

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: Rua Hills Limited

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: Lot Raphoe Village Stage 1A, Westgate, 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):

Lot/Flat/Unit:

DP:

Record of Title (unique identifier):

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):

(clauses 13, 14, 15 & 31)

Deposit (refer clause 2.0): \$

payable to Hugh Green Limited on signing of this Agreement

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

(1) By payment in cleared funds on the settlement date which is: 12 months from the date of issue on the title (subject to clauses 28.9 & 28.11)

OR

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

Interest rate for late settlement:

20 % p.a.

CONDITIONS (refer clause 9.0)

Finance required (clause 9.1):

Yes/No

Finance date:

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:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of the LIM date, ending on the 15th day of January) in the following year, both days inclusive;
 - (d) the day observed as the anniversary of any province in which the property is situated;
 - (e) the day on which a public holiday is observed to acknowledge Matariki, pursuant to the Te Kāhui o Matariki Public Holiday Act 2022; and
 - (f) 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.~~

Refer to clause 29.1(d)

- 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 (1) Where:
- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,
- 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

- Refer to clause 29.1(h)
- 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:~~

*** Refer to clause 29.1(j)

- (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:~~ Refer to clause 29.1(m)

- (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 outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement:~~
 - (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
 - (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.

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:
- the transfer of the whole or any part of the common property;
 - the addition of any land to the common property;
 - the cancellation of the unit plan;
 - 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
 - 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:
- a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act; and
 - 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:
- 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.
 - All contributions and other moneys payable by the vendor to the body corporate have been paid in full.
 - 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:
- postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - 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:
- 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
 - 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 Unauthorised Structures – Cross-Leases and Unit Titles
- Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:
 - in the case of a cross-lease title, any required lessors' consent; or
 - in the case of a unit title, any required body corporate consent,
 the purchaser may demand within the period expiring on the earlier of:
 - the tenth working day after the date of this agreement; or
 - 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.
 - 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
- 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.
 - 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
- 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
- If the purchaser has indicated on the front page of this agreement that a LIM is required:
 - that LIM is to be obtained by the purchaser at the purchaser's cost; and
 - 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.
 - 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.

Refer to clause 29.1(r)

- 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

See Further Terms of Sale attached



FURTHER TERMS OF SALE

20. DEFINITIONS AND INTERPRETATION

20.1 In this agreement, unless the context requires otherwise:

"224 Certificate" means the certificate issued under s224(c) of the Resource Management Act 1991 for a Lot or otherwise affecting that part of the Underlying Land a Lot forms part of.

"Association" means the incorporated society that may be established to provide common facilities and administer the constitution and bylaws setting out certain controls as to use, design standards, maintenance standards and the conduct of residents and occupiers of properties within the Development.

"Development" means the residential development of all or part of the Underlying Land, together with all improvements, including services, roads, footpaths, verges, parks and reserves constructed or to be constructed as part of that development.

"Early Access" has the meaning given to it in clause 28.

"Early Access Date" means the issuance date specified on the 224 Certificate.

"Land Covenants" means the land covenants creating a building scheme to be noted on the title for the Lot(s), the proposed form of which as at the date of this agreement is attached to this agreement as Appendix 2, but which may be varied from time to time by the vendor in its absolute discretion.

"Lot(s)" means the lot or lots described in the property section on the front page of this agreement.

"Lot Development" means the construction on a Lot of a dwelling with associated improvements and landscaping, to be carried out by the purchaser in accordance with this agreement.

"Non-objection Encumbrance" means the non-objection encumbrance to be noted on the title for the Lot(s), the proposed form of which as at the date of this agreement is attached to this agreement as Appendix 3, but which may be varied from time to time by the vendor in its absolute discretion.

"Regulatory Consent" means any consent required from Auckland Council or any other Relevant Authority for the subdivision of the Underlying Land and undertaking the Development.

"Relevant Authority" any government, local authority, territorial authority or regional council or other body having jurisdiction over the Underlying Land, the Development or the Lot. **"Resource Consent"** means the resource consent numbers LUC60437651 (Lots 1 – 6) LUC60438705 (Lots 7 – 171) issued by Auckland Council and any other resource consent(s) obtained or to be obtained by the vendor for the subdivision of the Underlying Land and undertaking of the Development.

"Scheme Plan" means the plan of the Development attached to this agreement.

"Sunset Date" means two years after the date of this agreement, subject to extension under clause 21.2 or under clause 26 (Force Majeure).

"Underlying Land" means the land formerly or currently contained in record of title 1169634 (Lot 5002 Deposited Plan 590200).

21. CONDITIONS

21.1 This agreement is conditional upon the vendor at its own expense doing all things necessary for and procuring the issue of the 224 Certificate by the Sunset Date.

- 21.2 The vendor may by notice to the purchaser extend the date for satisfaction of the condition in clause 21.1, provided that the vendor is making reasonable progress in obtaining issue of the 224 Certificate. No extension shall extend any such date beyond the periods provided for in section 225(2) of the Resource Management Act 1991.
- 21.3 If at any time it becomes apparent to the vendor that the condition in clause 21.1 will not be fulfilled the vendor may notify the purchaser accordingly and immediately without need for any further notice cancel this agreement and return the deposit to the purchaser without either party having any claim against the other on account of such cancellation.

22. DEPOSIT

- 22.1 If the purchaser fails to pay to the vendor any part of the deposit required to be paid under this agreement, within 3 working days of the vendor giving notice to the purchaser that such part deposit is due, the vendor may cancel this agreement with immediate effect on notice in writing to the purchaser. Any deposit paid to the vendor prior to such cancellation shall, without prejudice to any other rights that the vendor may have against the purchaser, be forfeited to the vendor upon such cancellation. Without limitation to the foregoing right of the vendor to cancel this agreement, the purchaser acknowledges and agrees that if the deposit is not paid in full within 3 working days of the date of this agreement the purchaser shall be liable to pay default interest on the unpaid portion of the deposit in accordance with clause 30.1.
- 22.2 Any deposit that is paid to (or for the account of) the vendor (or any related company of the vendor) under this agreement shall be the absolute property of the vendor from the time of payment and shall not be required to be held as stakeholder by the vendor. Nothing in this clause limits the obligation of the vendor to repay all or part of the deposit to the purchaser where such repayment is required under the express terms of this agreement.
- 22.3 The purchaser acknowledges that the entire deposit is in all respects to be regarded as a deposit and does not include any penalty component with the intention that in the event of cancellation entitling the vendor to forfeit and retain the deposit the entire deposit may be forfeited and retained by the vendor. If at the time of cancellation only part of the deposit has been paid, the vendor, without prejudice to the vendor's other rights and remedies, may forfeit and retain that part (and net interest thereon, if any) and sue the purchaser for the balance of the deposit.

23. TIMEFRAMES

- 23.1 The vendor will, at its own expense and with reasonable due diligence and speed, do all things reasonably necessary to have a land transfer plan of subdivision in respect of the Underlying Land prepared and deposited with LINZ and to obtain the issue of a separate fee simple title for each Lot.
- 23.2 The vendor warrants that it has received the Resource Consent to complete the Development in accordance with the attached Scheme Plan. The purchaser acknowledges and agrees that it has been provided with an opportunity to inspect the Resource Consent prior to signing this agreement.
- 23.3 Notwithstanding clause 23.1, the vendor gives no undertaking or warranty to the purchaser as to the timeframe for deposit of the plan, issue of the 224 Certificate or issue of new title to the Lot(s). The timing of such matters is not an essential term of this agreement and may not be made an essential term of this agreement. The vendor is not obliged to deposit the subdivision plan by any fixed date, nor will the purchaser be entitled to make any claim against the vendor for any delays which may occur in the deposit of the subdivision plan and the issue of title for the Lot(s). Any anticipated or projected dates for the issue of the 224 Certificate, issue of title, the settlement date or any other matter given by the vendor or its agents either prior to or after execution of this agreement are indicative and approximate only, are not binding on the vendor

and do not give rise to any right to cancel or any claim for compensation, damages or right of set-off by the purchaser.

24. VENDOR'S SUBDIVISION

Alterations

- 24.1 The purchaser acknowledges that the lay-out, size and design of the lots (including the Lot(s)), roads, reserves and other aspects of the Development shown on the Scheme Plan, or otherwise available as at the date of this agreement, are indicative only and the vendor reserves the right in its sole discretion to alter the final design, specifications and configuration of the Scheme Plan and the Development (including, without limitation, by increasing or reducing the number of lots or including, altering or cancelling any proposed easements shown on the Scheme Plan or any other documents). The purchaser shall not be entitled to make any objection or requisition, make claim to compensation or cancel or repudiate this agreement in respect of any such alteration. The purchaser acknowledges that the Scheme Plan and other subdivision plans are subject to final approval as to survey and in accordance with this clause the vendor may alter or vary any such plan to comply with the requirements of any Relevant Authority, LINZ or the vendor.

Staged Development

- 24.2 The purchaser acknowledges that it is to purchase each Lot on the basis of each Lot being part of the Development, the construction and subdivision of which may be staged and that the purchaser will take title notwithstanding that underlying fee simple plans, boundary adjustment plans, or other such plans may deposit before or after the settlement date.
- 24.3 The vendor will have the free and unrestricted right to vary and complete the Development in such manner as it thinks fit and the vendor will have the right to delay completion of any portion of the Development if necessary for the completion of lots in later stages of the Development. In addition to the foregoing, the vendor may abandon or cancel the Development at any stage of the Development. If the vendor cancels the Development as a whole or any stage of the Development containing one or more Lot(s) then the vendor shall give notice of such cancellation to the purchaser and shall refund to the purchaser the deposit (insofar as it relates to the cancelled Lot(s)) and thereupon this agreement (insofar as it relates to the cancelled Lot(s)) shall be at an end and neither party shall have any right or claim against the other with respect to the same. The vendor will not be required to give the purchaser any reason or explanation for any variation, delay, abandonment or cancellation under this clause.
- 24.4 The purchaser will immediately upon request to do so by the vendor, give or procure or join in giving and procuring any consent and execute and do all such documents, plans, deeds, acts, matters or things necessary or expedient for varying or completing the Development in any form.
- 24.5 Notwithstanding anything to the contrary in this agreement the vendor reserves the right to not proceed with subsequent stages of the Development, and the purchaser will have no claim whatsoever against the vendor in connection with the same, but without prejudice to the purchaser's and vendor's respective rights and obligations in respect of the Lot(s).

Non-objection

- 24.6 The purchaser irrevocably agrees not to make any objection or do anything by act or omission to directly or indirectly impede or delay any application by the vendor for resource consent under the Resource Management Act 1991 or any other application for land use, subdivision and/or building consent(s) for the Underlying Land or the Development. In addition, the purchaser agrees and undertakes to waive all rights of complaint, submission, appeal or objection it may have under the Resource Management Act 1991 or otherwise in respect of any subdivision, use or development of any part of the Underlying Land or the Development.
- 24.7 The purchaser agrees and acknowledges that the vendor may (in its sole discretion) elect to register the Non-objection Encumbrance over the Lot(s) recording that (inter alia) the registered owner of the Lot(s) may not object to nor hinder the vendor's intended residential developments in the area, including (without limitation) the subdivision and development of the balance of the Underlying Land.

Vendor's Right of Access for Development Purposes

- 24.8 For the avoidance of doubt, the vendor retains all rights to the property up until the settlement date including (but not limited to) the following:
- a) The right to cut away and remove the soil and sub-strata of the property, and fill adjacent roads, access-ways, and rights of way; to store soil in the course of development works; and to excavate, contour, re-contour, fill, landscape and enhance any part of the property and the Underlying Land; and
 - b) The right to lay telecommunications and power cables, gas, sewage and water pipes and/or to construct any transformer or supply box or other reticulation or distribution mechanism.
- 24.9 Following the settlement date the purchaser shall provide the vendor with access to the property to undertake any of the actions under clause 24.8 ("works") which the vendor (in its absolute discretion) wishes to undertake, provided that upon completion of the works the vendor (at its own cost) reinstates the property to as close as reasonably practicable to the condition it was in before the commencement of the works.

25. TITLE, EASEMENTS AND INTERESTS

- 25.1 The purchaser acknowledges that a separate title has not yet issued for the property. The purchaser shall not be entitled to a transfer of the property or call for title to the property until the settlement date.
- 25.2 The purchaser acknowledges that the title(s) for the property may be subject to all or any of the interests and memorials currently affecting the Underlying Land. In addition, the purchaser acknowledges that the vendor reserves the right to grant, create, receive the benefit of and/or register any easements, consent notices, covenants, building line restrictions or any other encumbrances, rights or obligations (together "**Interests**") that:
- a) may be required by any Relevant Authority in order to deposit the subdivision plan to create a separate title for each residential lot in the Development;
 - b) result from, are required by, or are anticipated by, the terms of this agreement, the Resource Consent, any other Regulatory Consent, any statute or regulation, or the requirement of any utility provider or Relevant Authority;
 - c) are required to ensure compliance with the Land Covenants;
 - d) if determined by the vendor in its absolute discretion, require each purchaser to become a member of an Association (or other such legally constituted entity) at the time of settlement and to perform the obligations of a member of the Association (or other such legally constituted entity's) as set out by that Association's (or other such legally constituted entity) constitution or rules, such requirements being secured by registration of a covenant, encumbrance and/or consent notice. In such instance, the purchaser acknowledges and agrees that the vendor may adopt a constitution or rules in a form that the vendor deems appropriate at the vendor's sole discretion without consultation with the purchaser and the purchaser is deemed to have accepted such constitution or rules;
 - e) in the sole and absolute discretion of the vendor are deemed to be necessary or desirable in respect of the Development or the development of any adjoining land owned by the vendor or any related company of the vendor.

The purchaser agrees, as an essential term of this agreement, to take title to the property subject to or with the benefit thereof of any of the foregoing Interests and shall, if necessary, execute (and have its mortgagee execute) all documents and do such acts and things as may be required to obtain the deposit of the plan, and implementation of any such Interests. The purchaser shall not raise any objections or requisitions, delay settlement or claim any compensation, damages, right of set-off or any other right or remedy under this agreement or otherwise at law or in equity with

respect to any of the Interests or any non-objection covenant registered under clause 24.7.

Land Covenants

- 25.3 The vendor and purchaser covenant and agree that pending settlement and registration of the Land Covenants, the purchaser will comply with the Land Covenants in the form attached to this agreement (as the same may be amended by notice in writing from the vendor to the purchaser).

Measurements

- 25.4 The parties acknowledge that all measurements and areas are subject to variation in the course of development and survey, and to any alterations that may be required upon checking by Auckland Council, LINZ and other Relevant Authorities. The purchaser shall not be entitled to seek adjustment to the purchase price for any variation of the size of the Lot(s) sold hereunder or to repudiate this agreement on account of any such variation.

Services

- 25.5 The vendor will provide electricity, water, waste water, stormwater and telecommunication utility connections to the boundary of each Lot to the extent the vendor is required to do so by the terms of the applicable Regulatory Consents. The purchaser acknowledges that connecting the dwelling to be constructed to those services and any physical connection charges payable to any utilities provider/network provider, including the installation of a water meter, is at the cost of the purchaser. The purchaser will reimburse the vendor on demand for any such charges to the extent that the same are incurred by the vendor prior to settlement on account of any Lot Development undertaken by the purchaser following the Early Access Date.
- 25.6 Upon request by the purchaser, the vendor will make available for inspection at the vendor's office, the approved engineering drawings for the Development. The purchaser shall be deemed to have inspected the engineering drawings and to be satisfied as to the location and suitability of all underground services. On completion of the subdivision and the issue of the 224 Certificate, upon request by the purchaser, the vendor will make available to the purchaser at the purchaser's expense a copy of that part of the "as built" drawings of the Development that relate to the property. The vendor gives no warranty in respect of the services to the property other than that they comply with local authority or service providers' standards. The purchaser shall have no right to requisition the title to the property or cancel this agreement because of any location or type of service.

Ground Conditions

- 25.7 The vendor has advised the purchaser that the development of the Underlying Land will be supervised by registered engineers who are required to prepare a preliminary report concerning the soil and foundation characteristics of the subdivision. An inspection copy of that report may be available from the vendor upon request from the Early Access Date until the settlement date. The vendor gives no warranty in respect of the ground conditions of the property or the Underlying Land and the purchaser shall have no claim against the vendor for the subsoil condition or instability of the land or should any filling or contaminant be found thereon.

No Caveat

- 25.8 The purchaser shall not lodge a caveat against the vendor's title to the Underlying Land and may only lodge a caveat against the vendor's title to a Lot if a separate title for the relevant Lot has issued. If the purchaser lodges a caveat contrary to the restrictions in this clause (which are essential to the vendor), the vendor will be entitled to require the purchaser to remove the caveat, or, at the vendor's option, to consent to the registration of any instrument which the vendor is entitled to register in terms of this agreement. The cost of such removal or consent including any costs or expenses incurred by the vendor in relation to such removal or consent will be borne by the purchaser.
- 25.9 If the vendor wishes to register any Interest (as defined in clause 25.2) or non-objection covenant on the title to the property and the purchaser has lodged a caveat against the title to the property,

then the purchaser shall promptly (but in any event within two (2) working days) of a request in writing from the vendor:

- a) Remove the caveat over the title; or
- b) Consent to the relevant dealing in such form as the vendor may require,

so that the vendor can proceed to register the relevant Interest or no-objection covenant on the title. The cost of such removal or consent including any costs or expenses incurred by the vendor in relation to such removal or consent will be borne by the purchaser.

- 25.10 The purchaser shall indemnify the vendor from all and against any losses, costs, damages or claims suffered by the vendor as a result of the purchaser's failure to comply with its obligations under clause 25.8 or clause 25.9 (which obligations are essential to the vendor) including all costs and expenses incurred by the vendor directly or indirectly by any consequent delay. If the purchaser fails to remove the caveat, or consent to the registration as described in clause 25.8 or 25.9 (as applicable), within two (2) working days of the vendor's request the vendor may immediately and without further notice either (or both):

- a) take all necessary steps at the purchaser's cost to obtain immediate removal of the caveat. The purchaser agrees that production of this agreement to LINZ together with a written statement from the vendor that the purchaser has failed to comply with a notice issued by the vendor in terms of this clause will be sufficient authority to permit LINZ to remove the caveat from the vendor's title. In addition to the foregoing, the purchaser irrevocably appoints the vendor and each director of the vendor as the purchaser's attorney to sign all documents and do all things in the name of and on behalf the purchaser to remove the caveat;
- b) cancel this agreement and forfeit the deposit to the vendor,

in each case, without prejudice to any other claim the vendor may have.

- 25.11 Where the purchaser has lodged a caveat against the title to a Lot, and this agreement has been validly cancelled (either in its entirety or with respect to such Lot) the purchaser shall immediately do all things necessary to remove the caveat. If the purchaser fails to remove the caveat within 2 working days of this agreement being so cancelled then clauses 25.9 and 25.10 shall apply in the same manner and to the same extent as if the purchaser never had the right to lodge the caveat in the first place.

Resident's Association

- 25.12 The vendor may, as part of the Development, establish an incorporated society (to be known as the Association) to provide common facilities and administer the constitution and bylaws setting out certain controls as to use, design standards, maintenance standards and the conduct of residents and occupiers.
- 25.13 If the Association is established, then 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 constitution and bylaws.
- 25.14 The Association will have 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) will be secured by an encumbrance.
- 25.15 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 (if any);

- b) join as a member of the Association (if any) 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.

25.16 The restrictive covenants giving effect to the Purchaser's covenants and obligations under this clause 25 will be recorded and secured by registration against the title to the property. The restrictive covenants (including the encumbrance) may be created at the time of deposit of the title plan for the property or, at the option of the vendor, at the time the property is transferred to the purchaser. The encumbrance will include a rent charge that will rank as a first charge against the title to the property.

25.17 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.

26. FORCE MAJEURE

26.1 If war, civil disorders, monetary or economic developments, acts of Government or any Relevant Authority, any plague, epidemic, pandemic, acts of God, fire, earthquake, flood, explosion, lightning, storm, volcanic activity, public power failure, national emergency, delays in obtaining consents due to the acts of any Relevant Authority, weather conditions, strikes, lock-outs, accidents, business failure of contractors, difficulties with the Underlying Land or the process of subdivision of the Underlying Land or other factors beyond the reasonable control of the vendor whether similar or not ("**Specified Event**") prevent the vendor from commencing or continuing the subdivision of the Underlying Land or render it impracticable for the vendor to commence or continue the subdivision of the Underlying Land, then the vendor may by notice in writing to the purchaser advise of the Specified Event and either (at the vendor's option in its sole discretion):

- a) cancel this agreement, in which case the purchaser shall be entitled to the return of the deposit and neither party shall have any right or claim against the other arising from this agreement or its termination; or
- b) advise the purchaser that the Sunset Date is extended by the period that the Specified Event causes a delay in the completion of the subdivision, provided that any such extension(s) shall not exceed six (6) months in aggregate.

27. DISCLOSURES AND ACKNOWLEDGMENTS

27.1 The vendor discloses and the purchaser acknowledges and agrees that (subject to any express provision to the contrary herein):

- a) The purchaser is not purchasing the property in reliance upon completion of the vendor's overall Development concept or of any part of the vendor's Development proceeding.
- b) Completion of the Development, or parts of it, may be deferred, suspended or cancelled.
- c) The purchaser purchases the property solely in reliance on the purchaser's own judgement and not upon any representation or warranty made by the vendor or any agent of the vendor other than the representations and warranties expressly recorded in this agreement. The vendor is not bound by any representations that are not recorded in writing in this agreement.

27.2 Subject to any specific right to the contrary in this agreement, the purchaser is not entitled to avoid this agreement or any of its provisions, raise any objection or make any requisition or delay settlement or claim any compensation, damages, right of set-off or any other right or remedy under this agreement or otherwise at law or in equity in respect of any of the matters referred to in clause 27.1.

28. EARLY ACCESS

28.1 If:

- a) the condition in clause 21.1 of this agreement (and any conditions for the sole benefit of the purchaser) have been satisfied or waived;
- b) the purchaser has paid the deposit in full and is otherwise in compliance with all the terms of this agreement; and
- c) the vendor is satisfied (in its reasonable opinion) that the purchaser will be able to settle the purchase of the property in accordance with this agreement on the settlement date,

then (and only then) the vendor grants early access to the purchaser to the property ("**Early Access**") from the Early Access Date.

28.2 The parties acknowledge that:

- a) at no stage is Early Access deemed to be the giving and taking of possession of the property;
- b) the risk of all activity on the property and the risk of any Lot Development shall pass from the vendor to the purchaser on the Early Access Date. The purchaser shall be solely responsible for insuring any Lot Development; and
- c) it is the purchaser's sole choice as to whether to commence Lot Development from the Early Access Date but prior to the settlement date. The purchaser assumes all risk associated with any such decision to commence construction prior to the settlement date.

28.3 Early Access shall be granted by the vendor in accordance with clause 28.1 above on the following terms:

- a) the purchaser may only use the Early Access for the purpose of construction of a residential dwelling on the property and ancillary but related works;
- b) the purchaser must not commence any construction of the dwelling or any ancillary works on the property until:
 - (i) the purchaser has provided the vendor with a copy of the intended plans for the dwelling and ancillary works to be constructed (in the form to be submitted to the Relevant Authority for building consent), the same comply with the Land Covenants, and the vendor has approved such plans in writing (which approval the vendor may withhold in its absolute discretion). The plans to be submitted to the vendor for approval must include a floor plan, exterior elevations, colour scheme and material specifications for the dwelling, and a comprehensive landscaping plan and must be sufficiently advanced to enable the vendor to consider the application for approval. Any approval given by the vendor is for aesthetic purposes only and implies no warranty as to the quality or suitability of the dwelling or ancillary works; and
 - (ii) the purchaser has obtained all required building consents and approvals from any Relevant Authority;
- c) the purchaser shall comply with the plans approved by the vendor under subclause (b)(i) above, applicable building consent(s) and approvals from the Relevant Authority for the duration of the period of Early Access and shall comply with the relevant provisions of the Resource Consent (insofar as it relates to the Lot(s) or the construction of Lot Development on the Lot(s));
- d) the purchaser shall comply with all applicable laws during the period of Early Access;

- e) the purchaser shall comply with all of the Land Covenants during the period of Early Access;
- f) the purchaser shall comply with all reasonable health and safety policies/requirements pertaining to the access to the property as determined and notified by the vendor from time to time, it being acknowledged and agreed that these shall be on terms consistent with accepted industry standards. The purchaser shall, on request, provide the vendor with a copy of its Health and Safety plan and manual and its incident register relating to incidents which have occurred on the property. Nothing in this clause limits or affects the purchaser's duty to comply with its own obligations under the Health and Safety at Work Act 2015 including any consequent amendments and enactments passed in substitution for that Act;
- g) the purchaser shall, at its own cost, erect appropriate temporary fencing, to a standard reasonably acceptable to the vendor, around each Lot when undertaking any construction works on the Lot during the period of Early Access;
- h) from commencement of construction on the Lot the purchaser shall hold public indemnity/liability insurance reasonably acceptable to the vendor of not less than \$2,000,000.00 in cover and shall provide evidence of the same to the vendor upon request;
- i) the purchaser is to undertake construction of the Lot Development in a proper and tradesmanlike manner and in accordance with sound building, architectural and engineering practices;
- j) the purchaser shall be solely responsible for any insurances over the property (including Lot Development) and all outgoings with respect to the property (including, without limitation, utilities, rates, water rates, special water meter readings and connection charges) from the Early Access Date and shall reimburse the vendor for the same on demand;
- k) the vendor retains the right to (from time to time) require the purchaser to vacate the property in order for the vendor to undertake any works which may be required on the property pursuant to the Resource Consent or any requirements in respect to completing the vendor's subdivision and Development. The purchaser shall promptly comply with any such demand/direction given by the vendor.

28.4 From commencement of construction from the Early Access Date until the completion of the construction of the dwelling on a Lot, the purchaser shall:

- a) keep and maintain a large rubbish bin on the relevant Lot and ensure that all rubbish is contained daily therein, and that the rubbish bin is emptied at regular intervals; and
- b) keep and maintain a temporary toilet facility (such as a Portaloo or of similar quality) for use on the relevant Lot by the purchaser and all of its contractors, sub-contractors and agents.

If the purchaser fails to comply with (a) or (b) above at any time during the period of construction then the purchaser shall pay to the vendor liquidated damages of five hundred dollars (\$500.00) plus GST for each such instance of non-compliance. The liquidated damages will be payable by the purchaser to the vendor at settlement on the settlement date. The vendor's right to liquidated damages under this clause is without prejudice to any other rights of the vendor under this agreement with respect to such non-compliance.

28.5 The purchaser warrants and undertakes that it is solely responsible for correctly siting the dwelling on a Lot and conforming with any building consent. If the purchaser constructs a dwelling or other improvement over the surveyed boundary of a Lot the vendor shall be entitled to:

- a) require the purchaser to promptly relocate the relevant dwelling and/or other improvements so that they are sited wholly within the boundary of the relevant Lot; or

- b) at the vendor's sole discretion, adjust the boundaries of the relevant Lot (if such circumstances allow) at the purchaser's cost.
- 28.6 The purchaser unconditionally and irrevocably agrees to indemnify the vendor from and against all costs, expenses, losses, claims and proceedings that the vendor may suffer or incur as a result of or in connection with:
- a) any works undertaken by the purchaser (or its agents or representatives) on the property during the period of Early Access;
 - b) any failure by the purchaser to comply with its obligations under this clause 28 during the period of Early Access.
- 28.7 The purchaser acknowledges and agrees that any warranties of the vendor do not extend to any works done, caused or permitted to be done by the purchaser prior to settlement.
- 28.8 The purchaser acknowledges and agrees that Early Access is a privilege, not a right. If the purchaser breaches any of its obligations under this clause 28 the vendor may terminate the purchaser's right to Early Access until such time as the breach has been remedied to the satisfaction of the vendor.
- 28.9 In addition to its rights under clause 28.8, where:
- a) Early Access has been granted;
 - b) title to the relevant Lot has issued; and
 - c) the purchaser has breached any of its obligations under this clause 28 and has failed to remedy such breach within 5 working days' of notice in writing from the vendor requesting that the breach be remedied,
- the vendor may (and without limitation to any other rights of the vendor) elect to escalate the settlement date on not less than ten (10) working days' notice in writing to the purchaser.
- 28.10 The purchaser shall continue to be bound by the obligations in clauses 28.4 to 28.7 from the settlement date.
- 28.11 The purchaser may at any time after a title to a Lot has issued, elect to bring forward the settlement date for that Lot on not less than ten (10) working days' notice in writing to the vendor.

29. CHANGES TO THE GENERAL TERMS OF SALE

- 29.1 The parties acknowledge and agree that the General Terms of Sale are amended as follows:
- a) Clause 2.2 is deleted from the General Terms of Sale.
 - b) Clause 2.4 is deleted from the General Terms of Sale.
 - c) Clause 2.5 is deleted from the General Terms of Sale.
 - d) Clause 3.3 is deleted and replaced with the following:

"3.3 Possession shall be given and taken on the settlement date. Except to the extent stated otherwise in the Further Terms of Sale, outgoings and incomings in respect of the property from (and including) the Early Access Date are the responsibility of and belong to the purchaser."
 - e) Clause 3.4 is deleted from the General Terms of Sale.
 - f) Each reference to "vacant possession" in the General Terms is a reference to vacant possession excluding any Lot Development undertaken by the Purchaser and excluding

any other access granted to the purchaser from the Early Access Date;

- g) Clause 3.13(4) is deleted from the General Terms of Sale.
- h) Clause 5.1 is deleted and replaced with the following:

“5.1 The property and chattels shall remain at the risk of the vendor until the settlement date or until such earlier date as risk is to pass under the Further Terms of Sale.”
- i) Clause 5.2 is deleted from the General Terms of Sale.
- j) The reference to “settlement date” in clause 6.1 is deleted and replaced with “Early Access Date”.
- k) The balance of Clause 6.2(1) is deleted after the words ‘...vendor’s title...’ in the first line.
- l) Clauses 7.1 and 7.2 are deleted from the General Terms of Sale.
- m) The first line of clause 7.3 of the General Terms of Sale is deleted and replaced with the following:

“7.3 The vendor warrants and undertakes that as at the Early Access Date:”
- n) Clause 7.3(7) is deleted from the General Terms of Sale.
- o) The words “or indirectly” are deleted from the first line of clause 7.3(8) of the General Terms of Sale.
- p) Clauses 7.5(1) and (2) are deleted from the General Terms of Sale. Except to the extent stated otherwise in the Further Terms of Sale, outgoings and incomings in respect of the property from (and including) the Early Access Date are the responsibility of and belong to the purchaser.
- q) Clause 10.7 of the General Terms of Sale is deleted.
- r) Clause 11.4(1)(b)(i) of the General Terms of Sale is deleted and replaced with the following:

“11.4(1)(b)(i) forfeit and retain for the vendor’s own benefit the deposit paid by the purchaser; and/or”
- s) Clauses 20.1, 20.2, 20.3, 20.4 and 20.5 are deleted from the General Terms of Sale.

30. ADDITIONAL VENDOR POWERS UPON PURCHASER DEFAULT

Default interest

- 30.1 If the purchaser fails to pay any amount due and payable to the vendor under these Further Terms of Sale on the due date for payment then the purchaser shall pay interest on such amount owing calculated at the rate of 20% per annum. Such interest shall accrue daily and shall be payable on demand.

Failure to settle

- 30.2 If the vendor validly cancels this agreement then the vendor shall be entitled to resell the property on any terms and conditions that are acceptable to the vendor in its sole discretion, notwithstanding that improvements may have been erected on the property. To the extent that the improvements (if any) on the property have not legally vested in the vendor at law, the purchaser hereby irrevocably and unconditionally authorises the vendor to sell such

improvements in conjunction with any sale of the property and irrevocably appoints the vendor and each director of the vendor (jointly and severally) as its attorney to execute all documents and do all things required to affect a sale of the property and improvements thereon.

30.3 If the purchaser fails to settle the purchase of the property on the settlement date and fails to comply with the terms of any settlement notice issued by the vendor and:

- a) the purchaser has not erected any improvements on the property or otherwise undertaken the Lot Development, then clause 11.4 of the General Terms of Sale (as amended under clause 29.1) shall apply;
- b) the purchaser has erected any improvements on the property or otherwise undertaken the Lot Development, then, in addition to its other rights under clause 11.4 of the General Terms of Sale (as amended under clause 29.1) the vendor may appoint (at the purchaser's cost) an independent qualified valuer to determine the market value of the land (i.e. the property excluding improvements) as at the date of any agreement for resale, and such determination shall be binding on the parties. Upon settlement of the resale (if any), the vendor shall be entitled to deduct from the sale proceeds the following ("Vendor's Entitlements"):
 - (i) either the original purchase price of the property, or the value of the land as determined by the valuer, whichever is the higher;
 - (ii) all amounts calculated pursuant to clauses 11.4(3)(a) to (c) of the General Terms of Sale;
 - (iii) any costs incurred by the vendor, including but not limited to, obtaining all necessary consents for the construction of the dwelling, completing the construction of the dwelling in accordance with the consents, and the connection of any utilities to the dwelling on the property;
 - (iv) the valuer's costs; and
 - (v) all other amounts owing by the purchaser to the vendor under this agreement.

30.4 If subclause 30.3b) applies, then any surplus funds from the resale after the deduction of the Vendor's Entitlements ("**Surplus Funds**") shall be paid by the vendor to the purchaser as soon as reasonably possible after settlement, in consideration of the purchaser's improvements to the property. For the avoidance of doubt, the payment of the Surplus Funds to the purchaser under this clause 30.4 shall be a good and valid discharge of all obligations of the vendor to the purchaser with respect to the sale of the improvements on the property. The provisions of clause 11.4(4) shall be subject to the provisions of clause 30.3 and this clause 30.4.

31. GOODS AND SERVICES TAX (TO BE READ WITH CLAUSES 13-15 OF THE GENERAL TERMS OF SALE)

GST date

31.1 The supply under this agreement is a taxable supply and notwithstanding anything to the contrary on the front page of this agreement or in clause 13 of the General Terms of Sale, the GST date for the purposes of this agreement shall be the earlier of:

- (a) the settlement date;
- (b) the date 5 working days before the vendor is required to account to the Inland Revenue Department for GST on the supply of the property evidenced by this agreement without incurring any penalty or interest for late payment; or
- (c) the date on which the purchaser is entitled to delivery of an invoice under the GST Act with respect to the supply made under this agreement.

Nomination

31.2 If the purchaser is a registered person for the purposes of GST and wishes to nominate its obligations under this agreement to a purchaser that:

- a) is not a registered person for the purposes of the GST Act; and/or
- b) intends to use any interest in land supplied as a principal place of residence either for itself or for an associated person,

then the purchaser acknowledges that if the vendor has to account to the Inland Revenue Department (IRD) for GST as a result of the nomination (and the purchase price is not specified as being plus GST), the purchase price shall be increased by the then current rate of GST to account for the GST payable by the vendor to the IRD.

Indemnity

31.3 If the purchaser provides incorrect information (by omission or otherwise) under Schedule 1, and as a consequence the GST treatment of the supply under this agreement is incorrect, the purchaser indemnifies the vendor against any GST and/or default GST payable by the vendor as a result of that incorrect GST treatment.

Further Deposit

31.4 The purchaser agrees that if the supply under this agreement is originally zero rated for GST and for any reason is subsequently no longer able to be zero rated for GST then they will immediately pay to the vendor a further deposit equal to ten and one-half per cent (10.5%) of the purchase price in cleared funds.

32. NOMINATION

32.1 If this agreement describes the purchaser as including the purchaser's nominee then notwithstanding any such nomination the purchaser shall remain bound by the terms and conditions of this agreement and shall perform and observe or procure the performance and observation of all the terms and conditions to be performed on the part of the purchaser as principal obligor. The vendor may grant any time or other indulgence to, or compound with, or release the purchaser's nominee or nominees, as the case may be from payment or performance under this agreement without affecting the liability of the purchaser hereunder nor shall the death or insolvency of the purchaser or nominee affect such liability.

32.2 If the purchaser nominates someone else to complete the settlement the purchaser must within three (3) working days of the nomination notify the vendor of such nomination and the GST status of the nominee. Failure by the purchaser to immediately notify the vendor of such nomination and the GST status of the nominee within three (3) working days of the nomination will entitle the vendor to cancel this agreement on notice in writing to the purchaser and/or to receive liquidated damages in the sum of five hundred dollars (\$500.00) plus GST.

32.3 If the purchaser nominates someone else to complete the settlement and the GST status of the nominee is the same as the GST status of the purchaser then such nomination, if advised to the vendor within one (1) month or less prior to the settlement date, will entitle the vendor to an administration fee in the sum of five hundred dollars (\$500.00) plus GST payable by the purchaser to the vendor at settlement.

32.4 If the purchaser nominates someone else to complete the settlement and the GST status of the nominee is different to the GST status of the purchaser then such nomination will entitle the vendor to an administration fee:

- a) in the sum of one thousand five hundred dollars (\$1,500.00) plus GST, if the nomination is advised to the vendor more than one (1) month prior to the settlement date; or
- b) in the sum of two thousand five hundred dollars (\$2,500.00) plus GST, if the nomination

is advised to the vendor one (1) month or less prior to the settlement date,

which will be payable by the purchaser to the vendor at settlement.

- 32.5 The provisions of clauses 32.2, 32.3 and 32.4 apply to the initial and each subsequent nomination and any amounts payable by virtue of the application of those clauses shall be cumulative.

33. MARKETING

- 33.1 Subject to clause 33.2 the vendor is to have sole responsibility, at its own cost, for the marketing and promotion of the Development. The purchaser must not do, or procure any other person to do, any act that would derogate from the marketing and promotional activities of the vendor.
- 33.2 The purchaser is to have the sole right, at its own cost, to market and promote the Lot Development provided that the purchaser complies with all reasonable branding and marketing guidelines and other reasonable directions notified to it by the vendor.

34. GENERAL

Apportionment of Rates

- 34.1 If the purchaser is liable to pay (or contribute to, or reimburse the vendor for) rates with respect to a Lot (whether during a period of Early Access or at settlement) and the Lot is not separately rated at such time, then the amount of rates attributable to the relevant Lot shall be determined by the vendor based on the area of the applicable Lot as a proportion of the total rated area of the land the subject of the Development (including the Lot but excluding roads and reserves, etc.). The vendor's determination of the applicable rates shall be final and binding on the parties.

Multiple Lots

- 34.2 Where the purchaser is purchasing more than one Lot under this agreement and:
- a) the 224 Certificate for one or more of the Lot(s) issues before the 224 Certificate for the other(s); and/or
 - b) the title for one or more of the Lot(s) issues before the other(s),

then the rights and obligations of the parties under this agreement that turn on a 224 Certificate having been issued and/or a title having issued shall only apply with respect to those Lot(s) in respect of which the relevant requirement has been met. For the avoidance of doubt, the parties acknowledge and agree that the settlement date may differ for each of the Lots.

Entire Agreement

- 34.3 This agreement (including its schedules and appendices) constitutes the entire understanding and agreement of the parties relating to the property and supercedes and extinguishes all prior agreements.

Severability

- 34.4 If any provision of this agreement or its application to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions will not be affected by that event and each provision will be valid and enforceable to the fullest extent permitted by law.

Amendments

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

Partial Invalidity

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

Lowest Price Clause

- 34.7 For the purposes of the financial arrangements rules in the Income Tax Act 2007 and for the purposes of the Credit Contracts and Consumer Finance Act 2003, the parties agree that:
- a) the purchase price for each Lot is the lowest price the parties would have agreed for the sale and purchase of each of the Lots, on the date this agreement was entered into, if payment would have been required in full at the time the first right in the contracted property was transferred;
 - b) the purchase price for each Lot is the value of the relevant Lot and is the “cash price” of the applicable Lot within the meaning of section 5 of the Credit Contracts and Consumer Finance Act 2003 and therefore this agreement does not constitute a deferred payment disposition under that Act;
 - c) they will compute their taxable income for the relevant period on the basis that the purchase price includes no capitalised interest and will file their tax returns accordingly; and
 - d) no part of the purchase price includes capitalised or compounded interest.

Further Assurances

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

Confidentiality

- 34.9 Other than disclosures which the purchaser is required to make by law (including with respect to completing its applicable tax returns and financial statements) or disclosures to its professional advisers, the purchaser warrants and undertakes to the vendor that it will not disclose the terms of this agreement or the purchase price payable under this agreement to any third party.

Provision of Information

- 34.10 The purchaser must, within 10 working days of having been requested in writing by the vendor to do so, provide the vendor with any information about the purchaser or the purchaser's nominee(s) that the vendor's lawyer or the vendor's lender(s) reasonably considers necessary in order to satisfy the requirements of the Foreign Account Tax Compliance Act, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, any global account tax compliance legislation or any other legislative or regulatory authority that requires the provision of personal or identity information. The purchaser acknowledges that the information required may include some or all of the following:
- a) The IRD number of each of the purchasers and guarantors named in this agreement;
 - b) A copy of each purchaser's (or in the event of a company, each shareholder's) passport(s) certified as correct by a lawyer, notary public or person authorised to take oaths;
 - c) If the purchaser (or its shareholders) is a New Zealand resident and does not have a passport, their full name, date of birth and residential address;
 - d) Information set out at 34.10(a) to (c) above with respect to each purchaser's nominee.

If the purchaser, having received a request to provide information in accordance with this clause fails within the specified timeframe to provide the information, the purchaser shall be deemed to be in default of the terms of this agreement. The parties agree that compliance with the obligations in this clause is an essential term of this agreement for the purposes of Subpart 3 of Part 2 of the Contract and Commercial Law Act 2017.

Notices

- 34.11 Notices to be required to be served on the vendor may be delivered in person to the vendor's premises at:

Level 2, Raphoe House
8 Gloucester Park Road,
Onehunga
AUCKLAND 1061

Execution by Vendor

- 34.12 This agreement will not be binding on the vendor until the vendor has signed it.

Power of Attorney

- 34.13 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, and to perform all acts, matters and things as may be necessary to:

- a) complete the Development (including any stage of the Development);
- b) apply for, consent to and execute all necessary Regulatory and/or Resource Consents or applications which may be necessary and conduct all appeals (if any) which are necessary or desirable to obtain such Regulatory and/or Resource 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) execute all applications, consents, plans, deeds, memoranda, variations and other documents and to exercise all powers necessary to approve and lodge a plan or plans of subdivision (or to amend the same) under the Land Transfer Act 2017;
- f) apply for and obtain separate records of title for combinations of fee simple titles, principal and accessory units and future development units (if applicable);
- g) act as the Purchaser's proxy or exercise the Purchaser's voting rights in the Association until such time as all records of title for the properties in the Development have been issued;
- h) withdraw any caveat improperly lodged by the Purchaser;
- i) execute all other documents required for the continuation and completion of the Development;
- j) obtain the consent of any mortgagee or other interested party for registration purposes;

- k) do any other things necessary or desirable (at the Vendor's discretion) to continue and complete the Development.
- 34.14 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.
- 34.15 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 34 and from time to time to revoke any such appointment and appoint any further one or more attorney/s in place of such attorney.
- 34.16 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.

Digital signing

- 34.17 Any party may sign this agreement by way of the application of that party's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017. Where a party applies an electronic signature to this agreement in accordance with this clause:
 - a) that party confirms that such method of signing is reliable and conclusive of that party's intention to be legally bound by this agreement;
 - b) all the parties are able to rely on such electronic signature as if that party had signed this agreement by manuscript signature in accordance with all legal requirements; and
 - c) the parties acknowledge that by accepting or acknowledging receipt of copies of this agreement with the other party's electronic signature, they are consenting to the use of the party's electronic signature.

35. SECURITY OF PERFORMANCE

- 35.1 To secure the obligations of the purchaser under this agreement (including, without limitation, the obligation to pay the balance of the purchase price at settlement) the purchaser undertakes and agrees that if the purchaser is in default under this agreement the purchaser will be deemed to have granted the vendor a security in any and all land the purchaser owns at the time of default, or acquires subsequently, (together, the "**Security Land**") by way of execution of a registerable mortgage or mortgages over the Security Land ("**Mortgage**").
- 35.2 Each Mortgage shall be in the form and substance of registered memorandum of mortgage number RGL 2018/4344 with a priority amount pursuant to s92 of the Property Law Act 2007 of 1.5 times the purchase price payable under this agreement (plus interest and costs). Upon a request in writing from the vendor the purchaser undertakes to immediately execute, deliver up and/or register all such documents as the vendor may reasonably require to ensure that the vendor has the benefit of a registered Mortgage(s) over the title to the Security Land.
- 35.3 The purchaser acknowledges that the vendor may in its discretion prior to the registration of any Mortgage lodge and maintain a caveat over the title to any or all of the Security Land to secure the rights of the vendor, and the purchaser's obligations, under this clause 35.
- 35.4 The obligations in this clause 35 shall survive the termination of this agreement and shall continue in force until such a time as all amounts due and owing from the purchaser to the



vendor under this agreement have been paid in full.

THE above **SECURITY OF PERFORMANCE**
clause is **EXPRESSLY ACKNOWLEDGED** and
AGREED by the purchaser in the presence of:

Signature of purchaser

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

GUARANTEE AND INDEMNITY

Where the purchaser is a non-natural person and in consideration of the vendor entering into this agreement the below named natural persons (*“the **Guarantors**”* and each a *“**Guarantor**”*) jointly and severally, and unconditionally and irrevocably:

- (a) Guarantee the due and punctual performance by the purchaser of all of its obligations (including, for the avoidance of doubt, all obligations to pay monies) under this agreement and all other agreements entered into between the vendor and the purchaser; and
- (b) Indemnifies the vendor against any loss the vendor might suffer should the purchaser not perform its obligations (including, for the avoidance of doubt, all obligations to pay monies) under this agreement and/or any other agreement entered into between the vendor and the purchaser.

Each Guarantor covenants with the vendor that:

1. No release delay or other indulgence given by the vendor to the purchaser or the purchaser's nominee shall release, prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
2. As between the Guarantors and the vendor the Guarantors 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 Guarantors or any Guarantor.
3. No nomination of this agreement by the purchaser shall release the Guarantors from liability.
4. The obligations of the Guarantor under this Guarantee and Indemnity shall extend until all the obligations of the purchaser under this agreement (and all other agreements entered into between the vendor and the purchaser) are completed, notwithstanding any intervening payment, action, settlement or other matter.

Security

5. To secure the obligations of the Guarantors under this Guarantee and Indemnity each Guarantor undertakes and agrees that if the purchaser is in default under this agreement the Guarantors will be deemed to have granted the vendor a security in any and all land the Guarantors (or either of them) own at the time of default, or acquire subsequently, (the **“Guarantor's Security Land”**) by way of execution of a registerable mortgage or mortgages over the Guarantor's Security Land (**“Guarantor's Mortgage”**).
6. Each Guarantor's Mortgage shall be in the form and substance of memorandum of mortgage number RGL 2018/4344 with a priority amount pursuant to s92 of the Property Law Act 2007 of 1.5 times the purchase price payable by the purchaser under this agreement (plus interest and costs). Upon a request in writing from the vendor each Guarantor undertakes to immediately execute, deliver up and/or register all such documents as the vendor may reasonably require to ensure that the vendor has the benefit of a registered Guarantor's Mortgage(s) over the title to the Guarantor's Security Land.
7. Each Guarantor acknowledges that the vendor may in its discretion prior to the registration of any Guarantor's Mortgage register and maintain a caveat over the title to any or all of the Guarantor's Security Land to secure the rights of the vendor, and the obligations of the Guarantors, under this Guarantee and Indemnity.
8. The obligations under clauses 5 to 7 above shall survive the termination of this agreement and shall continue in force until such a time as all amounts due and owing from the purchaser to the vendor under this agreement have been paid in full.



SIGNED by the Guarantor as a Deed in the presence of:

Signature of Guarantor

Name of Guarantor

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by the Guarantor as a Deed in the presence of:

Signature of Guarantor

Name of Guarantor

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

APPENDIX 1

Scheme Plan

Lots 148-156 and Lots 157-163 are accessed via Jointly Owned Access Lots (JOAL).



Plans are for illustrative purposes only and are subject to change.

Stage 1a Sales Plan

Raphoe Village

Our Sales Team

Luke Sullivan

p 09 622 3800

m 021 557 140

luke@ruahills.co.nz

Sasha Koch

p 09 622 3800

m 021 0838 1911

sasha@ruahills.co.nz





APPENDIX 2

Land Covenants

APPENDIX 2

Land Covenants

Rua Hills, Raphoe Village Stage 1a

Building Enhancement Covenants

Notes to Purchaser: The following are draft Building Enhancement Covenants which are subject to change by the Developer prior to the settlement date. It is intended that the final Building Enhancement Covenants will be registered on the title to each residential lot in this stage of the subdivision such that each residential lot will be bound by, and have the benefit of, the covenants as against each other residential lot (except for those covenants which are given for the benefit of the Developer, and which will be enforceable by the Developer, alone).

PART A

DEFINITIONS AND INTERPRETATION

I. In these Covenants, unless the context requires otherwise:

CPI means the Consumer Price Index (CPI) (All Groups) as published by Statistics New Zealand, or a replacement index.

Covenantee means the registered owner(s) from time to time of the Benefited Land in the Development (excluding the Lot).

Covenantor means the registered owner(s) from time to time of the Burdened Land.

Development means the residential development known as Rua Hills, Raphoe Village Stage 1a carried out by the Developer on land formerly comprised in record of title 1169634 (Lot 5002 Deposited Plan 590200).

Developer means Rua Hills Limited and, where the context permits, includes any successor party or organisation nominated by it to deal with applications for approvals under these covenants.

Dwelling House means a building structure used for residential purposes.

Erect means place, build, install, attach, situate, or construct or permit to be placed, built, installed, attached, situated or constructed.

JOAL means jointly owned access lot.

Lot means a lot in the Development that has, or will have, a separate record of title.

Relevant Authority means any corporation, including any government, local or regional territorial authority, statutory or non-statutory authority or body having jurisdiction over the Lots or any part thereof.

Single Dwelling House means a single building structure with one main dwelling used for residential purposes. For clarity, a building structure that includes a minor dwelling (i.e. 'home and income') is not permitted in the Development.

PART B

The Covenantor for itself and its successors in title hereby covenants with the Cantee for and on behalf of each of them and their respective successors in title and the registered proprietors for the time being of all the Lots contained in the Development to take effect from the date of the signing of this agreement as follows:

Consents / Approval of Plans

1. Before starting construction of any dwelling house or Erecting any structure on a Lot, the Covenantor must give the Developer the building plans (**Plans**) for that dwelling or structure (as intended for a building consent), as follows:
 - (a) Stage One – Concept Design;
 - (b) Stage Two – Developed Design Plans;
 - (c) Stage Three – Post Construction Inspection

Plans must include full details of all exterior colour schemes and finishes and details of fencing and landscaping, and must obtain the Developer's written approval. The Developer will take its Design Guidelines into account and may decide entirely at its discretion in all respects. If the Covenantor does not comply, it must pay the Developer liquidated damages of five thousand dollars (\$5,000) plus GST (**Damages Amount**), which the Developer may discount at its sole discretion if the house or structure is not fully complete. The Damages Amount increases each year in line with CPI from the date these Covenants are registered.
2. At its own cost, the Covenantor must obtain all required resource and building consents (**Consents**) for the dwelling house and/or other structures once the Developer has approved the Concept Design and Developed Design Plans (Stage One and Two in clause 1 above), and must comply fully with the terms and conditions of the Consents.
3. If a Relevant Authority requires any change to the Plans before granting a Consent, the changed Plans must be resubmitted to the Developer for approval under covenant 1 above before construction starts.

Construction and Construction Materials

4. The Covenantor must build a Single Dwelling House with the following minimum gross floor area (including garages):
 - (a) for Lot sizes between 351m² and 600m²: 180m²;
 - (b) for Lot sizes between 300m² and 350m²: 150m²;
 - (c) for Lot sizes less than 300m²: 140m²;

Except as allowed under covenant 37 below, the Covenantor must not Erect on the Lot any building other than a Single Dwelling House and a structure permitted under covenant 28 below.

5. The Covenantor must use no more than two (2) primary approved cladding materials on the external walls (approved materials being: brick, unpainted, bagged or painted; concrete masonry, unpainted, painted or honed; timber or fibre cement weatherboards, shiplap, or board & batten, stained or painted; timber batten rain screen over fibre cement or plywood sub-cladding; profiled coloursteel; or any other material the Developer approves entirely at its discretion). The Covenantor must not use, on any external wall cladding (except soffits and/or textured finishes), unrelieved flat sheet, Hardiflex, unfinished galvanised steel, plywood sheeting, metal sheeting (excluding profiled coloursteel), Hardiplank or similar materials. This applies to all external wall cladding, including any basement or subfloor space.
6. Garages and carports must be set back at least 5.5 metres from the road boundary or JOAL boundary of the Lot. Garage doors must be set back at least 1.0 metre behind the front façade of the house.
7. Retaining walls must not be placed within 1 metre of any reserve or esplanade boundary.
8. The Covenantor must not use as a roofing material any material other than pre-painted colour steel, asphalt shingles, wooden shingles, or other materials approved in writing by the Developer.
9. The Covenantor must not let the exterior or roof of any building have a colour scheme that does not blend in with the environment.
10. The Covenantor must not Erect, or allow to be placed on a Lot, any second-hand, relocated or temporary buildings.
11. The Covenantor must not use or incorporate any second-hand materials into any building or structure on a Lot.
12. The Covenantor must not Erect any building within 2.5 metres of the road boundary or JOAL boundary of the Lot.

Fencing

13. The Covenantor must not Erect, or allow to be erected, fencing made of steel or panel steel, corrugated iron, cement fibreboard, untextured flat fibrolite, Hardiflex, Hardiplank or similar materials, without the Developer's prior written consent, which the Developer may give entirely at its discretion in all respects.
14. The Covenantor must not Erect, or allow to be erected, any fence or boundary wall, or allow any hedge, shrubs or tree to grow as a living fence, unless it is no more than 1.8 metres high and the Developer has given prior written consent, which the Developer may give entirely at its discretion in all respects.
15. To keep an open environment, the Covenantor must not Erect, or allow to be erected, any fence or boundary wall, or allow any hedge, shrubs or trees to grow as a living fence, within 3.0 metres of the road boundary or JOAL boundary of the Lot, without the Developer's prior written consent, which the Developer may give entirely at its discretion in all respects.

16. Any garden walls and fences (other than those the Developer has provided next to the reserve boundary) must not exceed 1.2m high — or 1.6m high if 50% permeable — and must be set back 1.0 metre from the reserve boundary.
17. Any timber fencing or retaining walls must be stained or painted on both sides. Timber retaining walls must be dark, recessive colours.
18. The Covenantor must repair, restore or replace any defaced or damaged fences or boundary walls within twenty-eight (28) days of a written request from the Covenantee.
19. The Covenantor must not call upon the Developer to pay or contribute towards the cost of erection or maintenance of any boundary fence between a Lot and any adjoining Lot or other land owned by the Developer, provided that this covenant shall not enure for the benefit of the subsequent transferee of such adjoining Lot or other land.

Construction Timing/ Use of Dwelling

20. The Covenantor must complete all construction work to a ready for occupation state (including drives, paths, fences, letterbox, and all other hard landscaping) within eighteen (18) months of commencing construction.
21. The Covenantor must not use or occupy any building as a residence until such time as construction has been completed and all the exterior sheeting and finishing including exterior painting has been completed.

General Appearance

22. The Covenantor must not permit any rubbish to accumulate and/or to be placed upon a Lot or permit grass or weeds to grow in excess of 100mm in height or to become unsightly, or allow any waste, soil or other matter to foul a Lot, JOAL or the road way, footpaths or berms. If the Developer notifies the Covenantor that rubbish removal, slashing, maintaining or clearing of a Lot, JOAL or the road way, footpath or berms is necessary to maintain the tidy presentation of the Development, the Covenantor must carry out the works within ten (10) working days. If the Covenantor fails to comply with the request to remove rubbish, slash, maintain or clear, the Developer may engage a contractor to carry out the rubbish removal, slashing, maintenance or clearing and the Covenantor must pay the Developer for the costs incurred within ten (10) working days of receipt of an invoice from the Developer detailing the costs incurred. The Covenantee may take action for breach of the covenants where the Developer has declined to take action or if the breach occurs more than 5 years after the issue date on the title for the Lot. In this situation the Covenantee is entitled to recover all reasonably incurred costs.
23. The Covenantor must not permit nor allow rubbish, junk, car bodies, litter, or other similar unsightly items to accumulate on the Lot.
24. During construction of any building covered by these Building Enhancement Covenants the Covenantor must:
 - (a) at its own cost, Erect appropriate temporary fencing, to a standard

- reasonably acceptable to the Developer, around each Lot during construction works; and
- (b) keep and maintain a large rubbish bin on the Lot, deposit all rubbish in it daily, and empty it at regular intervals; and
 - (c) keep and maintain a temporary toilet facility (such as a Portaloo or similar quality) on the Lot for the Covenantor and all its contractors, sub-contractors and agents; and
 - (d) carry out construction of the dwelling, associated improvements, landscaping and other works on the Lot in a proper and tradesman-like manner and in accordance with sound building, architectural and engineering practices; and
 - (e) follow Auckland Council's "Building on small sites" guidelines and any other applicable construction guidelines issued by a Relevant Authority; and
 - (f) not place any materials on neighbouring lots, park any vehicles on neighbouring lots, or take access from neighbouring lots without first getting the Developer's consent.
25. The Covenantor must keep clotheslines, external water heaters, rubbish and recycling bins, garden bags, solar panels and batteries, garden sheds, air conditioning units, home heating fuel tanks, gas units and obtrusive pipes away from the road and reserves and out of direct sight of the road and reserves.
26. The Covenantor must not place any satellite dish over 1.0 metre in diameter on a Lot or on any building or structure on a Lot and must not place any satellite dish or antennae in the front yard of a Lot. Any satellite dish or television antennae must be positioned out of full view of the road, a reserve or the front yard. No antenna or satellite dish may extend higher than 2.0 metres above the roofline of any building on a Lot.
27. Any water or detention tanks must be completely underground, unless the Developer gives prior written consent, which the Developer may give entirely at its sole discretion.

No Temporary or Ancillary Buildings

28. The Covenantor must not Erect or place on a Lot any caravan, boat and/or boat trailer, mobile home or other temporary accommodation, or any hut or shed for permanent or temporary use, except as follows:
- (a) the Covenantor may Erect a temporary builder's shed or other utility shed:
 - (i) that is needed during construction of the dwelling house on the Lot; and
 - (ii) that will be removed from the Lot before anyone occupies the dwelling house, and in any event within 18 months of starting construction,provided the shed is never used for residential accommodation; and
 - (b) the Covenantor may Erect a garden shed on the rear of a Lot, provided it:
 - (i) is built in new permanent materials, appropriately painted, or is a new

proprietary brand pre-coated with a factory colour finish that will not detract from the visual amenity of the Development and matches the colour and nature of the dwelling house on the Lot; and

- (ii) is no more than one storey high, does not exceed 10m² in floor area, and is exempt building work under Schedule 1 of the Building Act 2004; and
- (c) the Covenantor may park or store a caravan, boat and boat trailer, trailer or mobile home on a Lot only if it is not visible from the road or a reserve and is not parked on a JOAL.

Landscaping

- 29. Within three (3) months of building on a Lot, the Covenantor must landscape the Lot with lawns and shrubs in accordance with the landscaping plan approved by the Developer. If the Covenantor defaults, the Developer or its agents, contractors or appointees may enter the Lot and take whatever action the Developer considers necessary at the Covenantor's expense to fix the default. If the Covenantor does not pay those costs on demand, the Developer may recover them as liquidated damages in the district court.
- 30. The Covenantor must ensure any trees or vegetation planted on the Lot will not grow taller than 4.0 metres.
- 31. The Covenantor must not build a vehicle crossing and driveway unless they are completed to the Relevant Authority's standard and specifications before occupation and are in sympathy with the Development. Any vehicle crossing or driveway must be paved with standard council mix with 10mm aggregate chip and 25% "Waipa" pebble and 2% black oxide, with a lightly exposed finish.
- 32. Access paths must be paved with exposed aggregate standard council mix with 10mm aggregate chip and 25% "Waipa" pebble and 2% black oxide, with a lightly exposed finish.

Maintenance

- 33. The Covenantor is responsible for, and must reinstate, all damage to the roads, footpaths, kerbs, berms and structures in the Development caused by the Covenantor or its contractors, subcontractors, agents, employees or workmen, or arising from or connected with the Covenantor's use of a Lot.
- 34. The Covenantor must keep and maintain the Lot, all improvements on it, and the Relevant Authority-owned road frontage next to it:
 - (a) in a neat and tidy condition; and
 - (b) in good and substantial tenantable repair and condition.

No Commercial Use

- 35. The Covenantor must not use, or allow the Lot to be used, for any trading or commercial purposes, except to display the land and buildings for resale or as a show home. This covenant does not stop the Lot being leased for residential purposes.

36. The Covenantor must not allow any advertising sign or hoarding of a commercial nature to be erected on any part of the Lot without the Developer's prior written consent, except to display the Lot and buildings for resale or as a show home.

Subdivision / Amalgamation

37. Despite covenant 35, and subject to the criteria below, the Covenantor may amalgamate several Lots into one larger lot, or use the Lots as they are, to develop a day care centre, play school, retirement village, retail shops, connected multiple dwellings or similar uses, provided that:
- (a) the Developer gives prior written consent, entirely at its sole discretion and without having to give reasons for any refusal;
 - (b) the Relevant Authority grants resource consent for the relevant activity, at the Covenantor's cost; and
 - (c) the development complies in all respects with all other applicable provisions of these covenants, except any the Developer waives in writing in its absolute discretion.
38. Any approval the Developer gives under covenant 37 is not an express or implied warranty that the Lots may be amalgamated, or that the amalgamated Lots may be used for any particular purpose. The Covenantor is responsible for making its own enquiries, at its own cost, about whether the Lots can be amalgamated and how they may be used.
39. The Covenantor may not subdivide a Lot (other than for minor boundary adjustments) unless:
- (a) the Developer gives prior written consent, entirely at its sole discretion and without having to give reasons for any refusal; and
 - (b) the Relevant Authority grants resource consent for the subdivision, at the Covenantor's cost.

Bond

40. When requesting approval of the building plans, the Covenantor must transfer a bond to the Developer as follows:
- (a) the Covenantor must pay the Developer seven thousand five hundred dollars (\$7,500) (Bond) to secure performance of these Building Enhancement Covenants; and
 - (b) a base fee of one thousand five hundred dollars (\$1,500) (incl. GST) will be deducted from the Bond immediately and is payable to the Developer as a compliance monitoring fee; and
 - (c) the balance of the Bond after that deduction (Bond Balance) will be held by the Developer until the Covenantor advises that the building and landscaping are complete and these Building Enhancement Covenants have been complied with (Bond Expiry Date).
41. The Bond Balance will be returned to the Covenantor at the Bond Expiry

Date; however, if there has been any non-compliance with any covenant in this instrument, the Developer may deduct from the Bond Balance any amount that, in the Developer's unfettered opinion, compensates it for costs incurred (including the Developer's own time) in dealing with the non-compliance, plus any penalties under these Building Enhancement Covenants.

42. The Covenantor acknowledges that any Bond Balance will automatically transfer to the new registered proprietor of the Lot if the Covenantor transfers the Lot.

Breach of Covenants

43. If the Developer considers there is any breach or non-observance by the Covenantor of one or more of the above covenants, the Developer may give the Covenantor written notice. Without limiting any other liability the Covenantor may have to the Developer and anyone with the benefit of the covenants, on the Developer's written demand the Covenantor must:
- (a) within seven (7) working days (or any shorter period provided elsewhere in the covenants or by the Relevant Authority) of receiving written notice from the Developer, pay the Developer liquidated damages of five hundred dollars (\$500) for each day the breach continues (this \$500 amount increases automatically each year in line with CPI);
 - (b) within seven (7) working days (or any shorter period provided elsewhere in the covenants or by the Relevant Authority) of receiving written notice, remedy the breach if it can be remedied, on terms set by the Developer, which may require removing and/or replacing any structure or building material that breaches the covenants; and/or
 - (c) allow the Developer to lodge a caveat against the Lot's certificate of title to protect any unpaid debt owing to the Developer, on the basis that any unpaid debt is deemed a contractual charge over the Lot until fully paid or otherwise satisfied.

The Covenantor may take action for breach of the covenants where the Developer has declined to take action or if the breach occurs more than 5 years after the issue date on the title. In this situation the Covenantor is entitled to recover all reasonably incurred costs.

This covenant 43 shall not apply to the Developer with respect to those Lot(s) of which the Developer is the registered proprietor for so long as the Developer remains the registered proprietor of such Lot(s).

44. If the Covenantor does not remedy the breach within a reasonable time of receiving notice, the Covenantor may take whatever legal action it considers necessary to remedy the breach.
45. All expenses and costs of enforcing these covenants are a debt due that is a charge against the breaching Covenantor's Lot and recoverable as liquidated damages.

Release of Land from Covenants

46. If at any time any part of a Burdened Land or the Benefitted Land is to vest in a Relevant Authority these covenants shall be deemed to have been surrendered on the date of the deposit of the plan identifying the land that is to so vest (or such replacement process as is required to enable registration

of the vesting of the land) in respect of that part of the Burdened Land or Benefitted Land (as the case may be) that is to vest in the Relevant Authority. No further consents of either the Covenantor or the Covenantee shall be required in order to affect the surrender and any such consents that would otherwise have been required shall be deemed to have been given.

47. The above covenants, other than those at covenants 18, 19, 22, 23, 33, 34, 43 (but only insofar as covenant 43 relates to a breach of the aforementioned covenants which are to remain in force) and 48, shall cease to have effect from the date falling twenty (20) years after the date on which these covenants are first registered on the records of title of the Lots (Expiry Date), provided that nothing in this covenant shall affect any rights accrued prior to the Expiry Date.

Jointly Owned Access Lots (JOAL)

48. If the record of title for the Burdened Land includes a share of a defined JOAL, then this Covenant 48 will apply to that Lot and the Covenantor agrees to be bound by these Covenants:
- (a) the JOAL can only be used for access to and from the Burdened Land with or without animals, vehicles, trailers, caravans, machinery or other similar items;
 - (b) the JOAL cannot be used for parking vehicles, trailers, caravans, machinery or other similar items at any time;
 - (c) the Covenantor (together with other JOAL owners) will maintain the JOAL and not do anything to damage the surface of the JOAL or any streetlights, landscaping or utility services located or operating within the JOAL;
 - (d) the Covenantor will screen any rubbish bins so that they are not visible from the JOAL boundary.



APPENDIX 3

Form of Non-objection Encumbrance

Form 18

Encumbrance instrument

(Section 100 Land Transfer Act 2017)

Land registration district

North Auckland

Record of Title (unique identifier)

All/part

Area/description of part

1169634

All

Encumbrancer

Surname(s) must be underlined.

Rua Hills Limited

Encumbrancee

Surname(s) must be underlined.

Rua Hills Limited

Estate or interest to be encumbered

Insert, eg, fee simple, leasehold in lease number, etc.

Fee simple

Encumbrance memorandum number

Not applicable

Nature of security

State whether sum of money, annuity, or rentcharge, and amount.

Annual rentcharge of the amount specified in clause 4.1 of the Annexure Schedule and such other sums of money as are payable by the Encumbrancer to the Encumbrancee pursuant to this encumbrance.

Operative clause

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above record of title(s) with the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the Annexure Schedule and so as to incorporate in this encumbrance the terms and other provisions set out in the Annexure Schedule for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Form 18 continued

Terms *Continue on additional Annexure Schedule(s) if required.*

- | | |
|---|---|
| 1 | Length of term: Refer to the definition of "Term" in clause 1.1 of the Annexure Schedule |
| 2 | Payment date(s): Refer to clause 4.1 of the Annexure Schedule |
| 3 | Rate(s) of interest: Nil |
| 4 | Event(s) in which the sum, annuity, or rentcharge becomes payable: Refer to clauses 4.1 and 4.2 of the Annexure Schedule |
| 5 | Event(s) in which the sum, annuity, or rentcharge ceases to be payable: Refer to clauses 4.2 and 9.1 of the Annexure Schedule |

Covenants and conditions *Continue on additional Annexure Schedule(s) if required.*

Refer to the Annexure Schedule

Modification of statutory provisions *Continue in additional Annexure Schedule(s) if required.*

Refer to the Annexure Schedule

Form L

Annexure Schedule

Page 3 of 11

Insert instrument type

Encumbrance instrument

1. Definitions and Interpretation

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

Activity means any activity on or use of, or in relation to, Raphoe Village including:

- (a) any building, construction, earthworks, civil works, landscaping or other improvements or works on, or in relation to, Raphoe Village (including for a supermarket, retirement village, childcare, retail and/or commercial lot, area, building or precinct);
- (b) the Subdivision of Raphoe Village;
- (c) the Development;
- (d) Supermarket and Retail Operations;
- (e) retirement village;
- (f) childcare businesses;
- (g) any other retail and/or commercial activities; and
- (h) all associated or ancillary activities;

and **Activities** shall be interpreted accordingly.

Attorney means the Encumbrancee or its nominee.

Authority means any government, local, statutory or non-statutory authority, body or other person having jurisdiction over, or authority for, Raphoe Village (or the Subdivision, development or use of Raphoe Village) including the territorial authority and Land Information New Zealand.

Raphoe Village means:

- (a) the land that is or was contained in records of title 1169633 (Lot 5001 Deposited Plan 590200), 1169634 (Lot 5002 Deposited Plan 590200), 1169635 (Lot 5003 Deposited Plan 590200) and 1127999 (Lot 105 Deposited Plan 590200); and
- (b) any other land in respect of which the Encumbrancee or any Related Company is the registered owner,

and includes any part of the land described in clauses (a) and (b) above.

Form L

Annexure Schedule

Page 4 of 11

Insert instrument type

Encumbrance instrument

Development means the development and/or Subdivision of Raphoe Village, which may include a supermarket, retirement village(s), childcare and a retail and/or commercial lot, area, building or precinct and/or residential lots.

Encumbrancee means the party named as the encumbrancee in this encumbrance and includes its transferees and assignees.

Encumbrancer means the party named as the encumbrancer in this encumbrance and includes the registered owner for the time being of the Encumbrancer's Land (but only for as long as that person is the registered owner of the Encumbrancer's Land) and any person claiming under the Encumbrancer.

Encumbrancer's Land means the land contained in record of title 1169634 (North Auckland Registry) and includes any part of that land.

LTA means the Land Transfer Act 2017.

Power of Attorney means the power of attorney referred to in clause 6.

Related Company has the meaning given to that term in section 2 of the Companies Act 1993.

Secured Obligations means the obligations secured by this encumbrance, including those obligations set out in Schedule A.

Subdivision has the meaning given to the term "subdivision of land" in section 218 of the Resource Management Act 1991; and **Subdivide** has a corresponding meaning.

Supermarket and Retail Operations means all commercial and leisure activities, works, uses, effects and occupations carried on in supermarket and/or retail and/or commercial improvements at Raphoe Village (including restaurants, bars, café and other food and drink outlets) at any time in accordance with prevailing practices and trends for the time being, including:

- (a) traffic from and the parking of vehicles by customers, employers, visitors, contractors or other persons;
- (b) loading and unloading of vehicles;
- (c) noise and/or smells arising and/or emitting from the Supermarket and Retail Operations at Raphoe Village;
- (d) liquor licences; and

Form L

Annexure Schedule

Page 5 of 11

Insert instrument type

Encumbrance instrument

- (e) lighting.

Term means the period:

- (a) commencing on the date this encumbrance is registered; and
- (b) ending 999 years later.

Working Day has the meaning given to that term in section 4 of the Property Law Act 2007.

1.2 Interpretation: In this encumbrance:

- (a) Clause headings and other headings are for ease of reference only and will not affect the interpretation of this encumbrance.
- (b) Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- (c) References to parties are references to parties to this encumbrance (being the Encumbrancer and Encumbrancee).
- (d) References to persons will be deemed to include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality.
- (e) Words importing the singular will include the plural and vice versa.
- (f) References to a statute include references to regulations, orders or notices made under that statute, and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and include a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
- (g) A reference to the word “include” or “including” is to be interpreted without limitation.

1.3 Binding on transferees and others: This encumbrance is binding on all:

- (a) transferees, lessees, mortgagees, chargeholders, and their respective successors in title and assignees, of any estate or interest in the Encumbrancer’s Land; and

Form L

Annexure Schedule

Page 6 of 11

Insert instrument type

Encumbrance instrument

(b) occupiers of the Encumbrancer's Land.

2. Intention

- 2.1 The intention of this encumbrance is to secure the ongoing performance by the Encumbrancer of the Secured Obligations for the duration of the Term and the Encumbrancee is only required to provide a discharge of this encumbrance in accordance with clause 9.1.

3. Covenants

- 3.1 The Encumbrancer covenants with the Encumbrancee to perform the Secured Obligations.

4. Rentcharge

- 4.1 **Annual payment:** Subject to clause 4.2, the annual rentcharge of \$1,000.00 plus GST per annum (if demanded in writing by the Encumbrancee) is payable by the Encumbrancer to the Encumbrancee on each anniversary of the date this encumbrance is registered.
- 4.2 **Deemed waiver:** If during the 12 months preceding any day on which the annual rentcharge under clause 4.1 is payable, there has not been any breach by the Encumbrancer of any of the covenants under this encumbrance, then the annual rentcharge will be deemed to have been waived by the Encumbrancee.

5. Priority

- 5.1 This encumbrance shall rank as a first charge in respect of the Encumbrancer's Land and the Encumbrancer shall procure that any chargeholder or mortgagee enters into a priority instrument to reflect the same.

6. Power of Attorney

- 6.1 **Appointment:** The Encumbrancer irrevocably and unconditionally nominates, constitutes and appoints the Attorney to be the true and lawful attorney of the Encumbrancer for the purposes of:
- (a) executing on behalf and in the name of the Encumbrancer all approvals, dispensations, authorities, consents and other documents which this encumbrance requires the Encumbrancer to execute; and
 - (b) performing on behalf and in the name of the Encumbrancer all acts, matters and things which this encumbrance requires the Encumbrancer to perform.

Form L

Annexure Schedule

Page 7 of 11

Insert instrument type

Encumbrance instrument

6.2 **Continuing Power of Attorney:** The parties acknowledge that the Power of Attorney has been given for valuable consideration and will operate and continue to operate until such time as this encumbrance is discharged in accordance with clause 9.1.

6.3 **Separate deed:** The Encumbrancee may require the Encumbrancer to execute and provide to the Encumbrancee a separate power of attorney deed recording the appointment of the Attorney as the attorney of the Encumbrancer on the terms contained in this clause 6. The form of such power of attorney deed will be prepared by the Encumbrancee's lawyer at the cost of the Encumbrancee. The Encumbrancer must provide such duly executed power of attorney deed to the Encumbrancee within 5 Working Days of the power of attorney deed being provided to the Encumbrancer.

7. Consent of the Encumbrancee

7.1 **Consent to certain activities:** Subject to clause 7.2, for the purposes of the Property Law Act 2007 and the LTA, the Encumbrancee consents to the following dealings affecting the Encumbrancer's Land without having to execute a consent instrument (provided such dealings do not constitute a breach of this encumbrance):

- (a) creation, variation or surrender of an easement;
- (b) variation of a mortgage instrument or priority of mortgages;
- (c) registration of a lease, lease variation instrument or surrender of a lease; and
- (d) sale or otherwise disposal of a licence or shares to which the licence relates (or any of them).

7.2 **Capacity and Purpose:** The consent of the Encumbrancee recorded in clause 7.1 is given by the Encumbrancee in its capacity as encumbrancee under, and for the purpose of, this encumbrance and does not constitute the consent of the Encumbrancee in any other capacity or for any other purpose.

8. Implied Terms

8.1 Sections 203 to 205 of the Property Law Act 2007 apply to this encumbrance, but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent charger or encumbrancee):

- (a) the Encumbrancee shall be entitled to none of the powers and remedies given to encumbrancees by the LTA and the Property Law Act 2007; and
- (b) no covenants on the part of the Encumbrancer are implied in this encumbrance other than the covenants requiring persons to give effect to instruments implied by section 208 of the LTA.

Form L

Annexure Schedule

Page 8 of 11

Insert instrument type

Encumbrance instrument

9. Discharge and Redemption

9.1 **Discharge:** Provided the Encumbrancer has fully complied with the covenants contained in this encumbrance, the Encumbrancer will be entitled to a discharge of this encumbrance, at the request and cost of the Encumbrancer, at the end of the Term.

9.2 **Covenants by Encumbrancer:** The Encumbrancer irrevocably covenants with the Encumbrancee that until this encumbrance has been discharged in accordance with clause 9.1:

- (a) the Encumbrancee will have no obligation to discharge this encumbrance pursuant to section 97 of the Property Law Act 2007 or otherwise;
- (b) the Encumbrancer will not take any steps whatsoever to redeem or discharge this encumbrance or to have it revoked, cancelled, surrendered, lapsed, modified, extinguished or otherwise removed from the title to the Encumbrancer's Land pursuant to sections 97, 115 or 317 of the Property Law Act 2007 or otherwise;
- (c) the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to redeem or discharge this encumbrance or to have it revoked, cancelled, surrendered, lapsed, modified, extinguished or otherwise removed from the title; and
- (d) the Encumbrancer will not encourage, support or assist any other person to do anything which the Encumbrancer has agreed not to do and will not procure any other person to do so.

9.3 **Clarifications:** For the avoidance of doubt:

- (a) if any obligation of the Encumbrancer in this encumbrance is of a restrictive nature (for example, it requires the Encumbrancer not to do something), the performance of that obligation will require the Encumbrancer to observe and comply with the restriction; and
- (b) if any obligation of the Encumbrancer in this encumbrance is of a continuing nature, that obligation will be treated as not having been performed for as long as it is capable of still being performed, observed or complied with.

10. Transfer and Assignment

10.1 The Encumbrancee may transfer or assign all or part of its rights and powers under this encumbrance without the consent of the Encumbrancer. The transferee or

Form L

Annexure Schedule

Page 9 of 11

Insert instrument type

Encumbrance instrument

assignee is to have the same rights and powers under this encumbrance (or proportion of those rights if it is the transferee or assignee of part only) as if named in this encumbrance as the Encumbrancee.

11. Contractual Privity

- 11.1 This encumbrance is intended to be for the benefit, and enforceable at the suit, of each Related Company of the Encumbrancee and the Attorney in terms of section 12 the Contract and Commercial Law Act 2017.

12. Miscellaneous

- 12.1 **Costs:** The Encumbrancer will, immediately on demand by the Encumbrancee, pay all costs (including legal fees on a solicitor and own client basis) incurred by the Encumbrancee in relation to the enforcement (or attempted enforcement) and discharge of this encumbrance.

12.2 **Governing Law and Jurisdiction:**

- (a) This encumbrance is governed by, and is to be construed in accordance with, New Zealand law.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this encumbrance, its performance or subject matter.

- 12.3 **Joint and Several:** Where the Encumbrancer consists of more than one person, this encumbrance shall bind such persons jointly and severally.

- 12.4 **Further Assurances:** Without limiting the effect of section 208 of the LTA, the Encumbrancer must do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this encumbrance.

- 12.5 **Partial Invalidity:** If any provision of this encumbrance is or becomes invalid or unenforceable, then:

- (a) that provision shall be deemed deleted from this encumbrance;
- (b) such invalidity or unenforceability shall not affect the other provisions of this encumbrance, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision; and

Insert instrument type

Encumbrance instrument

- (c) the parties shall immediately enter into substitute or additional instrument(s) to give full effect to the provisions of this encumbrance (including any provision deemed deleted by clause 12.5(a)).

12.6 Exercise of Rights and Waivers:

- (a) No failure to exercise, and no delay in exercising, a right of the Encumbrancee under this encumbrance will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right by the Encumbrancee.
- (b) No waiver by the Encumbrancee of its rights under this encumbrance is effective unless it is in writing and signed by the Encumbrancee.

Form L

Annexure Schedule

Page 11 of 11

Insert instrument type

Encumbrance instrument

SCHEDULE A

The Encumbrancer shall:

1. **Applications:** Not, directly or indirectly, submit in opposition (nor permit nor suffer any agent or servant or any other representative of the Encumbrancer howsoever to submit in opposition) nor support, finance or contribute to any submission in opposition to:
 - (a) any present or future application for any consent, approval or permit required from any Authority made or supported by the Encumbrancee (or any Related Company), including any application for any district or other plan change or variation, in connection with any Activity;
 - (b) any Activity.
2. **Appeals:** Not, directly or indirectly, oppose the Encumbrancee's interest in any appeals arising from any matter referred to in clause 1 of this Schedule.
3. **Noise, smells and other consequences:** Not, directly or indirectly, object to the noise, smells or any other consequences of any Activity.
4. **Consent of Encumbrancer:** Not withhold any approval, dispensation, authority or consent required in connection with:
 - (a) any application for a consent, approval or permit made or supported by the Encumbrancee (or any Related Company) in connection with any Activity;
 - (b) any change to or variation or review of any district plan or regional plan which would allow a proposal in connection with any Activity,

and the Encumbrancer shall promptly, and no later than 15 Working Days after receipt of request by the Encumbrancee, provide any such approval, dispensation, authority or consent (as applicable) on request by the Encumbrancee.
5. **Interference:** Allow the Encumbrancee to proceed with the Activities without interference, objection, opposition or restraint from the Encumbrancer.
6. **Proceedings:** Bring no proceedings for damages, nuisance or interference arising from any Activity, nor support, finance or contribute to any such proceedings.
7. **Encouragement:** Not, directly or indirectly, encourage, support or assist any other person to do any thing which the Encumbrancer has agreed not to do, including without limitation those contained in clauses 1 to 6 above, and will not procure any other person to do so.

(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.

Section 1 Vendor	
1(a) The vendor's registration number (if already registered): 028-586-361	
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
Section 2 Purchaser	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)	
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
OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. 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").	Yes/No
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
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
OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. 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)

Stove	{ }	Rangehood	{ }	Wall/under bench oven	{ }	Cooktop	{ }
Dishwasher	{ }	Kitchen waste disposal	{ }	Tight fittings	{ }	Smoke detectors	{ }
Burglar alarm	{ }	Heated towel rail	{ }	Heat pump	{ }	Garage door remote control	{ }
Garden shed	{ }	Blinds		Curtains		Drapes	
Fixed floor coverings		Bathroom extractor fan					

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*

Delete the options that do not apply

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

On behalf of Rua Hills Limited

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

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

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

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

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

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

*If this agreement is signed under:

- 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:** Rua Hills Limited

Contact Details: PO Box 12-443
Penrose
Auckland 1642
Ph: 09-622 3800

VENDOR'S LAWYERS:

Firm:
Individual Acting:
Email:
Contact Details:

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

Manager:
Salesperson:
Second Salesperson:
Contact Details:

Licensed Real Estate Agent under Real Estate Agents Act 2008

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