

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:

17 June 2019

VENDOR:

Rock Solid Holdings Limited (company number 1014247)

PURCHASER: Oyster Property Holdings Limited (company number 7385296)

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

PROPERTYAddress: 1. 101 McLaughlins Road, Wiri, Auckland
2. 12 Harbour Ridge Drive, Wiri, AucklandEstate: **FEE SIMPLE** **LEASEHOLD** **STRATUM IN FREEHOLD** **STRATUM IN LEASEHOLD**
CROSSLEASE (FEE SIMPLE) **CROSSLEASE (LEASEHOLD)** (fee simple if none is deleted)

Legal Description:

Area (more or less):

Lot/Flat/Unit:

DP:

Record of Title (unique identifier):

1. Lot 3

1. 525619

1. 841803

2. Lot 31

2. 508731

2. 774841

PAYMENT OF PURCHASE PRICE

Purchase price: \$31,159,000.00

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): ~~\$550,000.00~~ ^{\$1,000,000} payable in accordance with clauses 2 and 20.

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

(1) By payment in cleared funds on the settlement date which is in accordance with clause 26.1

OR

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

Interest rate for late settlement: 12 % p.a.

CONDITIONS (refer clause 10.0)

Finance condition

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: Both properties tenanted

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 2, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

Release date: 12 November 2018

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

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

1.2 Time for Performance

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

1.3 Notices

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

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

- (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
- (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 222 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.
- 1.4 Interpretation**
- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

2.0 Deposit

- 2.1** The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.
- 2.2** If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- ~~2.3 The deposit shall be in part payment of the purchase price.~~
- ~~2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:~~
- ~~(1) the registration procedure under clause 6.8 is completed without either party cancelling this agreement; and~~
- ~~(2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and~~
- ~~(3) where the property is a unit title:~~
- ~~(a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and~~
- ~~(b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2));~~
- ~~have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or~~
- ~~(4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.3(6) or where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 154(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase;~~

3.0 Possession and Settlement

Possession

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

Settlement

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

Last Minute Settlement

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

Purchaser Default: Late Settlement

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

Vendor Default: Late Settlement or Failure to Give Possession

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

Deferment of Settlement and Possession

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

New Title Provision

3.18 (1) Where

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

4.0 Residential Land Withholding Tax

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

5.0 Risk and Insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
 - (1) If the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
 - (2) If the property is not untenable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
 - (3) In the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
 - (4) If the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 8.4 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

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

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

7.0 Vendor's warranties and undertakings

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

8.0 Claims for compensation

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

9.0 Unit title and cross lease provisions

Unit Titles

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

Unauthorised Structures – Cross Leases and Unit Titles

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

10.0 Conditions and mortgage terms

Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) 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) this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld;
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor (the purchaser's notice) on or before the fifth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the 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 subclause 10.3(5) shall apply.
- (3) The vendor shall give notice to the purchaser (the vendor's notice) on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 10.3(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.3(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.
- 10.5 If this agreement relates to a transaction to which the Land Act 1994 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement, that date shall be the settlement date or a date 95 working days from the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or a date 20 working days from the date of this agreement whichever is the sooner.
- 10.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

Operation of Conditions

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

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

Mortgage Terms

~~10.9 Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.~~

~~10.10 If the 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 3.8(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

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

15.0 Zero-rating

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

16.0 Supply of a Going Concern

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

17.0 Limitation of Liability

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

18.0 Counterparts

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

FURTHER TERMS OF SALE



FURTHER TERMS OF SALE

19. DUE DILIGENCE CONDITION

- 19.1 This Agreement is conditional upon the Purchaser confirming to the Vendor on or before 5:00pm on the Due Diligence Date (subject to clause 19.1), that it is satisfied (acting entirely at its own discretion) with the results of its investigation of the Property ("Due Diligence Investigation") in all respects of all matters which the Purchaser, in the Purchaser's sole discretion, deems pertinent including (without limitation) that the acquisition does not require OIA Consent. The Purchaser shall not be obliged to state any reason for, or to justify, its conclusion as to whether or not the results of such Due Diligence Investigation are satisfactory to it or not.
- 19.2 Prior to or immediately following the Execution Date the Vendor shall provide to the Purchaser copies of all the Leases, contracts, guarantees and such other information held by the Vendor, which the Vendor believes would be material to a purchaser of the Property including (without limitation) asset registers, floor-plans, subdivision and resource consents, building reports, seismic reports, consultant reports (including without limitation planning, technical, civil, geotechnical and environmental reports), services diagrams, copies of any Building Contract and plans and specifications in respect of the McLaughlins Development, and tenancy schedules which provide the current details for each of the Leases of the premises, term, Rent, rent reviews and rights of renewal. The Vendor acknowledges that the Purchaser is entering into this Agreement on the basis that the McLaughlins Development is practically complete and that all necessary code compliance certificates have or will have prior to completion of the Purchaser's Due Diligence Investigation, been issued by the relevant Authority.
- 19.3 The Vendor shall promptly respond to any requests for further information submitted to the Vendor by the Purchaser or any consultants engaged by the Purchaser in connection with its Due Diligence Investigation. On the Execution Date the Vendor shall notify the Purchaser of the name and contact details for the representative of the Vendor to whom requests for further information may be addressed.
- 19.4 The condition in clause 19.1 is for the sole benefit of the Purchaser and may be waived by the Purchaser.

20. DEPOSIT

- 20.1 The Purchaser shall pay the Deposit, as part payment of the Purchase Price, to the Stakeholder on the date being two working days following the Unconditional Date, to be held as stakeholder in an interest bearing trust account pending:
- (a) Settlement whereupon the Deposit shall be paid to the Vendor; or
 - (b) this Agreement being cancelled in accordance with this Agreement whereupon the Deposit shall be paid in accordance with this Agreement.

Interest (less commission, withholding tax and applicable bank charges) shall be paid to the party receiving the Deposit and, if paid to the Vendor, shall be paid in addition to the Purchase Price.

21. APPORTIONMENT OF RENT

- 21.1 Rent payable in advance and which has been paid at Settlement under the Leases in cleared funds shall be apportioned so that the Purchaser is entitled in respect of the Leases to the amount calculated in accordance with the following formula:

$$\left(\frac{A}{365} \right) \times B$$

FURTHER TERMS OF SALE

Where:

A = the annual Rent (exclusive of GST) paid pursuant to the Leases at the rate at which the Rent has been paid; and

B = the number of days from, but excluding, Settlement to and including the last day of the month or other period for which the Rent has been paid in advance.

- 21.2 Rent payable under the Leases which has not been paid in cleared funds shall be disregarded and no party shall be obliged to account to the other for such Rent at Settlement. Once such Rent has been received in cleared funds it shall be apportioned in accordance with clause 21.1 and the party who receives such Rent shall pay the proportion due to the other within 5 working days after receipt in cleared funds.
- 21.3 The Purchaser shall use all commercially reasonable endeavours to collect any Arrears. All sums received from the Lessees following Settlement shall be applied firstly by the Purchaser in settling any arrears of Rent due to the Purchaser and thereafter to settle any Arrears.

22. APPORTIONMENT OF OUTGOINGS

- 22.1 The Vendor acknowledges and agrees that it will punctually pay all Outgoings relating to the Property falling due for payment prior to Settlement.
- 22.2 In respect of any Outgoings which are not recoverable from the Lessees:
- (a) the Purchaser will pay to the Vendor the proportion of any such Outgoings paid by the Vendor and which relate to the period after Settlement;
 - (b) the Vendor will pay to the Purchaser the proportion of any such Outgoings accrued but unpaid which relate to the period up to and including Settlement; and
 - (c) to the extent that any such Outgoings have not been finally determined by the Vendor at Settlement the Vendor will as soon as reasonably practicable following Settlement proceed to have the liabilities finally determined and shall notify the Purchaser of the same. Payment of any amount due to or by the Vendor (as the case may be) will be made within 10 working days of such final liability being determined.
- 22.3 In respect of any Outgoings which are recoverable from the Lessees:
- (a) the Vendor shall be entitled to any provisional payments made by way of reimbursement for Outgoings which are payable by a Lessee on or before the Settlement Date;
 - (b) as soon as reasonably practicable after Settlement the Vendor shall undertake a reconciliation to determine:
 - (i) the amounts which the Vendor has actually recovered from the Lessees in respect of Outgoings ("Receipts"); and
 - (ii) the amounts which the Vendor has incurred in respect of Outgoings ("Expenditure");
 - (c) if the Receipts exceed the Expenditure the Vendor shall pay to the Purchaser such excess;
 - (d) if the Expenditure exceeds the Receipts the Purchaser shall pay to the Vendor such excess; and
 - (e) the Vendor shall undertake an interim calculation of the Receipts and Expenditure and an adjustment (in accordance with clause 22.3(c) and (d)) shall be made on Settlement. Following

FURTHER TERMS OF SALE

Settlement a final reconciliation shall be undertaken in accordance with clauses 22.3(b), (c) and (d).

23. SETTLEMENT DELIVERABLES

23.1 On the Settlement Date the Vendor shall concurrently hand to the Purchaser:

- (a) the Vendor's original of each Lease or a certified copy if the original is not available;
- (b) letters addressed to each of the Lessees advising each Lessee of the requirement to pay all Rent payable by that Lessee under that Lessee's Lease to the Purchaser or as it directs for the period commencing on the Settlement Date;
- (c) an assignment of the Bank Guarantee for the Harbour Ridge property to the Purchaser;
- (d) a counterpart of the deed of assignment contemplated in clause 24.1 duly executed by the Vendor;
- (e) copies of the compliance schedule, current building warrant of fitness held at the Property and all associated reports, service records and manuals relating to the Property and the Vendor's chattels, fixtures and fittings;
- (f) all operational manuals, warranty forms or certificates, permits, licences and authorities and similar items relating to the Property; and
- (g) copies of all warranties and guarantees contemplated by the Building Contract and otherwise held by the Vendor relating to the buildings on the Property,

the obligations in clause 3.8 and this clause 23.1 being interdependent.

24. DEED OF ASSIGNMENT

24.1 On Settlement, the parties shall enter into a deed prepared by the Vendor's solicitors and approved by the Purchaser (such approval not to be unreasonably withheld) assigning to the Purchaser the benefit of:

- (a) all professional reports related to the Property and requested by or provided to the Purchaser during its Due Diligence Investigation;
- (b) any resource consents, permits or equivalent permissions which are granted in relation to the Property or any activity from the Property but don't automatically transfer to the Purchaser by virtue of acquiring the Property (by way of example and without limitation the benefit of any discharge consent);
- (c) all warranties and guarantees which any contractor or product supplier is, by virtue of the Building Contract, required to provide in respect of the McLaughlins Development; and
- (d) all other warranties and guarantees held by the Vendor relating to the buildings on the Property.

24.2 The Vendor will not be required to obtain the consent of any of the third parties referred to in clause 24.1 but will assist the Purchaser in the enforcement of any of the warranties and guarantees in clause 24.1 and will, if necessary declare to hold on trust those warranties for the benefit of the Purchaser.

25. LEASING / PROPERTY MANAGEMENT

25.1 During the Due Diligence Period and the Interim Period the Vendor shall:

FURTHER TERMS OF SALE

- (a) comply with the Purchaser's reasonable requests for reasonably ascertainable material information relating to the ongoing administration and management of the Property;
 - (b) keep the Purchaser informed as to any legal proceedings or arbitration threatened or commenced by the Vendor, or by any person against the Vendor, in any matter relating to the Property; and
 - (c) operate, manage and maintain the Property to the same standards as the Vendor has done to date and in a reasonable and prudent manner ensuring, without limitation, that the condition of the Property as at the Settlement Date is of no lesser standard than that which it was in at the Execution Date.
- 25.2 During the Interim Period, the Vendor must not, without first having obtained the consent of the Purchaser (such consent not to be unreasonably withheld or delayed and which may be granted subject to reasonable conditions), enter into any agreement of any nature nor shall the Vendor agree or undertake anything in relation to the Property or any Lease including, without limitation, taking any steps in relation to any proceeding of the nature of referred to in clause 25.1(b).
- 25.3 In addition to the obligations contained in clause 25.2, during the Interim Period, the Vendor must not, without first having obtained the consent of the Purchaser:
 - (a) deal with or consent to any assignment or transfer of a Lease; or
 - (b) deal with or consent to any sub-lease;
 - (c) determine any Lease by reason of default of the Lessee;
 - (d) accept any surrender of any Lease;
 - (e) agree to a rent review; or
 - (f) vary or agree to vary a Lease.
- 25.4 The Purchaser will respond in a timely manner to any requests by the Vendor to implement any of the matters referred to in clause 25.3 and shall not unreasonably or arbitrarily withhold consent to any such request. The Purchaser shall be required to give its consent to any such request where the Vendor is required by the provisions of a Lease to implement any of the matters referred to in clause 25.3.
- 25.5 During the Due Diligence Period and the Interim Period the Vendor shall permit the Purchaser or any person authorised by the Purchaser at any time prior to the Settlement Date (after having given the Vendor reasonable notice and in every case received the prior approval of any tenant of the Property) to:
 - (a) enter the Property for any reasonable purpose including without limitation to ascertain the existence and state of repair of the Property and to undertake any other investigations as part of its Due Diligence Investigations; and
 - (b) enter into discussions with any contractor previously or currently engaged in the construction and/or maintenance of any buildings or improvements on the Property regarding the works undertaken and the state and condition of such buildings and improvements; and
 - (c) enter into discussions with any Lessee relating to their past, present and/or future occupation and use of the Property.
- 25.6 The Vendor acknowledges that if and to the extent any leasing incentive or inducement (whether by way of fitout contribution, rent concession, loan or otherwise) ("Incentive") provided or agreed to be provided to any Lessee has, at the Settlement Date, yet to be fully met, satisfied or enjoyed, then the Vendor shall, on the Settlement Date, pay to the Purchaser an amount equal to all such Incentives.

FURTHER TERMS OF SALE

26. SETTLEMENT DATE

26.1 The Settlement Date shall be the date which is ⁶⁰~~30~~ working days after the Unconditional Date.

27. VENDOR'S WARRANTIES

Warranties

27.1 The Vendor gives to the Purchaser the Warranties set out in clause 27.3 except that they do not apply where and to the extent that:

- (a) they relate to matters fairly disclosed in the Disclosed Documents;
- (b) they relate to matters which are disclosed through:
 - (i) a search of the certificate of title for the Property at LINZ as at the Execution Date; and/or
 - (ii) a LIM prepared by the Authority on the application by or on behalf of the Purchaser immediately following the Execution Date,

where "fairly disclosed" means disclosed in writing in such a manner and in such detail as would enable a reasonable purchaser to make a reasonable and informed decision on the relevant matter.

27.2 The Warranties are given as at the Execution Date (save to the extent that the Warranty is stated to apply only at a date later than the Execution Date) and are repeated as at the Settlement Date.

Vendor's Warranties

27.3 The Vendor warrants subject to clauses 27.1 and 27.4, that:

Information

as at the Due Diligence Date:

- (i) all information about the Property made available to the Purchaser through the Due Diligence Investigation is true and correct and complete in all material respects;
 - (ii) the Vendor does not hold any information which would reasonably be considered to be material to a purchaser of the Property and which has not been provided to the Purchaser during the Due Diligence Period;
 - (iii) no information in respect of the Property (including the Disclosed Documents) which has been or is provided by or on behalf of the Vendor in writing to the Purchaser is known by the Vendor to be false or misleading; and
 - (iv) the Vendor has made all due, proper and prudent enquiries of all parties engaged by it to undertake the day to day management and maintenance of the property prior to giving any of the warranties contained in this agreement.
- 27.4 For the purposes of clause 27.3 the phrase "so far as the Vendor is aware" shall be deemed to include the statement that with regard to the matters referred to, the statement is true, accurate and complete so far as the Vendor is aware following due, diligent and careful enquiry of all employees and/or agents of the Vendor with knowledge of and/or responsibility for the management of the Property.

FURTHER TERMS OF SALE

28. LOWEST PRICE CLAUSE

- 28.1 For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:
- (a) the purchase price, adjusted in accordance with any provision of this Agreement, is the lowest price (within the meaning of section EW 32(3) of the Income Tax Act 2007) that they would have agreed for the sale and purchase of the Property, on the Settlement Date, if payment would have been required in full at the time the first right in the Property was transferred; and
 - (b) they will compute their taxable income for the relevant period on the basis that the purchase price includes no capitalised interest and they will file their tax returns on that basis.

~~29. ALLOCATION OF PURCHASE PRICE~~

- 29.1 The parties agree that the allocation of the purchase price for each property shall be six hundred dollars (\$600) per square metre of land and the balance equated to the value of the premises.
- 29.2 ~~Each party shall file their income tax returns in a manner consistent with the allocation of the Purchase Price determined in accordance with this clause 29.~~

30. PERSONAL PROPERTIES SECURITIES ACT

- 30.1 The Vendor confirms that none of the financing statements registered against it under the Personal Protection Securities Act relate to these properties. On settlement the Vendor's director will if required give a warranty and undertaking that the financing statements as registered at that date do not relate to either of these properties. There will be no requirement for the Vendor to provide a partial discharge or "carve out" of any of the financing statements.

31. MCLAUGHLINS ROAD CODE COMPLIANCE CERTIFICATE

- 31.1 In the event that the Code Compliance Certificate has not issued for the McLaughlins Road property by settlement date the Purchaser shall be entitled to undertake to hold the sum of fifty thousand dollars (\$50,000) in their trust account upon an undertaking that they will release the fifty thousand dollars (\$50,000) to the Vendor or their solicitor immediately following the issue of the Code Compliance Certificate.

32. OIO CONSENT NOT REQUIRED

- 32.1 The Purchaser warrants that the Purchaser does not require OIA consent.

~~33. MCLAUGHLINS ROAD LEASE~~

- 33.1 ~~This agreement is conditional on the Vendor confirming within 30 working days of signing this agreement that it has obtained a signed Deed of Lease for the McLaughlins Road property. In the event the Vendor is unable to procure this within that time then the Vendor may elect to cancel this agreement.~~

34. GENERAL

No Waiver

- 34.1 A waiver of any provision of this Agreement shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

FURTHER TERMS OF SALE

- 34.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

Further Assurances

- 34.3 Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party or parties to obtain the full benefit of this Agreement according to its true intent.

Governing Law

- 34.4 This Agreement shall be governed by and construed in accordance with New Zealand law.

Confidentiality

- 34.5 Neither party shall make any public announcement, nor communicate the existence of this Agreement or its terms (and in particular the amount of the Purchase Price), to any third party without obtaining the prior written approval of the other party to this Agreement, other than:

- (a) to its legal and financial advisors and consultants who would reasonably be expected to be provided with any such information; or
- (b) where necessary to comply with any applicable law or the requirement or best practice, of any regulatory body (including the ASX and the NZSX) or its obligations in this Agreement, in which case any such disclosure shall be copied to the other party to this Agreement; or
- (c) to the extent reasonably necessary to obtain the investor equity required to capitalise the Purchaser's nominee (it being acknowledged by the parties that the Purchaser or persons associated with the Purchaser may seek such investor equity by way of a proportionate ownership scheme or similar subscription or equity raising arrangement in accordance with and subject to the requirements of the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014 to the extent applicable).

35. DEFINITIONS, NOTICES AND INTERPRETATION

35.1 Definitions

In these Further Terms of Sale, unless the context requires a different interpretation:

"Authority" means the relevant territorial authority having jurisdiction in relation to the Property.

"Arrears" means any Rent which is due but unpaid as at Settlement and which the Vendor is entitled to under this Agreement.

"Building Contract" means any building contract for the construction and completion of all or part of the McLaughlins Development, including any subcontracts;

"Chattels" means the chattels owned by the Vendor and contained at the Property on Settlement.

"Council" means Auckland Council.

"Disclosed Documents" means:

- (a) the documents provided by the Vendor to the Purchaser; and

FURTHER TERMS OF SALE

- (b) those matters advised to the Purchaser and the Purchaser's solicitors in writing by the Vendor and the Vendor's solicitors,

as part of the Due Diligence Investigation.

"Due Diligence Date" means the date that is 30 working days after the Execution Date.

"Due Diligence Period" means the period commencing on the Execution Date and expiring on the date on which the condition in clause 19.1 has been fulfilled (and notified to the Vendor).

"Execution Date" means the date this Agreement is signed by the last of the Vendor and the Purchaser and is delivered to the other party.

"Harbour Ridge Property" means the property identified as the "Harbour Ridge Property" within the definition of "Property" in the First Schedule;

"Interim Period" means the period from the date which the condition in clause 19.1 has been fulfilled (and notified to the Vendor) to the Settlement Date.

"Leases" means the leases, agreements to lease, licences and other occupancy agreements affecting the Property and any ancillary documents to the same disclosed to the Purchaser during the Due Diligence Investigation or which have been granted by the Vendor in accordance with the procedures in clause 24.

"Lessee" means any tenant, lessee, licensee or occupier under any Lease.

"McLaughlins Development" means the construction of the building on the McLaughlins Property as required pursuant to the agreement to lease between the Vendor and the McLaughlins Lessee;

"McLaughlins Lessee" means the Lessee pursuant to the Lease in respect of the McLaughlins Property;

"McLaughlins Property" means the property identified as the "McLaughlins Property" within the definition of "Property" in the First Schedule

"NZSX" means the New Zealand stock market operated by NZX.

"NZX" means New Zealand Exchange Limited.

"Outgoings" means all rates, taxes, assessments, costs and fees paid by the Vendor in relation to the Property (including the costs of repairs and maintenance paid for by the Vendor and rechargeable to any Lessee), and any other outgoings (periodical or otherwise) in respect of the Property for which the Vendor is or was liable as owner of the Property.

"Property" means the property described in Schedule 1 (being both the McLaughlins Property and the Harbour Ridge Property) and references to "property" in the general terms of sale shall have the corresponding meaning.

"Rent" means all rent contributions, operating expenses and any other moneys payable to the Vendor under the Leases whether payable in advance or in arrears and whether payable prior to or after the Execution Date.

"Settlement" means the date on which settlement actually occurs under this Agreement.

"Stakeholder" means the Vendor's solicitor.

"Tenancy Schedule" means the tenancy schedule provided by the Vendor pursuant to clause 19.2.

"Unconditional Date" means on which the condition contained in clause 19.1 is fulfilled or waived by the Purchaser.

FURTHER TERMS OF SALE

"Warranties" means the warranties provided to the Purchaser by the Vendor as detailed in clauses 7 and 27.3.

35.2 Interpretation

- (a) A reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;
- (b) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (c) A reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done; and
- (d) Any unlawful or voidable provision in this Agreement shall be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without effecting the validity, legality or enforceability of the remaining provisions, provided the reading down or severing does not materially affect the purpose of or frustrate this Agreement.

36. UNDERWRITE

- 36.1 The parties acknowledge and agree that the Purchaser is purchasing the Property at the agreed Purchase Price on the basis that, as at Settlement, the Property is returning an aggregate net rental of \$1,548,624 per annum plus GST (**Underwrite Rental**). The Vendor acknowledges and warrants that the Lessees are, as at the Execution Date (or will be as at the Settlement Date), paying an aggregate net rental of \$1,482,268 per annum plus GST (disregarding any Incentives) (**Settlement Rental**) but are anticipated to be paying an aggregate net rental equivalent to the Underwrite Rental by 30 June 2021. *Subject to actual Settlement date*
- 36.2 To account for the shortfall in rental referred to in clause 36.1, the Vendor agrees to pay to the Purchaser on Settlement (by way of a credit in favour of the Purchaser in the settlement statement) a sum equivalent to the difference between the Underwrite Rental and the Settlement Rental (or such increased rental that the Purchaser is entitled to receive pursuant to the Leases) for the period commencing on the day following the date of Settlement until 30 June 2021, such sum to be calculated and agreed (or a formula determined to so calculate such sum) within the first 10 working days of the Purchaser's Due Diligence Period, each of the parties acting reasonably and in good faith.

37. ALLOCATION OF PURCHASE PRICE

- 37.1 The Vendor and Purchaser agree, for the purposes of filing ~~their~~ *the Purchasers* income tax returns, the purchase price shall be allocated between the land, building, fixtures and fittings, and chattels comprised within and/or located on each of the McLaughlins Property and the Harbour Ridge Property. Within 25 working days following the Execution Date, the Purchaser shall (at the Purchaser's cost) appoint a suitably qualified valuer to determine such allocation. The decision of the valuer shall be final and binding on the parties and each party shall file their income tax returns in a manner consistent with the allocation of the purchase price determined by the valuer.

FURTHER TERMS OF SALE



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



R. W. Muir
Registrar-General
of Land

Identifier **841803**
Land Registration District **North Auckland**
Date Issued **08 August 2018**

Prior References
697042 697046

Estate Fee Simple
Area 9605 square metres more or less
Legal Description Lot 3 Deposited Plan 525619

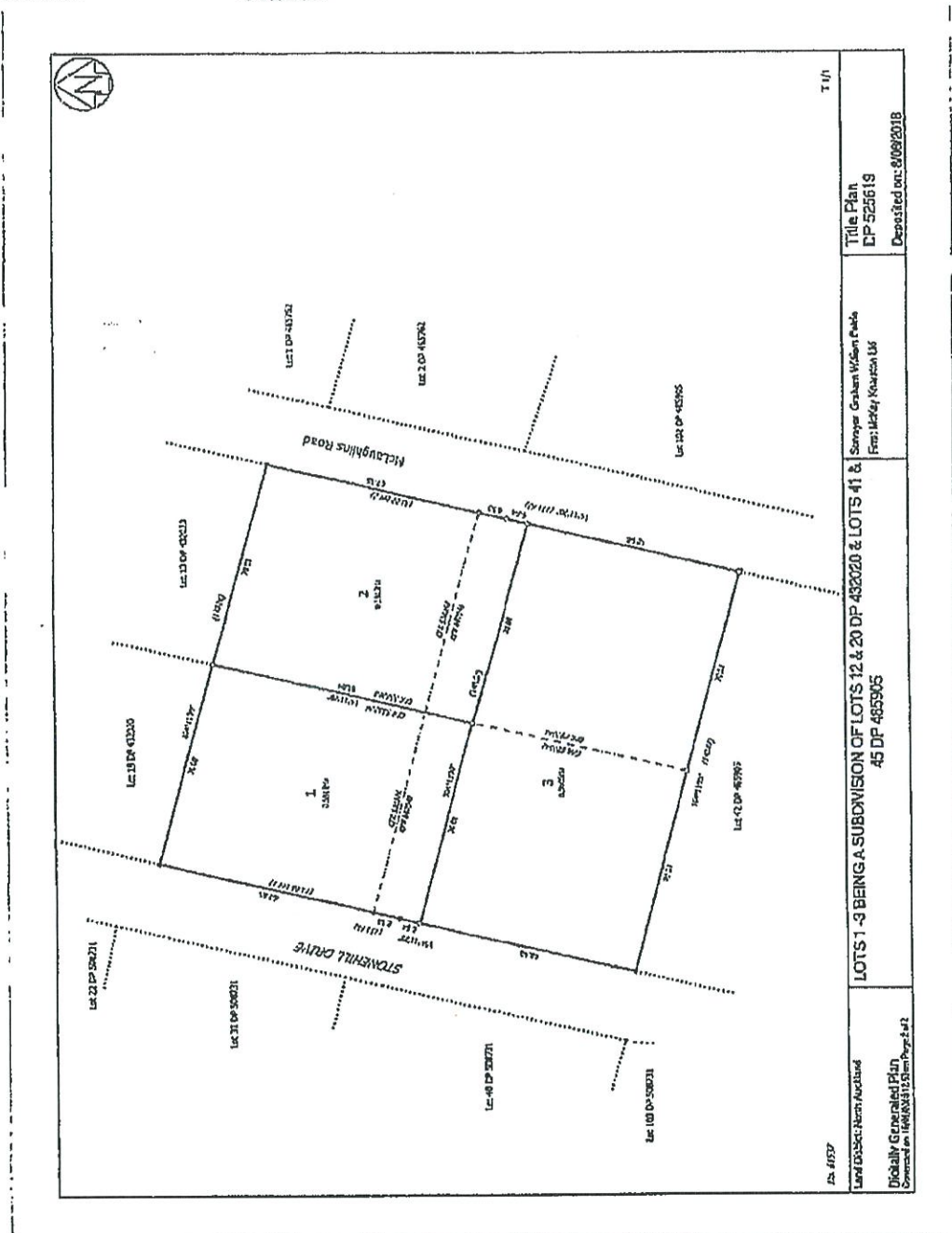
Registered Owners
Rock Solid Holdings Limited

Interests
10888755.3 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 26.9.2017 at 3:12 pm
Land Covenant in Easement Instrument 10888755.5 - 26.9.2017 at 3:12 pm

FURTHER TERMS OF SALE

Identifier

841803



FURTHER TERMS OF SALE



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



Identifier **774841**
Land Registration District **North Auckland**
Date Issued **21 May 2018**

Prior References
697053

Estate	Fee Simple
Area	6140 square metres more or less
Legal Description	Lot 31 Deposited Plan 508731

Registered Owners
Rock Solid Holdings Limited

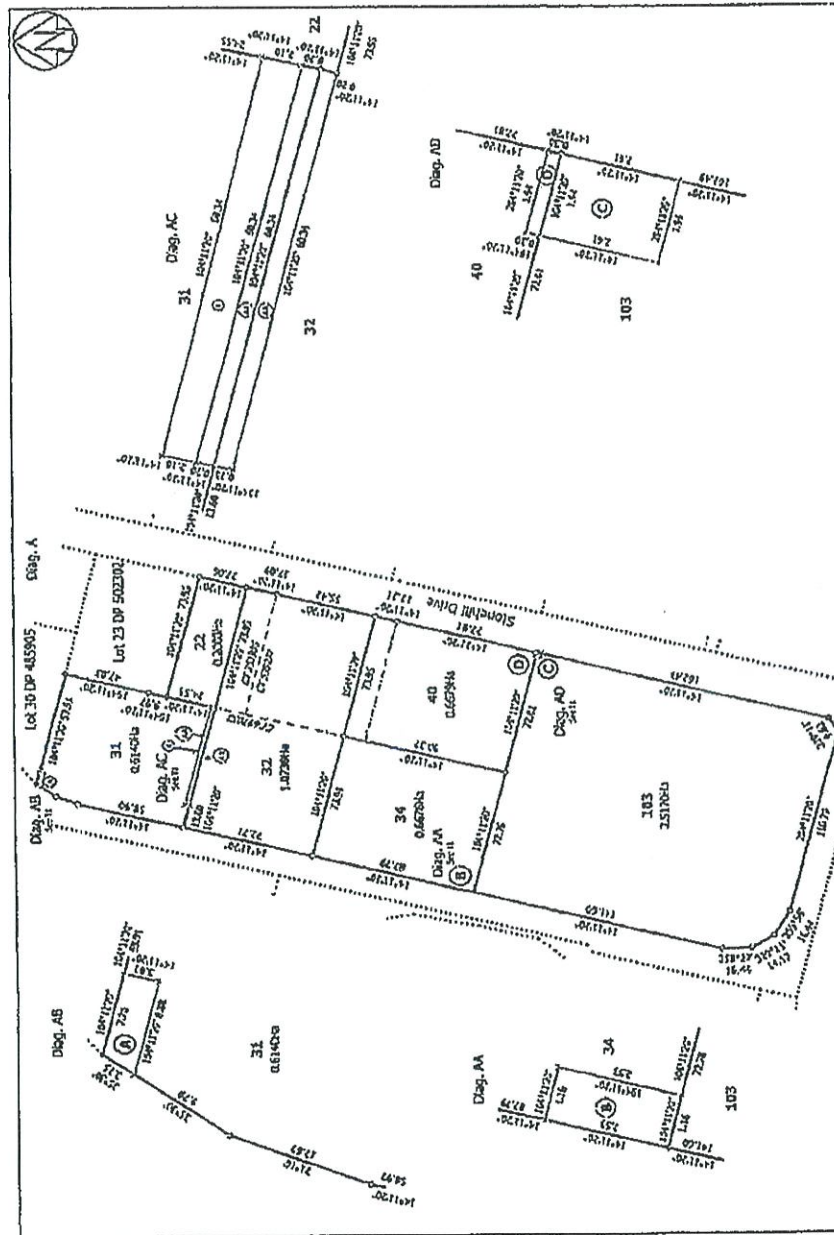
Interests

10888755.3 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 26.9.2017 at 3:12 pm
Land Covenant in Easement Instrument 10888755.5 - 26.9.2017 at 3:12 pm
Subject to a right (in gross) to convey electricity over part marked A on DP 508731 in favour of Vector Limited created by Easement Instrument 11007934.1 - 5.3.2018 at 4:53 pm
Subject to a party wall right over part marked AA, and a right of support over part marked E, both on DP 508731 created by Easement Instrument 11117074.2 - 21.5.2018 at 2:38 pm
Appurtenant hereto is a party wall right created by Easement Instrument 11117074.2 - 21.5.2018 at 2:38 pm
Land Covenant in Easement Instrument 11117074.3 - 21.5.2018 at 2:38 pm

FURTHER TERMS OF SALE

Identifier

774841



Land District North Auckland	Lots 22, 31, 32, 34, 40 and 103 Being a Subdivision of Lot 100 DP 485905, Lot 21 DP 493020 and Lot 22 DP 502302	Surreyco, Simon Richard Nola First Horizon Corporate Consultants Ltd	Title Plan DP 508731	Downloaded on: 21/05/2018
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SCHEDULE 1

(GST Information – see clause 15.0)

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

Section 1

1.	The vendor's registration number (if already registered):	74-120-350
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No

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

5.	The purchaser's details are as follows:	
	(a) Full name: Oyster Property Holdings Limited	
	(b) Address: Level 18, 55 Shortland Street, Auckland 1010	
	(c) Registration number (if already registered):	
6.	The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
	OR	
	The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
	That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	
7.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No

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

Section 2

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

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

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

SCHEDULE 2

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

~~Stove~~ ~~Fixed floor coverings~~ ~~Blinds~~ ~~Curtains~~ ~~Light fittings~~

The Chattels as defined in clause 35.1 of the Further Terms of Sale.

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

This is a binding contract. Read the information set out on the back page before signing.

Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Agents Authority.

Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010.

Signature of Purchaser(s):



Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

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

Signature of Vendor(s):



Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

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

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

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

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

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

*If this agreement is signed under:

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

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

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

BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - the purchaser is not a New Zealand citizen. There are strict controls on the purchase of property in New Zealand by persons who are not New Zealand citizens.
 - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - the purchaser wishes to check the weatherlightness and soundness of construction of any dwellings or other buildings on the land.
- Both parties may need to have customer due diligence performed on them by their lawyer or conveyancer in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 which is best done prior to the signing of this agreement.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before the purchaser enters into the agreement:
 - the vendor must provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010;
 - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 and 9.0:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 2 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

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

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.

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AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE:

VENDOR:

Rock Solid Holdings Limited

Contact Details:

VENDOR'S LAWYERS:

Firm: Bay Law Office

Individual Acting: Peter Jacobson

Contact Details:

09 6268055

pjacobson@baylawoffice.co.nz

PURCHASER:

Oyster Property Holdings Limited

Contact Details:

PURCHASER'S LAWYERS:

Firm: Thompson Blackie Biddles

Individual Acting: Sam Greenwood/David Simpson

Contact Details:

09 3617055

sam.greenwood@tbblegal.com

david.simpson@tbblegal.com

LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details:

