

## FURTHER TERMS OF SALE

### 18.0 Further Definitions

18.1 Unless the context otherwise requires, the following further definitions shall apply to this Agreement:

- (1) “**Conditions**” means the conditions in clause 19.0;
- (2) “**Consents**” means any statutory permits, consents (including resource consents) and approvals for the Subdivision;
- (3) “**Consent Notice**” means any consent notice issued by the Relevant Authorities pursuant to section 221 of the Resource Management Act 1991;
- (4) “**Covenants**” means the draft covenants contained in Schedule 4, which may be varied pursuant to clause 24.2;
- (5) “**Land**” means the land described as Lot 609 DP 476164 and to be contained in certificate of title 657130 (title yet to issue), owned by the Vendor;
- (6) “**LINZ**” means Land Information New Zealand;
- (7) “**Property**” means the property described on the front page of this Agreement;
- (8) “**Relevant Authorities**” means any body or corporation including any Government, local, statutory or non-statutory authority or body having jurisdiction over the Subdivision (including, but not limited to, any territorial authority and LINZ);
- (9) “**Scheme Plan**” means the scheme plan (or if applicable, the draft LT Plan) contained in Schedule 3, which may be varied pursuant to clause 22.2;
- (10) “**Settlement Date**” means the date specified in clause 21.0;
- (11) “**Subdivision**” means the subdivision of the Land in accordance with the Consents and the Scheme Plan; and
- (12) “**Subdivision Plan**” means the land transfer plan or plans of subdivision to be prepared by the Vendor’s surveyor for examination and approval by LINZ and to be deposited at LINZ for the Subdivision.

### 19.0 Conditions

19.1 This Agreement is conditional upon:

- (1) The Purchaser being satisfied in all respects with its due diligence investigation of the Property, in which the Purchaser may take into consideration all matters which in the Purchaser’s opinion are relevant. The date for the satisfaction or otherwise of this condition is **five (5) working days from the date of this Agreement**. If the Purchaser does not give notice to the Vendor within five (5) working days of the date of this Agreement that this condition is not satisfied, then this condition shall be deemed satisfied;
- (2) The Vendor securing the Consents on terms acceptable to the Vendor in the Vendor’s sole discretion, on or before **30 November 2015**. This condition is inserted for the sole benefit of the Vendor;

- (3) The Vendor completing the necessary subdivision works in accordance with the Consents and obtaining the issue of a certificate pursuant to section 224(c) of the Resource Management Act 1991 for the Subdivision from the Relevant Authorities on or before **29 April 2016**. If at any time it becomes apparent to the Vendor that this condition will not be satisfied by the time stated, the Vendor may notify the Purchaser accordingly and immediately cancel this Agreement, and the Purchaser shall have no claim against the Vendor; and
- (4) The Vendor providing to the Purchaser on or before **30 June 2016** a copy of the title for the Property.
- 19.2** If any of the Conditions have not been satisfied by the relevant satisfaction date (or any extension of those dates), either party may, at any time after the relevant satisfaction date (or any extended date), but before the relevant condition is satisfied, cancel this Agreement by giving written notice to the other party.
- 19.3** On cancellation of this Agreement, the Vendor will refund in full all money that the Purchaser has paid to the Vendor and neither party will have any right or claim against the other.
- 20.0 Deposit**
- 20.1** No deposit is payable by the Purchaser.
- 21.0 Settlement Date**
- 21.1** The settlement date shall be the date specified on the front page of the Agreement.
- 22.0 Subdivision**
- 22.1** The Vendor shall at its cost use all reasonable endeavours to:
- (1) Subdivide the Land generally in accordance with the Scheme Plan;
- (2) Complete the Subdivision in accordance with the requirements of the Relevant Authorities; and
- (3) Enable the issue of individual title for the Property from LINZ.
- 22.2** The Purchaser acknowledges that all measurements and areas indicated on the Scheme Plan are approximate only and may be varied:
- (1) On completion of the Subdivision Plan by the Vendor's surveyor;
- (2) On examination of the Subdivision Plan by LINZ;
- (3) To incorporate such amendments required by LINZ and/or the Relevant Authorities; and
- (4) To incorporate such amendments which in the opinion of the Vendor are necessary or desirable.
- 22.3** The Purchaser shall not be entitled to requisition, cancel or vary the terms of this Agreement or demand compensation from the Vendor due to the measurements, dimensions, boundaries or areas indicated on the Scheme Plan being varied provided

however that the Vendor will not be entitled in any respect to reduce the area of any Lot by more than 5% without the written consent of the Purchaser.

**22.4** The Purchaser acknowledges that the Vendor retains the following rights in respect of the Property (provided the Vendor acts reasonably in all respects):

- (1) To store soil in the course of development works on the Property;
- (2) To cut away or remove as reasonably required, the soil and substrata of the Property and/or any other part of the Land and fill as reasonably required adjacent to roads, accessways or rights of way; and
- (3) To excavate contour, lower, fill, landscape or plant the Property and Land.

**22.5** The Purchaser agrees not to make any objection or do anything by act or omission to directly or indirectly impede or delay any application by the Vendor for resource consent under the Resource Management Act 1991 or any other application for land use or subdivision of the Land.

**22.6** In addition to the warranties in the general terms of sale, the Vendor further warrants and undertakes that at the Settlement Date:

- (1) The Property will be left in a clean and tidy condition;
- (2) All construction debris will be removed from the Property;
- (3) All boundary pegs will be clearly flagged; and
- (4) The Subdivision will be completed in accordance with the terms and conditions of the Consents.

## **23.0 Covenants**

**23.1** To ensure the architectural quality of the buildings in the Subdivision and to protect the investment of all of the owners of lots in the Subdivision, it is intended that the Covenants will be registered against the title of the Property and lots (as specified in the Covenants) for the mutual benefit of the owners of the lots.

**23.2** The Purchaser acknowledges and agrees that parts of Lots 801 – 808, 812 and 814 – 818 (as shown on the Scheme Plan) within the building restriction area adjacent to the esplanade reserve (as shown on the Scheme Plan) may be subject to covenants requiring owners to maintain planting carried out by the Vendor in accordance to a planting plan prescribed by the Council.

**23.3** Notwithstanding clause 23.2, the Vendor reserves the right at any time to sell, transfer or otherwise dispose of the Property or any of the lots in the Subdivision free of any or all of the Covenants.

## **24.0 Title**

**24.1** The Property is sold subject to, and the Purchaser agrees to take title for the Property subject to (and the Vendor reserves the right to grant):

- (1) The existing interests that apply to the Land;
- (2) The Consent Notice(s);
- (3) The Covenant(s);

- (4) Any rights of way, drainage rights, licences, easements, building line restrictions or other encumbrances, consent notices, design requirements, rights or obligations which may be required in order to satisfy any requirements of any Relevant Authorities, or which in the opinion of the Vendor are necessary or desirable.
- 24.2** The Purchaser acknowledges that the Covenants contained in the Schedule(s) are draft documents and the Vendor is entitled to vary such documents (and the Purchaser agrees to take title subject to the interests described in those varied documents) in order to satisfy any requirements of the Relevant Authorities, or which in the opinion of the Vendor are necessary or desirable.
- 24.3** The Purchaser will take title to the Property subject to or with the benefit of any interests registered against it pursuant to clauses 24.1 and 24.2, and the Purchaser shall not raise any objections or requisitions in respect of such interests or in respect to the location of any services.
- 24.4** The Purchaser agrees to execute all documents and do all things required to enable the granting of the interests referred to in clauses 23 and 24 and for deposit of the Subdivision Plan.
- 24.5** Without limitation, the Purchaser specifically acknowledges and agrees that parts of Lots 801 – 810, 812, 814 – 818 and 820 – 828 on the Scheme Plan may be subject to a Consent Notice prohibiting building on those parts unless permitted by and constructed in accordance with a geotechnical report by a specified firm of engineers.
- 24.6** The Purchaser acknowledges that segregation strips of approximately 0.2m will prevent access from Lots 820 – 828 on the Scheme Plan onto Lynley Park Drive and other land vesting in Council as road adjoining those Lots (but this shall not apply to access lots that serve Lots 820 – 828).
- 25.0 No Caveat**
- 25.1** The Purchaser shall not lodge a caveat against the Vendor's title to the Land or the Property.
- 25.2** Without prejudice to any of the other rights and remedies of the Vendor, if the Purchaser lodges a caveat in breach of clause 25.1:
- (1) The Purchaser shall be liable for all costs incurred directly or indirectly by the Vendor as a result of such caveat including the costs associated with the removal or attempted removal of the caveat and the costs associated with the delay in completion of the Subdivision or the settlement of any lots; and
- (2) In addition to the obligations of the Purchaser described in clause 25.2(1), the Vendor may cancel this Agreement by giving written notice to the Purchaser in which case, all deposits and other amounts paid by the Purchaser will be forfeited to the Vendor.
- 26.0 Confidentiality**
- 26.1** The Purchaser shall maintain as confidential at all times, and shall not at any time directly or indirectly disclose or permit to be disclosed to any person the Purchase Price or other terms of this Agreement.

## **27.0 No Vendor Warranty**

**27.1** The Purchaser acknowledges that the Purchaser has inspected the Property. The Purchaser acknowledges that it has entered into this Agreement and is purchasing the Property solely in reliance on its own judgment and not upon any representation or warranty made by the Vendor or any agent of the Vendor.

**27.2** The Vendor gives no warranty as to the date upon which the Subdivision Plan will be deposited and a new title issued for the Property.

## **28.0 Lowest Price**

**28.1** The parties acknowledge that the Purchase Price does not include any capitalised interest and the parties agree for the purposes of the Credit Contracts and Consumer Finance Act 2003 and for the purposes of the accruals rules in the Income Tax Act 2007, and in particular Sections EW32(3) and (4) of that Act that:

- (1)** The Purchase Price is the lowest price they would have agreed for the Property if payment would have been required in full at the time the first right in the Property was transferred;
- (2)** The Purchase Price is the value of the Property; and
- (3)** That no part of the Purchase Price is or represents capitalised or compounded interest.

## **29.0 Nomination**

**29.1** If this Agreement describes the Purchaser as including the Purchaser's nominee then notwithstanding any such nomination the Purchaser shall remain bound by the terms and conditions of this Agreement and shall perform and observe or procure the performance and observation of all the terms and conditions to be performed on the part of the Purchaser as principal obligor.

**29.2** Should the Purchaser nominate someone else to complete the settlement the Purchaser must immediately notify the Vendor of such nomination and the GST status of the nominee. Failure by the Purchaser to immediately notify the Vendor of such nomination will entitle the Vendor to the option to cancel the Agreement and/or to receive liquidated damages of five hundred dollars (\$500.00) plus GST.

## **30.0 Unforeseen Circumstances**

**30.1** The Vendor shall not be liable for any act, omission or failure under this Agreement if that act, omission or failure arises from a cause beyond the reasonable control of the Vendor, including (without limitation) extreme weather conditions, civil disruption or industrial action, provided that:

- (1)** The Vendor shall, as soon as possible after becoming aware of such cause or the likelihood of such cause, give the Purchaser written notice accordingly;
- (2)** Notwithstanding the intervention of such cause, each party shall continue to use its best endeavours to perform its obligations as required under this Agreement (excluding any obligations which have already been duly performed as at the date of the relevant cause) despite that cause; and

- (3) In any such event, the Vendor shall not be deemed to have accepted any extra costs which may be incurred or sustained by the Purchaser through a delay resulting from that cause.

### **31.0 Force Majeure**

**31.1** If any events of force majeure prevent the performance by the Vendor of any of its obligations under this Agreement, then performance of that obligation shall be suspended until the cause of force majeure ceases to prevent performance of that obligation. If the Vendor claims force majeure it shall notify the Purchaser in writing as soon as reasonably possible after the occurrence of the cause of force majeure.

**31.2** If for any reason it shall appear that the subsistence of the cause of force majeure shall operate to frustrate the Agreement then the Vendor may terminate the Agreement.

**31.3** For the purposes of this Agreement the event of force majeure shall be limited to the following occurrences:

- (1) War (either declared or not declared), revolution or active public enemies;
- (2) Flood, storm, tempest, earthquake, land subsidence, fire, explosion or act of God;
- (3) Act or restraint by any Relevant Authority;
- (4) The taking of the whole or a significant part of the Land by proclamation or otherwise by any Relevant Authority; and
- (5) Any other cause similar to any of the foregoing beyond the reasonable control of the Vendor.

### **32.0 Amendments**

**32.1** No amendment to this Agreement shall be valid unless in writing and executed by both parties in the same manner as that in which this Agreement has been executed.

### **33.0 Partial Invalidity**

**33.1** If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

### **34.0 No Waiver**

**34.1** 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.

**SCHEDULE 3**

**Scheme Plan**

**SCHEDULE 4**  
**Draft Covenants**