

# AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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

## DATE:

**VENDOR:** GTJM PROPERTY LIMITED (COMPANY NUMBER 7796017)

**PURCHASER:** \_\_\_\_\_ and/or nominee

**The vendor is registered under the GST Act in respect of the transaction and/or will be so registered at settlement:** Yes/No  
If "Yes", Schedule 1 must be completed by the parties.

**Purchase price allocation (PPA) is relevant to the parties for income tax and/or GST purposes:** Vendor Yes/No  
If both parties answer "Yes", use of the PPA addendum for this agreement is recommended. Purchaser/Purchaser's Nominee Yes/No

## PROPERTY

**Address:** 336 AND 336A PORTOBELLO ROAD, DUNEDIN

**Estate:** FREEHOLD ~~LEASEHOLD~~ ~~STRATUM IN LEASEHOLD~~ ~~CROSS LEASE (FREEHOLD)~~ ~~STRATUM IN FREEHOLD~~ ~~CROSS LEASE (LEASEHOLD)~~

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

## Legal Description:

**Area (more or less):** \_\_\_\_\_ **Lot/Flat/Unit:** \_\_\_\_\_ **DP:** \_\_\_\_\_ **Record of Title (unique identifier):** \_\_\_\_\_  
( ) SQUARE METRES MORE OR LESS (SUBJECT TO SURVEY) BEING LOT ( ) OF A PROPOSED  
SUBDIVISION OF THE VENDOR'S UNDERLYING LAND CONTAINED IN RECORD OF TITLES OT310/57 AND  
OT312/165 AND AS MORE PARTICULARLY HIGHLIGHTED IN THE ATTACHED PLAN MARKED "A"

## PAYMENT OF PURCHASE PRICE

**Purchase price:** \$

**Plus GST (if any) OR Inclusive of GST (if any)**  
If neither is deleted, the purchase price includes GST (if any).  
**GST date (refer clause 13.0):** \_\_\_\_\_

**Deposit (refer clause 2.0):** \$REFER FURTHER TERMS OF SALE

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

(1) By payment in cleared funds on the settlement date which is:

OR

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

**Interest rate for late settlement:** 15 % p.a.

## CONDITIONS (refer clause 9.0)

<b>Finance required (clause 9.1):</b>	<b>Yes/No</b>	<b>Finance date:</b>
<b>LIM required (clause 9.3):</b>	<b>Yes/No</b>	<b>LIM date:</b>
<b>Building report required (clause 9.4):</b>	<b>Yes/No</b>	<b>Building report date:</b>
<b>Toxicology report required (clause 9.5):</b>	<b>Yes/No</b>	<b>Toxicology report date:</b>
<b>OIA consent required (clause 9.6):</b>	<b>Yes/No</b>	<b>OIA date (clause 9.8):</b>
<b>Land Act consent required (clause 9.7):</b>	<b>Yes/No</b>	<b>Land Act date (clause 9.8):</b>

## TENANCIES

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

Yes/No

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

Release date: 9 May 2023

# GENERAL TERMS OF SALE

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

### 1.1 Definitions

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



- (35) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (36) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under clause 3.8.
- (37) "Settlement date" means the date specified as such in this agreement.
- (38) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (39) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (40) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (41) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (42) "Toxicology report date" means the toxicology report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (43) "Unit title" means a unit title under the Unit Titles Act.
- (44) "Unit Titles Act" means the Unit Titles Act 2010.
- (45) "Working day" means any day of the week other than:
  - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
  - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
  - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of the LIM date, ending on the 15th day of January) in the following year, both days inclusive;
  - (d) the day observed as the anniversary of any province in which the property is situated;
  - (e) the day on which a public holiday is observed to acknowledge Matariki, pursuant to the Te Kāhui o Matariki Public Holiday Act 2022; and
  - (f) any other day that the Government of New Zealand declares to be a public holiday.

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

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

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

1.3 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for clause 1.3(2).

1.4 Notices

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

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

**1.5 Interpretation and Execution**

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- (6) Reference to a party's lawyer includes reference to a conveyancing practitioner (as defined in the Lawyers and Conveyancers Act 2006), engaged by that party, provided that all actions of that conveyancing practitioner (including without limitation any actions in respect of any undertaking or in respect of settlement) must strictly accord with the PLS Guidelines.

**2.0 Deposit**

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties or at such other time as is specified in this agreement.
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until the latest of those of the following matters which are applicable to this agreement:
  - (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and/or
  - (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and/or
  - (3) where the property is a unit title:
    - (a) a pre-contract disclosure statement that complies with section 146 of the Unit Titles Act, and a pre-settlement disclosure statement that complies with section 147 of the Unit Titles Act, have been provided to the purchaser by the vendor within the times prescribed in those sections; and/or
    - (b) all rights of delay or cancellation under sections 149, 149A, 151, or 151A of the Unit Titles Act that have arisen have been waived or have expired without being exercised; and/or
    - (c) this agreement is cancelled pursuant to sections 149A or 151A of the Unit Titles Act; and/or
  - (4) this agreement is:
    - (a) cancelled pursuant to clause 6.2(3)(c); and/or
    - (b) avoided pursuant to clause 9.10(5).
- 2.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to clause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008, but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing.

**3.0 Possession and Settlement****Possession**

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

**Settlement**

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



- 3.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
    - (b) certify and sign the transfer instrument.
- 3.7 The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
    - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 3.8 On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under clause 3.12 or 3.13, or for any deduction allowed to the purchaser under clause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to clause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to clause 10.8);
  - (2) the vendor's lawyer shall immediately thereafter:
    - (a) release or procure the release of the transfer instrument and the other instruments mentioned in clause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
    - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in clause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
    - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.
- 3.9 All obligations under clause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement in accordance with the PLS Guidelines. Where the purchaser considers it is necessary or desirable to tender settlement, this may be effected (in addition to any other valid form of tender) by the purchaser's lawyer providing to the vendor's lawyer a written undertaking that:
- (1) the purchaser is ready, willing, and able to settle;
  - (2) the purchaser's lawyer has certified and signed the transfer instrument and any other instruments in the Landonline Workspace for the transaction that must be signed on behalf of the purchaser; and
  - (3) the purchaser's lawyer holds in their trust account in cleared funds the amount that the purchaser must pay on settlement.

#### **Last-Minute Settlement**

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

#### **Purchaser Default: Late Settlement**

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this clause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
  - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
    - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
    - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to clause 3.12(1).
  - (3) If the parties are unable to agree upon any amount payable under this clause 3.12, either party may make a claim under clause 10.0.

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

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

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

#### Deferment of Settlement and Possession

- 3.14 If:
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
  - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.16 If:
- (1) the property is a unit title; and
  - (2) the settlement date is deferred pursuant to either clause 3.14 or clause 3.15; and
  - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with clause 8.3,
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to clause 3.14, to the tenth working day after the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
  - (b) where there is a deferment of the settlement date pursuant to clause 3.15, to the tenth working day after the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

#### New Title Provision

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



- (i) the vendor has given the purchaser notice that a search copy is obtainable; or
  - (ii) the requisitions procedure under clause 6.0 is complete.
- (2) Clause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.

#### 4.0 Residential Land Withholding Tax

- 4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:
  - (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
    - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
    - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
  - (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
  - (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
    - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
    - (b) any costs payable by the vendor under clause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under clause 4.1(1), then the purchaser may:
  - (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
  - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this clause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 4.3 If pursuant to clause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
  - (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
  - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to clause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
  - (1) the costs payable by the vendor under clause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
  - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

#### 5.0 Risk and insurance

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

**6.0 Title, boundaries and requisitions**

- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- ~~6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:~~  
~~(a) the tenth working day after the date of this agreement, or~~  
~~(b) the settlement date.~~
- ~~(2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.~~
- ~~(3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:~~  
~~(a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice,~~  
~~(b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement,~~  
~~(c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.~~
- ~~6.3 In the event of cancellation under clause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.~~
- ~~6.4 (1) If the title to the property being sold is a cross-lease title or a unit title and there are:~~  
~~(a) in the case of a cross-lease title:~~  
~~(i) alterations to the external dimensions of any leased structure, or~~  
~~(ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted use covenant,~~  
~~(b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be), then the purchaser may requisition the title under clause 6.2 requiring the vendor.~~  
~~(c) in the case of a cross-lease title, to deposit a new plan depicting the buildings or structures and register a new cross-lease or cross-leases (as the case may be) and any other ancillary dealings in order to convey good title, or~~  
~~(d) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.~~
- ~~(2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.~~
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

**7.0 Vendor's warranties and undertakings**

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
- (a) from any local or government authority or other statutory body; or
- (b) under the Resource Management Act 1991; or
- (c) from any tenant of the property; or
- (d) from any other party; or
- (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.
- 7.3 The vendor warrants and undertakes that at settlement:
- (1) The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted).
- (2) All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.
- (3) There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.



- (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
  - (5) Where the vendor has done or caused or permitted to be done on the property any works:
    - (a) any permit, resource consent, or building consent required by law was obtained; and
    - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
    - (c) where appropriate, a code compliance certificate was issued for those works.
  - (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
    - (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
    - (b) the building has a current building warrant of fitness; and
    - (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
  - (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
  - (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party,
 has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
- 7.4 If the property is or includes part only of a building, the warranty and undertaking in clause 7.3(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
  - (2) the building has a current building warrant of fitness; and
  - (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 7.5 The vendor warrants and undertakes that on or immediately after settlement:
- (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
  - (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
  - (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
  - (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.

## **8.0 Unit title and cross-lease provisions**

### **Unit Titles**

- 8.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement and a pre-settlement disclosure statement in accordance with the Unit Titles Act. The requirements of this clause 8 are in addition to, and do not derogate from, the requirements of that Act.
- 8.2 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as follows as at the date of this agreement.
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct to the extent required by the Unit Titles Act.
  - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate.
  - (3) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
  - (4) No order or declaration has been made by any Court or Tribunal against the body corporate or the vendor under any provision of the Unit Titles Act.
  - (5) The vendor has no knowledge or notice of any fact which might result in:
    - (a) the vendor or the purchaser incurring any other liability under any provision of the Unit Titles Act, or
    - (b) any proceedings being instituted by or against the body corporate, or
    - (c) any order or declaration being sought against the body corporate or the vendor under any provision of the Unit Titles Act.
  - (6) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules.
  - (7) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property.

- (8) ~~No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:~~
- ~~(a) the transfer of the whole or any part of the common property,~~
  - ~~(b) the addition of any land to the common property,~~
  - ~~(c) the cancellation of the unit plan,~~
  - ~~(d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan, or~~
  - ~~(e) any change to utility interest or ownership interest for any unit on the unit plan.~~
- 8.3 ~~If the property is a unit title, not less than five working days before the settlement date, the vendor will provide:~~
- ~~(1) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act, and~~
  - ~~(2) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act.~~
- 8.4 ~~If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as at the settlement date:~~
- ~~(1) Other than contributions to the operating account, long-term maintenance fund, contingency fund, or capital improvements fund that are shown in the pre-settlement disclosure statement, there are no other amounts owing by the vendor under any provision of the Unit Titles Act.~~
  - ~~(2) All contributions and other moneys payable by the vendor to the body corporate have been paid in full.~~
  - ~~(3) The warranties at clause 8.2(2), (3), (4), (5), (6), (7), and (8) are repeated.~~
- 8.5 ~~If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of clause 8.3, then in addition to the purchaser's rights under sections 150, 151 and 151A of the Unit Titles Act, the purchaser may:~~
- ~~(1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser, or~~
  - ~~(2) elect that settlement shall still take place on the settlement date, such election to be a waiver of any other rights to delay or cancel settlement under the Unit Titles Act or otherwise.~~
- 8.6 ~~If the property is a unit title, each party specifies that:~~
- ~~(1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act, and~~
  - ~~(2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Unit Titles Act.~~
- 8.7 ~~Unauthorised Structures – Cross-Leases and Unit Titles~~
- ~~(1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:~~
    - ~~(a) in the case of a cross-lease title, any required lessors' consent, or~~
    - ~~(b) in the case of a unit title, any required body corporate consent,~~~~the purchaser may demand within the period expiring on the earlier of:~~
    - ~~(i) the tenth working day after the date of this agreement, or~~
    - ~~(ii) the settlement date,~~~~that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.~~
  - ~~(2) Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in clauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under clause 8.6(1) being deemed to be an objection and requisition.~~

## 9.0 Conditions and mortgage terms

- 9.1 Finance condition
- (1) If the purchaser has indicated that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date.
  - (2) If the purchaser avoids this agreement for failing to arrange finance in terms of clause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.
- 9.2 Mortgage terms
- (1) Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 9.3 LIM condition
- (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
    - (a) that LIM is to be obtained by the purchaser at the purchaser's cost; and
    - (b) this agreement is conditional upon the purchaser approving that LIM by the LIM date, provided that such approval must not be unreasonably or arbitrarily withheld.
  - (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the LIM date stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the LIM date and the vendor does not give an extension when requested, then unless the purchaser waives this condition, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.



- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the third working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the fifth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.

#### 9.4 Building report condition

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

#### 9.5 Toxicology report condition

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

#### 9.6 OIA consent condition

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

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

#### 9.8 If the Land Act date or OIA date is not shown on the front page of this agreement that date shall be the settlement date or that date 65 working days after the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or that date 20 working days after the date of this agreement, whichever is the sooner.

#### 9.9 Resource Management Act condition

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

#### 9.10 Operation of conditions

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

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

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

## 10.0 Claims for compensation

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



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

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

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
- (2) The settlement notice shall be effective only if the party serving it is at the time of service in all material respects ready, willing, and able to proceed to settle in accordance with this agreement, or is not so ready, willing, and able to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to clause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
  - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive,
- time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 11.1.
- (3) The vendor may give a settlement notice with a notice under this clause.
- (4) For the purposes of this clause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to clause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
    - (a) sue the purchaser for specific performance; or
    - (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
      - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
      - (ii) sue the purchaser for damages.
  - (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
  - (3) The damages claimable by the vendor under clause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
    - (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale;
    - (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
    - (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
  - (4) Any surplus money arising from a resale shall be retained by the vendor.

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

## 12.0 Non-merger

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

## 13.0 Goods and Services Tax and Purchase Price Allocation

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

## 14.0 Zero-rating

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



- (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement, if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 14.6 If
- (1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and
  - (2) that part is still being so used at the time of the supply under this agreement,
- then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 14.7 If
- (1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
  - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in clauses 14.3 and 14.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.
- 14.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of clause 14.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:
- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of this agreement; and
  - (2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with clause 14.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest rate for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

## 15.0 Supply of a Going Concern

- 15.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated in this agreement:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
  - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
  - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
  - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 15.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 13.0 of this agreement shall apply.

## 16.0 Limitation of Liability

- 16.1 If a person enters into this agreement as trustee of a trust and is not a beneficiary of the trust, then that person will be known as an "independent trustee" and clauses 16.2 and 16.3 will apply.
- 16.2 The liability of an independent trustee under this agreement is limited to the extent of the indemnity from the assets of the trust available to the independent trustee at the time of enforcement of that indemnity.
- 16.3 However, if the entitlement of the independent trustee to be indemnified from the trust assets has been lost or impaired (whether fully or in part) by reason of the independent trustee's act or omission (whether in breach of trust or otherwise), then the limitation of liability in clause 16.2 does not apply, and the independent trustee will be personally liable up to the amount that would have been indemnified from the assets of the trust had the indemnity not been lost.

## 17.0 Counterparts

- 17.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 17.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 17.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.
- 17.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

## 18.0 Agency

- 18.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor has appointed as the vendor's agent according to an executed agency agreement.
- 18.2 The scope of the authority of the agent under clause 18.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser's offer or counteroffer on the vendor's behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 18.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.



**19.0 Collection of Sales Information**

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

**20.0 COVID-19 / Pandemic Provisions**

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

## FURTHER TERMS OF SALE

SEE ATTACHED FURTHER TERMS OF SALE



## **FURTHER TERMS OF SALE**

### **21.0 Deposit**

- 21.1 A deposit of 10% of the Purchase price is payable forthwith to the vendor's solicitor on the confirmation of clause 38.0.
- 21.2 The deposit will be held in the trust account of the vendor's solicitor as stakeholder for both parties until the Subdivision Plan (as defined below) for the Property deposits with Land Information New Zealand ("LINZ") when the deposit and net interest (if any) less any applicable withholding tax and commission ("Net Deposit") shall be paid to the vendor; or
- 21.3 In the event that this agreement is cancelled:
- (a) As a result of a default by the purchaser, the Net Deposit will be immediately released to the vendor; and
  - (b) For any other reason, save the default of the purchaser, the Net Deposit will be immediately refunded to the purchaser.
- 21.4 The purchaser and the vendor acknowledge that the deposit is to be regarded as part payment of the Purchase price.

### **22.0 Vendor Subdivision**

- 22.1 The vendor will forthwith take all necessary steps to lodge for deposit with LINZ a plan of subdivision generally in the form attached and marked "A" ("the Subdivision Plan") to enable the vendor to give to the purchaser a separate new record of title to the Property.
- 22.2 This agreement is subject to and conditional upon the deposit of the Subdivision Plan and issue of a separate record of title for the Property. The vendor gives no warranty as to the date when the Subdivision Plan will deposit nor as to when the purchaser will be able to register a transfer. This condition is inserted for the sole benefit of the vendor.
- 22.3 The purchaser acknowledges that the date by which the Subdivision Plan is to be deposited and the transfer to the purchaser are not essential dates for the purposes of this agreement.
- 22.4 The vendor shall not be responsible for any delays beyond the vendor's reasonable control including delays relating to permits or consents of any nature, court orders, weather conditions, force majeure, strikes, accidents and unavailability of materials.

### **23.0 Measurements are subject to final calculation and check.**

- 23.1 The purchaser acknowledges that any areas and measurements on the Subdivision Plan are approximate only and subject to survey.



23.2 All measurements and areas are subject to check by the vendor's surveyor, the Dunedin City Council ("DCC") or LINZ and to any variation which may be found necessary upon such check or which the DCC or LINZ may require. The Purchase price will not be adjusted if there is any alteration in the area or in any other dimension because of any check by DCC or LINZ nor will the purchaser be entitled to any other form of compensation.

**24.0 No warranties by or on behalf of the vendor other than those in this agreement**

24.1 The purchaser acknowledges that the purchaser has inspected the Property and that the purchaser purchases the same solely in reliance upon the purchaser's own judgement and not upon any representation or warranty made by the vendor or any agent of the vendor. The purchaser is deemed to have made all enquiries appropriate in order to ascertain the use to which the Property may be put and any performance standards which may be applicable to the Property either by reason of the Resource Management Act 1991, any Transitional District Plan, Proposed District Plan or Operative District Plan compiled pursuant to the Resource Management Act 1991 or any other Act, Regulation, bylaw or other authority of any sort.

**25.0 Purchaser must not lodge caveat**

25.1 The purchaser must not lodge a caveat against the vendor's underlying title before the deposit of the Subdivision Plan.

This is an essential stipulation for the purposes of the Contract and Commercial Law Act 2017.

25.2 If the purchaser does register a caveat in breach of this clause the vendor shall be entitled to:

- (a) cancel this agreement; or
- (b) require the purchaser to remove the caveat; or
- (c) require the purchaser to consent to the registration of any instrument or other encumbrance which the vendor is entitled to create or grant in terms of this agreement at the cost in all things of the purchaser including any costs or expenses incurred by the vendor in or about the obtaining of such removal or consent.

25.3 The vendor is hereby irrevocably appointed agent of the purchaser for the purposes of Section 144 Land Transfer Act 2017 and may sign a withdrawal of the caveat or consent to the registration of any document on behalf of the purchaser.

25.4 The purchaser shall indemnify the vendor against all costs claims or other liabilities whatsoever incurred or arising as a result of the execution by the vendor, of a withdrawal of caveat in accordance with the last provision.

**26.0 Damages for breach of clause 25.**

If the purchaser registers a caveat in breach of clause 25.0 the vendor shall be entitled to damages representing:

- (a) costs incurred by the vendor in the removing the caveat; and
- (b) interest on the purchase monies outstanding on all agreements entered into by the vendor for the sale of the lots created by the subdivision (including the lot sold pursuant to this agreement) at the default interest rate.

## **27.0 Title**

### **27.1 Existing interests on title**

The record of title to issue for the Property may (at the vendor's discretion) be subject to all existing easements, encumbrances, covenants, reservations, interests, memorials and exceptions of any kind shown on the vendor's underlying head title to the Property.

### **27.2 Further interests to be created**

The vendor reserves the right to alter the Subdivision Plan, grant or create any easements, consent notices, encumbrances, covenants (restrictive or otherwise) or memorials which it may be obliged to grant or create in order to obtain a deposit of the Subdivision Plan or which, in the vendor's opinion, are in the interest of promoting the subdivision, and the purchaser agrees to take title to the Property subject to those interests.

The purchaser may not requisition the title to the Property because of any such alteration, grant or creation nor shall the purchaser be entitled to any compensation.

### **27.3 Restrictive Covenants**

Without limiting the rights of the vendor contained in clause 27.2 the Property will be subject to restrictive covenants generally in the form of covenants included in the First Schedule to this agreement. The vendor reserves the right to modify the wording of the covenants.

### **27.4 The purchaser will execute any document necessary to register any covenant.**

The purchaser agrees to take all requisite steps, including if necessary the registration of the covenants with the transfer of the Property, to ensure that such of the covenants as the vendor may in the sole discretion of the vendor require to be incorporated and registered against the title to the Property as restrictive covenants, in favour of such other land as the vendor may direct to, be so registered.

If a covenant is to be registered with the transfer from the vendor to the purchaser, the covenant shall be signed by the purchaser prior to it being submitted for execution by the vendor. This is a precondition to settlement.



**27.5 The vendor shall not be obliged to enforce the covenants against any other purchaser.**

Nothing contained in this agreement shall make it obligatory for the vendor to enforce any of the covenants contained in the First Schedule against any other owner of land in the subdivision of which the Property forms part for itself or on behalf of any other owner or owners.

**28.0 Subdivision Works**

**28.1 Right of Access**

The vendor and the vendor's surveyors, engineers, contractors or workmen shall have the right, before or after settlement, to enter the Property and do such work as shall, in the opinion of the vendor or the vendor's engineer or contractor, be necessary or desirable to complete the subdivisional works.

The vendor must make good any disturbance of the soil as a result of any works undertaken after settlement.

**28.2 The vendor may alter the topography of the land**

The vendor may carry out whatever earthworks are necessary or desirable in order to comply with the conditions of subdivision consent or otherwise complete the subdivision in accordance with the vendor's design.

The vendor may:

- (a) store soil in accordance with any development work;
- (b) cut away, remove or move the soil and substrata of the Property and any other land within the subdivision; and
- (c) create berms or fill adjacent to roads, access ways or rights of way, excavate, contour, lower, fill, landscape or plant the Property and/or any other land within the subdivision.

**28.3 Services**

The vendor agrees, at the vendor's cost, and in compliance with the conditions of the subdivision resource consent, to complete the installation of the following services to the boundaries of the Property before the Settlement date:

- (a) water;
- (b) electricity;
- (c) stormwater; and
- (d) fibre.

The services will be installed to the boundary of each property in a location deemed most appropriate by the vendor's engineer, surveyor and/or the DCC.

## **29.0 Settlement**

- 29.1 The Purchase price and all the other moneys payable by the purchaser to the vendor under this agreement shall be paid in cleared funds on the Settlement date which shall be on the day which is 10 working days after the vendor gives the purchaser written notice that a search copy (as defined in Section 60 of the Land Transfer Act 2017) of the new record of title for the Property is available.

## **30.0 Fencing**

- 30.1 The vendor will not be required to assist the purchaser with fencing of the Property. The Vendor reserves the right to register such a fencing covenant on the separate new record of title to the Property.

## **31.0 No Objection To Future Development**

- 31.1 The purchaser covenants that the purchaser will not:

- (a) object to or lodge any submission against any planning proposal, resource consent application or plan change with the DCC or any relevant authority such as any corporation, government, local, statutory or non-statutory authority or body having jurisdiction over the land or any part thereof "Relevant Authority"; or
- (b) obtain an order, injunction or any other remedy intended to prevent, delay, hinder or frustrate any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority; or
- (c) encourage or support any other person to:
- (d) object or to lodge any submission against any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority; or
- (e) obtain an order, injunction or any other remedy intended to prevent, delay, hinder or frustrate any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority;

that relates to any land owned by the vendor (at any time) situated within a 1-kilometre radius of the boundaries of the vendor's underlying title.

- 31.2 Prior to settlement the vendor may register against the new record of title for the Property the covenants contained in this clause 31 in a land covenant or an encumbrance and in relation to such benefited and burdened land or in favour of the vendor or such other landowners, as the vendor in its sole discretion sees fit.



## **32.0 Purchaser to Keep Property Tidy**

- 32.1 The purchaser shall from the Settlement date prevent the growth of long grass and weeds and plants and pests, if the purchaser fails to do so the vendor may enter the Property for the purposes of remedying such default and the purchaser shall indemnify the vendor against the cost of the vendor remedying the default to get the Property in neat and tidy condition.

## **33.0 General**

- 33.1 The parties acknowledge that this agreement and the attachments to this agreement contain the entire agreement between the parties notwithstanding any negotiations or discussions prior to the execution of this agreement and notwithstanding anything contained in any media publication or other representation.
- 33.2 The purchaser acknowledges that they have not been induced to execute this agreement by any representation, verbal or otherwise, made by or on behalf of the vendor, which is not set out in this agreement.
- 33.3 Any fence on the Property may bear no relation to the boundary. The vendor shall have no responsibility to amend or replace fencing.
- 33.4 If any provision of this agreement or the application thereof to any person or circumstances is or becomes invalid or unenforceable, the remaining provisions will not be effected by that event and such provision will be valid and enforceable to the fullest extent permitted by law.

## **34.0 Guarantee**

- 34.1 Where the purchaser is a company, the director or directors of the purchaser company personally guarantee to the vendor compliance by the purchaser of the purchaser's obligations under this agreement and indemnify the vendor against all costs, claims or liabilities incurred by the vendor as a result of any breach by the purchaser of this agreement.
- 34.2 The signatory/ies for the purchaser to this agreement warrant that the directors of the purchaser company have approved entry into this agreement and in particular the personal guarantees provided to the vendor on their behalf pursuant to clause 34.1.

## **35.0 Purchaser Acknowledgement**

- 35.1 The purchaser acknowledges that:
- (a) the vendor has been granted a subdivision resource consent from DCC in terms of Resource Consent Application SUB-2023-117 and LUC-2023-353 (dated 28 May 2024) ("the Resource Consent");

(b) the purchaser has been provided with (either electronically or by hard copy) the Resource Consent;

(c) proposed lots 1-9 in the Subdivision Plan will be subject to a Consent Notice which provides that:

*“only one primary residential unit (with ancillary unit) may be established on this site in order to maintain the number of residences using the shared access from Weller Street to a level approved by Council.”*

### **36.0 Assignment**

36.1 The purchaser may not assign or transfer its rights or obligations under this agreement without the prior written consent of the vendor.

36.2 The purchaser shall on any assignment, transfer or other disposition of the Property or the purchaser's interest in this agreement include in any on-sale agreement the vendor's rights and the purchaser's obligations set out in this agreement.

### **37.0 Accruals**

37.1 The parties acknowledge and agree that where, in relation to this agreement, it is necessary to determine "consideration" for the purposes of section EW32 of the Income Tax Act 2007, the consideration payable is the "lowest price" the parties would have agreed upon for the sale and purchase of the Property in terms of paragraph (3) in section EW32 of the Income Tax Act 2007.

### **38.0 Purchaser's Condition**

38.1 This agreement is subject to and conditional upon the purchaser's solicitor's approval as to the form of this agreement and the existing title within ten (10) working days from the date of this agreement. If the purchaser or the purchaser's solicitor does not raise any issues as to form and title within the said ten (10) working days, the purchaser shall be taken to have confirmed this condition as satisfied.

### **39.0 Conflict**

39.1 If any conflict arises between the provisions of the Further Terms of Sale of this agreement and those of the General Terms of Sale of this Agreement then the provision of the Further Terms of Sale shall prevail.

### **40.0 Force Majeure**

40.1 In the event that war, civil disorders, monetary or economic developments, acts of government or other factors beyond the reasonable control of the vendor, whether similar or not ("Specified Event") shall prevent the vendor from commencing, continuing or completing the subdivision or render it

impracticable, in the vendor's sole opinion for the vendor to commence, continue and complete the subdivision, then the vendor may by notice in writing advise the purchaser of this specified event and cancel this agreement and the deposit shall be returned in full to the purchaser pursuant to clause 23.1 (b).

#### **41.0 Not Binding**

- 41.1 Notwithstanding the presentation of this agreement by the vendor or the vendor's agent to the purchaser or the purchaser's agent such presentation shall not be construed as an offer capable of acceptance by the purchaser and this agreement shall not be binding until signed by both parties hereto.

#### **42.0 Sunset date**

- 42.1 In the event that the new record of title for the Property subject to this agreement has not issued by 1 June 2026 ("Sunset date"), then the purchaser will be entitled at any time after the Sunset date and prior to the date upon which the Settlement date is triggered, to cancel this agreement by notice in writing provided that the vendor may, upon written notice to the purchaser extend the Sunset date by a total of no more than ninety (90) days at the vendor's sole discretion. Upon a cancellation of the agreement pursuant to this clause 42, the purchaser will be entitled to a full refund of the ten percent (10%) deposit paid and neither party will have any further claims or rights against the other.



## FIRST SCHEDULE

### DEFINITIONS

**“Building”** includes any structure, dwelling, garage, shed or other ancillary building other than a shed temporarily located on the Land for use by the registered owner or the registered owner's servants, agents or contractors solely for the purpose of use during the course of construction of any other building on the Land.

**“Development”** means GTJM's residential subdivision development of its land situated at 336 and 336A Portobello Road, Dunedin and contained in Record of Titles OT312/165 and OT310/57 and in terms of resource consent application SUB-2023-117 and LUC-2023-353.

**“Existing Ground Level”** means the ground level of the Land as of the date that the Grantor takes and registers a transfer of the Land from the Vendor/GTJM.

**“Grantor”** means the registered owner of the Land/Lot from time to time;

**“GTJM”** means GTJM Property Limited at Dunedin, Company number 7796017 and its successors or assigns.

**“Lot”** means any of proposed lots 1-9 as outlined in the Subdivision Plan described in this agreement.

**“the Land”** means the Property described in this agreement

**“the Vendor”** means GTJM;

### A COVENANTS

#### 1.0 DESIGN COVENANTS

1.1 The Grantor covenants and agrees:

- (a) not to construct a Building on Lots 1 and/or 3 that exceeds 5.7m metres in height above the Existing Ground Level;
- (b) for the purpose of clause 1.1(a) in calculating height no account shall be taken of chimneys only, provided that the maximum height for any Building that is subject to this clause is not exceeded by more than 1.5m and any chimney has a maximum width of 1.1m in any direction provided further that Council has approved the proposed design of any Building featuring a chimney
- (c) that all external lighting installed within the boundaries of the Land/Lot shall be down lighting only and shall not create any light spill beyond the boundary of the Land/Lot;
- (d) not to use roof materials on any Building other than one, or a combination of, steel (corrugated or tray), cedar shingles, slate or similar, or any other roof materials approved in writing by GTJM,

provided that zincalume plain galvanised or other similar steel finishes shall not be permitted;

- (e) that roof colours must be of dark, natural tones of grey, brown or green with a light reflectivity value of between 6 and 30%;
- (f) unless otherwise approved by GTJM in writing, not to use wall cladding materials other than one, or a combination of, the following:
  - (i) timber, smooth plaster, concrete, corrugated iron, stone, or high-quality materials approved by GTJM in writing; and
  - (ii) all cladding shall be recessive in colour or in a range of browns, tussock, greys, or natural greens;
- (g) not to use joinery materials other than one or a combination of the following:
  - (i) timber, steel or aluminium; and
  - (ii) joinery colours (except timber) shall complement roofing, guttering and spouting colours or as otherwise approved in writing by GTJM;
- (h) not to occupy any Building until it has achieved practical completion or has received a current code compliance certificate issued by the local council authority under the Building Act 2004;

## **2.0 BUILDING AND USE COVENANTS**

### **2.1 The Grantor covenants and agrees:**

- (a) not to erect or place, or permit to be erected or placed, on the Land/Lot any caravan, mobile home(s), hut or other temporary accommodation for use as temporary accommodation. The storage of a mobile home, caravan and/or boat is permitted on the Land/Lot once a dwelling has been constructed provided it is screened from the road frontage;
- (b) not to construct or place any pre-used, second-hand and/or relocated Building on the Land/Lot;
- (c) not to use the Land/Lot or permit the same to be used for any use other than residential purposes, and in particular, not to use the Land/Lot or permit the same to be used, for any trading, industrial or commercial purpose. It is acknowledged that the use of a dwelling as a registered Homestay as defined in the Dunedin City Council Operative District Plan as of 1 December 2015 will not be in breach of the provisions of this clause;
- (d) not to permit the parking of trucks or large commercial vehicles on or adjoining the Land/Lot other than for temporary delivery purposes;
- (e) that any Building must be constructed on site from new materials;

- (f) no Building shall be erected on the Land/Lot that has concrete or treated wooden piles without providing a solid and durable skirting board or other enclosure around the exterior of the Building from ground height to the underside of the wall cladding;
- (g) the Land/Lot must be maintained in a neat and tidy condition and to a standard that grass and other ground cover shall not exceed a height of 150mm. Until a dwelling is erected on the Land/Lot, GTJM shall be entitled to enter onto the Land/Lot without prior notice and carry out any mowing or grass needed to ensure compliance with this requirement at the land owner's expense;
- (h) no use may be made of any adjacent land or lot adjoining the Land/Lot for access, parking or dumping of rubbish;
- (i) to reinstate, replace, and be responsible for costs arising from damage to, the landscaping, roads, curbing, berms, concrete or other structures with the Development arising directly or indirectly from the construction of any Building on the Land/Lot, or the landscaping of the Land/Lot or the Grantor's use of the Land
- (j) prior to the commencement of the construction of any dwelling or building on the Land/Lot the Grantor shall first construct a suitable vehicle crossing to the satisfaction of GTJM across the curb to protect it from damage;
- (k) once construction of a dwelling on the Land/Lot has commenced the Grantor shall:
  - (i) complete construction of the dwelling over a period of 24 months from the commencement of construction; and
  - (ii) complete the landscaping on the Land/Lot within 30 months from the commencement of construction of the dwelling or the next growing season, whichever is sooner;
- (l) no garages or outbuildings shall be erected on the Land/Lot except in conjunction with or following construction of a dwelling, and all such buildings shall be constructed with permanent materials of timber, stone or other permanent materials in character with the dwelling on the Land/Lot or as otherwise approved in writing by GTJM;
- (m) that the further subdivision of the Land/Lot is prohibited except where:
  - (i) the subdivision is a boundary adjustment, and
  - (ii) the subdivision does not create any additional, separate saleable residential lots or areas that additional dwellings may be built on;

Nothing in this clause shall prevent a Residential Flat as defined in the Dunedin City Council Operative District Plan being constructed as part of a dwelling.



- (n) no landscape feature on the Land/Lot may exceed a height of 2.5m above Existing Ground Level;
- (o) no plants, shrubs or trees shall be allowed to exceed a height of 1.8m within 2m of the boundary of the Land/Lot and (except for any trees established by GTJM) no planting shall be allowed to exceed a height of 5m in any other place on the Land/Lot;
- (p) that diesel, petrol, oil or gas tanks that have a capacity of over 500 litres are prohibited on the Land/Lot or within any building on the Land/Lot unless first approved in writing by GTJM;
- (q) to ensure all gas cylinders, diesel, petrol, oil or gas tanks and/or air conditioning units shall be suitably screened from both the road frontage and the dwellings on any neighbouring lots and shall not be sited within 5m of any dwelling on the neighbouring lots; and
- (r) Allow any animal (including dogs and other domestic pets) to be kept in or upon the Land/Lot or Building on the Land/Lot that is or is likely to cause a nuisance or annoyance to other occupiers in the Development or to detract from the Development as a whole. In particular, the registered owner of the Land/Lot shall not allow on or about the Land/Lot or any Lot in the Development any dog which in whole or in part is or resembles the pit bull terrier or doberman pinscher breeds.

### **3.0 FENCING COVENANTS**

- 3.1 For so long as any Lot forming part of the Development is owned by GTJM, GTJM shall not be liable to contribute to the cost of, or assist in the erection or maintenance of any boundary or dividing fence between any such Lot owned by GTJM and any Lot that is not owned by GTJM;
- 3.2 Boundary fencing of any contiguous residential Lots comprised in the Development shall use live hedges, and/or wooden trellis style, and/or similar fencing materials first approved in writing by GTJM.
- 3.3 Unless otherwise first approved in writing by GTJM, all fencing within the Development shall not:
  - (a) exceed 1.8m in height; and
  - (b) be sited within 4.5 metres of the boundary to any road frontage unless live hedging is used (in which case this restriction shall not apply).

### **4.0 APPROVAL PROCESS FOR BUILDINGS AND SITE DEVELOPMENT**

- 4.1 The Grantor shall not build on the Land any Building unless the plans and specifications of that Building have first been approved in writing by GTJM in accordance with this covenant.
- 4.2 Prior to submitting a resource consent application or a building consent application (as the case may be) to the Council for the necessary approvals, and prior to the commencement of construction, the owner of each Lot within

the Development shall obtain the written approval of GTJM to their building plans and landscaping plans and in particular approval in respect of:

- (a) Site plan showing the location of all buildings, landscaping and vehicle access;
- (b) Elevations- which shall include a description of all exterior finishes and colours and materials;
- (c) Landscaping plans detailing any retaining walls;
- (d) Concept plans and specifications.

4.3 GTJM undertakes to use its best endeavours to respond to each application submitted no later than 15 working days after receipt of the items noted in 4.2 above. GTJM may decline to approve any or all aspects or details of the proposed Building or landscape plans that GTJM in its sole and absolute discretion and determination may consider as prejudicial to the underlying objectives and purpose of these covenants- which include protecting the overall look and feel of the Development and to ensure it remains consistent with the balance of the Development.

4.4 In determining whether or not to approve the plans and specifications in part or in whole, GTJM will take into account the appearance of the proposed dwelling in relation to the appearance of other dwellings already forming part of the Development to the intent that the appearance of the proposed dwelling shall be generally compatible with a range of style, design and appearance of other dwellings proposed to be built or actually built within the Development, or that GTJM wishes to see built in the Development.

4.5 Approval of plans by GTJM does not constitute any representation that plans are otherwise compliant with these covenants or any other applicable building regulations or district plan, building or other land use requirements and compliance with all such covenants and requirements constitute separate responsibilities and obligations of the Grantor.

4.6 GTJM may nominate or delegate the approval process to any other suitably qualified person or entity at any time.

## **5.0 NO OBJECTION COVENANT**

5.1 The Grantor covenants that the GTJM that they will not:

- (a) object to or lodge any submission against any planning proposal, resource consent application or plan change with the Dunedin City Council ("DCC") or any relevant authority such as any corporation, government, local, statutory or non-statutory authority or body having jurisdiction over the land or any part thereof "Relevant Authority"; or



- (b) obtain an order, injunction or any other remedy intended to prevent, delay, hinder or frustrate any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority; or
- (c) encourage or support any other person to:
- (d) object or to lodge any submission against any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority; or
- (e) obtain an order, injunction or any other remedy intended to prevent, delay, hinder or frustrate any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority;

that relates to any land owned by the Vendor/GTJM (at any time) situated within a 1-kilometre radius of the boundaries of the Land comprised in the Development.

## **B. ENFORCEMENT**

1. GTJM may, at its absolute discretion at all times enforce these covenants in the same manner as any other person having the benefit of these covenants and in particular, if the registered owner from time to time of the Land/Lot is in breach of any of the foregoing covenants (and without prejudice to any other liability which the registered owner from time to time of the Land/Lot may have to any other person having the benefit of those covenants) they will upon written demand from GTJM
  - (a) Immediately remedy the breach or non-observance of the covenants;
  - (b) Pay to GTJM as liquidated damages the sum of five hundred dollars (\$500.00) per day for each day that such breach or non-observance continues after the date upon which written demand was made.
2. GTJM does not have any legal responsibility or liability for the enforcement, enforceability, applicability or lack of action with respect to enforcement or applicability of any of these covenants. In addition, GTJM does not undertake to enforce or monitor compliance of these covenants. The registered owner from time to time of the Land/Lot in his capacity as grantee in the proposed easement instrument creating these covenants also agrees to keep GTJM indemnified, free and harmless from any claim, liability, loss or action arising against it or its agents in this regard.

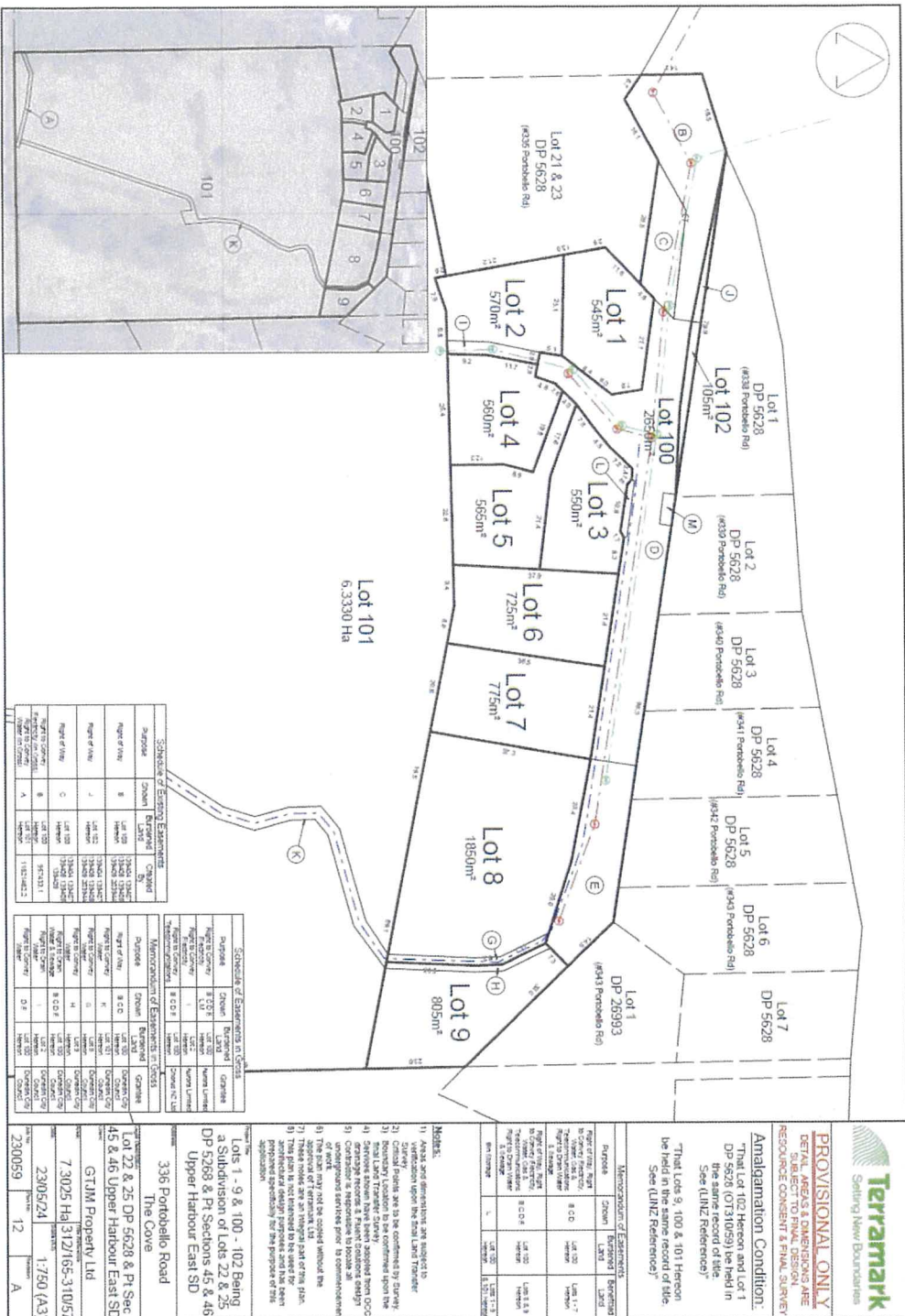
## **C. DISPUTE RESOLUTION**

1. Without prejudice to the enforcement provisions of this document, if any dispute arises between or among any persons concerning the covenants,



then such persons shall enter into negotiations in good faith to resolve their dispute.

2. If the dispute is not resolved within twenty (20) working days from the date on which the parties begin their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.
3. If an arbitrator cannot be agreed upon within a further ten (10) working days, then an independent arbitrator will be appointed by the President of the time being of the New Zealand Law Society.
4. Such arbitration shall be determined in accordance with the Arbitration Act 1996 (and its amendments) or any enactment passed in its substitution



**SCHEDULE 1****(GST Information – see clause 14.0)**

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

<b>Section 1 Vendor</b>	
1(a) The vendor's registration number (if already registered): 130-461-603	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
<b>Section 2 Purchaser</b>	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
<b>If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)</b>	
2(c) The purchaser's details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
<b>OR</b> The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
<b>If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.</b>	
<b>Section 3 Nominee</b>	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
<b>If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.</b>	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
<b>OR</b> The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No



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

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

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

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

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

Name of Tenant(s):

Rent:

Term:

Bond:

Copyright  
©

**Commercial/Industrial Tenancies**

(If necessary complete on a separate schedule)

1. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

2. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

3. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

## WARNING AND DISCLAIMER

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

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

#### Acknowledgements

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

The person or persons signing this agreement acknowledge that either:

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

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

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

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

Signature of Purchaser(s):

Signature of Vendor(s):

Name:

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

Delete the options that do not apply

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

Name:

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

Delete the options that do not apply

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

Name:

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

Delete the options that do not apply

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

Name:

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

Delete the options that do not apply

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

\*If this agreement is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ).

Also insert the following wording for the Attorney's Signature above:

Signed for [full name of the donor] by his or her Attorney [attorney's signature].

**AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE****VENDOR:** GTJM PROPERTY LIMITED (COMPANY NUMBER 7796017)

Contact Details:

**VENDOR'S LAWYERS:**

Firm: GALLAWAY COOK ALLAN

Individual Acting: TOM WILLIS

Email: tom.willis@gallawaycookallan.co.nz

Contact Details: PO BOX 143  
DUNEDIN 9054

03 4777 312

**Email address for service of notices** (clause 1.4): lawyers@gallawaycookallan.co.nz**PURCHASER:**

Contact Details:

**PURCHASER'S LAWYERS:**

Firm:

Individual Acting:

Email:

Contact Details:

**Email address for service of notices** (clause 1.4):**SALE BY LICENSED REAL ESTATE AGENT:** BE REAL ESTATE, DUNEDIN

Manager: CHRIS ADAMS

Salesperson: CHRIS ADAMS

Second Salesperson:

Contact Details: chris@berealestate.co.nz  
027 433 1656

Licensed Real Estate Agent under Real Estate Agents Act 2008

**© Auckland District Law Society Inc. (ADLS) & Real Estate Institute of New Zealand Inc. (REINZ)****IMPORTANT WARNING:** All copyright in and associated with this form and its contents is owned by ADLS & REINZ. A user of this form only acquires a limited non-exclusive licence to use it *once within a single transaction only*. The standard ADLS & REINZ contract terms apply, which also prohibit any form of distribution, on-selling, or reproduction, including copying, digitising or recreating the form by any means whatsoever.

ADLS &amp; REINZ monitor the use of this form and may take enforcement action against any person acting in breach of these obligations. Copying or digitising this form and altering its standard text, without clearly identifying the alterations, is prohibited, and, in addition to copyright infringement, may also be a breach of the Fair Trading Act 1986 and misrepresentation.