

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: 21st Feb 2018

VENDOR: TE RAPA GATEWAY LIMITED

PURCHASER: Dairy Goat Co-operative (N.Z.) Limited (Company No. 421398)

and/or nominee

The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement: Yes/No

PROPERTY
 Address: Lots 56, 93, 94, 95, 96 and 97, Chalmers Road, Te Rapa, Hamilton (Stage 3)

Estate: **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: Unique Identifier or CT:
 Lot 56, 93, 94, 95, 96 and 97 being approximately 29,669m² more or less shown in the proposed subdivision Scheme Plan attached at Schedule 3 being part of the subdivision of the Land.

PAYMENT OF PURCHASE PRICE
 Purchase price: \$8,900,700.00 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): \$ 10% of the purchase price payable in accordance with clause 23

Balance of purchase price to be paid or satisfied as follows:
 (1) By payment in cleared funds on the settlement date which is the date being 10 working days after the date that the Purchaser is notified that a search copy (as that term is defined in section 172A of the Land Transfer Act 1952) for each of the lots comprising the property is available
 OR
 (2) In the manner described in the Further Terms of Sale. interest rate for late settlement: 15 % 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: Vacant Possession

Bond:	Rent:	Term:	Right of renewal:
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Monarch Commercial Limited –
 NAI Harcourts Hamilton
 678 Victoria Street
 Hamilton 3204
 Ph: 07 850 5252
Hamilton@naiharcourts.co.nz

Manager: Mike Neale
 Sales person: Karl van Gisbergen

Licensed Real Estate Agent under Real Estate Agents Act 2008

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

[Handwritten signatures and initials]

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 1986, 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:
- An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1986 and "GST Act" means the Goods and Services Tax Act 1986.
- (9) "Land online workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (15) "Property" means the property described in this agreement.
- (16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the Property and the chattels included in the sale.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (20) "Settlement date" means the date specified as such in this agreement.
- (21) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title under the Unit Titles Act 2010.
- (24) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (25) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (26) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
- (27) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (28) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (29) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 1952.
- (30) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (31) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (32) "Working day" means any day of the week other than:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - If Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - a day in the period commencing on the 24th day of December in any year and ending on the 6th day of January (or in the case of subclause 10.2(2) the 16th day of January) in the following year, both days inclusive; and
 - the day observed as the anniversary of any province in which the property is situated.
- A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (33) Unless a contrary intention appears on the front page or elsewhere in this agreement:
- 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
 - 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

- 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.
- 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.
- 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:

- All notices must be served in writing.
- 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.
- All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - on the party as authorised by sections 364 to 361 of the Property Law Act 2007, or
 - on the party or on the party's lawyer:
 - by personal delivery; or
 - by posting by ordinary mail; or
 - by facsimile; or
 - by email; or
 - 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.
- In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
 - in the case of personal delivery, when received by the party or at the lawyer's office;
 - 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;
 - 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;
 - in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

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 AKC
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- (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
- (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 20(1) of the Electronic Transactions Act 2002, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

1.4 Interpretation

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

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:
- (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and
 - (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
 - (3) where the property is a unit title:
 - (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and
 - (b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2)), have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
 - (4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.0(6) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.

3.0 Possession and Settlement

Possession

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

Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 3.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landline 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 underwriting 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.

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Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
 - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).
- 3.13 Where subclause 3.12(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:
- (1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
 - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
 - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1999 in the joint names of the vendor and the purchaser;
 - (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (6) the amount determined to be payable shall not be limited by the interim amount; and
 - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.14 (1) For the purposes of this subclause 3.14:
- (a) the default period means:
 - (i) in subclause 3.14(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in subclause 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.14(5), the period from the settlement date until the date when settlement occurs; and
 - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
 - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
 - (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period. A purchaser in possession under this subclause 3.14(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.14(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 3.14(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period.
- (6) The provisions of this subclause 3.14 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) Where the parties are unable to agree upon any amount payable under this subclause 3.14:
- (a) an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined;
 - (b) the interim amount shall be the lower of:
 - (i) the amount claimed; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date.
 - (c) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1999 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 10th working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.16 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.17 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 9.2(3),
- (4) then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (b) where there is a deferment of the settlement date pursuant to subclause 3.16, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision

- 3.10 (1) Where
- the transfer of the property is to be registered against a new title yet to be issued; and
 - a search copy, as defined in section 172A of the Land Transfer Act 1952, 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:
 - the vendor has given the purchaser notice that a search copy is obtainable; or
 - the requisitions procedure under clause 6.0 is complete.
- (2) Subclause 3.10(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:
- 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:
 - sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
 - if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
 - 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
 - any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
 - RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
 - 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:
- 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
 - 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:
- 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
 - 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:
- the costs payable by the vendor under subclause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
 - 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:
- if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
 - 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 reinstale for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - 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;
 - 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;
 - 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
 - if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 6.4 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title ~~except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:~~
- the tenth working day after the date of this agreement; or
 - 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 172A of the Land Transfer Act 1952 is obtainable.
- (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:
- 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;
 - 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;
 - 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 immediate 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:
- In the case of a cross lease title:
 - alterations to the external dimensions of any leased structure; or
 - 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;
 - in the case of a unit title, encroachments 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:
- 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
 - 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 unit and register such transfers and any other ancillary dealings in order to convey good title.

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~~(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 section 7 of the Contractual Remedies Act 1979, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

7.0 Vendor's warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party; or
 - (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at settlement:
- (1) The chattels and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver them shall only create a right of compensation.
 - (2) All electrical and other installations on the property are free of any charge whatsoever.
 - (3) There are no arrears of rates, water rates or charges outstanding on the property.
 - (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
 - (5) Where the vendor has done or caused or permitted to be done on the property any works:
 - (a) any permit, resource consent, or building consent required by law was obtained; and
 - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
 - (c) where appropriate, a code compliance certificate was issued for those works.
 - (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
 - (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - (b) the building has a current building warrant of fitness; and
 - (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
 - (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
 - (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party,
 has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
 - (9) Any chattels included in the sale are the unencumbered property of the vendor.
- 7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - (2) the building has a current building warrant of fitness; and
 - (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 7.4 The vendor warrants and undertakes that on or immediately after settlement:
- (1) if the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
 - (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
 - (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
 - (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 7.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 8.4 and any right of equitable set-off.

8.0 Claims for compensation

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

9.0 Unit title and cross-lease provisions

Unit Titles

- 9.1 If the property is a unit title, sections 144 to 159 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 105 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 156 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 285(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 286(3) 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(9) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 9.0(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.
- Unauthorised Structures - Cross Leases and Unit Titles**
- 9.6 (1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:
 - (a) in the case of a cross lease title, any required lessors' consent; or
 - (b) in the case of a unit title, any required body corporate consent;
 the purchaser may demand within the period expiring on the earlier of:
 - (i) the tenth working day after the date of this agreement; or
 - (ii) the settlement date;
 that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements (a current consent) and provide the purchaser with a copy of such consent on or before the settlement date.
- (2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 6.2(3) and 6.2(4) shall apply with the purchaser's demand under subclause 9.6(1) being deemed to be an objection and requisition.

10.0 Conditions and mortgage terms

Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
 - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - (c) this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor (the purchaser's notice) on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 10.0(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 10.0(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 avails this agreement for non-fulfilment of this condition pursuant to subclause 10.0(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.
- 10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.
- 10.7 If this agreement relates to a transaction to which section 226 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

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Operation of Conditions

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

Mortgage Terms

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

11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
 (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able, and willing to proceed to settle in accordance with this agreement or is not so ready, able, and willing to settle only by reason of the default or omission of the other party.
 (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to subclause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
 (1) on or before the twelfth working day after the date of service of the notice; or
 (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
 (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
 (3) The vendor may give a settlement notice with a notice under this subclause.
 (4) For the purpose of this subclause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 11.1(3):
 (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the 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) or other finance 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 (or 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 3.0(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 6(16) of the GST Act applies.

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

15.0 Zero-rating

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

16.0 Supply of a Going Concern

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

17.0 Limitation of Liability

- 17.1 If any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that
 - (a) the person has power to enter into this agreement under the terms of the trust;
 - (b) the person has properly signed this agreement in accordance with the terms of the trust;
 - (c) the person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this agreement.
 - (2) If that person has no right 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.

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FURTHER TERMS OF SALE

See attached

SCHEDULE 1

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

Stove

Fixed-floor-coverings

Blinds

Curtains

Light fittings

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FURTHER TERMS OF SALE

19. DEFINITIONS

19.1 In this agreement, unless inconsistent with the context, the following words shall have the meanings set out opposite them:

"Approvals" the full and final approval of the Consents by the Relevant Authority, together with all written consents and approvals from parties other than the Vendor and the Relevant Authority necessary to give effect to the subdivision of the Land in terms of the Scheme Plan, including but not limited to the disposal of any objection or appeal to the terms of the Consents and the expiry of any objection or appeal period.

"Consents" all land use consents, subdivision consents required from the Relevant Authority under the Resource Management Act 1991 for the subdivision of the Land and/or (at the Vendor's sole discretion) any consent by the Relevant Authority to a new comprehensive development plan for the Land which the Vendor, in its absolute discretion, considers necessary or expedient for the subdivision of the Land.

"Design Encumbrance" the proposed instrument substantially in the form attached at Schedule 4 (subject to clause 27.3).

"Force Majeure Event" any of the following events:

- (a) the date for satisfaction of any conditions under this agreement being extended;
- (b) inclement weather which has the effect of stopping the works required to be undertaken by the Vendor pursuant to this agreement;
- (c) loss or damage to the works required to be undertaken by the Vendor pursuant to this agreement by fire, flood, explosion, earthquake, lightning, storm and tempest, civil commotion, theft, vandalism, malicious damage or any like occurrence including war other than as a result of any negligent act or omission on the part of the Vendor;
- (d) any industrial action, worker dispute, strike, lockout or other similar stoppage or event which affects:
 - (i) the provision of labour or materials; or

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(ii) any builder, contractor, or supplier of material in any way involved in carrying out or providing materials, services or work,

which is not specific to the Vendor or the Property;

- (e) an addition or variation made at the Purchaser's request;
- (f) a delay by the Purchaser in submitting any documentation or plans to the Vendor or providing any approval to the Vendor;
- (g) a delay caused by any breach by the Purchaser of its obligations in this agreement or any act or omission of the Purchaser its contractors, employees, agents or invitees;
- (h) a restriction, regulation, or control imposed or order issued by a Relevant Authority which could not have been foreseen by an experienced developer;
- (i) the delay in any Relevant Authority giving any Consents and/or Approvals if all practical steps to obtain such Consents and/or approvals have been taken;
- (j) compliance by the Vendor with any notice issued by a Relevant Authority in respect of the works required to be undertaken by the Vendor pursuant to this Agreement which is not provided for under any Consent and/or Approval and which could not have been foreseen by an experienced developer; and
- (k) any other circumstances beyond the control of the Vendor and which could not have been foreseen by an experienced developer.

"Land"

the land comprising Lot 19 DP 502753 (Identifier 753687), Lot 20 DP 502753 (Identifier 753688), Lot 50 DP 471831 (Identifier 783109), Lot 52 DP 510134 (Identifier 800010), Lot 53 DP 516727 (Identifier 806048), Lot 54 DP 502753 (Identifier 776207), Lot 58 DP 510134 (Identifier 780450), Lots 1-6 DP 513562 (Identifiers 794058 to 794063) Lot 51 DP 510134 (Identifier 780452), Lot 55 DP 517812 (Identifier 810176), Lot 59 DP 510134 (Identifier 787062) all South Auckland Registration District and any residual certificates of title derived therefrom.

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"Land Titles Plan"	the subdivision plan of the Land of which the Property forms part, deposit of which at LINZ will create a separate legal title to the Property, such plan to be prepared and completed by the Vendor at the sole cost of the Vendor in accordance with the Scheme Plan and the Approval.
"LINZ"	Land Information New Zealand.
"Lots"	the lots on the Scheme Plan and any subsequent Scheme Plan relating to the Land.
"No Objection Encumbrance"	the instrument substantially in the form attached at Schedule 5 but as may be amended by the Vendor from time to time at its absolute discretion.
"Property"	the property the subject of this agreement including any alteration in the size of the Property as a result of the final survey of the Property.
"Relevant Authority"	any corporation, including any government, local, statutory or non-statutory authority or body having jurisdiction over the Property or any part of it.
"Scheme Plan"	the plan of the proposed subdivision of the Land prepared by or for the Vendor and incorporating the Property, a copy of which is attached at Schedule 3.

19.2 If there is a conflict between the provisions of the Scheme Plan and the terms and conditions of the Approval, the terms and conditions of the Approval shall prevail.

20. PURCHASER'S DUE DILIGENCE

20.1 This agreement is conditional upon the Purchaser being entirely satisfied with the Property at the agreed purchase price following the Purchaser carrying out a due diligence investigation of the Property, including (but not limited to) an investigation of the following:

- (a) the soundness and stability of the Property;
- (b) the state of the title to the Property;
- (c) the overall financial suitability of the Purchaser's proposed investment in the Property;
- (d) all necessary and relevant planning and environmental considerations that may impact the use of the Property; and
- (e) any other matters which the Purchaser may consider relevant.

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

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20.3 The parties agree that the satisfaction of the condition contained in clause 20.1 shall be at the sole and absolute discretion of the Purchaser and that if the condition is not fulfilled due to the Purchaser not being satisfied with any aspect of the property, the Purchaser shall not be obliged to state any reasons for the Purchaser's lack of satisfaction.

20.4 The date for satisfaction of the condition in clause 20.1 shall be 15 March 2018.

21. CONSENTS AND APPROVALS

21.1 This agreement is conditional on the Vendor obtaining the Consents and the Approvals for the subdivision of the Land on terms and conditions satisfactory to the Vendor.

21.2 The date for satisfaction of the condition contained in clause 21.1 shall be the date falling 5 months after the date that the condition in clause 20.1 has been satisfied, provided that if on such date:

- (a) an application for any Consent(s) or Approval is awaiting a decision or determination from the Relevant Authority; or
- (b) the Relevant Authority's decision has been received in respect of the Consent(s) and/or Approval but the period for filing appeals has not expired; or
- (c) an appeal has been lodged in respect of an application for any Consent(s) or the Approval; or
- (d) time is required to satisfy a condition imposed by any Relevant Authority or court;

then the date for satisfaction shall automatically be extended until the date falling five working days after the date of final determination.

21.3 What constitutes satisfactory terms and conditions relating to the Consents and the Approvals for the purposes of clause 21.1 will be determined by the Vendor in its absolute discretion.

22. VENDOR TO HAVE SCHEME PLAN APPROVED AND TO DEPOSIT PLAN

22.1 Subject to the condition in clause 20.1 being satisfied, the Vendor shall, at the Vendor's expense in all things, as promptly as possible submit the necessary applications to the Relevant Authority for the Consents provided that the Vendor reserves the right to seek the appropriate Consent at its discretion, including (without limitation) a new comprehensive development plan for the Land.

22.2 Subject to the conditions in clauses 20.1 and 21.1 being satisfied the Vendor shall, subject to clause 40 at the Vendor's expense in all things, as promptly as possible:

- (a) implement the relevant Approvals in so far as it relates to the Property;
- (b) carry out all work necessary to subdivide the Land so as to create separate identifiers for the lots comprising the Property;
- (c) deposit the Land Titles Plan in the relevant registry at LINZ; and
- (d) obtain separate identifiers for the lots comprising the Property.

23. **DEPOSIT TERMS**

23.1 **Payment:** The deposit shall be payable to the Vendor's solicitor as follows:

- (a) a sum equivalent to 5% of the purchase price on the date the condition in clause 20.1 is satisfied or waived; and
- (b) the balance making the total deposit paid 10% of the purchase price on the date the condition in clause 21.1 is satisfied or waived.

23.2 **Stakeholder:** The deposit will be paid in cleared funds to the Vendor's solicitor's trust account and may be placed in an interest bearing bank account with a registered bank in New Zealand in accordance with clause 23.3.

23.3 **Terms of Deposit:** The deposit will be held by the Vendor's solicitor in accordance with the following provisions:

- (a) if this Agreement does not become unconditional and is cancelled (save in the case of the Purchaser's default), the Vendor's solicitor will return the deposit to the Purchaser together with net interest earned thereon (if any);
- (b) if this Agreement becomes unconditional, the Vendor's solicitor shall release the deposit and the net interest earned thereon (if any) to the Vendor on the date that a certificate under section 224(c) of the Resource Management Act 1991 has been lodged with LINZ by the Relevant Authority in respect of the deposit of the Land Titles Plan or such earlier date as may be determined in accordance with clause 2.
- (c) all net interest accruing to the deposit shall otherwise be payable to the eventual payee;

23.4 **Withholding Tax and Interest:** The parties acknowledge that withholding tax and stakeholder's interest collection commission will be deducted from the interest earned on the deposit.

23.5 **No Liability:** The Vendor's solicitor will not be liable to any party by reason of any delay in investing the deposit, any failure by the registered bank, any costs deducted by the registered bank for handling the deposit or any interest, provided however the Vendor shall procure that the Vendor's solicitor use its reasonable endeavours to place the deposit on interest bearing account as soon as is reasonably practicable after receipt of it.

23.6 **Authority:** Execution of this Agreement by the parties is authority to the Vendor's solicitor to release the deposit and net interest (if any) earned thereon to the relevant party in accordance with the provisions of clause 23.3 of the Agreement without the necessity of the stakeholder obtaining any further authority in writing from the parties.

24. **TRANSFER**

24.1 The Purchaser shall not be entitled to a transfer of the Property or to call for settlement in accordance with the terms and conditions of this agreement until:

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- (a) all conditions precedent have been satisfied; and
- (b) new certificates of title for the lots comprising the Property have been issued by LINZ.

25. ACKNOWLEDGEMENT AS TO TITLE

25.1 The Purchaser acknowledges that a separate certificate of title has not yet issued for the Property.

26. NO WARRANTY

26.1 The Vendor gives no warranty to the Purchaser as to when the Land Titles Plan will deposit in the relevant registry of the LINZ, nor as to when the Purchaser will be able to register a memorandum of transfer of the Property to the Purchaser. The Purchaser acknowledges that the dates by which the Land Titles Plan is to be deposited at LINZ and the memorandum of transfer can be registered are not essential terms or conditions of this agreement.

27. DESIGN ENCUMBRANCE

27.1 The Purchaser acknowledges and agrees with the Vendor that the Property is part of a development which is intended to be established as a modern and well-designed premier business address – a quality place companies to invest and grow.

27.2 The Purchaser acknowledges and agrees that compliance with the objectives of clause 27.1 shall be protected by registration of the Design Encumbrance against the title to the Property. The Purchaser agrees that it shall take title to the Property subject to the Design Encumbrance.

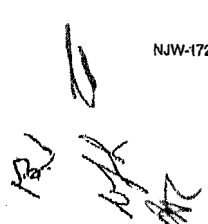
27.3 The Purchaser acknowledges that the terms of the Design Encumbrance may be amended by the Vendor in its absolute discretion where such amendments are required to comply with the terms of the Consents, Approvals and/or any other requirements of the Relevant Authority.

27.4 The Purchaser shall be entitled to submit outline plans and specifications for the intended design of the building on the Property at any time prior to settlement. The Vendor shall (in its capacity as a member of the Design Review Panel in the Design Encumbrance) and the Vendor shall procure that Hamilton Porter JV Company Limited (in its capacity as a member of the Design Review Panel in the Design Encumbrance) not unreasonably or arbitrarily withhold its consent to such plans and specifications, where the requirements of the Design Encumbrance have been met.

28. EASEMENTS AND RESTRICTIONS

28.1 The Vendor sells the Property subject to the existing interest, easements, reservations and restrictions appearing on the title or affecting the Land as at the date of this Agreement and reserves the right to grant or receive the benefit of any easements, building line restrictions or other encumbrances, rights, interests or obligations ("Easements and Restrictions") which may be required in order to satisfy any conditions of the Consents and/or Approvals, or which in the sole discretion of the Vendor are deemed to be necessary or desirable.

28.2 In respect of those Easements and Restrictions which are not necessary to satisfy any conditions of the Consents and/or Approvals, in the event that such Easements and Restrictions materially adversely affect the value of the Property then the Vendor shall first seek the Purchaser's approval to such Easements and Restrictions (which shall not



be unreasonably withheld or delayed) by giving written notice to the Purchaser ("Vendor's Notice"). The Purchaser may reasonably refuse approval by giving written notice in writing to the Vendor at any time within 10 working days of the date of the Vendor's Notice, in which case this agreement shall be voidable at the option of either party. If the Purchaser does not respond to the Vendor within 10 working days of the date of the Vendor's Notice the Purchaser shall be deemed to take title to the Property subject to or with the benefit of any such Easements and Restrictions.

28.3 Notwithstanding any other provision in this clause 28, the Purchaser acknowledges and accepts that further subdivision and development work is being undertaken in the vicinity of the Property and the Purchaser agrees that the Purchaser will not:

- (a) object to, or hinder, or in any other way complain about, any lawfully authorised subdivision activity or development work carried on, on the Land or in any residual title or titles derived therefrom;
- (b) withhold consent to any subdivision or development activity that may require written approvals under the Resource Management Act 1991 and/or from the Relevant Authority including (without limitation any application in respect of or chance to any comprehensive development plan) and will, if called upon by the Vendor, to execute all documents and/or do all things necessary to provide such approval or consent as may be required by the Vendor for the purposes of the subdivision or development of the land described in (a) above;
- (c) object to or procure any third party to object to any future or proposed application by the Vendor or its successors in title of the land described in (a) above for a resource consent, plan change, or application for any comprehensive development plan required by the Vendor for its future development of the land described in (a) above.

28.4 In order to protect ensure compliance with the intent of clause 28.3 the Purchaser agrees that the Vendor shall have the right to register the No Objection Encumbrance against the title to Property and that the Purchaser shall take title subject to the terms of the No Objection Encumbrance.

28.5 The Purchaser shall execute all documents (with the inclusion of all terms considered necessary by the solicitors for the Vendor) and do such acts and things required to obtain the deposit of the Land Titles Plan, and the implementation of any such Easements and Restrictions and/or the Design Encumbrance and/or the No Objection Encumbrance.

29. MEASUREMENTS AND AREAS

29.1 All measurements and areas set out on the front page of this Agreement or indicated on the Scheme Plan are subject to completion of the Land Titles Plan and check of the Land Titles Plan(s) by the Vendor's surveyor and to any variation which may be found necessary upon checking by the Relevant Authority and/or LINZ. The Purchase Price shall be adjusted up or down, as the case may be, at a rate equal to \$X per square metre for each square metre or part thereof by which the area defined in the Land Titles Plan exceeds or is less than the area specified in this agreement. For the purposes of this clause, \$X shall be the Purchase Price of the Property divided by the number of square metres in the area of the Property specified in this agreement. If the Purchase Price is adjusted pursuant to this clause, the Vendor shall issue a further GST tax invoice or a GST credit note, as appropriate.

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30. DIFFERENCE IN AREA ENTITLING PURCHASER TO CANCEL

30.1 Notwithstanding clause 29, where the area as defined in the deposited Land Titles Plan is more or less by more than 3% from the area of the Property as specified in this agreement, the Purchaser shall be entitled to cancel this agreement by giving written notice of cancellation to the Vendor and in the event of such cancellation, the deposit paid shall be refunded to the Purchaser.

31. ALTERATION OF SCHEME PLAN

31.1 The Vendor may at any time alter or vary the Scheme Plan and any subsequent plan relating to the subdivision (including the alteration, variation or cancellation of any proposed restriction shown on any such plan) in such manner as the Vendor considers appropriate, having regard to the circumstances, and (subject only to clauses 29 and 30) the Purchaser shall not be entitled to make any objection, requisition or claim for compensation in respect of such alteration or variation.

32. RIGHT OF VENDOR TO CARRY OUT WORKS

32.1 The Vendor and the Vendor's surveyors, agents, consultants, engineers, contractors, sub-contractors, employees or any of them shall have the right to enter the Property at all times prior to settlement with such plant, machinery, vehicles and equipment and to do such work as shall in the opinion of the Vendor, the Vendor's engineers or the Vendor's contractors be necessary or desirable to complete the subdivision and, without limiting the generality of the foregoing, including the right to:

- (a) excavate, fill, contour and landscape the Property and any part of the subdivision;
- (b) cut and, if required, remove any materials and vegetation including trees, without in any case being liable in damages or to make any compensation to the Purchaser or any person claiming through or under the Purchaser;
- (c) erect, install and construct electricity reticulation systems, whether by overhead poles and wires, or by underground cables, and to install on the Property and on any part of the subdivision any transformer, junction box or other installation necessary or desirable for the reticulated supply of electricity; and
- (d) carry out any other act, matter, work or thing that may in the sole discretion of the Vendor be necessary or desirable to complete the subdivision, all of which shall be carried out in accordance with the requirements of the Relevant Authority, and the Vendor shall not be liable for any damage or loss in value, caused to the Property arising therefrom.

33. NO CAVEAT

33.1 The Purchaser shall not lodge any caveat against the titles to the Land prior to depositing the Land Titles Plan.

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34. **PURCHASER TO KEEP PROPERTY TIDY**

34.1 The Purchaser shall, as from the possession date, keep the Property in a neat and tidy condition and shall prevent the growth of long grass and weeds and plants defined as noxious plants under the Noxious Plants Act 1978, or any legislation passed in substitution for that Act and, if the Purchaser fails to do so, the Purchaser shall indemnify the Vendor against the cost of the Vendor remedying the default, and the Vendor may enter the Property for the purpose of remedying such default.

35. **FENCING**

35.1 The Vendor shall not be liable to erect or repair or contribute towards the cost of erection or repair of any dividing or boundary fence between the Property and any adjoining land owned by the Vendor, but this provision shall not benefit the purchaser of such adjoining land. A fencing covenant to this effect shall be included in the memorandum of transfer of the Property to be submitted by the Purchaser to the Vendor.

36. **LOWEST PRICE**

36.1 The parties agree that the Purchase Price is the lowest price which the parties would have agreed upon at the date of execution of this agreement in terms of the rules relating to accrual treatment of income and expenditure under the Income Tax Act 2007 or any legislation superseding such Act.

37. **NON MERGER**

37.1 Notwithstanding any rule of law to the contrary, the obligations and warranties of the parties in this agreement and the agreement evidencing it will not merge with the transfer of title to the Property or with the delivery of the title to the Property.

38. **NO WAIVER**

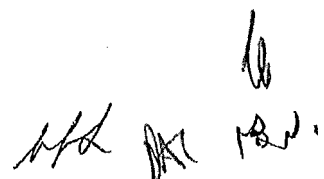
38.1 No waiver of any breach of any term of this agreement shall be effective unless the waiver is in writing and signed by the party against whom that waiver is claimed. No waiver of any breach shall be, or be deemed to be, a waiver of any other or subsequent breach.

39. **DISCLAIMER**

39.1 The Vendor's marketing material, including information available on the Vendor's website, marketing brochure and other materials, plans and associated documentation, have all been prepared prior to commencement of the development of the land. While the information set out in those materials are approximate illustrations, they can only be for guidance and no responsibility will be taken for any differences, errors or omissions which may become apparent upon completion of the Property and the Purchaser acknowledges that it must verify such matters to its own satisfaction and the Purchaser purchases the Property in reliance solely upon its own judgment.

40. **STAGED DEVELOPMENT**

40.1 Notwithstanding anything set out in this agreement, the Purchaser acknowledges and accepts that:



- (a) the Development is being carried out in stages and that certain lots with the Development will be created and developed on a progressive basis and that, as such, not all of the Development will be completed at the settlement date;
- (b) future stages of the Development may be varied, omitted, suspended or delayed or may not occur at all;
- (c) the Purchaser shall not be entitled to avoid this agreement, delay settlement or claim any compensation, damages, right of set off or any other right or remedy by reason of the fact that all or any part of the Development is not completed at the settlement date.
- (d) other than completion of the works required to create separate identifiers for the lots comprising the Property in accordance with the Approval, the Purchaser is not purchasing the Property in reliance upon completion of all or any part of the Development; and
- (e) completion of the Development or any part thereof by the Vendor is not an essential term of this agreement;

41. BINDING AGREEMENT

41.1 This Agreement shall not be binding until duly executed by both parties.

42. RESIDUAL ENGINEERING FILL

42.1 The Purchaser agrees that where reasonably practicable it will first offer to the Vendor at no cost, any residual engineering fill removed from the Property during construction, and where the Vendor so requires such fill arrange (in consultation and prior arrangement with the Vendor) for it to be dumped in the pit on the Land located on Lots 29, 30 and 31 or such other suitable area close by as directed by the Vendor.

43. APPROVAL OF PURCHASER'S PROPOSED FACILITY

43.1 The Purchaser's intention is to construct a goat milking processing facility on the Property. The Purchaser acknowledges that the location of the proposed facility and certain plant is a key issue for the Vendor to ensure that adverse effects on other parts of the Development are mitigated. As such, the Purchaser agrees that it shall not construct or erect any milk processing facility on the Property without obtaining the written consent of the Vendor to the plans and specifications in relation to the location of that part of the facility comprising the processing plant (including the dryer facility) which must be as close as reasonably practicable (subject to the requirements of the Relevant Authority) to the Waikato Expressway) Approval shall not be unreasonably withheld or delayed by the Vendor where the requirements of this clause 43.1 are complied with to the reasonable satisfaction of the Vendor. The Purchaser shall not erect any such facility on the Property otherwise than in accordance with the plans and specifications approved by the Vendor pursuant to this clause 43.

44. SUNSET DATE

44.1 If a search copy, as that term is defined in section 172A of the Land Transfer Act 1952, for lots comprising the Property is not available on or before 20 March 2019 ("Sunset Date") then subject to clauses 44.2 and 44.3 the Purchaser may (subject to having complied in all respects with its obligations under this agreement as at the Sunset Date) at any time before such search copy is available, cancel this agreement by notice in

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writing to the Vendor. In the event of cancellation any deposit paid shall be refunded to the Purchaser and neither party shall have any claim or right against the other under this agreement.

- 44.2 The Sunset Date shall be extended by any period of delay caused by a Force Majeure Event.
- 44.3 Without limiting clause 44.2, if on the Sunset Date the Vendor can demonstrate that an application for a search copy for each lot comprising the Property has been made to LINZ, then the Sunset Date shall be extended by a period of 30 working days.

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45. APPROVAL BY VENDOR'S BOARD

- 45.1 This agreement is conditional upon the board of directors of the Vendor being satisfied, acting reasonably, that the Purchaser's proposed infrastructure for its intended development of the property will not have a material adverse effect on the services provided to other properties within the Vendor's development, whether already sold or yet to be sold or within land still to be developed.
- 45.2 For the purpose of the Vendor's assessment of the above, the Purchaser will provide the Vendor with all relevant information reasonably obtained or produced by the Purchaser during its due diligence investigations. All such information shall be treated as confidential information.
- 45.3 The date for satisfaction of the condition contained in clause 45.1 shall be the date falling ten working days after the date that the condition in clause 20.1 is satisfied or waived by the Purchaser.
- 45.4 The Purchaser acknowledges that the condition contained in clause 45.1 is inserted for the sole benefit of the Vendor and may at any time prior to this agreement being avoided be waived by the Vendor giving written notice of waiver to the Vendor. If this agreement is terminated due to the non-satisfaction by the Vendor of the condition in clause 45.1, the Vendor will provide the Purchaser with its reasons for non-satisfaction along with the notice of cancellation.

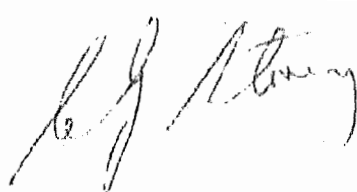
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45. APPROVAL BY VENDOR'S BOARD

- 45.1 This agreement is conditional upon the board of directors of the Vendor being satisfied, acting reasonably, that the Purchaser's proposed infrastructure for its intended development of the property will not have a material adverse effect on the services provided to other properties within the Vendor's development, whether already sold or yet to be sold or within land still to be developed.
- 45.2 For the purpose of the Vendor's assessment of the above, the Purchaser will provide the Vendor with all relevant information reasonably obtained or produced by the Purchaser during its due diligence investigations. All such information shall be treated as confidential information
- 45.3 The date for satisfaction of the condition contained in clause 45.1 shall be the date falling ten working days after the date that the condition in clause 20.1 is satisfied or waived by the Purchaser.
- 45.4 The Purchaser acknowledges that the condition contained in clause 45.1 is inserted for the sole benefit of the Vendor and may at any time prior to this agreement being avoided be waived by the Vendor giving written notice of waiver to the Vendor. If this agreement is terminated due to the non-satisfaction by the Vendor of the condition in clause 45.1, the Vendor will provide the Purchaser with its reasons for non-satisfaction along with the notice of cancellation.

 20/2/18

1.  20/2/18

 STEPHEN CONNOLLY
21/2/18

**SCHEDULE 2
(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): 87-877-582	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No

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

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

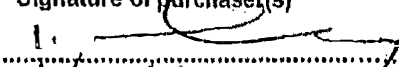

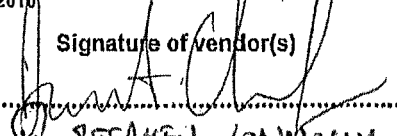
WARNING (This warning does not form part of this agreement)

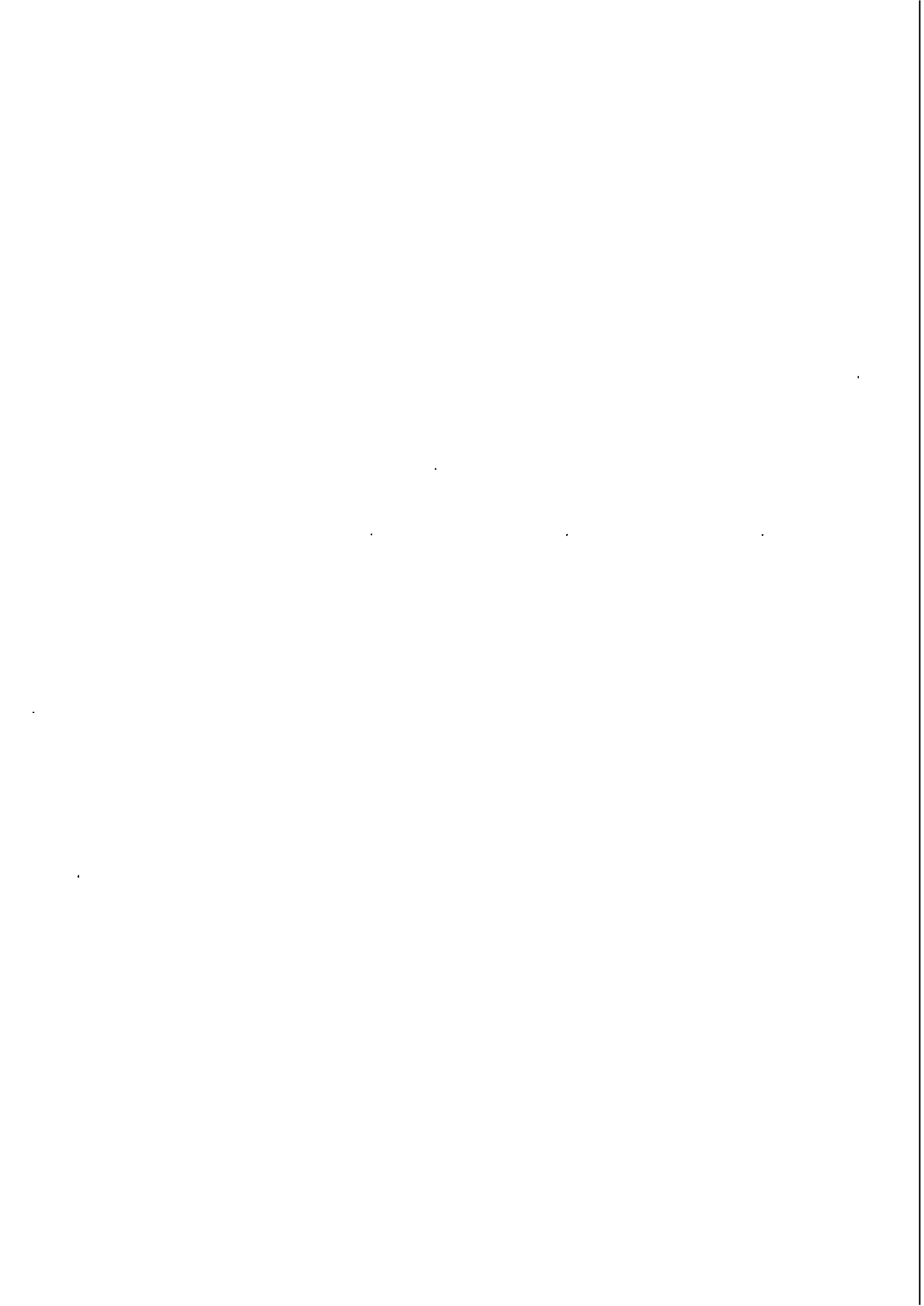
This is a binding contract. Read the information set out on the back page before signing.

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

<p>Signature of purchaser(s)</p> <p>1.  Director</p> <p> Director</p>	<p>Signature of vendor(s)</p> <p></p> <p>STEPHEN LOUNOLLY</p> <p>11</p> <p>122744-25 - Lots 56, 93, 94, 95, 96 and 97</p> <p>CHIEF FINANCIAL OFFICER</p>
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SCHEDULE 3

Scheme Plan

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SCHEDULE 4
Design Encumbrance

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NJW-172900-25-1-V1

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Encumbrance instrument

(Section 101 Land Transfer Act 1952)

Affected instrument identifier
and type (if applicable)

All/part

Area/Description of part or stratum

[]	All	
-----	-----	--

Encumbrancer

[TE RAPA GATEWAY LIMITED / HAMILTON PORTER JV COMPANY LIMITED]

Encumbrancee

TE RAPA GATEWAY LIMITED AND HAMILTON PORTER JV COMPANY LIMITED

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Fee simple

Encumbrance Memorandum Number

-

Nature of security

State whether sum of money, annuity or rentcharge and amount

Rent charge

Encumbrance

Delete words in [], as appropriate

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

Encumbrance Instrument *continued*

Terms

<p>1 Length of term:</p> <p>2 Payment date(s)</p> <p>3 Rate(s) of interest</p> <p>4 Event(s) in which the sum, annuity or rentcharge becomes payable</p> <p>5 Event(s) in which the sum, annuity or rentcharge ceases to be payable</p> <p>See attached Annexure Schedule 2</p>
--

Covenants and conditions

Continue in Annexure Schedule(s), if required

<p>See attached Annexure Schedule 2</p>
--

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

<p>See attached Annexure Schedule 2</p>
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ANNEXURE SCHEDULE 2

BACKGROUND

- A. The Encumbrancer is registered as proprietor of the land more particularly described in the First Schedule.
- B. The Encumbrancee is the registered proprietor of the land more particularly described in the Second Schedule.
- C. The Encumbrancer has agreed:
 - (a) To grant and make the rent charge with the Encumbrancee as set out in this Encumbrance subject to the conditions set out below; and
 - (b) To enter into the covenants in favour of the Encumbrancee as set out in the Third Schedule.

ENCUMBRANCE

- 1. In this Encumbrance and its Schedules, unless the context otherwise requires:

- (a) the following terms shall have the following meanings:

"Design Guidelines" means the then current design guidelines published and notified to the Encumbrancer and being as at the date of this Instrument those design guidelines dated August 2016, a copy of which has been provided to the Encumbrancer

"Design Review Panel" means the panel established for the purposes of approving plans and specifications pursuant to the covenant contained in paragraph 4 of the Third Schedule, such panel to comprise at least one representative of Encumbrancee and an independent registered architect or other urban design/landscape professional nominated by Encumbrancee from time to time

"Encumbered Land" means the land of the Encumbrancer described in the First Schedule;

"Encumbrancee" includes the Encumbrancee's successors, assigns, lessees, licensees, occupiers, contractors, employees or agents;

"Encumbrancee's Land" means the land of the Encumbrancee described in the Second Schedule;

"Encumbrancer" includes its successors, assigns, lessees, licensees, occupiers, employees or agents;

"RMA" means the Resource Management Act 1991;

"Relevant Authority" means any Government, local, statutory or non-statutory authority or body having jurisdiction over the Subdivision.

"Subdivision" means the development comprising the Encumbrancee's Land and any lots previously created from and derived out of the titles to the Encumbrancee's Land

- (b) "Schedule" refers to the schedules attached to this Encumbrance.

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- (c) References to clauses are references to clauses of this Encumbrance.
- (d) Words importing the singular number or plural number shall include the plural number singular number respectively and words importing the masculine gender shall include the feminine or neuter gender.

2. Encumbrance

2.1 The Encumbrancer encumbers the Encumbered Land for the benefit of the Encumbrancee in accordance with clause 3 and covenants with the Encumbrancee as set out in the Third Schedule.

2.2 The Encumbrancee shall have in its absolute discretion the right to:

- (a) In respect of any lots within the then balance of the Encumbrancee's Land and subsequent stages of the Subdivision impose additional restrictions or stipulations in any encumbrance relating to such lots, the then balance of the Encumbrancee's Land and/or any subsequent stages of Subdivision or to omit or vary in its absolute discretion any encumbrance in respect of such land; and
- (b) amend the Design Guidelines by giving written notice of such amendments to the Encumbrancer

PROVIDED THAT any such amendments shall be prepared in consultation with and in accordance with the requirements of the Relevant Authority, are for the overall benefit of the design and appearance of the buildings and structures on the Subdivision or parts of it and do not have a materially adverse effect on the Encumbrancer's use or enjoyment of the Encumbered Land or the value of the Encumbered Land;

PROVIDED FURTHER THAT such amendments shall not be enforceable in respect of any building, structure, alteration or addition to the Servient Land in respect of which approval has previously been given by the Design Review Panel pursuant to clause 4 of the Third Schedule;

3. Terms and Conditions of Encumbrance

3.1 The term of the encumbrance is a term commencing on the date this instrument is registered on the Encumbered Land and expiring on 31 December 2045 subject only to earlier determination in accordance with clause 3.6.

3.2 The rent charge is ONE DOLLAR (\$1.00) per annum to be paid to the Encumbrancee by the first day of January in each year if demanded by that date. The first payment if so demanded is due on or before the 1st day of January next succeeding the date of this memorandum.

3.3 The covenants in the Third Schedule shall be enforceable against the owners and occupiers for the time being of the Encumbered Land and all successors in title to any lot comprising the Encumbered Land.

3.4 Sections 203, 204 and 205 of the Property Law Act 2007 apply to this Memorandum of Encumbrance but otherwise (and without prejudice to the Encumbrancee's right of action at common law as a rent chargee or encumbrancee):

- (a) The Encumbrancee shall not be entitled to any of the powers and remedies given to encumbrances by the Land Transfer Act 1952 and the Property Law Act 2007; and

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(b) No covenants on the part of the Encumbrancer and its successors in title are implied in this Encumbrance other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.

3.6 The Encumbrancee shall be entitled at any time on the giving of one month's notice to the Encumbrancer, or any one or more of them, to surrender this Encumbrance and the parties will take all steps as may be necessary to register such surrender in Land Information New Zealand.

3.7 If the Encumbrancer or any person having or claiming an interest in the Encumbered Land, makes an application to the Court to have this Encumbrance discharged pursuant to sections 97, 115 or 317 of the Property Law Act 2007 or pursuant to section 317 of the Property Law Act 2007 to have this encumbrance revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Encumbered Land (or any other provisions replacing those sections) or take steps toward making such application, or takes any similar action, then the rent charge payable pursuant to clause 3.2 will increase to \$150,000.00 per annum payable in advance with effect from the time the Encumbrancer or such person first takes action

4. Costs

4.1 All the costs of the Design Review Panel (including without limitation any disbursements or professional charges of a member of the Design Review Panel) relating to the Encumbered Land shall be met by the then registered proprietor of the Encumbered Land and shall be payable upon demand.

5. Remedy on Breach

5.1 If there should be any breach of any of the covenants contained in this Instrument and without prejudice to any other liability which the Encumbrancer may have to the Encumbrancee and any person or persons having the benefit of such covenants the Encumbrancer will upon written demand being made by the Encumbrancee;

(a) pay to the person making such demand as liquidated damages the sum of \$100 (One Hundred Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made; and

(b) do or cause to be done anything necessary to remedy any such breach.

If the Encumbrancer does not comply with paragraph (b) of this clause within a reasonable period of time after demand has been made then the Encumbrancer hereby irrevocably authorises the Encumbrancee together with their employees and agents to enter and remain upon the Lot to do anything necessary to remedy any breach at the Encumbrancer's cost and without being liable for any damage or deterioration occasioned to the Encumbered Land in exercising these powers.

PROVIDED HOWEVER that none neither Encumbrancee nor the Design Review Panel shall be required or obliged to enforce all or any of the covenants stipulations and restrictions contained in this Instrument.

6. Disputes

6.1 Any disputes regarding the decision of the Design Review Panel shall be referred to an independent architect nominated by the President of the New Zealand Institute of Architects (or its nominee) whose decision shall be final. The Encumbrancer shall meet the costs of such determination.

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[Signature]

**FIRST SCHEDULE
(Encumbered Land)**

Certificate of Title	Lot and Deposited Plan Number
[]	Lots [] DP []

**SECOND SCHEDULE
(The Encumbrancee's Land)**

Certificate of Title	Legal Description
[]	Lots [] DP []

**THIRD SCHEDULE
(Covenants)**

The Encumbrancer shall:

1. Not use the Encumbered Land or permit the same to be used for any of the following purposes:
 - (a) any residential use; or
 - (b) any other use not permitted by the district plan of the Relevant Authority;
2. At all times observe and comply with all then current statutes, regulations, by-laws and lawful requirements of any Relevant Authority in respect of the use and development of the Encumbered Land. In the event of any inconsistency between the requirements of this clause 2 and the Design Guidelines, the provisions of this clause 2 shall prevail.
3. Not erect on the Encumbered Land any structure (including, without limitation fences, walls, driveways, signs and other like structures) other than a structure which is permitted by the Design Guidelines ("Permitted Structure") nor, in respect of such Permitted Structures, use or incorporate any second hand building materials in the construction thereof.
4. Not relocate any new or second hand buildings onto the Encumbered Land.
5. Not erect any Permitted Structure or make any alteration or addition thereto without the Design Review Panel having first approved in writing the plans (including site plans) and specifications for the same which approval shall not be withheld in the case of plans and specifications which provide for a Permitted Structure:

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- (a) which is to be reasonably sited having regard to the Design Guidelines;
 - (b) which is in accordance with the requirements set out in the Design Guidelines;
 - (c) in respect of which the Encumbrancee or the Encumbrancee's consultant has confirmed in writing that it complies with and conforms in all respects to the Relevant Authority's land use consent as amended or varied from time to time for the development of the Encumbered Land
6. Ensure that the construction of any Permitted Structure is completed within 24 months of commencement of site preparation for that Permitted Structure.
7. Not park or allow to be parked any vehicle on the Encumbered Land in breach of the Design Guidelines nor park any on the Encumbered Land any unregistered vehicle or any vehicle which is damaged or which is in breach of the Design Guidelines.
8. Landscape the Encumbrancer's Land in accordance with the requirements set out in the Design Guidelines provided that no landscaping shall be commenced unless the Design Review Panel has first approved in writing the relevant landscaping plan, which approval shall not be unreasonably withheld in the case of a landscaping plan and specifications which are in compliance with the Design Guidelines.
9. Maintain the Encumbered Land (including all structures vegetation and landscaping thereon) in accordance with the requirements set out in the Design Guidelines.
10. Not dispose of rubbish by open fires or incinerators on the Encumbered Land.
11. Not undertake any activities on the Encumbered Land which results in the creation of dust, fumes or other emissions so as to cause nuisance or annoyance to the owners of other lots in the Subdivision.
12. Not keep on the Encumbered Land any domestic animals, stock or animal shelters.
13. Not permit any rubbish to accumulate or to be placed upon the Encumbered Land or permit excessive growth of grass or noxious plants such that the Encumbered Land becomes unsightly, or of concern, nuisance or annoyance to the owners of the other lots in the Subdivision.
14. Maintain the Encumbered Land, Permitted Structures and other the buildings, services and improvements erected thereon to a standard suitable and consistent with a modern industrial premises and ensure that any graffiti on the buildings is removed as soon as reasonably practicable.
15. Not establish, or cause or permit to be established, a sanitary landfill, clean fill tipping site, recycling facility, waste management processing facility, scrap metal yard or automotive dismantling yard on the Encumbered Land.
16. Not install or erect any fixed transmitting telecommunication including (without limitation) any mobile phone and other wireless technology equipment on the Encumbered Land but excluding any WIFI devices.
17. Not to erect any storage units, containers or other temporary structures on the Encumbered Land except to the extent required for the purposes of construction of any Permitted Structure.
18. In the event that it enters into any arrangement with a lessee, licensee or other occupier of the Encumbered Land, ensure that such lessee, licensee or other occupier enters into and agrees with the Encumbrancee in writing to be bound by the

[Handwritten signatures and initials]

terms of the covenants set out in this Instrument and, if required by the Encumbrancee, the Encumbrancer shall enforce these covenants against the holder of any such right of occupation on demand at the cost of the Encumbrancer.

19. Not do any act or thing which is a breach of any other stipulation, restriction or covenant that the Encumbrancee may require or impose in respect of the Subdivision or part thereof for the purposes of the covenants contained in this Instrument provided that such other stipulation restriction or covenant shall not prejudice any prior approval already granted by Encumbrancee.
20. Not call upon the Encumbrancee to pay for or contribute towards the cost or erection or maintenance of any boundary fence between the Encumbered Land and any adjoining land owned by the Encumbrancee but this covenant shall not enure for the benefit of any subsequent registered proprietor of such adjoining land.
21. The Encumbrancee shall not construct or erect any milk processing facility on the Encumbered Land without obtaining the written consent of the Encumbrancee to the plans and specifications in relation to (the location of that part of the facility comprising the processing plant (including the dryer facility) which must be as close as reasonably practicable (subject to the requirements of the Relevant Authority) to the Waikato Expressway. Approval shall not be unreasonably withheld or delayed by the Encumbrancee where the requirements of this clause 21 are complied with to the reasonable satisfaction of the Encumbrancee. The Encumbrancer shall not erect any such facility on the Encumbered Land otherwise than in accordance with the plans and specifications approved by the Encumbrancee pursuant to this clause 21.

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TE RAPA GATEWAY INDUSTRIAL PARK

DESIGN GUIDELINES - AUGUST 2016

The vision for the Te Rapa Gateway Industrial Park is to create a modern and well-designed premier business address – a quality place for companies to invest and grow.

The quality of the overall development will be administered by the Te Rapa Gateway Design Review Panel. The following design guidelines apply to each lot within the subdivision:

Site Layout

1. Development controls relating to yard setbacks, building height and site coverage shall comply with the then current District Plan and Proposed District Plan of the local authority having jurisdiction over the lot.
2. The building setback from the boundary in the front yard of any lot shall be a minimum of 5 metres.
3. All development is to provide a minimum of 2 metres of landscaping along the street frontage (excluding driveways).
4. Site planning for developments is to be laid out in accordance with the following general guidelines:
 - (a) Offices and car parking are to face the street frontage;
 - (b) Loading yards are to be located away from the prevailing winds;
 - (c) Truck turning is to be accommodated within the yard area unless the lot is a corner site;
 - (d) Rubbish areas and recycling areas are to be screened from the street frontage;

Fencing

5. All loading yards are to be securely fenced. Where loading yards face the street frontage, fencing is to be 1.8 metre high vertical palisade metal fencing, powder coated black with matching gates. Where loading yards do not directly adjoin the street, security fencing may be 2 metre high black galvanised mesh with powder coated galvanised supporting steel framework.

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6. Barbed or razor wire is not permitted.

Building Shape and Form

7. There are no restrictions on the shape and form of buildings.
8. Industrial buildings usually present large "blank" facades to the streetscape. Typically industrial building compositions also presents small office boxes sited against a much larger metal clad forms, both sited in a "sea" of asphalt. This type of arrangement when repeated along a street presents a bland characterless image which promotes a lack of neighbourhood pride, promotes vandalism and in the long term, reduces rental returns and property values.

The following design guidelines (Guidelines 9 - 11) are the recommended methods of enhancing the design of individual developments and thus the streetscape and image of the precinct.

9. Building designs should mitigate the "big box/ small box" syndrome i.e. siting a small office against the front of a much larger industrial building by the use of the following techniques:
 - (a) stretching the office out as far as possible along the front of the industrial form;
 - (b) placing the office on the inside of the industrial form and introducing glazing into the front face of the industrial form;
 - (c) using large overhangs on single storey offices stretching across the frontage of the larger form;
10. Building designs should engage with the street by:
 - (a) maximising the use of glass in office frontages;
 - (b) using glazing or clear plastic sheet to a section of the front of the industrial form;
 - (c) placing carports and staff courtyards to the street;
11. Building designs shall take "flatness" out of the front facades of offices and industrial forms by:
 - (a) introducing small overhangs to the roof of the front of industrial forms to create shadow;
 - (b) layering materials on the front of large industrial forms;

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- (c) placing canopies at all entrance ways;
- (d) the use of sun screens;
- (e) indenting patterns into precast concrete;

Building Materials

12. Industrial forms should use materials from the following palette:

- (a) powder coated steel wall cladding and roofing;
- (b) precast concrete panels part or full height;
- (c) translucent plastic sheet (for wall or roof lighting);

13. Office materials should be selected from the following:

- (a) composite aluminium panel;
- (b) painted/indented/honed precast concrete panels;
- (c) painted fibre cement sheet (minimum thickness 8mm);
- (d) powder coated metal cladding (where it matches the material on the industrial form);
- (e) powder coated aluminium joinery;
- (f) powder coated aluminium louvres;

14. The use of plain galvanised long run metal sheet (zincalume) is not permitted.

Colours

15. Designs should be based on neutral colours in general for the bulk of the building.

Exterior Lighting

16. CPTED principles are to be applied in lighting design.

17. Loading yards, car parking and building entry areas should be adequately lit.

18. Light standards (where used) should be black powder coated to match fenolng.

Signage

19. All developments should have identification signage on the street at the visitor entry point; such signage should be in the form of a "blade" sign. The sign may be illuminated or non-illuminated. The maximum height for any sign is to be 6 metres and the maximum area shall be 8m² per side.
20. Identification signage is permitted on building facades subject to the following restrictions:
 - (a) signage is not to protrude outside the building envelope;
 - (b) signage on the front facade of any building is limited to 20m² - illuminated or non-illuminated;
 - (c) signage on other facades of any building is limited to 10m² - non-illuminated;

Landscaping, Planting and Yard Surfaces

21. All landscaping on any lot shall comply fully with the requirements relevant to landscaping set out in the then current District Plan, Proposed District Plan, any applicable Comprehensive Development Plan and any other requirements of the local authority having jurisdiction over the lot.
22. No plants, shrubs or other vegetation shall be planted or placed on any lot save for those set out in the attached schedule of approved plants.
23. No yard or open areas shall be surfaced with loose metal and must be adequately surfaced with asphalt or concrete surfacing.

Site Services

24. All services to the site are to be underground.

Green Sustainable Design

25. Where practicable, the principles of NZGBC "Industrial green star" are to be utilised in construction of any structure.

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Schedule of Approved Plants

Species	Common Name	Plant Grade
Native Trees		
<i>Knighia excelsa</i>	Rewarewa	PB95
<i>Podocarpus totara</i>	Totara	PB95
<i>Alectryon excelsus</i>	Titoki	PB95
<i>Sophora microphylla</i>	Kowhai	PB95
Exotic Trees		
<i>Carpinus betulus</i> 'Fastiglata'	Upright Hornbeam	PB95
<i>Quercus palustris</i>	Pin Oak	PB95
<i>Platanus x acerifolia</i>	London Plane	PB95
Shrubs		
<i>Cornelia</i> 'Geenty's Green'		PB5
<i>Coprosma kirkii</i>		PB5
<i>Griseelinia littoralis</i> 'Broadway Mint'		PB5
<i>Chionochloa flavoana</i>		PB5
Groundcovers		
<i>Lomandra tanika</i>		PB3
<i>Carex virgata</i>		PB3
<i>Phormium</i> 'Green Dwarf'		PB3
<i>Phormium cookianum</i>		PB3
<i>Phormium</i> 'Jester'		PB3
<i>Liberia peregrinans</i>		PB3

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 [Signature] B.V.
 [Signature]

SCHEDULE 5
No Objection Encumbrance

NJW-172000-26-1-V1

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Encumbrance Instrument

(Section 101 Land Transfer Act 1952)

Affected Instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
[]	All	

Encumbrancer

[TE RAPA GATEWAY LIMITED / HAMILTON PORTER JV COMPANY LIMITED]

Encumbrancee

TE RAPA GATEWAY LIMITED AND HAMILTON PORTER JV COMPANY LIMITED

Estate or Interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Fee simple

Encumbrance Memorandum Number

-

Nature of security

State whether sum of money, annuity or rentcharge and amount

Rent charge

Encumbrance

Delete words in [], as appropriate

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

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Encumbrance Instrument *continued*

Terms

- 1 Length of term
- 2 Payment date(s)
- 3 Rate(s) of interest
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable

See attached Annexure Schedule 2

Covenants and conditions

Continue in Annexure Schedule(s), if required

See attached Annexure Schedule 2

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

See attached Annexure Schedule 2

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ANNEXURE SCHEDULE 2

BACKGROUND

- A. The Encumbrancer is registered as proprietor of the land more particularly described in the First Schedule.
- B. The Encumbrancee is the registered proprietor of the land more particularly described in the Second Schedule.
- C. The Encumbrancer has agreed:
 - (a) To grant and make the rent charge with the Encumbrancee as set out in this Encumbrance subject to the conditions set out below; and
 - (b) To enter into the covenants in favour of the Encumbrancee as set out in the Third Schedule.

ENCUMBRANCE

- 1. In this Encumbrance and its Schedules, unless the context otherwise requires:
 - (a) the following terms shall have the following meanings:
 - "Encumbered Land" means the land of the Encumbrancer described in the First Schedule;
 - "Encumbrancee" includes the Encumbrancee's successors, assigns, lessees, licensees, occupiers, contractors, employees or agents;
 - "Encumbrancee's Land" means the land of the Encumbrancee described in the Second Schedule;
 - "Encumbrancer" includes its successors, assigns, lessees, licensees, occupiers, employees or agents;
 - "RMA" means the Resource Management Act 1991;
 - "Subdivision and/or Development Work" shall include, but not be limited to, the subdivision and development of all or part of the Encumbrancee's Land in such manner and at such times as the Encumbrancee in his sole discretion may decide.
 - (b) "Schedule" refers to the schedules attached to this Encumbrance.
 - (c) References to clauses are references to clauses of this Encumbrance.
 - (d) Words importing the singular number or plural number shall include the plural number singular number respectively and words importing the masculine gender shall include the feminine or neuter gender.
- 2. Encumbrance
 - 2.1 The Encumbrancer encumbers the Encumbered Land for the benefit of the Encumbrancee in accordance with clause 3 and covenants with the Encumbrancee as set out in the Third Schedule.

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3. **Terms and Conditions of Encumbrance**

- 3.1 The term of the encumbrance is 999 years commencing from the date of this Encumbrance subject only to earlier determination in accordance with clause 3.6.
- 3.2 The rent charge is ONE DOLLAR (\$1.00) per annum to be paid to the Encumbrancee by the first day of January in each year if demanded by that date. The first payment if so demanded is due on or before the 1st day of January next succeeding the date of this memorandum.
- 3.3 The covenants in the Third Schedule shall be enforceable against the owners and occupiers for the time being of any lot comprising the Encumbered Land and all successors in title to any lot comprising the Encumbered Land.
- 3.4 Sections 203, 204 and 205 of the Property Law Act 2007 apply to this Memorandum of Encumbrance but otherwise (and without prejudice to the Encumbrancee's right of action at common law as a rent chargee or encumbrancee):
- (a) The Encumbrancee shall not be entitled to any of the powers and remedies given to encumbrances by the Land Transfer Act 1952 and the Property Law Act 2007; and
 - (b) No covenants on the part of the Encumbrancer and its successors in title are implied in this Encumbrance other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.
- 3.5 The Encumbrancee shall be entitled at any time on the giving of one month's notice to the Encumbrancer, or any one or more of them, to surrender this Encumbrance and the parties will take all steps as may be necessary to register such surrender in Land Information New Zealand.
- 3.6 If the Encumbrancer or any person having or claiming an interest in the Encumbered Land, makes an application to the Court to have this Encumbrance discharged pursuant to sections 97, 115 or 317 of the Property Law Act 2007 or pursuant to section 317 of the Property Law Act 2007 to have this encumbrance revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Encumbered Land (or any other provisions replacing those sections) or take steps toward making such application, or takes any similar action, then the rent charge payable pursuant to clause 3.2 will increase to \$150,000.00 per annum payable in advance with effect from the time the Encumbrancer or such person first takes action.

**FIRST SCHEDULE
(Encumbered Land)**

Certificate of Title	Lot and Deposited Plan Number
[]	Lots [] DP []

**SECOND SCHEDULE
(The Encumbrancee's Land)**

Certificate of Title	Legal Description
[]	Lots [] DP []

**THIRD SCHEDULE
(Covenants)**

1. The Encumbrancer acknowledges that:
 - (a) The Encumbrancee may from time to time undertake Subdivision and/or Development Work on the Encumbrancee's Land which may require resource consents (as that term is defined in section 87 of the RMA) and that applications for such consents may require approvals of adjoining landowners under the RMA.
 - (b) The Encumbrancer is the owner of land adjacent to the Encumbrancee's Land. The Encumbrancee is concerned to ensure that the Encumbrancer and its successors in title to the Encumbered Land, and any part of, or interest in, that land be restricted, in accordance with the terms of this Encumbrance:
 - (i) in their ability to object to or hinder any lawfully authorised Subdivision and/or Development Work carried on, or as may be carried on, on the Encumbrancee's Land from time to time; or
 - (ii) in their rights as adjoining landowners or potentially affected parties to withhold consent to any Subdivision and/or Development Work that may require written approvals under the RMA.

2. The Encumbrancer further acknowledges:
 - (a) that the undertaking of Subdivision and/or Development Work necessarily involves or may involve operational or construction noise, traffic movements and other environmental effects which the Encumbrancer may find disturbing and inconvenient from time to time; and
 - (b) that the Encumbrancee is entitled to carry out Subdivision and/or Development Work or upon application from time to time, may become entitled to carry out other Subdivision and/or Development Work.

3. Throughout the term, the Encumbrancer covenants and agrees that it will not object to, prevent, prohibit or in any way interfere with or restrain any Subdivision and/or Development Work lawfully carried out by the Encumbrancee on the Encumbrancee's Land and will not lodge or permit or procure any third party to lodge with the Hamilton City Council or any other territorial authority or agency from whom the Encumbrancee may require approvals, permits or consents to undertake Subdivision and/or Development Work (including, without limitation, any amendment to or new

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application for any comprehensive development plan relevant to the Encumbrancee's Land) or renewals of such approvals, permits or consents to continue Subdivision and/or Development Work, any submission objecting to the conducting of existing or future Subdivision and/or Development Work on the Encumbrancee's Land.

4. The Encumbrancer will not:

- (a) make or lodge;
- (b) be party to, procure, assist or support;
- (c) finance or contribute to the cost of;

any application, submission or proceeding (under RMA or otherwise) designed or intended to or having the effect of limiting, preventing or restricting:

- (d) any rezoning or amendment to the provisions of the District Plan, proposed plan or comprehensive development plan relevant to the Encumbrancee's Land; or
- (e) any activity being undertaken or proposed to be undertaken on the Encumbrancee's Land.

5. The Encumbrancee will not:

- (a) make or lodge;
- (b) be party to, procure, assist or support;
- (c) finance or contribute to the cost of;

any application, submission or proceeding under the RMA which has the effect of subdividing the Encumbered Land without the consent of the Encumbrancee which consent may be withheld at the Encumbrancee's absolute discretion.

6. With respect to Subdivision and/or Development Work not currently undertaken by the Encumbrancee on the Encumbrancee's Land but which may in the future be proposed to be carried out and implemented on such land, the Encumbrancer hereby covenants and agrees that pursuant to the RMA or any legislation replacing the RMA, it approves of and consents to those activities occurring on the Encumbrancee's Land and will, if called upon to do so by the Encumbrancee, execute all documents or do all things as may be necessary to evidence that approval and consent in writing to any consent authority when called upon to do so by the Encumbrancee.

7. The Encumbrancer hereby covenants that it shall throughout the term save harmless and keep indemnified the Encumbrancee from all proceedings, costs, claims and demands in respect of breaches by the Encumbrancer of the covenants and restrictions herein contained and implied on behalf of the Encumbrancer which occurred while the Encumbrancer was the registered proprietor of the Encumbered Land or any part of or interest in the Encumbered Land.

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.
 - 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 weathertightness and soundness of construction of any dwellings or other buildings on the land.
- 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 1 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.

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE: *21st Feb 2018*

VENDOR:
TE RAPA GATEWAY LIMITED

Contact Details:

VENDOR'S LAWYERS:
Firm: Burton Partners
Individual Acting: Nick Wilson
Contact Details:
PO Box 8889, Symonds Street, Auckland 1150
Ph: 09 300 3777
Email: nick.wilson@burtonpartners.nz

PURCHASER:
Dairy Goat Co-operative (N.Z.) Limited

Contact Details:

PURCHASER'S LAWYERS:
Firm:
Individual Acting:
Contact Details:

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.

LICENSED REAL ESTATE AGENT:
~~Colliers International New Zealand~~
Agent's Name: *Karl Van Sijbergen*
Manager: *Mike Neale*
Salesperson:
Contact Details:

[Handwritten signatures and initials]