR</b> 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. That part is: (e.g. “the main farmhouse” or “the apartment above the shop”)	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party (“nominee”).	
<b>If the answer to question 2(e) is “Yes”, then please continue. Otherwise, there is no need to complete this Schedule any further.</b>	
<b>Section 3 Nominee</b>	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	
<b>If the answer to either or both of questions 3(a) and 3(b) is “No”, there is no need to complete this Schedule any further.</b>	
3(c) The nominee’s details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
<b>OR</b> 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. That part is: (e.g. “the main farmhouse” or “the apartment above the shop”)	Yes/No

**SCHEDULE 2****List all chattels included in the sale**

(Strike out or add as applicable. If necessary complete on a separate schedule or the further terms of sale)

<del>Stove</del> ( )	Rangehood ( 1 )	Wall/under bench oven ( 1 )	Cooktop ( 1 )
Dishwasher ( 1 )	<del>Kitchen waste disposal</del> ( )	Light fittings (Y)	Smoke detectors (Y)
Burglar alarm (N)	Heated towel rail ( )	Heat pump ( 1 )	<del>Garage door remote control</del> ( )
<del>Garden shed</del> ( )	Blinds	Curtains	Drapes
Fixed floor coverings	Bathroom extractor fan	Fridge/Freezer,	

Both parties should check that Schedule 2 (list of chattels) includes an accurate list of all items which are included with the sale and purchase (in addition to, or as part of any building).

**SCHEDULE 3****Residential Tenancies**

Name of Tenant(s):

Rent:

Term:

Bond:

**Commercial/Industrial Tenancies**

(If necessary complete on a separate schedule)

1. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

2. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

3. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:



## WARNING AND DISCLAIMER

- This agreement is a standard form document. It is therefore likely that amendments and additions may need to be made in order to suit the circumstances of each of the vendor and the purchaser, and to suit the particular property involved. It is also important that you are certain that any amendments made correctly reflect your understanding of what has been agreed. **You should always get legal advice before you sign the agreement and throughout the buying and selling process.**
- ADLS and REINZ accept no liability whatsoever in respect of this document and any agreement which may arise from it.
- The vendor should check the correctness of all warranties made under clause 7, clause 8, and elsewhere in this agreement.
- In the case of a unit title, before the purchaser enters into the agreement, the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act.
- The transaction may have tax implications for the parties and it is recommended that both parties seek their own professional advice regarding the tax implications of the transaction before signing, including:
  - the GST treatment of the transaction, which depends upon the GST information supplied by the parties and could change before settlement if that information changes; and
  - the income tax treatment of the transaction, including any income tax implications of purchase price allocation.

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

#### Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Authority and a copy of the agency's in-house complaints and dispute resolution process.

The person or persons signing this agreement acknowledge that either:

- they are signing in a personal capacity as the 'vendor' or 'purchaser' named on the front page, or
- they have authority to bind the party named as 'vendor' or 'purchaser' on the front page.

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

**Before signing**, each party should read this entire contract and should obtain all relevant professional advice.

This is a binding contract. Once signed, you will be bound by the terms of it and there may be no, or only limited, rights to terminate it.

Signature of Purchaser(s):

Signature of Vendor(s):

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney\*

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

Name: Mathew Peters

Director / Trustee / Authorised Signatory / Agent / Attorney\*

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

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney\*

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

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney\*

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

\*If this agreement is signed under:

- a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- 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 for [full name of the donor] by his or her Attorney [attorney's signature].*

**AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE****VENDOR:**

Roskill South Whare Tupu Limited Partnership

Contact Details: Level 2, 7 Falcon Street  
Parnell  
Auckland 1052  
Email: [megan@avantgroup.co.nz](mailto:megan@avantgroup.co.nz)  
Ph: 09-966 1100

**VENDOR'S LAWYERS:**

Firm: Carson Fox Legal  
Individual Acting: Nadine Clark  
Email: [nadine.clark@carsonfox.co.nz](mailto:nadine.clark@carsonfox.co.nz)  
Contact Details:

Ph: 09-966 1100

**Email address for service of notices** (clause 1.4): [nadine.clark@carsonfox.co.nz](mailto:nadine.clark@carsonfox.co.nz)

**PURCHASER:**

Contact Details:

**PURCHASER'S LAWYERS:**

Firm:  
Individual Acting:  
Email:  
Contact Details:

**Email address for service of notices** (clause 1.4):

**SALE BY LICENSED REAL ESTATE AGENT:** Megan Jaffe Real Estate Limited - (REAA 2008) a member of Ray White Real Estate

Manager: Megan Jaffe  
Salesperson: Banson Chong [banson.chong@raywhite.com](mailto:banson.chong@raywhite.com) 021 163 9939  
Second Salesperson: Cary Chong [cary.chong@raywhite.com](mailto:cary.chong@raywhite.com) 027 250 0389  
Contact Details: Ph: 520 9100  
[remuera.nz@raywhite.com](mailto:remuera.nz@raywhite.com)  
411 Remuera Road, Remuera, Auckland 1050

Licensed Real Estate Agent under Real Estate Agents Act 2008

**© Auckland District Law Society Inc. (ADLS) & Real Estate Institute of New Zealand Inc. (REINZ)**

**IMPORTANT WARNING:** All copyright in and associated with this form and its contents is owned by ADLS & REINZ. A user of this form only acquires a limited non-exclusive licence to use it *once within a single transaction only*. The standard ADLS & REINZ contract terms apply, which also prohibit any form of distribution, on-selling, or reproduction, including copying, digitising or recreating the form by any means whatsoever. ADLS & REINZ monitor the use of this form and may take enforcement action against any person acting in breach of these obligations. Copying or digitising this form and altering its standard text, without clearly identifying the alterations, is prohibited, and, in addition to copyright infringement, may also be a breach of the Fair Trading Act 1986 and misrepresentation.

# Deed of Covenant

in relation to **WHAKATO LOT**

*63 Freeland Ave, Mt Roskill, Auckland*

**Owner's Names:**

# Details

Date    /    /2024

---

## Background

- A     The Owner is or will be the owner of the land and improvements at Lot     , *63 Freeland Ave, Mt Roskill* (the **Property**).
- B     The Property comprises a Dwelling of two or more bedrooms.
- C     The Property was constructed as part of a development under the KiwiBuild Programme.
- D     The Owner acquired its interest in the Property by virtue of qualifying for the KiwiBuild Programme as an Eligible Purchaser.
- E     The Owner has agreed to covenant in favour of the Crown in relation to the Owner's use of the Property and its rights to transfer the Property during the Minimum Ownership Period. The Owner has agreed to grant a covenant in gross to the Crown to secure performance of the
- F     Owner's covenants under this deed.

# Agreed terms

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this deed:

**Boarder** means any person that occupies the Property under a Boarding Arrangement.

**Boarding Arrangement** means an arrangement whereby the Owner allows a third party to reside in the Property (whether for valuable consideration or not) at the same time that the Owner also resides in the Property.

**Capital Gain** means the difference between:

- (a) the purchase price paid by the Owner to purchase the Property; and
- (b) the total amount received by the Owner from a third party as consideration for the transfer of the Property to that third party,

both amounts being GST inclusive.

**Crown** means the Sovereign in right of New Zealand acting by and through the Chief Executive of the Ministry of Housing and Urban Development.

**Crown Interest** has the meaning given to it in clause 3.2.

**Crown Payment** means:

- (a) where clause 2.6(a) applies, 30% of the gross rental received by the Owner from the relevant third party; and
- (b) where clause 2.6(b) applies, the lesser of:
  - (i) 30% of the Capital Gain; and
  - (ii) the difference between:
    - (A) the total amount received by the Owner from a third party as consideration for the transfer of the Property to that third party (including GST); and
    - (B) the amount required to discharge any mortgage of the Property before transferring the Property to that third party.

**Eligible Purchaser** means a person who meets all of the requirements to purchase a KiwiBuild Dwelling, as determined by the Crown from time to time.

**KiwiBuild Dwelling** means a dwelling that:

- (a) is priced at or below the relevant KiwiBuild price cap for the relevant type of dwelling in the relevant location;
- (b) is offered for sale in the first instance to an Eligible Purchaser; and
- (c) has been approved by the Crown's KiwiBuild unit as forming part of the KiwiBuild Programme.

**KiwiBuild Programme** means the Crown's programme in relation to housing to identify and leverage opportunities to procure KiwiBuild Dwellings, being 100,000 affordable quality homes for Eligible Purchasers generally known as 'KiwiBuild'.

**Minimum Ownership Period** means:

- (a) where the Property is a studio or one-bedroom dwelling, a one-year period from and including the date on which the Owner is registered as owner of the Property; or
- (b) where the Property comprises a dwelling of two or more bedrooms, a three-year period from and including the date on which the Owner is registered as owner of the Property.

**Property** has the meaning given to it in Background paragraphs A and B to this deed.

**Transfer Request** has the meaning given to it in clause 2.4.

**Working Day** has the meaning given to in the Property Law Act 2007.

## 1.2 References

A reference in this deed to:

- (a) **\$** means the lawful currency of New Zealand;
- (b) an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (c) **at any time** includes from time to time;
- (d) **including** and similar expressions do not limit what else may be included;
- (e) **law** includes any common law, equity and any statute; and
- (f) a **person** includes:
  - (i) an individual, body corporate, association of persons (whether corporate or not), trust, state, agency of state and any other entity (in each case, whether or not having separate legal personality); and
  - (ii) that person's successors, permitted assigns, executors and administrators (as applicable).

## 1.3 Interpretation

In this deed:

- (a) headings are for reference only and do not affect interpretation;
- (b) references to clauses, schedules and appendices are to those in this deed, and a reference to this deed includes any schedule or appendix;
- (c) reference to a document or agreement includes that document or agreement as extended, novated, altered, amended, supplemented or replaced from time to time;
- (d) reference to any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (e) reference to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (f) the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;

- (g) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Working Day, will be done on or by the next Working Day;
- (h) reference to time is to New Zealand time unless stated otherwise; and
- (i) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.

## 2. Owner's covenants

### 2.1 Property to be used as residence for Owner

Subject to clauses 2.2 to 2.5, the Owner must live in the Property as their principal place of residence during the Minimum Ownership Period.

### 2.2 Owner may enter into Boarding Arrangement

Subject to clauses 2.4 and 2.5, the Owner may allow a Boarder to reside in the Property under a Boarding Arrangement during the Minimum Ownership Period, but will not otherwise rent all or any part of the Property to any third party.

### 2.3 Owner not to transfer Property during Minimum Ownership Period

Subject to clauses 2.4 and 2.5, the Owner will not transfer the Property to any third party at any time during the Minimum Ownership Period. For the avoidance of doubt, nothing in this clause will prevent the Owner from entering into an agreement to transfer the Property to a third party during the Minimum Ownership Period where settlement is to take place following expiry of the Minimum Ownership Period.

### 2.4 Permitted rentals and transfers

Notwithstanding clauses 2.2 and 2.3, the Owner may give the Crown written notice requesting the Crown to consent to the Owner renting or transferring the Property during the Minimum Ownership Period (a **Rental Request** or **Transfer Request** (as applicable)). If the Owner presents reasonable evidence to the Crown that any mortgagee of the Property is encouraging the Owner to sell the Property voluntarily because the Owner is having difficulty making mortgage payments to that mortgagee, the Crown cannot refuse a Transfer Request without the mortgagee's prior written consent. In all other cases, the Owner acknowledges and agrees that the Crown may act at its discretion in considering any Rental Request or Transfer Request and may impose any conditions it thinks fit in giving its consent, except that the Crown cannot restrict the price at which the Property is rented or sold, nor place any restrictions on the person to whom the Property may be rented or sold. If the Crown consents to a Rental Request or Transfer Request, the Owner:

- (a) may rent or transfer (as applicable) the Property in accordance with the Crown's consent and any conditions imposed by the Crown in giving its consent; and
- (b) will not be required to pay any Crown Payment to the Crown in relation to that rental or transfer (as applicable).

### 2.5 Permitted transfers and dealings

Notwithstanding clause 2.3, the following transfers or dealings with the Property are permitted during the Minimum Ownership Period and will not trigger payment of any Crown Payment:

- (a) the registration of a mortgage to any mortgagee;
- (b) the registration of a variation to a mortgage to any mortgagee;

- (c) transfer by way of power of sale exercised by any registered mortgagee during the Minimum Ownership Period at any price and to any buyer, whether or not they are an Eligible Purchaser;
- (d) the discharge of an existing mortgage and the registration of a replacement mortgage for any reason;
- (e) where there is more than one Owner holding the Property, the transfer of the Property to the same Owner, whether from joint tenants to tenants in common, or vice versa;
- (f) where the Owner wants to transfer the Property to the trustees of a trust under which the Owner is a beneficiary, the transfer of the Property to those trustees;
- (g) where the Owners are the trustees of a trust, the transfer of the Property to any newly appointed and/or remaining trustees of that trust; or
- (h) where the Property is held by more than one Owner as relationship property for the purposes of the Property (Relationships) Act 1976, then provided the Owners notify the Crown: the transfer of the Property to one of those Owners as required to give effect to any:
  - (i) agreement reached between those Owners on the dissolution of their marriage or civil union or ending of their de facto relationship (as applicable); or
  - (ii) order of the Family Court under that Act (or any other court having jurisdiction).

## **2.6 Owner to pay Crown Payment in specified circumstances**

Subject to clauses 2.2 to 2.5, the Owner will pay the Crown Payment to the Crown on demand if the Owner:

- (a) rents all or any part of the Property; and/or
- (b) transfers the Property, to any third party at any time during the Minimum Ownership Period.

## **3. Protection of Crown Interest**

### **3.1 Agreement to grant covenant in gross**

The Owner agrees to grant a covenant in gross over the Property to secure performance by the Owner of its covenants in clause 2.

### **3.2 Interest in land**

For the avoidance of doubt, the Owner's agreement to grant a covenant in gross over the Property in clause 3.1 is intended to confer on the Crown an interest in land (the **Crown Interest**).

### **3.3 Registration**

The Owner acknowledges and agrees that to protect the Crown Interest, the Crown may elect (at its discretion) to either:

- (a) register a caveat against the record of title for the Property in respect of the Crown Interest in the form detailed in clause 3.4; or
- (b) require the Owner to register a covenant in gross against the record of title for the Property in respect of the Crown Interest in the form detailed in clause 3.5



### **3.4 Caveat**

If the Crown registers a caveat against the record of title for the Property to protect the Crown's Interest under clause 3.3(a), then:

- (a) the caveat will be in the form attached as Schedule 1; and
- (b) the Owner may require the Crown to withdraw the caveat:
  - (i) in the same e-dealing as any transfer of the Property during the Minimum Ownership Period effected in accordance with clause 2.4; or
  - (ii) on expiry of the Minimum Ownership Period; and
- (c) the Owner or any registered mortgagee of the Property may require the Crown to withdraw the caveat in the same e-dealing as any transfer of the Property during the Minimum Ownership Period by way of power of sale exercised by that registered mortgagee.

### **3.5 Covenant in gross**

If the Crown requires the Owner to register a covenant in gross against the record of title for the Property to protect the Crown's Interest under clause 3.3(b), then:

- (a) the covenant in gross will be in the form and on the terms required by the Crown provided that the covenant in gross will be expressed to be for a term expiring on the earlier of:
  - (i) expiry of the Minimum Ownership Period; and
  - (ii) registration of any transfer of the Property during the Minimum Ownership Period effected in accordance with clause 2.4;
- (b) the Owner will do all other things and sign all documents necessary to enable registration of the covenant in gross; and
- (c) the Owner may require the Crown to surrender the covenant in gross:
  - (i) in the same e-dealing as any transfer of the Property during the Minimum Ownership Period effected in accordance with clause 2.4; or
  - (ii) on expiry of the Minimum Ownership Period; and
- (d) the Owner or any registered mortgagee of the Property may require the Crown to surrender the covenant in gross in the same e-dealing any transfer of the Property during the Minimum Ownership Period by way of power of sale exercised by that registered mortgagee.

### **3.6 Power of attorney**

The Owner irrevocably appoints the Crown as the Owner's attorney to do anything and sign all documents necessary to enable registration of any covenant in gross required by the Crown under clause 3.3(b).

### **3.7 Monitoring**

The Owner acknowledges and consents to the Crown carrying out all reasonable and necessary monitoring of the Owner's obligations under this deed.

## **4. Miscellaneous**

### **4.1 Joint and several liability**

Where there is more than one Owner, the obligations of the Owner under this deed are joint and several.

### **4.2 Privity**

The Owner acknowledges and agrees that, for the purposes of Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, the Owner's promises in clauses 2 and 3 of this deed confer a benefit on and are enforceable by the Crown.

### **4.3 Severability**

A provision of this deed that is illegal, invalid or unenforceable is ineffective to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of the remainder of the deed.

### **4.4 Variation**

A variation of this deed must be in writing and signed by or on behalf of the Owner and the Crown.

### **4.5 Further assurances**

The Owner will do all acts and things, including the execution of all relevant documents, as may be reasonable to implement and carry out its obligations under, and contemplated by, this deed.

### **4.6 Governing law**

This deed is governed by the laws of New Zealand.

### **4.7 Counterparts**

This deed may be executed in any number of counterparts. Each counterpart constitutes an original of this deed, all of which together constitute one instrument which the parties and Crown may rely on. A party who has executed a counterpart of this deed may exchange it with another party by sending it to the other party including the Crown, including by facsimile or email. If requested by the other party or the Crown, the sending party will promptly deliver the original by hand or post (but failure to make that delivery will not affect the validity of this deed).

# Signing page

EXECUTED as a deed

**SIGNED** by **(owner)**

\_\_\_\_\_  
Signature of **(owner)**

in the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

**SIGNED** by **(owner)**

\_\_\_\_\_  
Signature of **(owner)**

in the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

# Schedule 1 – Form of caveat

Approved for ADLS by Registrar-General of Land under No. 2018/6256

## CAVEAT AGAINST DEALINGS WITH LAND

Section 138, Land Transfer Act 2017

Land registration district

Refer annexure schedule



BARCODE

Record of Title (unique identifier) All/part

Area/description of part

Refer annexure schedule

Caveator

Surname(s) must be underlined or in CAPITALS.

Her Majesty the Queen

Estate or interest claimed, grounds on which claim founded, and derivation from Registered Owner

Refer annexure schedule

Notice

Take notice that the Caveator forbids the registration of any instrument, having the effect of charging or transferring, or prejudicially affecting, the estate or interest protected by this caveat, except as provided by sections 140(2) and 141 of the Land Transfer Act 2017, until this caveat is withdrawn by the Caveator, removed by order of the High Court, or until the same has lapsed under the provisions of section 143 of the Land Transfer Act 2017. The exceptions are:

Refer annexure schedule

Address for service of Caveator

Ministry of Housing and Urban Development, 15 Stout Street, PO Box 1473, Wellington 6140 (Attention: Manager, KiwiBuild Development)

Address for service of Registered Owner

Refer annexure schedule

Dated this

day of

20

Attestation

Delete inapplicable descriptions in [ ].

Signed in my presence by the [Caveator] [Attorney] [Agent]

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Signature(s) [common seal] of [Caveator]

[Attorney] [Agent]

Note:

1. You should seek independent legal advice before signing this caveat instrument.
2. The witness cannot also be a party to the caveat instrument and must be able to confirm the identity of the person signing.
3. When entered on the register this caveat instrument will become part of the public record under the Land Transfer Act 2017.

**Caveat**

**Continuation of "Land registration district":**

*[Land registry to be inserted]*

**Continuation of "Unique identifier or C/T(s)":**

Unique identifier or C/T(s) stratum	All / Part	Area/description of part or
--	------------	-----------------------------

	All	
--	-----	--

**Continuation of "Estate or interest claimed":**

An interest in the land under a Deed of Covenant dated *[date to be inserted]* entered into by the registered owner in favour of the caveator and granting the caveator the right to register a covenant in gross against the record of title for the land.

**Continuation of "Notice":**

The exceptions are registration of any of the following instruments against the record of title for the land:

- (a) a mortgage to any mortgagee;
- (b) a variation of any mortgage to any mortgagee;
- (b) a transfer by way of power of sale exercised by any registered mortgagee at any price and to any buyer;
- (c) the discharge of an existing mortgage and the registration of a replacement mortgage for any reason;
- (d) where there is more than one registered owner holding the land, a transfer of the land to the same registered owners, whether from joint tenants to tenants in common, or vice versa;
- (e) where the registered owner wants to transfer the land to the trustees of a trust under which the registered owner is a beneficiary, a transfer of the land to those trustees;
- (f) where the registered owners are the trustees of a trust, the transfer of the land to any newly appointed and/or remaining trustees of that trust; or
- (g) where the land is held by more than one registered owner as relationship property for the purposes of the Property (Relationships) Act 1976, the transfer of the land to one of those registered owners as required to give effect to any:
  - (i) agreement reached between those registered owners on the dissolution of their marriage or civil union or ending of their de facto relationship (as applicable); or

- (ii) order of the Family Court under that Act (or any other court having jurisdiction). For the avoidance of doubt, caveator consent will not be required to effect registration of any of the above instruments.

***Continuation of address for service of Registered Owner:***