

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: 7 APRIL 2014

VENDOR: FRED THOMAS DRIVE INVESTMENTS LIMITED company number 3197268 at Auckland

PURCHASER: MAAT CONSULTING LIMITED

and/or nominee

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.

Yes/No

PROPERTY

Address: 2,3 and 4 Fred Thomas Drive, Takapuna, Auckland

Estate: FEE SIMPLE LEASEHOLD STRATUM IN FREEHOLD STRATUM IN LEASEHOLD
GROSS LEASE (FEE SIMPLE) GROSS LEASE (LEASEHOLD) (fee simple if none is deleted)

Legal Description:

Area (more or less):

Lot/Flat/Unit:

DP:

Unique Identifier or CT:

See attached

PAYMENT OF PURCHASE PRICE

Purchase price: \$ 60,850,000

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 14.0):

Deposit (refer clause 2.0): \$ 1,500,000 being 10% of the purchase price plus GST (if any)

on satisfaction of the condition in clause 27.1

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.

10 working days after satisfaction of the condition in clause 27.1
Interest rate for late settlement: 14 % p.a.

CONDITIONS (refer clause 10.0)

Finance condition See attached

LIM required: (refer clause 10.2)

Yes/No

Lender:

Building report required: (refer clause 10.3)

Yes/No

Amount required:

OIA Consent required: (refer clause 10.4)

Yes/No

Finance date:

Land Act/OIA date:

TENANCIES (if any)

Name of tenant: See Tenancy Schedule attached

Bond:

Rent:

Term:

Right of renewal:

SALE BY:

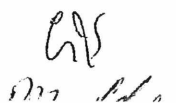
Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 1, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

Legal Description

1. An estate in fee simple in that parcel of land containing 17 square metres more or less being Section 1 Survey Office Plan 61394 and being the land comprised in identifier NA88C/125 subject to and with the benefit of all interests appearing on the title for identifier NA88C/125 excluding only any matter securing the financial indebtedness of the vendor.
2. An estate in fee simple in that parcel of land containing 5915 square metres more or less being Lot 1 Deposited Plan 150159 and being the land comprised in identifier NA89B/718 subject to and with the benefit of all interests appearing on the title for identifier NA89B/718 excluding only any matter securing the financial indebtedness of the vendor.
3. An estate in fee simple in that parcel of land containing 9291 square metres more or less being Lot 2 Deposited Plan 150159 and being the land in identifier NA89B/719 subject to and with the benefit of all interests appearing on the title for identifier NA89B/719 excluding only any matter securing the financial indebtedness of the vendor.

Copies of the titles for the land comprised in identifiers NA88C/125, NA89B/718 and NA89B/719 are attached to this agreement at Annexure B.



GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Agreement" means this document including the front page, these General Terms of Sale, any further Terms of Sale, and any schedules and attachments.
- (3) "Building Act" means the Building Act 1981 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Londonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- ~~(15) "Property" means the property described in this agreement.~~
- (16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "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.
- (20) "Settlement date" means the date specified as such in this agreement.
- (21) "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 incoming and outgoing, ~~apportioned at the settlement date.~~ as provided for under clause 23.1.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title under the Unit Titles Act 2010.
- (24) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (25) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (26) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
- (27) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (28) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (29) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 1952.
- (30) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (31) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (32) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of subclause 10.2(2) the 15th day of January) in the following year, both days inclusive; and
 - (d) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (33) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
 - (b) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.2 Time for Performance

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

1.3 Notices

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

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

- (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office
- (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service
- (6) In accordance with section 20(1) of the Electronic Transactions Act 2002, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above
- 1.4 Interpretation
- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail
- (4) Headings are for information only and do not form part of this agreement
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served
- 2.3 The deposit shall be in part payment of the purchase price
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until
- (1) the transition procedure under clause 9.6 is completed without either party cancelling this agreement; and
- (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
- (3) where the property is a unit title
- (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 447 of the Unit Titles Act 2010; and
- (b) an additional disclosure statement under section 448 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 448(2));
- have been provided to the purchaser by the vendor within the times prescribed in these sections or otherwise the purchaser has given notice under section 448(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
- (4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.8(5) or where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase

3.0 Possession and Settlement

20.4 or 21.4

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 purpose of examining the property, chattels and fixtures which are included in the sale; and
- (2) to re-enter the property on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and the fixtures
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor
- 3.4 On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant

Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date
- 3.6 The purchaser's lawyer shall
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property, and
- (2) prior to settlement
- (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
- (b) certify and sign the transfer instrument
- 3.7 The vendor's lawyer shall
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
- (2) prior to settlement
- (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
- (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated
- 3.8 On the settlement date
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.14)
- (2) the vendor's lawyer shall immediately thereafter
- (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them for registration
- (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
- (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement
- 3.9 All obligations under subclause 3.8 are interdependent
- 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines
- 3.11 Last Minute Settlement
- (1) If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor
- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
- (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day

Purchaser Default: Late Settlement

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

Vendor Default: Late Settlement or Failure to Give Possession

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

Determination of Settlement and Possession

3.15—If

- (1) this is an agreement for the sale by a commercial seller of a household unit; and
- (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit; then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).

3.16 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.

3.17—If

- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 3.2(4);
- (4) then the vendor may extend the settlement date:
- (a) where there is a determination of the settlement date pursuant to subclause 3.15 to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (b) where there is a determination of the settlement date pursuant to subclause 3.16 to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

9.48 (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 142 of the Land Transfer Act 1952 of that title is not obtainable by the tenth working day prior to the settlement date
 (c) then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
 (i) the vendor has given the purchaser notice that a search copy is obtainable or
 (ii) the requisitions procedure under clause 6.0 is complete.
 (2) Subclause 6.1(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

4.0 Residential Land Withholding Tax

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

5.0 Risk and insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
 (1) if the destruction or damage has been sufficient to render the property untenantable and it is untenantable 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 untenantable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair.
 (3) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenantable where the diminution in value exceeds an amount equal to 20% of the purchase price, and
 (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 6.4 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title ~~except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:~~ to the property and the purchaser shall not make any objections or requisitions as to the title to the property.
 (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 is defined in section 142 of the Land Transfer Act 1952 is obtainable.
 (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to the 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 (to vendor's notice) of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
 (b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
 (c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may, notwithstanding any intermediate negotiations by notice to the other, cancel this agreement.
 (4) In the event of cancellation under subclause 6.2(3)(c), 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.
 (5) (i) if the title to the property being sold is a cross lease title and 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 and the space (as the case may be) then the purchaser may requisition the title under subclause 6.2 requiring the vendor:
 (c) in the case of a cross lease title, to deposit a new plan showing 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;
 (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 accessory units and register such transfers and any other ancillary dealings in order to convey good title.

6.4 Except as provided by section 7 of the Contractual Remedies Act 1979, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 6.5, but not otherwise, shall be made or given as the case may require, and no compensation shall be payable.

6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land, and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

7.0 Vendor's warranties and undertakings

7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not

- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party; or

(2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.

7.2 The vendor warrants and undertakes that at settlement:

(1) the chattels and all plant, equipment, systems or devices which provide any services or amenities to the property, including without limitation, security, heating, cooling, or air conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted); but failure to deliver them shall only create a right of compensation;

(2) All electrical and other installations on the property are free of any charge whatsoever;

(3) There are no arrears of rates, water rates or charges outstanding on the property;

(4) Where an allowance has been made by the vendor in the settlement statement for incomes 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 work:

- (a) any permit, resource consent or building consent required by law was obtained; and
- (b) to the vendor's knowledge, the work was 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 is required to comply with a compliance schedule:

- (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
- (b) the building has a current building warrant of fitness; and
- (c) the vendor is not aware of any reason that the vendor has not disclosed in writing to the purchaser which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due;

(7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property;

(8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:

- (a) from any local or government authority or other statutory body; or
- (b) under the Resource Management Act 1991; or
- (c) from any tenant of the property; or
- (d) from any other party;

has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.

(9) Any chattels included in the sale are the unencumbered property of the vendor.

7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that where under the Building Act the building of which the property forms part requires a compliance schedule:

- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
- (2) the building has a current building warrant of fitness; and
- (3) the vendor is not aware of any reason that the vendor has not disclosed in writing to the purchaser which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due;

7.4 The vendor warrants and undertakes that on or immediately after settlement:

- (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading, but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned;
- (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement;

(3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water;

(4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser;

7.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not affect the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 6.4 and any right of equitable set-off.

8.0 Claims for compensation

8.1 If the purchaser claims a right to compensation either under subclause 6.4 or for an equitable set-off:

- (1) the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
- (2) the notice must:

- (a) in the case of a claim for compensation under subclause 6.4, state the particular error, omission, or misdescription of the property or title in respect of which compensation is claimed;
- (b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
- (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
- (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.

8.2 For the purposes of subclause 8.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given on or before the last working day prior to the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 4.1.1;

8.3 If the amount of compensation is agreed, it shall be deducted on settlement;

8.4 If the amount of compensation is disputed:

- (1) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
- (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
- (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointee shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
- (4) the stakeholder shall lodge the interim amount on interest-bearing deposit with a bank registered under the Finance Bank of New Zealand Act 1988 in the joint names of the vendor and the purchaser;
- (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
- (6) the amount of compensation determined to be payable shall not be limited by the interim amount; and
- (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society;

8.5 The procedures presented in subclauses 8.1 to 8.4 shall not prevent either party taking proceedings for the specific performance of the contract;

9.0 Unit title and cross-lease provisions

Unit Titles

5.4 If the property is a unit title—sections 444 to 463 of the Unit Titles Act 2010 (the Act) require the vendor to provide to the purchaser a pre-settlement disclosure statement and if so required by the purchaser, an additional disclosure statement.

9.2 If the property is a unit title, the vendor warrants and undertakes as follows:

- (1) The information in the pre-settlement disclosure statement provided to the purchaser was complete and correct.
- (2) Apart from regular periodic contributions, no contributions have been received or expected by the body corporate that have not been disclosed in writing to the purchaser.
- (3) Not less than five working days before the settlement date, the vendor will provide:
 - (a) a certificate of insurance for all insurance effected by the body corporate under the provisions of section 195 of the Act; and
 - (b) a pre-settlement disclosure statement from the vendor certified correct by the body corporate, except section 147 of the Act—any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
- (4) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 2010.
- (5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
- (6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Unit Titles Act 2010.
- (7) The vendor has no knowledge or belief of any fact which might give rise to or indicate the possibility of:
 - (a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 2010;
 - (b) any proceedings being instituted by or against the body corporate; or
 - (c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 2010.
- (8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules or there are no unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
- (9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
- (10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
 - (a) the transfer of the whole or any part of the common property;
 - (b) the addition of any land to the common property;
 - (c) the cancellation of the unit plan; or
 - (d) the deposit of an amendment to the unit plan, a development plan, or a new unit plan in substitution for the existing unit plan,
 which has not been disclosed in writing to the purchaser.
- (11) At settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.

9.3 If the property is a unit title, in addition to the purchase price, the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 6.2(3), the purchaser may:

- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
- (2) elect that settlement shall still take place on the settlement date.

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

- (1) the fee of the number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 266(1)(d) of the Act; and
- (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 266(1)(d) of the Act.

9.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 140(6) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.6(4). Such costs may be deducted from the deposit at the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

Cross-lease Structures—Cross Leases and Unit Titles

9.6 Where structures (not stated in clause 6.0 to be required) have been erected on the property, whether:

- (a) in the case of a cross-lease, after any required lessor's 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:
- (1) the tenth working day after the date of this agreement; or
 - (2) the settlement date,

that the vendor obtain the written consent of the relevant lessor or the body corporate (as the case may be) to such improvements (to current consent) and provide the purchaser with a copy of such consent on or before the settlement date.

(2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 6.2(3) and 6.2(4) shall apply with the purchaser's demand under subclause 6.2(1) being deemed to be an objection and request.

10.0 Conditions and mortgage terms

Particular Conditions

10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.

10.2 If the purchaser has indicated on the front page of this agreement that a LIM is required:

- (a) the LIM is to be obtained by the purchaser at the purchaser's cost;
- (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
- (c) the agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.

(1) On reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor (if the purchaser's notice is given) or before the fifth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if these 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 fifth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclauses 10.4(5) shall apply.

(2) The vendor shall give notice to the purchaser (if the vendor's notice is given) on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.

(3) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 10.4(5) shall apply.

(4) 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, the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.

10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining the purchaser's consent on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser on the basis of an objective assessment. The report must be prepared in good faith by a suitably qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.4(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.

10.4 (1) If the purchaser has indicated on the front page of the agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.

(2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.

10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.

10.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.

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

Operation of Conditions

- 10.8 If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent.
 - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
 - (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
 - (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
 - (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

Mortgage Terms

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

11.0 Notice to complete and remedies on default

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

12.0 Non-merger

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

13.0 Agent

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

14.0 Goods and Services Tax

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 - (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
 - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
 - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST.
 - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.6(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

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

15.0 Zero-rating

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

16.0 Supply of a Going Concern

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

17.0 Limitation of Liability

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

18.0 Counterparts

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

FURTHER TERMS OF SALE

See attached

SCHEDULE 1

List all chattels included in the sale
(strike out or add as applicable)

~~Stove~~

~~Fixed floor coverings~~

~~Blinds~~

~~Curtains~~

~~Light fittings~~

By 498
122 CH.

FURTHER TERMS OF SALE

19 FURTHER DEFINITIONS

19.1 In this agreement unless the context requires otherwise the following further definitions shall apply:

- (a) "Ancillary Documents" means all those documents which are supplemental to the Leases as the same are described in the Tenancy Schedule;
- (b) "Leases" means the documents described in the tenancy schedule attached at Annexure A to this agreement and identified as a lease (including in the case of premises at part level 2, 4 Fred Thomas Drive the agreement to lease with Amplifon NZ Limited dated 22 November 2016) and includes any further leases to which the purchaser's consent shall be given or deemed to be given pursuant to clause 22.3(a) and reference to "Lease" shall mean any one of them as the context may require;
- (c) "Maintenance Contracts" means the maintenance and service contracts as described in Schedule 3 and reference to Maintenance Contract shall mean any one of them as the context may require;
- (d) "Management Update" means the note of management matters dated 14 March 2017 providing a brief overview of ongoing management matters at the property as at that date;
- (e) "Property" and "property" means the land described in Schedule 1 of this agreement and the buildings constructed on that land which together comprise the property;
- (f) "Tenant" means any person holding any right of occupancy or use of any part of the property whether by way of lease, agreement to lease, licence to occupy or otherwise;
- (g) "Tenancy Schedule" means the schedule attached to this agreement at Annexure A detailing the Leases and the Ancillary Documents,
- (h) "Unconditional Date" means the date on which this agreement becomes unconditional in all respects; *for satisfaction of the condition in clause 20.1*
- (i) "Watercare Agreement" means the agreement under section 181 Local Government Act 2002 made between Watercare Services Limited and the vendor dated 26 August 2016.

20 AGREEMENT CONDITIONAL UPON DUE DILIGENCE

20.1 Purchaser due diligence

This agreement is conditional on the purchaser being satisfied in its sole discretion that the property is suitable for the purchaser's requirements including without limitation all legal and title issues relating to the property, valuation advice, a review of the Leases

and the Ancillary Documents and such other matters which the purchaser in its sole discretion deems pertinent.

20.2 Date for fulfilment

The date for satisfaction of the condition contained in clause 20.1 is 4:00 p.m. on the date which is 20 working days after the date of execution of this agreement by both parties

20.3 Benefit of purchaser's condition

The parties acknowledge that the condition in clause 20.1 of this agreement is inserted for the sole benefit of the purchaser and may at any time, prior to this agreement being avoided, be waived by the purchaser by giving written notice of waiver to the vendor.

20.4 If condition not satisfied

If the condition set out in clause 20.1 is not satisfied or waived by 4:00 p.m. on the date for fulfilment specified in clause 20.2 (time being of the essence) either party may cancel this agreement by written notice of cancellation to the other, and if so cancelled the provisions of general condition 10.8(5) shall apply.

20.5 Purchaser obligations

In consideration of the vendor agreeing to contract with the purchaser on these terms and in consideration of payment by the purchaser to the vendor of \$1 (if demanded) the purchaser shall take all necessary steps to carry out forthwith a due and diligent investigation as to the suitability of the property.

20.6 & 20.7 (See Annexure Schedule)

21 VENDOR'S CONDITIONS

21.1 Vendor's board approval

This agreement is further conditional upon the vendor's board of directors approving by written resolution the sale evidenced by this agreement and notifying the purchaser in writing of such approval or otherwise on or before the date ten (10) working days after the date of execution of this agreement by both parties.

21.2 Vendor sole discretion

The decision of the vendor's shall be at the sole discretion of the vendor's board and will bind the purchaser. The purchaser will not be entitled to require the vendor to give reasons for the board's decision.

21.3 Benefit of vendor's condition

The parties acknowledge that the condition in clause ~~19.1~~ of this agreement is inserted for the sole benefit of the vendor and may at any time, prior to the agreement being avoided, be waived by the vendor giving written notice of waiver to the purchaser.

21.4 If condition not satisfied

If the condition set out in clause 21.1 is not satisfied or waived by 4:00 p.m. on the date for fulfilment specified in clause 21.1 (time being of the essence) either party may cancel this agreement by written notice of cancellation to the other, ~~whereupon 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.~~

(Continued on Annexure Schedule.)

21.5 Operation of condition

General condition 10.8 will not apply to the condition in clause 21.1.1.

22 LEASES AND MANAGEMENT OF THE PROPERTY

22.1 Leases

- (a) The property is sold subject to and with the benefit of the Leases and the Ancillary Documents.
- (b) The purchaser acknowledges that the purchaser has been provided with copies of all the Leases and the Ancillary Documents and where and to the extent that there is any conflict between the Tenancy Schedule and the Leases and Ancillary Documents as provided to the purchaser, the Leases and Ancillary Documents as documented will apply.
- (c) The purchaser acknowledges that the purchaser has been provided with the Management Update and where and to the extent that there is any conflict between the Management Update and any documentation provided to the purchaser then the management position as documented will apply.
- (d) Subject to the terms and conditions of this agreement the vendor gives no warranty as to the adequacy or enforceability of any of the Leases and the Ancillary Documents or as to the financial capacity or prospects of any Tenant or that the Leases will remain in force on settlement or that the Tenants will, between the date of this agreement and settlement, comply with and duly discharge the obligations imposed on them pursuant to the Leases and the Ancillary Documents.

22.2 Liabilities following settlement

From the settlement date the purchaser will be responsible for all liabilities under all Leases and Ancillary Documents and the purchaser covenants for the benefit of the vendor that the purchaser will observe and perform all obligations imposed on the landlord pursuant to the Leases and the Ancillary Documents and agrees to indemnify and keep indemnified the vendor from and against any liability under any of the Leases and/or Ancillary Documents arising after the settlement date

22.3 Vendor's management obligations

From the date of this agreement until the settlement date, the vendor must:

- (a) not approve any assignment, subletting, renewal, rent review, surrender or variation of the Leases or Ancillary Documents (except where the vendor is obliged to approve such dealing by the terms of the relevant Leases and/or Ancillary Documents in which case the vendor is entitled to so approve without requiring the express consent of the purchaser, which consent shall instead be deemed to be given), nor enter into any agreement relating to the operation or administration of the property, without the prior consent of the purchaser. The purchaser may not unreasonably or arbitrarily withhold or delay any such consent. For the avoidance of doubt the purchaser confirms that the vendor is authorised to proceed with the transactions referred to in the Management Update;

- 22.3(c) *9/11* *QW* *CHD*
- (b) subject as provided in clause 22.2(a) manage the property in accordance with reasonably prudent property management practices and provide the purchaser with all material information relating to management of the property and keep the purchaser informed as to any legal proceedings or arbitration threatened or commenced by the vendor in relation to the property, or any counterclaim by any person against the vendor and shall keep the purchaser informed of all material tenancy matters including tenancy disputes and rent reviews.

22.4 Maintenance Contracts

- (a) The purchaser acknowledges that the purchaser has been provided with copies of the Maintenance Contracts. The vendor gives no warranty as to the adequacy or enforceability of the Maintenance Contracts or to the competency of the contractors or that the Maintenance Contracts will remain in force on settlement or that the contractors will between the date of this agreement and the settlement date comply with and discharge the obligations imposed on them by the Maintenance Contracts.
- (b) To the extent it can lawfully do so, the vendor assigns to the purchaser and the purchaser takes an assignment of the Maintenance Contracts including the benefit of all covenants and obligations on the part of each contractor in favour of or enforceable by the vendor in every Maintenance Contract. The assignment pursuant to this clause 22.4(b) takes effect only upon and from settlement.
- (c) The vendor must pay all monies due under the Maintenance Contracts up to and including the settlement date and the purchaser must pay all such monies from the settlement date.
- (d) The vendor will deliver to the purchaser at settlement a notice in favour of each contractor under a Maintenance Contract giving to that contractor written notice of the assignment to the purchaser of the benefit of the relevant Maintenance Contract.
- (e) Notwithstanding the previous provisions of this clause 22.4 where a Maintenance Contract is not assignable but is capable of early termination then the vendor shall, at its election, either terminate such contract prior to settlement or where the relevant contract is able to be enforced by the vendor after settlement the vendor shall (for the balance of the term of that contract) hold the benefit of such contract on trust for the purchaser and the vendor shall, from time to time when requested by the purchaser, take steps to enforce such Maintenance Contracts for the benefit of the purchaser provided the purchaser will indemnify the vendor for all costs, consequences and expenses the vendor incurs in so doing.
- (f) The purchaser covenants in favour of the vendor that it will on and from settlement observe and be bound by the provisions of the Maintenance Contracts as though the purchaser was originally named in place of the vendor and shall indemnify the vendor and keep the vendor indemnified against any liability or loss arising from and any costs, charges and expenses incurred in connection with the Maintenance Contracts, *except those arising prior to the settlement date.* *9/11* *QW* *CHD*

22.5 Outstanding Rent Reviews

- (a) If any rent review or rent adjustment dates pursuant to any of the Leases have occurred but the revised or adjusted rent has not been agreed or determined by the settlement date then the purchaser covenants to use all reasonable endeavours to agree or determine the new rent payable as soon as reasonably possible and in compliance with the provisions of the relevant Lease.
- (b) In complying with its obligations under clause 22.5(a) the purchaser will not agree any incentive or deferred or stepped rent or other concession with the relevant Tenant the purpose of which would deprive the vendor of its lawful entitlement to the appropriate proportion of the increased rent or reduce the amount of that proportion as it relates to the period from the relevant rent review or adjustment date up to and including the settlement date. The purchaser will act reasonably and prudently in complying with its obligations under clause 22.5(a).
- (c) The purchaser will keep the vendor informed of progress in relation to agreement or determination of any such rent and will promptly provide written notice to the vendor upon the rent being agreed or determined together with such other information as is reasonably requested by the vendor in relation to the agreement or determination of the same.
- (d) Following agreement or determination of any revised rent the provisions of clause 23 of this agreement will apply including (without limitation) that the vendor shall remain entitled to receive any increase in the rent attributable to the period from the relevant rent review or adjustment date up to and including the settlement date, which amount shall be treated as Arrears as contemplated by clause 23 notwithstanding that the revised rent may not have been agreed or determined until after the settlement date. *(See Annexure Schedule)*

22.6 Watercare Agreement

The property is sold subject to and with the benefit of the Watercare Agreement and the purchaser covenants for the benefit of the vendor to observe and perform all obligations imposed on the vendor pursuant to the Watercare Agreement and indemnifies and shall keep indemnified the vendor from and against any liability under the Watercare Agreement arising after the settlement date.

22.7 Bank Guarantees

- (a) The purchaser acknowledges that it has been provided with those bank guarantees as detailed in the Tenancy Schedule. The vendor shall not be required to cause any bank guarantee to be issued by the provider in the purchaser's name at or before settlement. The vendor does not warrant the validity or enforceability of any bank guarantee.
- (b) The purchaser covenants for the benefit of the vendor that the purchaser will observe and perform all obligations relating to any bank guarantees as detailed in the Tenancy Schedule and shall indemnify and keep the vendor indemnified from and against any liability under any of the Leases and/or Ancillary Documents in relation to any bank guarantee arising after the settlement date including (without

limitation) any claim from a Tenant arising from failure to return the whole or any part of a bank guarantee which the vendor gives to the purchaser.

23 SETTLEMENT

23.1 Apportionments

The vendor will provide to the purchaser prior to the settlement date a statement of rental payments (but not operating expenses) prepared on a best estimate basis as at the settlement date.

23.2 Entitlements

- (a) The vendor is entitled to all rent and other money payable under the Leases up to and including the settlement date ("Vendor Proportion"). The purchaser is entitled to all rent and other money payable under the Leases as and from the day immediately following the settlement date ("Purchaser's Proportion").
- (b) The vendor shall pay all operating expenses (if any) required to be paid by the vendor in respect of the property up to and including the settlement date and the purchaser shall pay all operating expenses (if any) required to be paid after the settlement date.
- (c) There shall be no adjustment of rates and taxes and other operating expenses which are payable by the Tenant directly to the assessing authority and the vendor shall not be required to pay any such rates, taxes or operating expenses that may be unpaid.

23.3 Outgoings

- (a) The vendor and purchaser agree that the operating expenses will not be apportioned on the settlement date and the following provisions shall apply:
 - (i) the parties must co-operate to calculate as soon as possible after settlement apportionment of outgoings as between the vendor and the purchaser including calculation of each subsequent adjustment with the Tenants in relation to the outgoings and the respective proportions of that adjustment which are payable by or receivable by the vendor and the purchaser on the basis of the principles contained in clauses 23.3(a)(iii)(1) and (2) below. The parties acknowledge that these adjustments may not be able to be made until after the end of any relevant accounting period;
 - (ii) the purchaser must deliver to the vendor following supply of the same to the Tenants, all information supplied to each Tenant as to the actual outgoings for the relevant periods and within thirty (30) working days from the end of the accounting period, an audited statement setting out full and accurate details of outgoings for the period ending on the actual date of settlement;
 - (iii) the calculations between the vendor and purchaser referred to in clause 23.3(a)(i) will be made on the basis that:

*Go 545
17/11/04*

- (1) the vendor's proportion of each adjustment is the proportion of the total amount being adjusted that the number of days from the start of the relevant accounting period up to and including the date of actual settlement bears to the total number of days in the relevant accounting period; and
- (2) the purchaser's proportion of each adjustment is the proportion of the total amount being adjusted that the number of days from the day immediately after the date of actual settlement up to the end of the relevant accounting period bears to the total number of days in the relevant accounting period;
- (iv) following such calculations the vendor must pay to the purchaser any amount due to a Tenant as a result of the calculations and where required the purchaser must then pay that amount to the Tenant promptly upon the purchaser receiving the same as cleared funds from the vendor;
- (v) if as a result of the calculations envisaged by this clause an amount must be paid by a Tenant then the previous provisions of this clause shall govern the approach to recovery of such monies as if they were Arrears notwithstanding that such amount may only have been ascertained after the settlement date.
- (b) To facilitate the provisions of this clause 23.3 the vendor and the purchaser shall each instruct their respective property managers and (to the extent necessary) their accountants to work together so as to conclude the calculations and allow for the subsequent apportionments as may be required in accordance with this clause 23.3.

23.4 Vendor to account to purchaser

The vendor will hold on trust and forthwith disburse to the purchaser any rent or other money received by the vendor following settlement that is due to the purchaser.

23.5 Treatment of Arrears

Amounts which fall due from Tenants on or before the settlement date but which remain unpaid as at the settlement date ("Arrears") will not be apportioned unless and until they are recovered from the Tenants.

23.6 Recovery of Arrears

Following settlement, the purchaser will use all reasonable endeavours to recover any Arrears which relate to the Vendor's Proportion, but in doing so must consult fully with the vendor at regular intervals and provide the vendor with regular progress updates. Alternatively, the vendor may before settlement elect (at the vendor's sole discretion) to reserve the right to recover any Arrears following settlement and pursue any tenant owing Arrears directly. Should the vendor so elect, the vendor will instruct its solicitors to prepare deeds of assignment of debt in a form reasonably required by the vendor for all or part of the Arrears, and the purchaser must duly execute and return the same as a precondition of settlement.

Q-925
32/04

23.7 Accounting to Vendor

Should the purchaser be responsible for recovering the Arrears, it must pay immediately the Vendor's Proportion of those Arrears to the Vendor upon recovery of the same. Any Arrears recovered from the Tenants will be credited to payment of any Arrears owed to the vendor in priority to any Arrears owed to the purchaser.

23.8 Delivery of Deeds and Documents

In addition to the items referred to in clauses 3.4 and 3.7(2) of the General Terms of Sale the vendor will provide to the purchaser the following on the settlement date:

- (a) counterpart originals of the Leases and Ancillary Documents provided that copies of counterpart originals must be accepted by the purchaser if a counterpart original has been lost or is unobtainable by the vendor;
- (b) all certificates and other documents then held by the vendor and which are reasonably required by the purchaser to evidence compliance with the Building Act (if applicable), save for those which are required to remain on display at the property;
- (c) rent authority letters from the vendor's solicitor to the Tenants advising of the change of ownership of the property and directing the Tenants to pay rental under the Leases in accordance with directions received from the purchaser; and
- (d) notice of assignment letters from the vendor's solicitor to each service provider pursuant to each Maintenance Contract advising of the assignment of the relevant Maintenance Contract (in accordance with clause 22.4) and directing the relevant service provider to invoice and address all correspondence to the purchaser.

24 VARIATION TO WARRANTIES *(c), (f) - See Annexure Schedule* *NPJ* *QW* *Chd*

24.1 Works

The vendor shall not be responsible for obtaining any code compliance certificate which may be outstanding for any works in or to the property permitted by the vendor but conducted by any Tenant or occupier of the property.

24.2 Contamination

The vendor gives no warranty that there are no contaminants in or on the property. The purchaser must satisfy itself as to the existence or otherwise of any such contaminant as part of the due diligence process and rely solely on its own investigation in relation to such works. For the purposes of this clause, "contaminant" has the meaning given in the Resource Management Act 1991.

24.3 Title

The vendor makes no representations nor provides any warranties as to encumbrances or any other title matter affecting the property.

24.4 Physical state, condition and use of the property

- Subject to clauses 24.7(c) and (d)* *NPJ* *QW* *Chd*
- (a) *h* The property is sold in as-is condition and the vendor gives no warranty, makes no representation and shall have no liability to the purchaser in respect of the state or condition of the property including (without limitation) in respect of the

QW *NPJ* *Chd*

condition, earthquake or seismic performance rating, soundness (structural or otherwise) or weathertightness of the buildings on the property and the condition or functioning of any plant, services or utility serving the property or for any work necessary to make the property or any service conform with any statutory requirements.

- (b) The vendor gives no warranty and makes no representation as to the use or uses to which the property can be put and it shall be the sole responsibility of the purchaser to ascertain and satisfy itself as to the use or uses to which the property may lawfully be put and to the constraints if any on the use or uses of the property pursuant to any legislation.

24.5 General exclusions

The express warranties in clause 7 of the General Terms and any other warranties and representations made by or on behalf of the vendor shall not apply to a matter or thing which:

- Due Diligence 22/3/11 [Signature]*
- (a) was disclosed to the purchaser prior to the ~~Unconditional~~ Date including (without limitation) as disclosed in the Management Update; or
- (b) is available on public records or registers including the Landonline computer register or records of the territorial or regional authorities; or
- (c) is expressly excluded from the warranties or representations by the terms of this agreement; or
- (d) could be reasonably verified by the purchaser; or
- (e) relates to information or circumstances known to the purchaser; or
- (f) relates to anything done, or omitted to be done, by the purchaser,

and the purchaser must verify any detail, matter or fact described in this clause 25 and relies solely on its own judgment in relation to such matters.

- 24.6 The purchaser acknowledges that there may be outstanding works required by Auckland Council as divulged on the notes in the LIM report and the purchaser must make its own enquiries and accepts that the vendor will have no responsibility for any such works and warranties given by the vendor will not apply to any such works. The purchaser further acknowledges that upon this agreement becoming unconditional it will have satisfied itself as to whether all consents and approvals required from any local or territorial authorities or other bodies having jurisdiction for the construction of improvements on the property and for the present use of the property have been obtained and complied with.

25 CHATTELS

- [Handwritten initials: RD, GA, RA, MJ]*
- 25.1 ~~The property is sold with the benefit of the vendor's chattels (if any). The vendor shall disclose to the purchaser prior to the settlement date any vendor's chattels which are included in this agreement. The vendor gives no warranties as to the working order and condition of the vendor's chattels and from the date of this agreement the vendor is not responsible for loss or damage to the vendor's chattels and is not obliged to insure them.~~

RRE-184982-94 30 V5

To the best of the vendor's knowledge the vendor's chattels which are included in the sale are the landlord's fixtures and fittings set out in each of the leases of the property.

[Handwritten initials: GA, RD, MJ, RA]

Handwritten initials: CH, GP, GP, GP, GP

All chattels located at the property which are not so notified as belonging to the vendor do not form part of the property and are excluded from the sale to be completed pursuant to this agreement.

26 GENERAL

26.1 Lowest Price

The purchase price for the property is the lowest price that the parties would have agreed upon for the property at the date this agreement was entered into under the financial arrangements rules in the Income Tax Act 2007 and on that basis no income or expenditure arises in respect of the sale and purchase of the property under those rules.

26.2 Major transaction

Where a party to this agreement is a company, and if the transaction evidenced by this agreement is a major transaction for that party, that party warrants to the other party that it has, or will have by the settlement date, obtained every necessary approval by special resolution of its shareholders, and the approval of any other relevant person, to the transaction contemplated by this agreement as if it is a "major transaction" as defined in the Companies Act 1993.

26.3 Confidentiality

The purchaser must treat all information made available by or on behalf of the vendor pursuant to this agreement as strictly private and confidential until settlement. If settlement does not proceed, the purchaser must return such information to the vendor, and will not divulge it to any third party or use it in any way for the purchaser's advantage. Neither party shall make any public announcement nor communicate the existence of this agreement or of its terms (and in particular, but without limiting the generality of the provisions of this clause, the amount of the purchase price) to any third party other than:

- (a) its legal advisers, consultants, investors and financiers who have a "need to know" in relation to the agreement; and
- (b) where necessary, to comply with any applicable law or the requirements of any regulatory body or its obligations under this agreement;
- (c) in the case of the purchaser to enable it to instruct the valuers of the property and to advise tenants of the property of the existence of and timeframes under this agreement,

without obtaining the prior written approval of the other party to this agreement. (See Annex

Schedule)

26.4 Assignment

~~The purchaser must not assign or transfer the whole or any part of its interest in this agreement.~~

26.5 Purchaser relies on own judgement

The purchaser acknowledges that the purchaser has entered into this agreement in reliance on the purchaser's own judgement and, apart from the vendor's express warranties or representations set out in writing in this agreement, not in reliance on any warranties or representations made by or on behalf of the vendor.

Handwritten initials: GP, GP, GP, GP, GP

Handwritten initials: GP, GP, GP, GP, GP

26.6 **Entire Agreement**

This agreement constitutes the entire understanding and agreement of the parties relating to this agreement, and supersedes and extinguishes all prior agreements.

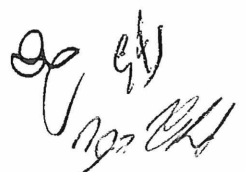
26.7 **Further Terms to prevail**

In the event of any conflict between the Further Terms of Sale and the General Conditions of Sale, the Further Terms of Sale shall prevail.

26.8 **Partial invalidity**

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

See Annexes Schedule.

Handwritten signature and initials in the bottom right corner of the page.

ANNEXURE SCHEDULE - FURTHER TERMS OF SALE (CONTINUED)

New clauses 20.6 and 20.7:

20.6 Supply of information

The vendor shall promptly make available to the purchaser's solicitors following execution of this agreement all material information relating to the property, including the Leases, the Ancillary Documents and all correspondence, reports and other materials in the vendor's possession which a prudent purchaser would expect to be provided with. The vendor shall promptly respond to any reasonable requests for further information by the purchaser or its solicitors in connection with its due diligence investigation.

20.7 Access to property

The vendor shall permit the purchaser or any person authorised by the purchaser at any time prior to the settlement date to enter the property for any reasonable purpose, including to ascertain its state of repair and to determine its seismic strength, after having given the vendor reasonable notice, and subject to the requirements of the Leases. The purchaser must not cause or permit the property to be damaged as a result of such access.

Clause 21.4 (continued):

The following is added at the end of clause 21.4:

If this agreement is cancelled due to the non-satisfaction of the condition in clause 21.1, the vendor will reimburse the reasonable costs incurred by the purchaser up until the date of cancellation, including the purchaser's legal costs associated with the negotiation of this agreement and legal due diligence, and any valuation costs incurred, up to a maximum of \$30,000 plus GST.

Clause 22.5(d) (continued):

The following is added at the end of clause 22.5(d):

Likewise, should any such rent review result in a decrease in rent with a requirement for a credit against rent paid to be made to the relevant Tenant, the vendor shall reimburse the purchaser for the amount of such credit as relates to the period from the rent review date to the settlement date.

Clause 23.8 (continued):

The following sub-clauses are added at the end of clause 23.8:

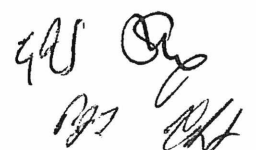
- (e) an assignment in a form prepared by the purchaser's solicitors and approved by the vendor (acting reasonably) of any guarantees or warranties held by the vendor in relation to the buildings and improvements situated on the property and any works carried out thereon, provided that the vendor gives no warranty to the purchaser that any such guarantees or warranties are capable of assignment; and
- (d) any original resource consents relating to the property which do not run with the land, together with duly executed transfers of those resource consents and the appropriate fee (if any) payable to the relevant authority in respect of their transfer.

New clause 24.7:

24.7 Additional vendor warranties

The vendor warrants at the date of this agreement, and again at the Due Diligence Date, that:

Leases



- (a) the Leases and Ancillary Documents record all contractual terms applying between the vendor and the Tenants which relate to or in any way affect the property;
- (b) there are no leases, tenancies, occupancy or use rights in respect of the property other than the Leases; and

Information

- (c) all information (as distinct from opinions and views) about the property made available by or on behalf of the vendor to the purchaser is, to the best of the vendor's knowledge and belief, true and correct and complete in all material respects.

Clause 26.3 (continued):


The following is added at the end of clause 26.3:

Despite the foregoing, the purchaser is entitled to disclose the terms of this agreement and details of the information disclosed by the vendor (including the terms of the Leases) within the Product Disclosure Statement and associated disclosures to be prepared and made by the purchaser or its nominee as part of the purchaser's public capital raising.

New clauses:

27 Purchaser capital raising condition

- 27.1 This agreement is further conditional on the purchaser confirming to the vendor that it has completed its required capital raising (by way of an offer to the public of shares in a new company to be formed) and associated debt funding in order to complete the purchase of the Property by no later than 5pm on the date which is 35 working days after the date of satisfaction or waiver of the condition in clause 20.1. Upon satisfaction of the condition in this clause the purchaser will nominate the new company to take title to the Property.
- 27.2 The condition in clause 27.1 is inserted for the sole benefit of the purchaser.

Handwritten signatures and initials in the bottom right corner, including what appears to be 'JAB' and 'M. A. L.'.

28 **Vendor underwrite**

28.1 The vendor will underwrite the rental income from the following premises within the property, on the terms set out in this clause 28:

- (a) The 158 m² vacant warehouse area on the ground floor of 4 Fred Thomas Drive, which shall be underwritten for 24 months from the settlement date at \$125 plus GST per square metre (\$19,730 plus GST per annum) plus usual outgoings;
- (b) The 90 m² vacant mezzanine storage area on the ground floor of 4 Fred Thomas Drive, which shall be underwritten for 24 months from the settlement date at \$125 plus GST per square metre (\$11,250 plus GST per annum) plus usual outgoings;
- (c) The 307 m² vacant area on Level 2 of 4 Fred Thomas Drive, and associated 11 car parks, which shall be underwritten for 24 months from the settlement date at \$275 plus GST per square metre and \$45 plus GST per park per week (total \$110,209 plus GST per annum), plus usual outgoings;
- (d) The rent (but not outgoings) payable by AON New Zealand Limited in respect of its tenancy of level 1A, 4 Fred Thomas Drive (**AON Lease**) which shall be underwritten at \$235 plus GST per square metre so that if following agreement or determination of the revised rent payable from the rent review due on 1 March 2017, the revised rent payable is less than \$235 plus GST per square metre the vendor will pay the difference from settlement until the date on which the rent is increased to \$235 plus GST per square metre (or more) in accordance with the CPI and other rent review provisions of the AON New Zealand Limited lease;
- (e) The rent (but not outgoings) payable by Property Partners Limited in respect of its tenancy of level 2, 2 Fred Thomas Drive including carparks, which shall be underwritten to the extent that it is less than \$33,371.92 plus GST per month (\$400,463 plus GST per annum) for the period ending on 31 August 2018;
- (f) The shortfall between the fixed sum of \$118,997.22 plus GST per annum (on account of the budgeted cost of operation of the carpark at 3 Fred Thomas Drive) and the amount recoverable from tenants of the property (budgeted to be \$37,480 plus GST for the financial year ending 31 March 2018 and \$92,078.47 plus GST for the financial year ending 31 March 2019), which shall be underwritten for 24 months from the settlement date. The vendor will supply the purchaser with reasonable evidence of the budgeted costs of operation of the carpark during the purchaser's due diligence investigations, to verify calculation of the fixed sum of \$118,997.22 plus GST per annum referred to in this clause, which will be adjusted accordingly if it cannot be so verified. The underwritten shortfall for the financial year ending 31 March 2018 will be calculated on a pro-rata basis from settlement; and
- (g) The 1,222 m² area on Level 2 of 4 Fred Thomas Drive, and associated 6 car parks, currently leased to The Electoral Commission, which shall be underwritten for a period of 12 months commencing on 1 January 2018 (being the first day following contractual expiry of that lease) at \$368 plus GST per square metre (gross rental) and \$47.50 plus GST per park per week (total \$464,820 plus GST per annum).

945 50
100 100

- 28.2 On the settlement date the vendor will procure that the vendor's solicitor retains from the purchase price paid by the purchaser to the vendor's solicitor a retention amount (**Retention Sum**) which is sufficient to meet the total potential liability of the vendor for the underwrite payment obligations of the vendor set out in this clause 28. The Retention Sum shall be held by the vendor's solicitor in an interest-bearing trust account in the joint names of the vendor and the purchaser as security for the vendor's underwrite payment obligations set out in this clause 28.
- 28.3 The parties irrevocably authorise and direct the vendor's solicitor to release to the purchaser on a monthly basis in advance (on the first day of each calendar month) such amounts as are necessary to satisfy the underwrite obligations set out in clause 28.1 until in each case the date on which the relevant underwrite period referred to in clause 28.1 has expired as provided for in this clause 28 PROVIDED THAT the vendor's solicitor shall only disburse the amounts properly payable under clause 28.3 provided the vendor has first been supplied with the following:
- (a) A tax invoice from the purchaser to the vendor for the amount properly payable under clause 28.3;
 - (b) A declaration from the purchaser confirming that the amount is properly due under clause 28.3; and
 - (c) A report from the purchaser to the vendor confirming the amount payable in terms of clause 28.3,
- and all such payments may be requested at not greater than monthly intervals.
- 28.4 Provided that the vendor's solicitor performs its obligations in accordance with the requirements of this agreement then the purchaser will have no claim against the vendor's solicitor for payments properly made in terms of this agreement.
- 28.5 At all times where the purchaser is accessing the Retention Sum the purchaser shall manage the property as a prudent landlord and use all commercially reasonable endeavours to procure new leases are entered into as soon as reasonably possible with replacement tenants of the premises referred to in clauses 28.1 (a), (b), (c) and (g). Such endeavours must include the appointment of a reputable leasing agent and regular marketing and promotion of the vacant space. The purchaser must accept any proposal by a tenant to lease the relevant vacant space on market commercial terms where the prospective tenant is respectable, responsible and of sufficient financial standing (or provides sufficient security for performance of the tenant's obligations in the lease). The Retention Sum will not be available to fund any lease inducements to prospective replacement tenants.
- 28.5 Where a replacement tenant has been procured in accordance with clause 28.5, but the rent payable is less than the rent for the relevant area (or car park space) referred to in clauses 28.1 (a), (b), (c) and (g), the purchaser shall be entitled to claim the difference between the two rents and receive payment from the Retention Sum by the process set out in clause 28.3.
- 28.6 The purchaser must keep the vendor fully informed of steps taken to market the vacant properties and give the vendor the option to attend all relevant meetings with the leasing agents and prospective tenants. The vendor will have the right to solicit potential tenants and to require the purchaser to show the relevant premises to potential replacement tenants. The vendor may put proposals to the purchaser as to

45 *[Signature]*
100 *[Signature]*

prospective replacement tenants for the underwritten premises and the purchaser must consider all such proposals in good faith.

- 28.7 Where The Electoral Commission continues to hold over in its premises beyond 31 December 2017, the underwrite period for that tenancy will be reduced according to the length of the holding over period, and the rent paid by The Electoral Commission during the holding over period will satisfy the vendor's underwrite obligation.
- 28.8 Where any replacement tenant commences paying rent to the purchaser part way through a month, the purchaser shall reimburse the vendor to the extent of any payment already made from the Retention Sum which overlaps with any period then paid for by such tenant. Such reimbursement must be made by the end of the relevant month. In the event that the purchaser fails to reimburse the vendor in a timely fashion, the vendor may require such sum to be deducted from the following monthly underwriting payment to be made under clause 28.3. Notwithstanding any other provision of this clause 28 the Retention Sum shall not be available for funding any arrears due from any tenant in relation to the occupation arrangements contemplated in clause 28.1 and for the avoidance of doubt the Retention Sum is not to be retained for any reason other than in connection with the provisions of this clause 28.
- 28.9 Once a replacement tenant is found in respect of any of the underwritten vacant premises referred to in clauses 28.1(a), (b), (c) and (g) and the rent commencement date has occurred under the relevant lease entered into with each replacement tenant requiring payment of a rent at a rate no less than that specified in clauses 28.1(a), (b), (c), or (g) as appropriate (**Relevant Date**) the parties will calculate the appropriate portion of the Retention Sum to be released to the vendor at that point. The parties irrevocably authorise and direct the vendor's solicitor to release to the vendor such portion of the Retention Sum calculated in accordance with this clause 28.9. From and including the Relevant Date the relevant underwrite provisions shall cease to apply but without prejudice to the vendor's liability for the underwrite relating to the period prior to the Relevant Date.
- 28.10 As soon as the premises rent payable under the AON Lease is payable at a rate of not less than \$235.00 plus GST per square metre (**End Date**) the parties will calculate the appropriate portion of the Retention Sum to be released to the vendor at that point and the parties irrevocably authorise and direct the vendor's solicitor to release to the vendor such portion of the Retention sum calculated in accordance with this clause 28.10. From and including the End Date the underwrite provision in relation to the AON Lease shall cease to apply but without prejudice to the vendor's liability for the underwrite relating to the period prior to the End Date.
- 28.11 Once the underwrite periods have all expired, the vendor's solicitors shall release to the vendor the balance of the Retention Sum (if any), together with the net interest earned (less withholding tax and commission) throughout the underwrite period.
- 28.12 Prior to the settlement date the vendor will procure that the vendor's solicitor provides an irrevocable undertaking to the purchaser that they will not deal with the monies held by them otherwise than in accordance with this clause.
- 28.13 In the event that there is any dispute between the parties as to the operation or application of this clause 28 either party may refer the matter to an independent barrister and solicitor experienced in property related matters appointed by agreement or failing agreement by the then President of the New Zealand Law Society or their nominee. The appointee will determine the dispute promptly as an

GLS
MD
C/D

expert and not as an arbitrator but may otherwise determine his or her own procedure. The determination of the expert will be final and the vendor's solicitor shall deal with the Retention Sum in accordance with any such determination.

- 28.14 Any costs incurred by the vendor's solicitors in administering the Retention Sum will be met by the vendor.

SP 1/4/14
MPP