



**23 Murphys Park Drive, Flat Bush Auckland**

**AGREEMENT FOR SALE AND PURCHASE**

**LAND ONLY**

Lot number: \_\_\_\_\_

Vendor: **Murphys Park Development LP**

Vendor's Solicitor: **Yu Lawyers**

Purchaser: \_\_\_\_\_

Purchaser's Address  
and contact details: \_\_\_\_\_

Purchaser's Solicitor: \_\_\_\_\_

Guarantor: (if any) \_\_\_\_\_

Guarantor's Address  
And contact details: \_\_\_\_\_

**PARTIES**

- 1.        **Murphys Park Development LP** acting by and through its general partner **Eastern Habitats Management Limited ("Vendor")**
  
- 2.        \_\_\_\_\_  
          **("Purchaser")**
  
- 3.        \_\_\_\_\_  
          **("Guarantor")**  
          (Required for Company / Trust Purchaser)

The Vendor is registered under the GST Act in respect of the transaction.

**PARTICULARS AND CONDITIONS OF SALE**

<b>Development</b>	
<b>Address:</b>	Lot _____, 23 Murphys Park Drive, Flat Bush, Auckland
<b>Estate:</b>	A fee simple estate for the new lot derived from a subdivision of Record of Title 864817 (North Auckland Land Registry) subject to all requisite encumbrances, consent notices and easements in the Vendor's development at the above address.
<b>Legal Description of the Property:</b>	Lot _____ being approximately _____m <sup>2</sup> as shown on the attached Scheme plans at Schedules 2 being a subdivision presently or formerly comprised in Record of Title 864817.

<b>PURCHASE PRICE AND PAYMENT</b>	
<b>Purchase Price:</b>	NZD \$ _____ <input type="checkbox"/> Plus GST (if any)  <b>OR</b>  <input type="checkbox"/> Inclusive of GST (if any)  If neither is selected or deleted the Purchase Price includes GST (if any).

<b>Deposit:</b>	<input type="checkbox"/> A Sum equivalent to <b>10%</b> of the Purchase Price applies to New Zealand residents or Ordinarily resident in NZ who are not an Overseas Person for the purpose of the overseas Investment Act 2015.  <input type="checkbox"/> A Sum equivalent to <b>20%</b> of the Purchase Price applies to Overseas Person as defined in section 7 of the Overseas Investment Act 2005.
<b>Payment of Deposit:</b>	The Deposit shall be payable to Vendor's solicitor's trust account <b>Yu Lawyers Trust Account Schedule 8</b> in accordance with clause <b>2.1 and 20.1.</b>
<b>Interest on Deposit:</b>	The deposit shall be deposited in an interest bearing trust account with the Stakeholder's Account and the Net Interest accrued shall be credited to the relevant party in accordance with <b>clause 20.2.</b>
<b>Balance:</b>	The balance of the Purchase Price shall be paid in cash in one sum on the Settlement Date.
<b>Interest rate for late settlement:</b>	18% per annum.

### **FURTHER PARTICULARS AND CONDITIONS OF SALE (IF ANY)**

#### **OPERATIVE CLAUSE**

*It is agreed that the Vendor sells and the Purchaser purchases the Lot for the Purchase Price and otherwise on the terms, the special conditions and the general conditions of sale attached.*

*The Guarantor (if applicable) covenants with the Vendor as set out in **clause 37.0** of this Agreement.*

#### **PURCHASER'S ACKNOWLEDGEMENTS:**

*Where this Agreement relates to the sale of a residential property and this Agreement was provided by a licensed real estate agent, or by a licensee on behalf of the agent, I/we hereby acknowledge receipt of the guide about the sale of residential property approved by the Real Estate Agents Authority.*

*I/We hereby acknowledge that I/we have been advised to seek independent legal, technical, accounting, taxation and financial advice in relation to this Agreement. I am/We are not relying on any advice from the agent/consultant in completing any purchase. If any particular legal, technical, accounting, taxation or financial advisors have been suggested I/we understand that I/we have no obligation to consult such advisors and if I/we elect to do so, that I/we do so on the basis that they are selected and instructed by me/us independently. I/We acknowledge the agent acts for the Vendor.*

*I/We acknowledge that prior to entering into this Agreement, I was/we were advised by the Vendor's agent to seek legal, technical or other advice and information.*

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**EXECUTED AS A DEED**

Signature of the **Vendor** by its duly authorised representative:

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**Hao Wang** as sole director of **Eastern Habitats Management Limited**  
as General Partner of **Murphys Park Development LP**

Signature of **Purchaser(s)**

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**Signed by** \_\_\_\_\_

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**Signed by** \_\_\_\_\_

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**Signed by** \_\_\_\_\_

Signature of **Guarantor(s)**  
(Required for Company/Trust Purchaser):

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**Signed by** \_\_\_\_\_

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**Signed by** \_\_\_\_\_

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**Signed by** \_\_\_\_\_

**Witness to signatures:**

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**Signed by** \_\_\_\_\_

Name of witness:  
Occupation of witness:

Address of witness:

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**DIRECTORY**

	<b>VENDOR</b>	<b>PURCHASER / GUARANTOR</b>
<b>Legal firm</b>	<i>Yu Lawyers</i>	
<b>Solicitor acting</b>	<i>David Liu / Anita Yang</i>	
<b>Postal address</b>	<i>713 Dominion Rd, Mt Eden, Auckland PO Box 96135, Balmoral DX CP 37511, Auckland</i>	
<b>Telephone</b>	<i>09 620 8228</i>	
<b>Facsimile</b>	<i>09 620 0868</i>	
<b>Email</b>	<i>david_liu@xtra.co.nz anita@yulawyers.co.nz</i>	

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# GENERAL TERMS OF SALE

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

### 1.1 Definitions

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

### 1.2 Time for Performance

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

### 1.3 Notices

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

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



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

#### 1.4 Interpretation

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

## 2.0 Deposit

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

## 3.0 Possession and Settlement

### Possession

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

### Settlement

- 3.5** The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 3.6** The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
    - (b) certify and sign the transfer instrument.
- 3.7** The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
    - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 3.8** On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.14);
  - (2) the vendor's lawyer shall immediately thereafter:
    - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
    - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
    - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.
- 3.9** All obligations under subclause 3.8 are interdependent.
- 3.10** The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

### Last Minute Settlement

- 3.11** If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
  - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

## Purchaser Default: Late Settlement

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

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

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

## Deferment of Settlement and Possession

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

## New Title Provision

## 3.18 (1) Where

- (a) the transfer of the property is to be registered against a new title yet to be issued; and
  - (b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,
  - (c) then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
    - (i) the vendor has given the purchaser notice that a search copy is obtainable; or
    - (ii) the requisitions procedure under clause 6.0 is complete.
- (2) Subclause 3.18(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

**4.0 Residential Land Withholding Tax**

4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:

- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
  - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
  - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
- (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
- (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
  - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
  - (b) any costs payable by the vendor under subclause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.

4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 4.1(1), then the purchaser may:

- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
- (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.

4.3 If pursuant to subclause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:

- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
- (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.

4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.

4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:

- (1) the costs payable by the vendor under subclause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
- (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

**5.0 Risk and insurance**

5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.

5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:

- (1) if the destruction or damage has been sufficient to render the property 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) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property 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 subclause 8.4 for when an amount of compensation is disputed.

5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

**6.0 Title, boundaries and requisitions**

6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.

6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:

- (a) the tenth working day after the date of this agreement; or
- (b) the settlement date.

(2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.

(3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:

- (a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
- (b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
- (c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.

(4) In the event of cancellation under subclause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.

6.3 (1) If the title to the property being sold is a cross-lease title or a unit title and therefore:

- (a) in the case of a cross-lease title:
  - (i) alterations to the external dimensions of any leased structure; or
  - (ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted user covenant;
- (b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be);

then the purchaser may requisition the title under subclause 6.2 requiring the vendor:

- (a) 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
- (b) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.

~~(2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.~~

- 6.4 Except as provided by sections 36 to 42 of the Contract and Commercial Law Act 2017, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

## 7.0 Vendor's warranties and undertakings

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

## 8.0 Claims for compensation

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

## 9.0 Unit title and cross lease provisions

### Unit Titles

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

### Unauthorised Structures—Cross Leases and Unit Titles

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

## 10.0 Conditions and mortgage terms

### Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
  - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
  - (c) this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.
- 10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement, that date shall be the settlement date or a date 95 working days from the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or a date 20 working days from the date of this agreement whichever is the sooner.
- 10.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

## Operation of Conditions

- 10.8** If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent.
  - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for 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.

## Mortgage Terms

- 10.9** Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 10.10** If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

**11.0 Notice to complete and remedies on default**

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

**12.0 Non-merger**

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

**13.0 Agent**

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

**14.0 Goods and Services Tax**

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

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

### 15.0 Zero-rating

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

### 16.0 Supply of a Going Concern

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

### 17.0 Limitation of Liability

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

### 18.0 Counterparts

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

**SCHEDULE 1****(GST Information – see clause 15.0)**

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

**Section 1**

1.	The vendor's registration number (if already registered): 116-083-108	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No

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

5.	The purchaser's details are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
6.	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). <b>OR</b> The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No  Yes/No
7.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No

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

**Section 2**

8.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
9.	The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No

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

10.	The nominee's details (if known to the purchaser) are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
11.	The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption). <b>OR</b> The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop").	Yes/No  Yes/No



## **A SUPPLEMENTARY GENERAL TERMS OF SALE**

### **1.1 Additional Definitions**

**Building Consent** means all necessary consents required for the construction of the approved Dwellings on the Lot(s).

**Building Consent Date** means the date the Vendor gives written notice to the Purchaser that the Building Consent for the Lot has issued.

**Council** means Auckland Council.

**Development** means the Vendor's residential development of all or part of the Land located at 23 Murphys Park Drive, Flat Bush, Auckland together with all improvements including services, roads, footpaths, verges, parks and reserves constructed or to be constructed as part of that development.

**Development Stage** means that stage of the Development that includes the Lot.

**Early Access Date** means the date the Vendor grants Early Access to the Purchaser.

**GST Date** means the earlier of:

- (a) The settlement date; or
- (b) The date being five (5) working days before the Vendor is required to account to the Inland Revenue Department for the GST on the supply of the property evidenced by this Agreement without incurring any penalty for late payment.

**Land** means all of the land formerly or currently comprised in record of title or identifier 864817 (North Auckland Registry).

**Land Covenants** means the land covenant set out in Schedule 5.

**LINZ** means Land Information New Zealand.

**Lot or Lots** means the lot or lots described in the front page of this Agreement.

**Record of Title** means the individual computer freehold register to be issued for the Lot by LINZ.

**Record of Title Date** means the date the Vendor gives written notice to the Purchaser that the Record of Title has issued.

**Regulatory Consent** means any consent required from the Council or other authority having jurisdiction for the subdivision of the Land and construction of Dwellings, and where applicable includes any written consents and approvals required from parties other than the Vendor and the Council in order to give effect to that consent.

**Schedule** means a schedule of this Agreement.

**Scheme Plan** means the plan attached as Schedule 2.

**Stakeholder** means Yu Lawyers Limited.

**Transpower Project** means the proposed undergrounding of the Transpower power lines that are in located on the Property and on adjoining properties.

## **B FURTHER TERMS OF SALE**

### **19.0 Agreement Conditional**

19.1 This Agreement is conditional upon:

- (a) the Vendor obtaining a minimum level of sales by number and value of the Lots in the Development Stage by 15 December 2019 to ensure that the construction of the Development is commercially and financially viable; and
- (b) The Vendor obtaining by 15 December 2019 sufficient finance to enable the Vendor to complete the Development on terms and conditions satisfactory to the Vendor in the Vendor's sole opinion; and
- (c) the Vendor being satisfied that the Council and any other relevant bodies or persons will grant all necessary building, subdivisional and other Regulatory Consents and approvals relating to the Development on terms and conditions satisfactory in the sole discretion of the Vendor by 15 December 2019; and

19.2 If the Vendor has not satisfied the conditions referred in clauses 19.1(a), (b) and (c) by the dates referred in such clauses, provided that the Vendor has made all reasonable effort to achieve these conditions, the date for satisfaction for each condition may be extended for a further period of six (6) months by the Vendor issuing the written extension notice to the Purchaser in writing before the date recorded in clauses 19.1(a), (b) and (c).

19.3 Conditions 19.1(a), (b) and (c) are inserted for the sole benefit of the Vendor and may be waived by the Vendor at any time. The Vendor may also declare the condition not to be satisfied before the due date for satisfaction and may cancel this Agreement pursuant to this clause whether or not it cancels all other sales in the Development for the same reason.

19.4 This Agreement is further conditional upon the Vendor giving written notice to the Purchaser of the issue of the Record of Title and providing the Purchaser with the Building Consent for the Property no later than 5:00pm 15 December 2020.

19.5 Provided that the Vendor is making reasonable progress in obtaining the issue of the Record of Title and the Building Consent, the Vendor may by notice to the Purchaser extend the date for satisfaction of the conditions in clause 19.4 for a further period of twelve (12) months by the Vendor issuing the written extension notice to the Purchaser in writing before the date recoded in clause 19.4.

**20.0 Deposit (TO BE READ IN CONJUNCTION WITH CLAUSE 2 OF THE GENERAL TERMS OF THE SALE)**

20.1 Upon execution of this Agreement, the Purchaser shall pay a deposit in the sum equivalent to 20% of the Purchase Price to the Stakeholder's trust account (**Schedule 8**) to hold as initial stakeholder. Time being strictly of the essence.

20.2 The deposits shall be held by the Vendor's solicitor, as stakeholder, on an interest bearing deposit through its trust account. Any interest earned on the deposit (less any applicable tax and administration fees) shall follow the deposit.

20.3 Contemporaneously with execution of this Agreement the Purchaser will provide the Vendor with the Purchaser's declared Residential Land Statement pursuant to section 51A of the Overseas Investment Act 2005 (**Schedule 7**) to confirm the

Purchaser's eligibility to purchase the Property, and photo identification of the Purchaser or, where the Purchaser is not a natural person, that of the Purchaser's controlling person and/or signatory and shall, if required by the Vendor by notice in writing, provide the Vendor with evidence to satisfy the Vendor that:

- (a) where the Purchaser is an individual, that the Purchaser is either a citizen of New Zealand, or is ordinarily resident in New Zealand and holds a valid permanent residency visa; or
- (b) where the Purchaser is a body corporate, a trust, a unit trust, a partnership, an unincorporated joint venture or other unincorporated body of persons, that the Purchaser is not an "overseas person" as that term is defined in the Overseas Investment Act 2005; and
- (c) where the Purchaser is an overseas person, evidence that the Purchaser has obtained the necessary consent from the Overseas Investment Office to proceed with the purchase.

20.4 If the Purchaser fails to comply with the Vendor's requirements under clause 20.3 within five (5) working days of service of the Vendor's notice, then the Vendor may, by notice in writing ("Further Deposit Notice"), require the amount of deposit payable by the Purchaser under this Agreement to be increased to an amount equivalent to 20% of the purchase price stipulated on the front page of this Agreement. Any additional deposit payable by the Purchaser under this clause 20.4 shall be paid within five (5) working days of service of the Further Deposit Notice. If the Purchaser fails to comply with the Vendor's requirement under clause 20.3(c) the Vendor may cancel this Agreement and retain any deposit paid by the Purchaser hereunder as liquidated damages.

#### 21.0 **No Stakeholder Liability**

21.1 The Stakeholder will not be liable to any party by reason of any delay in investing the Deposit, or any failure on the part of the bank, or any cost deducted by the bank for handling the Deposit or any interest thereon.

#### 22.0 **Release & Interest**

22.1 On the date of issue of separate title for the Lot, The Vendor shall be entitled to the Deposit and net interest and this clause shall be sufficient authority to the Stakeholder to make this payment.

22.2 On the Settlement Date or earlier pursuant to clause 22.1 (whichever is earlier), the Stakeholder may release the deposit plus any net interest earned to the Vendor (or to the Vendor's mortgagee (if any)). This clause is sufficient authority to the Stakeholder to make that payment notwithstanding any subsequent instructions to the contrary from the Purchaser or the Purchaser's solicitor.

22.3 If this Agreement is cancelled as a result of the Purchaser's default, the deposit paid together with net interest earned thereon shall be paid to the Vendor forthwith.

#### 23.0 **Interest**

23.1 Interest earned on the deposit (less withholding tax, bank charges and the Stakeholder's usual commission charges) shall follow capital.

#### 24.0 **Settlement Date**

24.1 Settlement shall be effected and completed on the Settlement Date, which shall be either:

- (a) the date that is nine (9) calendar months after the Building Consent Date\* or
- (b) the tenth (10<sup>th</sup>) working day after the Record of Title Date\*.

- If neither option is deleted, then option (b) shall apply.

#### 25.0 **Scheme Plan**

25.1 The Purchaser acknowledges that the typology and design of the Lots, roads, reserves and other aspects of the Development shown on the Scheme Plan or available at the date of this Agreement are indicative only and the Vendor reserves the right to alter or vary the final design, specifications and configuration of the Scheme Plan and the Development, and the Purchaser shall not be entitled to make any objection, requisition, or claim for compensation in respect of any such alteration or variation, provided that there is no material variation to the dimensions of the Lot(s).

25.2 The Vendor will cause to be completed a subdivisional plan (herein referred to as "the Subdivisional Plan") drawn substantially in accord with the Scheme Plan and will use its best endeavors to cause the Subdivisional Plan to be deposited with LINZ.

25.3 All measurements and areas shown on the Scheme Plan are approximate only and subject to final survey. The Vendor shall be entitled to incorporate in the Subdivisional Plan any variations from the Scheme as are required for the purposes of survey or as may otherwise be considered necessary or desirable by the Vendor for the purpose of the subdivision of the Land. No such variation shall entitle the Purchaser to damages or compensation nor shall it annul the sale or entitle the Purchaser to make any objections or requisition pursuant to clause 6 hereof PROVIDED ALWAYS that if any such variation shall substantially reduce the value of the Lot or Lots (as the case may be), then the Purchaser shall be entitled to cancel this Agreement by notice in writing given to the Vendors within five (5) working days after the date that the Vendors or its solicitors have notified the Purchaser of the variation, whereupon all moneys paid by the Purchaser in accordance with the terms hereof shall be refunded in full and neither party shall have any further claim upon the other.

#### 26.0 **Record of Title**

26.1 The Purchaser acknowledges that the Record of Title may be subject to all or any of the memorials currently affecting the Land and may be subject to:

- (a) Easements or other rights or encumbrances which are to be created to ensure compliance any statute, regulation, Regulatory Consent, or the requirement of any utility provider or the Council affecting or relating to the Land;

- (b) Land Covenants; and
  - (c) Any other easements or interest reasonably required by the Vendor.
- 26.2 For the avoidance of doubt, the Vendor is responsible for the payment of all reserve contributions, development contributions and any other contributions necessary to deliver title to the Purchaser.
- 26.3 All measurements, layouts and areas on the Scheme Plan and noted in front page of this Agreement are subject to any variation requested by the Council and/or the Vendor's engineers and architects in the course of obtaining the Regulatory Consent or which may be found necessary upon checking by the Council, the Vendor's engineers, architects, surveyors and/or LINZ ("Specified Causes") and neither party shall be entitled to bring any claim whatsoever against the other based on any such variation of layout or measurements, nor shall either party be entitled to claim any compensation, damages, right to set-off or to make any objection or requisition based on such variation. In all other cases, where the variation has not been caused by any of the Specified Causes, provided that the variation does not exceed 10% more or less than the area stated in this Agreement, neither the Vendor nor the Purchaser shall be entitled to seek adjustment of the purchase price for any variation to the area of the Lot but where the total area of the Lot differs by more than 10%, then the purchase price for the property will be adjusted upwards or downwards (as the case may be), based on the market value of the Property as at the date of this Agreement on an "as if complete basis" increased or decreased by the same proportion as the change in total area.
- 27.0 **No requisition**
- 27.1 The Purchaser acknowledges and accepts that in respect of clause 6.2 of the general terms of sale it shall have no right to requisition in respect of any notices, easements, interests, or rights that the Vendor grants under clause 26 of this Agreement
- 28.0 **No Caveat**
- 28.1 Pending settlement the Purchaser will not lodge a caveat on the identifiers to the Land but may lodge a caveat on the Record of Title after the issue of the Record of Title and code compliance certificate for the Property.
- 28.2 The Purchaser acknowledges that clause 28.1 is an essential term of this Agreement, breach of which will entitle the Vendor to terminate this Agreement if the caveat is not withdrawn within 5 working days after service on the Purchaser of a written notice to withdraw the caveat. In consideration of the Vendor entering this Agreement the Purchaser hereby irrevocably nominates and appoints the Vendor or any nominee of the Vendor to be the true and lawful attorney of the Purchaser for the purpose of effecting the withdrawal of any caveat lodged in breach of this clause.
- 29.0 **Building Terms**
- 29.1 Where clause 24.1(a) applies and subject to the purchaser first complying in full with clause 29.2 of this Agreement, after the Building Consent Date the Purchaser may access the Lot to commence construction of a dwelling on the Lot prior to settlement ("Early Access").

- 29.2 The Purchaser acknowledges and agrees that the Purchaser or any agent engaged by the Purchaser will not commence construction of a dwelling on a Lot under this Agreement until:
- (a) the condition contained in clause 19 of the Agreement have been satisfied or waived; and
  - (b) the deposit payable under clause 20.1 have been paid in full.
- 29.3 The parties acknowledge that:
- (a) at no stage is Early Access shall not amount to possession of the Lot or Lots (as the case may be); and
  - (b) the risk of all activity on the Lot shall pass from the Vendor to the Purchaser on the Early Access Date. The Purchaser shall be solely responsible for ensuring any development or works on the Lot.
- 29.4 The Purchaser warrants that each dwelling constructed on the Lot and the landscaping of the relevant Lot shall be completed:
- (a) in compliance with the land covenants (t.b.a);
  - (b) in conformity with the applicable Building Consent, the applicable Regulatory Consent and proper requirements of the Council and the providers of relevant utility services;
  - (c) in compliance with all reasonable health and safety policies/requirements pertaining to the access to the Lot as determined and notified by the Vendor from time to time. The Purchaser shall on request within five (5) working days provide with the Vendor a copy of the Health and Safety plan, manual, and incident register;
  - (d) in compliance with Health and Safety at Work Act 2015 including any consequent amendments and enactments passed in substitution of that Act;
  - (e) in a proper and tradesmanlike manner and in accordance with sound building architectural and engineering practices; and
  - (f) to high quality finish which must be of a standard reasonably acceptable to the Vendor.
- 29.4 From the Early Access Date, the purchaser shall:
- (a) be solely responsible for any insurances over the Lot and all outgoings with respect to the property (including but not limited to utilities, rates, water rates and special water meter readings) from the Early Access Date;
  - (b) The Purchaser shall promptly comply with the Vendor's notice to vacate the Lot in order for the Vendor to undertake any works which may be required on the Lot pursuant to the Regulatory Consent or any requirements in respect to completing the Vendor's subdivision and Development. For clarification purposes the Vendor retains the right to (from time to time) require the Purchaser to vacate the Lot in order for the Vendor to undertake any works which may be required on the Lot pursuant to the Regulatory Consent or any requirements in respect to completing the Vendor's subdivision and Development;

- (c) keep and maintain a large rubbish bin on the Lot and ensure that all rubbish is contained daily therein, and that the rubbish bin is emptied at regular intervals; and
  - (d) keep and maintain a temporary toilet facility (such as Portaloo and of similar quality) for use on the Lot by the Purchaser and its invitees, contractors, sub-contractors, and agents.
- 29.5 If the Purchaser fails to comply with clause 29.4(c) and 29.4(d), the Vendor may serve a notice upon the Purchaser requiring the Purchaser to remedy any breach within 5 working days, failing to do so, the Purchaser shall pay to the Vendor as liquidated damages the sum of \$500.00 for each day that the breach continues. The liquidated damages will be payable by the Purchaser to the Vendor on 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.
- 29.6 The Purchaser warrants and undertakes that it is solely responsible for correctly siting the dwelling on the Lot and conforming with the Building Consent. If the Purchaser constructs a dwelling or other improvement over the surveyed boundary of the Lot then 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 Lot; or
  - (b) at the Vendor's sole discretion, adjust the boundaries of the relevant Lot (if such circumstances allow) at the Purchaser's costs; or
  - (c) at the Vendor's sole discretion amend or make variations to the Building Consent (if such circumstances allow) at the Purchaser's cost.
- 29.7 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 Lot from the Early Access Date; or
  - (b) any failure by the Purchaser to comply with its obligation under this clause 29 from the Early Access Date.
- 29.8 In the event that the Purchaser breaches of its obligation under this clause 29 the Vendor may withdraw the Purchaser's right of Early Access until such time as the breach has been remedied to the satisfaction of the Vendor.
- 29.9 In addition to the Vendor's right to withdraw the Purchaser's right of Early Access under clause 29.8 ("Withdrawal Notice"), the Vendor may without limitation to any other rights of the Vendor under this agreement elect to escalate the Settlement Date to ten (10) working days' from the date of the Withdrawal Notice where:
  - (a) Early Access has been granted, and
  - (b) Record of Title for the Lot has been issued; and
  - (c) the purchaser has breached any of the obligation under this clause 29 and has failed to remedy such breach within five (5) working days of notice in writing from the Vendor requesting that the breach to be remedied.

- 29.5 If the Purchaser fails to settle the purchase of any of the Lot under this Agreement and this Agreement is subsequently terminated by the Vendor, then the Vendor may (at its sole discretion) elect to:
- (a) take ownership of any improvements made by the Purchaser to the relevant Lot (for which settlement was not completed) free of any encumbrances, and with no compensation for improvements; or
  - (b) require the Purchaser, at the Purchaser's cost to remove improvements and reinstate the relevant Lot (for which settlement was not completed) to their former condition as soon as practicable after termination.

### **30.0 Completion of Development**

- 30.1 The Purchaser must not object to any application for Regulatory Consent for any part of the Development and, if requested by the Vendor will, within 3 working days of having been requested in writing, provide the Vendor with any necessary "affected party" consents required by the Vendor to obtain such resource consent. The Purchaser confirms the Vendor may register a covenant against the title to the Lot preserving the Vendor's rights pursuant to this clause.
- 30.2 The Purchaser acknowledges the Vendor and the Vendor's surveyors, agents, consultants, engineers, contractors, sub-contractors may enter the Lot at all times prior to or after settlement with such plant, machinery, vehicles and equipment and to do such work as shall in the opinion of the Vendor be necessary or desirable to complete the Development. The Purchaser confirms the Vendor may register a covenant against the title to the Lot preserving the Vendor's rights pursuant to this clause.
- 30.3 The Vendor will not be responsible for any delays in the completion of the Development, Development Stage, or any part of the Development or the issue of a separate title for the Lot for any reason beyond the Vendor's control. In particular, the Vendor shall not be responsible for any delays as a result of weather conditions, strikes, lock-outs, accidents, unavailability of any material or product, contractor disputes or market conditions. Any anticipated or projected dates for completion of any part of the Development or the issue of a title for the Lot given by the Vendor or its agents are indicative only and the Purchaser acknowledges they have not induced the entry of the Purchaser into this Agreement.

### **31.0 Green Space**

- 31.1 The Purchaser acknowledges that:
- (a) There will be green space, as shown on the Master Plan, around the Development and/or the Development Stage which is intended to be for the benefit of all the surrounding owners and occupiers ("**Green Space**"); and
  - (b) the final determination of the ownership and structure of the Green Space has not been made but that indicatively, some or all of the Green Space is to be vested in Council.
- 31.2 If Council decided that private ownership of some or all of the Green Space is needed, the Purchaser agrees to be a party to any arrangement reasonably required by the Vendor or the Council (as Applicable) in respect of the ownership and structure of the Green Space to the extent it is not vested in Council, including without any limitation, any arrangements regarding the Purchaser's obligation to



pay a reasonable share of the costs of the upkeep, repair, and maintenance of the Green Space, which shall be allocated by the Vendor on a fair and equitable basis.

### 32.0 **Home Owner's Association**

The Purchaser hereby acknowledges and agrees that the Vendor may establish a home owners association or similar (the "Association") if required by any applicable resource consent, statute, regulation or relevant authority or as the Vendor in its discretion considers necessary or desirable in respect of the Lot, the Land, the Development Stage or the Development, which will impose an ongoing obligation on the registered proprietor(s) of the Lot(s) and its transferees and successors in title to the upkeep and maintenance of the common area, the amenities within the Development, the Green Space and the party walls between the Dwellings. If such an Association is required to be established by the Vendor then the Purchaser hereby covenants with the Vendor and agrees to become and remain a member of the Association and fulfil the obligations of a member of the Association. The Purchaser confirms the Vendor may register a covenant against the title to the Lot if not all lots preserving the Vendor's rights pursuant to this clause.

### 33.0 **Further Development**

33.1 The Purchaser acknowledges that the development of the Land of which the Property forms part, may become part of an ongoing larger development incorporating adjoining land and the Vendor (and/or its related companies) expressly reserves the right to proceed or not to proceed with the further development, delay development, modify any design, configuration or use proposal it may have or subsequently obtains at any time concerning possible future development on the adjoining land.

33.2 If the Vendor or its successors in title or its related companies decide to proceed with further development of the Land which the Property forms part of and the adjoining land, the Purchaser covenants with the Vendor and its successors in title that the Purchaser:

- (a) will not object to the Vendor or its successors in title or its related companies carrying out the phases or stages of the development;
- (b) will not seek any injunction against or claim damage from the Vendor or its successors in title or its related companies for any inconvenience caused to the Purchaser as a result of the Vendor carrying out the phases or stages of the development;
- (d) will not lodge any complaints with any Relevant Authority;
- (e) will not lodge any submission opposing any resource consent application relating to the phases or stages of the development; and
- (e) will do all things generally to support any such further development.

### 34.0 **Assignment**

34.1 The Purchaser will not assign, transfer, or otherwise dispose of or alienate the benefit of this Agreement without the prior written consent of the Vendor, which consent shall not be unreasonably, or arbitrarily, withheld or delayed where the Purchaser and the assignee, transferee or dispossesee have first complied with clause 34.2.

34.2 If the Vendor consents to the assignment, transfer, disposal of, or alienation of, the benefit of this Agreement by the Purchaser, the Purchaser shall at the cost of the Purchaser, prepare, have executed and stamped (if applicable) a deed in a form acceptable to the Vendor, pursuant to which the assignee, transferee or disposee covenants with the Vendor that the assignee, transferee or disposee is bound by the provisions contained or implied in this Agreement and on the part of the Purchaser to be observed and performed and provided however that the Purchaser executing this Agreement shall at all times remain liable for all obligations on the part of the Purchaser hereunder. The Deposit will from the date of a valid assignment be held for the benefit of the purchaser duly authorised as assignee. The Purchaser must pay the costs of the Vendor (on a solicitor and own client basis) of and incidental to approval of any such assignment, approval of the deed in terms of this clause.

34.3 The Vendor shall be free to assign or otherwise dispose of the benefit of this Agreement to a third party on such terms and conditions as it thinks fit, including but without limitation to an assignment by way of security to any funder of the Development.

### 35.0 **Miscellaneous**

35.1 The Purchaser acknowledges that a separate Record of title has not yet issued for the Lot. The Purchaser shall not be entitled to a transfer of the Lot or to call for settlement until this Agreement has been made unconditional and title to the Lot has issued.

35.2 The Purchaser acknowledges the Purchaser is not purchasing the Property in reliance on any further development of the Land proceeding at any particular time or in any particular manner.

35.3 No error or misdescription of the Land, the Development or the Lot shall annul the sale and the Purchaser's remedies if not otherwise limited by this Agreement shall be limited to compensation if demanded in writing before the settlement date but not otherwise.

35.4 The Purchaser must not withhold the balance of the Purchase Price (or any part of it) or demand any retention on settlement.

35.5 The Purchaser must not make any objection, requisition or claim for compensation because of:

(a) any alteration to the plans and specifications permitted by these special conditions; or

(b) any alteration to the plans and specifications made due to the requirements or direction of Auckland Council or the practicalities of construction; or

(c) any alterations to the plans and specifications made due to the requirements of good building practice or the availability of materials or substituted building items; or

(d) any alternative to the plans and specifications which in the sole opinion of an independent registered valuer appointed by the Vendor have no material adverse effect on the value of the Property or

- (e) the Transpower Project or any works required to undertake and complete the Transpower Project.
- 35.6 In the event that war, civil disorders, acts of Government or other factors beyond the reasonable control of the Vendor ("Specified Event") shall prevent the Vendor from commencing or continuing the construction of the Development or the Dwelling, the Vendor may by notice in writing to the Purchaser advise the Purchaser of the Specified Event, cancel the Agreement and refund the deposit to the Purchaser and neither party shall have any right or claim against the other.
- 35.7 It is recorded that:
  - (a) The settlement date is the earliest date on which the parties would in any circumstance have agreed that the balance of the purchase price was to be payable.
  - (b) Neither the period between the date of this Agreement and the settlement date nor any other provision in this Agreement evidences any deferment of the Purchaser's obligation to pay the Purchase Price for the purposes of section 6 of the Credit Contracts and Consumer Finance Act 2003.
  - (c) Accordingly this Agreement is not a credit contract for the purposes of or within the meaning of that Act.
- 35.8 For the purposes of the financial arrangement rules in the Income Tax Act 2007, the parties agree that:
  - (a) Despite any deferred or extended date for settlement or the giving and taking of possession under this Agreement the Purchase Price of the Property set out in this Agreement is the lowest price at which the Property could be purchased; and
  - (b) The Purchase Price is the value of the Property and does not contain any capitalised interest or discount component.
- 35.9 If the Vendor avails itself of any of the rights and remedies available to it under this Agreement in respect of any default by the Purchaser, then the Purchaser must pay all of the Vendor's legal costs (as between solicitor and own client) of and incidental to the enforcement or attempted enforcement of the Vendor's rights, remedies and powers under this Agreement.
- 35.10 Where the Purchaser executes this Agreement with the provision for a nominee as a pre-incorporation contract, or the signatory executes as agent, or on behalf of a company or a company to be formed, or as a director of a company, or as the trustee of a trust, the Purchaser and signatory personally shall at all times remain liable for all obligations on the part of the Purchaser hereunder. The Purchaser, if a trust, shall provide a full copy of the trust deed and the trustees' names if required by the Vendor and arrange for all trustees to sign this agreement.
- 35.11 If any person enters into this agreement as trustee of a trust, then that person warrants that:
  - (a) that person has power to enter into this Agreement under the terms of the trust;
  - (b) that person has properly signed this Agreement in accordance with the terms of the trust;

- (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Agreement; and
- (d) all of the persons who are trustees of the trust have approved entry into this agreement.

35.12 In consideration of the Vendor entering into this Agreement the Purchaser hereby irrevocably nominate constitute and appoint the Vendor or any nominee of the Vendor to be the true and lawful attorney of the Purchaser for the purposes of executing all documents, plans and consents and to perform all acts, matters and things as may be necessary to:

- (a) complete the subdivision of the Land and the Development;
- (b) provide "affected party" consent under clause 29.2;
- (c) grant or take the benefit of any encumbrances; and
- (d) withdraw any caveat lodged against any titles to the Land.

35.13 Production of this power of attorney to the Purchaser's solicitors, agent or mortgagee from time to time shall without further requirement or reference to the Purchaser comprise an irrevocable authorisation and instruction to the person involved or the Purchaser's mortgagee to execute any consents sought by the Vendor in relation to the subdivision, the deposit of plans, the granting or receiving the benefit of any Encumbrances and the issue of titles.

35.14 A separate power of attorney in a form required by the Vendor's solicitors may be required as a condition of settlement.

### 36.0 **Confidentiality**

36.1 The Purchaser shall divulge the existence or details of this Agreement to any person or body without the express permission of the Vendor except where the Purchaser acting reasonably considers it necessary to do so in order for it to carry out its due diligence enquiry on the property or to take steps to satisfy any other condition inserted for the Purchaser's benefit.

36.2 The obligations in this agreement continue in force until such time as the proprietor agrees that the existence of this information is no longer confidential.

### 37.0 **Guarantee and Indemnity**

37.1 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.

37.2 Each Guarantor covenants with the vendor that:

- (a) 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.
- (b) 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.
- (c) No nomination of this agreement by the purchaser shall release the Guarantors from liability.
- (d) 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.
- (e) 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").
- (f) Each Guarantor's Mortgage shall be in the form and substance of memorandum of mortgage number 2015/2009 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.
- (g) 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.
- (h) The obligations under clauses 37.2(e) to (g) 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.