

# AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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

DATE:

VENDOR: Brookside Developments - Featherston Limited

PURCHASER:

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: Refer Annexure 1 attached

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: Record of Title (unique identifier):

## PAYMENT OF PURCHASE PRICE

Purchase price: \$

Plus GST (if any) OR Inclusive of GST (if any)  
 If neither is deleted, the purchase price includes GST (if any).

GST date (refer clause 14.0):

Deposit (refer clause 2.0): \$ 15,000.00

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

(1) By payment in cleared funds on the settlement date which is clause 23.1.  
 OR

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

Interest rate for late settlement: 14 % 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:

~~Bond:~~

~~Rent:~~

~~Term:~~

~~Right of renewal:~~

SALE BY:

Private Treaty

Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 2, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

Release date: 12 November 2018

1

© AUCKLAND DISTRICT LAW SOCIETY INC. & REAL ESTATE INSTITUTE OF NEW ZEALAND INC. 2018. All Rights Reserved. See full terms of copyright on page 13.

Annexure 1

Property

Address	Lot [.....], Harrison Street East, Featherston
Estate	Fee simple
Legal Description	<p>Lot [.....] * situated at Harrison Street East, Featherston as depicted on the Development Plans in Schedule 5 being a fee simple estate subdivision of a fee simple estate to be created from the Land pursuant to the provisions of this Agreement.</p> <p>* (indicative only – actual lot numbers for fee simple estate Records of Title may change)</p>

**Purchaser Information Sheet**

Full name		
Address		
Contact number(s)		
Email address(es)		
Name and firm of lawyer		

## GENERAL TERMS OF SALE

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

#### 1.1 Definitions

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

#### 1.2 Time for Performance

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

#### 1.3 Notices

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

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

- (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
  - (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 222 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

#### 1.4 Interpretation

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

## 2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:
  - ~~(1) the 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 10.8(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase;

## 3.0 Possession and Settlement (5) and otherwise in accordance with clause 22.4

### Possession

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

### Settlement

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

### Last Minute Settlement

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

## Purchaser Default: Late Settlement

3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:

- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
- (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
  - (a) account to the purchaser on settlement for 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 1989 in the joint names of the vendor and the purchaser;
- (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
- (6) the amount determined to be payable shall not be limited by the interim amount; and
- (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

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

3.14 (1) For the purposes of this subclause 3.14:

- (a) the default period means:
  - (i) in subclause 3.14(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
  - (ii) in subclause 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
  - (iii) in subclause 3.14(5), the period from the settlement date until the date when settlement occurs; and
- (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
  - (a) the vendor shall pay the purchaser, at the purchaser's election, either:
    - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
    - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
  - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
    - (i) any withholding tax; and
    - (ii) any bank or legal administration fees and commission charges; and
    - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other 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 1989 in the joint names of the vendor and the purchaser;
  - (d) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
  - (e) the amount determined to be payable shall not be limited by the interim amount; and
  - (f) if the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

## Deferment of Settlement and Possession

3.15 — If

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

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

3.17 — If

- ~~(1) the property is a unit title;~~
- ~~(2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; and~~
- ~~(3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 9.2(3);~~
- ~~(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

## 3.18 (1) Where

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

**4.0 Residential Land Withholding Tax**

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

**5.0 Risk and insurance**

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

**6.0 Title, boundaries and requisitions**

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

~~(2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.~~

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

## 7.0 Vendor's warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party; or
  - (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at settlement:
- ~~(1) The chattels and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver them shall only create a right of compensation.~~
  - (2) All electrical and other installations on the property are free of any charge whatsoever.
  - (3) There are no arrears of rates, water rates or charges outstanding on the property.
  - (4) Where an allowance has been made by the vendor in the settlement statement for 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 6.4 and any right of equitable set-off.

## 8.0 Claims for compensation

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



## 9.0 Unit title and cross lease provisions

### Unit Titles

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

### Unauthorised Structures - Cross Leases and Unit Titles

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

## 10.0 Conditions and mortgage terms

### Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) 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 10.8(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 10.8(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(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 95 working days from the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or a date 20 working days from the date of this agreement whichever is the sooner.
- 10.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

## Operation of Conditions

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

## Mortgage Terms

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

**12.0 Non-merger**

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

**13.0 Agent**

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

**14.0 Goods and Services Tax**

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
  - (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
  - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:  
     (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and  
     (b) any default GST;
  - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
  - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

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

## 15.0 Zero-rating

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

## 16.0 Supply of a Going Concern

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

## 17.0 Limitation of Liability

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

## 18.0 Counterparts

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

## FURTHER TERMS OF SALE

Refer Further Terms of Sale attached.



4.4B

This page has been left blank intentionally.

## Further Terms of Sale

### 19. Definitions and Interpretation

#### 19.1 Definitions

In this Agreement, unless the context otherwise requires:

**“Approvals”** means all necessary statutory and regulatory permits and consents required by any Authorities for the Development to proceed.

**“Authority”** means any national or local government authority or agency that has jurisdiction over the Brookside Land or the Development.

**“Brookside Land”** means the land currently situated at Harrison Street, Featherston being Lot 3 on Deposited Plan 532420 currently comprised in Record of Title 871419 as well as any Record of Title(s) issued as a result of any previous subdivision of the land as well as any subdivision of the land permitted by this Agreement, together with and subject to the interests and encumbrances noted thereon.

**“Consents”** means all statutory permits, consents (including resource consents) and approvals for the Development, each on terms and conditions acceptable to the vendor.

**“Development”** means the development and subdivision to be carried out on the Brookside Land generally in accordance with the Development Plans as may varied or added to from time to time pursuant to this Agreement.

**“Development Plans”** means the plans for the Development attached in Schedule 5.

**“Harrison Street (Stage 4B) Land”** means that part of the Brookside Land marked as Lots 401 to 409 inclusive on the Development Plans.

**“Net Interest”** means all interest accrued on the Deposit, less withholding tax, commission and any bank handling charges.

**“Property”** means the property referred to in Annexure 1.

**“Scheme Plan”** means the plan for the Development to be deposited.

**“Settlement Date”** means the date calculated in accordance with clause 23.1.

**“Specified Event”** means war, civil disorder, monetary or economic developments, acts of government or other factors beyond the reasonable control of the vendor whether similar or not.

**“Stakeholder”** means the vendor’s lawyer, Gillespie Young Watson, Lower Hutt.

#### 19.2 Interpretation

In this Agreement, unless the context otherwise requires:

**Clauses and Schedules:** references to clauses and schedules are references to clauses of this Agreement and the Schedules attached respectively.

**Parties:** references to parties are references to parties under this Agreement.

**Gender:** words importing one gender will import all genders.

**Plurality:** words importing the singular will have the plural interpretation, and vice versa.

**Persons:** references to persons is a reference to all entities or bodies whether or not having a separate legal personality or not, including but not limited to individuals, companies, trusts, corporations, firm, partnerships, joint ventures, associations, organisations, charitable entities, Crown or agencies of the Crown, government departments or local authorities.

**Two or more parties:** any provision in this Agreement to be performed by two or more parties will bind those persons or parties, jointly and severally.

**Headings:** headings are included for reference only and will not form part of the interpretation of this Agreement.

**Statutes:** any reference in this Agreement to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to the relevant statute.

**Invalidity:** the invalidity or unenforceability of any part or provision of this Agreement will not affect the validity or enforceability of any other part or provision of it.

**New Zealand Law:** this Agreement will be governed by and construed in accordance with the laws of New Zealand.

## **20. Conditions**

### **Vendor's Condition**

20.1 This Agreement is conditional upon the vendor confirming to the purchaser on or before 30 March 2022 that the vendor is satisfied (in its sole and absolute discretion) that the Development is feasible, having regard to the level of sales, subdivision and development costs, finance costs and terms, availability of resource consents, and any other matter(s) which the vendor considers prudent or appropriate to consider. If this condition is not fulfilled, the vendor shall not be required to disclose any reason for such determination. This condition is inserted for the sole benefit of the vendor.

## **21. Sunset Date**

21.1 If the Settlement Date has not occurred by 30 March 2023 ("Sunset Date"), the purchaser shall be entitled to cancel this Agreement by giving notice of such cancellation to the vendor, and upon receipt of such notice this Agreement shall be at an end.

21.2 If this Agreement is terminated under clause 21.1 the Deposit and Net Interest will be released to the purchaser's lawyer and neither party will have any claim

against the other in relation to such termination, except in relation to any antecedent breach of this Agreement.

## **22. Deposit**

- 22.1 The purchaser will pay a Deposit of \$15,000.00 to the Stakeholder upon acceptance.
- 22.2 For Anti-Money Laundering Purposes, the purchaser will procure their lawyer to pay the Deposit on their behalf to the Stakeholder from cleared funds held in the purchaser's lawyer's trust account (and not from the purchaser directly). For additional Anti-Money Laundering purposes, the purchaser's lawyer must also provide to the Stakeholder the client identification number used by the purchaser's lawyer.
- 22.3 When arranging payment of the Deposit, the purchaser's lawyer shall include "Brookside", "Lot [number]" and "[purchaser's surname/name]" (in that order) as the payment references.
- 22.4 The Stakeholder will hold the Deposit in its trust account as stakeholder until:
  - (a) the certificate issued pursuant to section 224(c) of the Resource Management Act 1991 has issued and the vendor has provided notice of same to the purchaser; or
  - (b) until this Agreement is avoided for non-satisfaction of any condition or pursuant to clauses 21.1 or 31.1.
- 22.5 Interest on the Deposit will accrue for the benefit of the party that ultimately is entitled to receive the Deposit.
- 22.6 Subject to the provisions of this Agreement on the Settlement Date or earlier if the vendor becomes entitled, the Deposit will be paid to the Vendor and the vendor is hereby authorised to make such payment.
- 22.7 The parties acknowledge that the Stakeholder shall hold the Deposit as stakeholder for the benefit of both parties. The Stakeholder is irrevocably authorised to make payment of any withholding tax payable on interest earned on the Deposit to the Inland Revenue.
- 22.8 The parties acknowledge that, where the Deposit or part thereof is lodged on short-term deposit with a trading bank, then the Stakeholder shall be entitled to deduct a commission of 5% of the gross interest.

## **23. Possession and Settlement**

- 23.1 The Possession and Settlement Date will be ten (10) Working Days following the date the purchaser or purchaser's lawyer is notified that a search copy (as defined by section 60 of the Land Transfer Act 2017) of the new fee simple Record of Title for the Property is available.

## **24. Completion of the Development**

- 24.1 **Vendor to subdivide:** subject to the fulfilment or waiver of any condition to this Agreement, the vendor will at the vendor's cost, subdivide the Harrison Street (Stage 4B) Land generally in accordance with the Development Plans to provide a fee simple Record of Title for the Property;



- 24.2 **Vendor to have Scheme Plan approved and to deposit Scheme Plan:** subject to the provisions of this Agreement, the vendor will, at the vendor's expense in all things:
- (a) prepare the Scheme Plan substantially in accordance with the Development Plans;
  - (b) submit the Scheme Plan to the relevant Authority for resource consent;
  - (c) implement the resource consent;
  - (d) complete all necessary work to enable the deposit of the Scheme Plan with LINZ; and
  - (e) obtain a Record of Title for the Property (to be a fee simple estate).
- 24.3 **No liability for delays:** the vendor will not be responsible for any delays in securing Consents in respect of the Development or for any delays arising as a result of weather conditions strikes, lock-outs, accidents or any other matters beyond its reasonable control.
- 24.4 **Vendor may vary Development Plans and Scheme Plan:** the vendor may vary or alter:
- (a) the Development Plans;
  - (b) the Scheme Plan and any other plan relating to the Development (including the alteration, variation, cancellation or addition of any proposed easement or other interest shown on any such plan or the alteration of the layout of the Property); and
  - (c) any legal boundary which may become necessary during the course of the Development by reason of matters beyond the control of the vendor which may result from (but without limiting the generality thereof) the requirement and directions of any Authority
- in such a manner as the vendor considers appropriate having regard to the circumstances so long as any such variation or alteration does not, in the sole discretion of an independent registered valuer appointed by the vendor, materially diminish the value or use of the Property for residential purposes or substantially change the Property.
- 24.5 The purchaser will not be entitled to cancel this Agreement or to claim any compensation, damages, right of set-off or to make any objection or requisitions based on such alteration, variation, cancellation or addition, provided that the variation does not, in the sole opinion of an independent registered valuer appointed by the vendor, materially diminish the value or use of the Property for residential purposes.
- 24.6 **Shared areas:** the vendor may, at its option, complete the Scheme Plan on the basis that any driveways or accessways used exclusively by certain properties will be owned and shares by such properties in which case the cost of repair and maintenance of such areas will be borne by the owners of those properties.
- 24.7 **Fences:** fences are to be erected in accordance with the Development Plans and repaired, maintained or replaced in accordance with this clause 24.7.

- (a) The vendor will arrange for fences to be erected on the exterior boundaries of the Property as indicated on the Development Plans at its own cost prior to the Settlement Date.
- (b) The purchaser shall ensure that the boundary fence erected pursuant to clauses 24.7(a) is maintained and retained until 31 December 2025.
- (c) The purchaser will erect fences on the exterior boundaries of the Property as indicated on the Development Plans within three (3) months from the Settlement Date. The fences must be erected and constructed of the same or similar materials, height and colour as those fences referred to in clause 24.7(a).
- (d) The purchaser shall ensure that the boundary fence erected pursuant to clause 24.7(c) is maintained and retained until completion of the Development.
- (e) If repair, maintenance or replacement is required under clauses 24.7(b) and 24.7(d), the fence must be constructed of the same or similar materials, height and colour.
- (f) For the avoidance of doubt, the purchaser is only required to erect, repair, maintain or replace a boundary fence bounding the Property.
- (g) The purchaser acknowledges that the provisions of this clause 24.7 (in the same or similar substance) may be registered in a fencing covenant against the title for this Property and other properties in the Development prior to or on the Settlement Date.
- (h) References to the purchaser in this clause 24.7 shall include the purchaser and its successors in title, representatives, lessees, tenants, assigns and executors.

**24.8 Measurements:** all measurements and areas shown on the Development Plans are or may be approximations and subject to any variation which may be found necessary upon checking by the Relevant Authority, the vendor's surveyor, the District Land Registrar and LINZ. Other than where the final measured area of the Property is smaller than the estimated area by more than 5%, neither party is entitled to bring any claim whatsoever against the other based on any such variation of measurements, nor is either party entitled to make any compensation, damages, right of set-off or cancellation or to make any objection or requisitions based on such variation.

**24.9 No withholding or objection:** the purchaser will not:

- (a) withhold the balance of the Purchase Price (or any part of it) or demand any retention on settlement for any reason or claim, including compensation, damages, right of set-off or indemnity;
- (b) make any objection, requisition or claim for compensation because of any alteration to the Development, the Development Plans for the Scheme Plan;
  - (i) which are made because of a requirement or direction of the relevant Authority or because of the practical necessities of subdividing and developing the Harrison Street (Stage 4B) Land or the Brookside Land; or

- (ii) which, in the sole opinion of an independent registered valuer appointed by the vendor, have no material adverse effect on the value of the Property;

and;

- (c) 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 for subdivision consent(s) for the Development.

24.10 **No target date for completion:** subject to the provisions of this Agreement, the vendor will use all reasonable endeavours to enable a fee simple Record of Title to issue for the Property but the vendor gives no warranty to the purchaser as to when the Property or the Development will be completed or as to when the Scheme Plan will be deposited at LINZ, or as to when the vendor will be able to register a transfer of the Property to the purchaser. The purchaser acknowledges that any anticipated or projected dates for a fee simple Record of Title issuing for the Property or the Settlement Date or completion of the Development given by the vendor or its agents either prior to or after the execution of this Agreement are indicative and approximations only and are not binding on the vendor and shall not entitle the purchaser to any claim for compensation.

24.11 **Easements, encumbrances, rights and obligations:** without prejudice to the provisions in this Agreement, the vendor reserves to itself and its assigns the right to accept, grant or receive the benefit or restrictions of any easements, rights, leases or licenses, building line restrictions or other encumbrances, obligations or consent notices which may be required in order to satisfy any conditions of any consent, or are required by virtue of any statute, regulation or by any relevant Authority, or which in the sole and absolute discretion of the vendor are deemed to be necessary or desirable in respect of the Harrison Street (Stage 4B) Land, the Property or the Development.

24.12 The purchaser will take title to the Property subject to or with the benefit of any such easements, rights, leases or licenses, building line restrictions, encumbrances, obligations or consent notices, or variations and will execute all documents (with the inclusion of all terms considered reasonably desirable by the vendor's lawyer) and do such acts and things as may be required by the vendor in order to deposit the Scheme Plan, the implementation of any such easements, rights, leases or licenses, building line restrictions, encumbrances, obligations, consent notices or variations other rights or obligations in respect of the Harrison Street (Stage 4B) Land, the Property or the Development.

24.13 Without derogating from the provisions of clauses 24.11 and 24.12, the purchaser acknowledges that, inter alia, the two land covenants attached to this agreement as Schedules 3 and 4 (being a restrictive covenant and a reverse sensitivity covenant) respectively, may be registered (in the same or similar substance) against the title for this Property and other properties in the Development prior to or on the Settlement Date.

## **25. Completion of the balance of the Development after settlement**

25.1 The purchaser acknowledges and accepts that part of the Development (other than the Harrison Street (Stage 4B) Land) may not be completed as at the Settlement Date. The purchaser acknowledges that:

- (a) the vendor will, after the Settlement Date, have the right to complete the Development;
- (b) the work outlined in clause 25.1(a) may emanate noise and/or vibrations, as well as the presence of workers on the Harrison Street (Stage 4B) Land or the Brookside Land;
- (c) the remaining works may be completed in stages, and the vendor does not warrant that the Development will be completed within a specified timeframe; and
- (d) the purchaser will not object to or in any way endeavour to restrict the vendor from completing the Development.

25.2 Notwithstanding the provisions contained in clause 25.1 the vendor undertakes to the purchaser to use all reasonable endeavours to ensure that all work required under clause 25.1 is carried out in a professional and expedient manner and in a way that reduced to the maximum extent reasonably possible undue interference or disruption to the purchaser.

## **26. Purchaser acknowledgements**

26.1 The purchaser acknowledges and agrees that:

- (a) As at the date of this Agreement, a separate Record of Title has not issued for the Property;
- (b) The Record of Title to issue for the Property will be a fee simple estate subject to such reservations, consent notices, restrictions, encumbrances, liens and interests as the vendor may in its sole discretion determine and otherwise as provided for under this Agreement and as may be noted on the Record of Title; and
- (c) Any marketing materials and illustrations are indicative only and do not represent actual areas of the Property or other properties.

## **27. No caveat**

27.1 The purchaser will not lodge any caveat against the vendor's title to the Harrison Street (Stage 4B) Land, the Brookside Land or any other property and may only lodge a caveat against the Property once a separate record of title has issued for the Property, and in any event only if the vendor is in default of its obligations under this Agreement. The purchaser shall indemnify the vendor for and against any losses, costs, damages or claims suffered by the vendor as a result of the purchaser's breach of this clause 27. This clause 27 is an essential term of this Agreement and any breach of this clause 27 by the purchaser will enable the vendor to cancel the Agreement by two (2) Working Days' notice and forfeit the Deposit (without prejudice to any of the vendor's other rights or remedies).

## **28. Nominee**

28.1 Subject to clause 35.1, the purchaser may on execution of this Agreement indicate an intention to appoint a nominee or indicate that the purchaser is purchasing as a trustee or as a company to be formed, and if so the purchaser may appoint one or more persons provided that the provisions of clause 29.1 are observed and notwithstanding the appointment of such nominee the named purchaser in this Agreement will continue to be personally liable to make all payments under this Agreement and to observe and perform the obligations and agreements set out in this Agreement until completion of all settlement matters.

## **29. Purchaser's directors' guarantees**

29.1 If the purchaser or its nominee is a company, it will within ten (10) Working Days of the date of this Agreement (time being of the essence) procure its directors to enter into a form of guarantee to be prepared by the vendor's lawyer to the effect that the directors guarantee to perform and observe the conditions and obligations of the purchaser as set out in this Agreement. Notwithstanding the foregoing provisions of this clause 29, any person who signs this Agreement as a director or on behalf of a company will at all times be jointly and severally liable with the purchaser for all obligations of the purchaser under this agreement.

## **30. Lowest price/accruals**

30.1 The parties agree that the Purchase Price for the Property is the lowest price that the parties would have agreed upon for the Property under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis no income or expenditure arises under those rules.

## **31. Force majeure**

31.1 In the event that a Specified Event prevents the vendor from commencing or continuing the Development or renders it impracticable for the vendor to commence or continue the Development, then the vendor may by notice in writing to the purchaser advise of the Specified Event and cancel this Agreement and neither party will have any right or claim against the other.

## **32. Errors and misdescriptions**

32.1 No error or misdescription of the Harrison Street (Stage 4B) Land, the Property or the Development will annul the sale. The purchaser's remedies, if not otherwise limited by this Agreement, will be limited to compensation if demanded in writing no later than two (2) working days before the Settlement Date (time being of the essence) but not otherwise. Such compensation will in all circumstances be limited to any real or actual loss in the value of the Property as a direct result of the error or misdescription (considered in conjunction with all the properties in the Development as a whole) determined as at the Settlement Date by an independent registered valuer appointed by the vendor for that purpose (upon the vendor receiving notification of a compensation claim), whose decision will be final and binding on the parties. In determining the real or actual loss in value of the Property, the independent registered valuer will not be entitled to take into account any real or actual loss resulting from any movement in the residential property market that may have occurred in the period from the error or misdescription to the Settlement Date.

### **33. Entire agreement**

- 33.1 **Sole agreement:** the parties acknowledge that this Agreement and the Annexures, Schedules and attachments to this Agreement contain the entire agreement between the parties, notwithstanding any negotiations or discussions prior to the execution of the Agreement, and notwithstanding anything contained in any part of the marketing material, report or other document. The purchaser acknowledges that it has not been induced to execute this Agreement by any representation, verbal or otherwise, made by or on behalf of the vendor, which is not set out in this Agreement.

### **34. No representation or warranty**

- 34.1 The purchaser acknowledges that it enters into this Agreement solely in reliance on its own judgement and not upon any representation, statement, advertisement or warranty made by the vendor or any agent of the vendor except as set out in this Agreement.

### **35. Assignment**

- 35.1 The purchaser may not assign its interest under this Agreement or nominate another party as purchaser without the prior consent in writing of the vendor, which the vendor will not unreasonably withhold where:
- (a) the assignee or nominee has covenanted (in a form and substance acceptable to the vendor) to perform all the obligations of the purchaser under this Agreement;
  - (b) the assignee or nominee has, to the reasonable satisfaction of the vendor, demonstrated its ability to meet all its financial and other covenants under this Agreement to the satisfaction of the vendor and, where the assignee is a company, provided any personal guarantees which are requested by the vendor in accordance with clause 29.1; and
  - (c) all of the vendor's costs associated with an assignment or nomination (including any legal costs) are met by the purchaser's nominee or assignee.
- 35.2 The vendor may assign, transfer or otherwise dispose of or alienate its interest in this Agreement subject to the purchaser's rights and interest in the Property pursuant to this Agreement.

### **36. Severability**

- 36.1 If any provision of this Agreement or the application thereof to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions will not be affected by that event and each provision will be valid and enforceable to the fullest extent permitted by law.

### **37. Notices**

- 37.1 Where there is more than one party named as purchaser, then notice from the vendor to any one of the named purchasers or their lawyer will be deemed to constitute notice to all other named purchasers.

### **38. Sales of the properties generally**

- 38.1 The purchaser will not object (and waives any rights to do so) to methods employed by the vendor in an endeavour to sell or lease other properties forming part of the Development including, without limitation, as to the use and placement of signs and the maintenance of a sales office, provided that the vendor does not cause unreasonable interference to the comfort and convenience of the purchaser and its use and enjoyment of the Property.

### **39. Disclaimer**

- 39.1 The vendor's marketing material, marketing brochures and other materials, the plans showing the concept of the Development, and the Development Plans have all been prepared prior to commencement of the Development. While every reasonable effort had been made to ensure that the information and calculations set out in those materials correctly illustrate the Development and the Property, 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 Development.
- 39.2 In the event there is a conflict between, on one hand, the terms of this Agreement and, on the other hand, the vendor's marketing material, marketing brochures and other materials, the plans showing the concept of the Development, and the Development Plans, the terms of this Agreement shall prevail.

### **40. Services End User Agreement and Indemnity**

- 40.1 The Purchaser acknowledges and agree that it is deemed to have accepted and shall comply with the conditions and supply requirements of the providers of the services and utilities to the Property (including but not limited to Chorus New Zealand Limited, PowerCo Limited, the South Wairarapa District Council and Wellington Water), and will complete and repair any service and utility connections to the Property, including the payment of any initial and ongoing fees or charges.
- 40.2 The Purchaser further agrees to indemnify Brookside Developments - Featherston Limited and its director(s) from any liability or costs incurred or claims made which are directly or indirectly as a result of or associated with the Purchaser's default or actions.

### **41. Nominated Build Contract**

- 41.1 The parties acknowledge and agree that the Purchaser shall execute a Build Contract with:
- ☐ Wright Brothers Building Limited (NZBN 9429046049865)
  - ☐ EasyBuild Wellington Limited (NZBN 9429046162038)
  - ☐ neither
- [choose one]
- prior to or contemporaneously with this Agreement.

**SCHEDULE 1****(GST Information – see clause 15.0)**

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

**Section 1**

1.	The vendor's registration number (if already registered): 126-130-554	
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). <b>OR</b> The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No  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). <b>OR</b> The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop").	Yes/No  Yes/No



**SCHEDULE 2**

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

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

Bare land

**WARNING** *(This warning does not form part of this agreement)*  
This is a binding contract. **Read the information set out on the back page before signing.**

**Acknowledgements**  
Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Agents Authority.  
Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010.

**Signature of Purchaser(s):**

**Signature of Vendor(s):**

\_\_\_\_\_  
**Director / Trustee / Authorised Signatory / Attorney\***  
*Delete the options that do not apply*  
*If no option is deleted, the signatory is signing in their personal capacity*

\_\_\_\_\_  
**Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Attorney~~\***  
*Delete the options that do not apply*  
*If no option is deleted, the signatory is signing in their personal capacity*

\_\_\_\_\_  
**Director / Trustee / Authorised Signatory / Attorney\***  
*Delete the options that do not apply*  
*If no option is deleted, the signatory is signing in their personal capacity*

\_\_\_\_\_  
**Director / Trustee / Authorised Signatory / Attorney\***  
*Delete the options that do not apply*  
*If no option is deleted, the signatory is signing in their personal capacity*

\*If this agreement is signed under:  
(i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or  
(ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ).  
Also insert the following wording for the Attorney’s Signature above:  
*Signed by [full name of the donor] by his or her Attorney [attorney’s signature].*

6.4B

**Schedule 3**  
**(Restrictive covenant)**

## Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

### Covenantor

**BROOKSIDE DEVELOPMENTS - FEATHERSTON LIMITED**

### Covenantee

**BROOKSIDE DEVELOPMENTS - FEATHERSTON LIMITED**

### Grant of Covenant

**The Covenantor**, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

### Schedule A

*Schedule, if required*

*Continue in additional Annexure*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant		[TBC – Lots 401 through 409 inclusive]	[TBC – 871419 except for Lots 401 through 409 inclusive]
			Brookside Developments - Featherston Limited (in gross)

### Covenant rights and powers (including terms, covenants and conditions)

~~Delete phrases in [ ] and insert memorandum number as required.~~

~~Continue in additional Annexure Schedule if required.~~

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017].~~

Annexure Schedule 1.

## ANNEXURE SCHEDULE 1

### BACKGROUND

- A. The Covenantor is the registered owner of the estate described in Schedule A as the “Burdened Land”.
- B. The Covenantee is the registered owner of the estate described in Schedule A as the “Benefited Land”.
- C. The Covenantor has agreed with the Covenantee to accept restrictions upon the Burdened Land for the benefit of the Benefited Land and for the benefit of the Developer, as that term is defined below, (in gross).

### COVENANTS

The Covenantor for itself and successors in title to the Burdened Land hereby covenants and agrees with the Covenantee and its successors in title to the Benefited Land, that the Covenantor will henceforth and at all times hereafter observe and perform the stipulations and restrictions contained in Schedule One to the end and intent that each of the stipulations and restrictions in the matter and to the extent prescribed, enure for the benefit of, and be appurtenant to, the whole of the Benefited Land and every part thereof and the Developer, as that term is defined below, (in gross).

This instrument shall be registered against the estate described in Schedule A as the Burdened Land by the Covenantor and shall run forever in favour of the registered owner of the Benefited Land or any part thereof from time to time and/or for the benefit of the Developer, as that term is defined below, (in gross) PROVIDED ALWAYS that the owners of the Burdened Land shall as regards the stipulations and restrictions be personally liable only in respect to breaches thereto which shall occur while they are registered owner(s) of the Burdened Land in respect of which any such breach shall occur (or is alleged to have occurred).

### DEFINITIONS AND INTERPRETATION

- 1. Definitions:
  - 1.1. **“Authority”** means the South Wairarapa District Council or the Greater Wellington Regional Council as the case may be, or any other national or local government authority or agency that has jurisdiction over the Lot and the type of activity.
  - 1.2. **“Attachment”** means any item fixed or attached to a Building including antennae, dishes and panels.
  - 1.3. **“Building”** means any building or structure, including a residential dwelling-house, garden shed, garage and deck.
  - 1.4. **“Benefited Land”** means all the land to be contained in Records of Titles [TBC – 871419 except for Lots 401 through 409] inclusive.
  - 1.5. **“Burdened Land”** means all the land to be contained in Records of Title [TBC – Lots 401 through 409] inclusive.
  - 1.6. **“Covenantee”** means the registered owner(s) for the time being of the Benefited Land and/or the Developer (in gross).
  - 1.7. **“Covenantor”** means the registered owner(s) for the time being of the Burdened Land.
  - 1.8. **“Developer”** means Brookside Developments - Featherston Limited or any other person(s) or party nominated by Brookside Developments - Featherston Limited.
  - 1.9. **“Development”** means the development and subdivision to be carried out on the Benefited Land by the Developer.

- 1.10. **“Lot”** means the relevant Lot contained within the Burdened Land or any part of it. For the avoidance of doubt, any reference to “Lot” in these covenants includes a reference to a Lot created from further subdivision should it be permitted.
- 1.11. **“RMA”** means the Resource Management Act 1991.
2. Interpretation: in these Covenants, unless the context otherwise requires:
- 2.1. **Parties:** references to parties are references to parties under these covenants.
- 2.2. **Gender:** words importing one gender will import all genders.
- 2.3. **Plurality:** words importing the singular will have the plural interpretation, and vice versa.
- 2.4. **Persons:** references to persons is a reference to all entities or bodies whether or not having a separate legal personality or not, including but not limited to individuals, companies, trusts, corporations, firm, partnerships, joint ventures, associations, organisations, charitable entities, Crown or agencies of the Crown, government departments or local authorities.
- 2.5. **Headings:** headings are included for reference only and will not form part of the interpretation of these covenants.
- 2.6. **Statutes:** any reference in these covenants to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to the relevant statute.
- 2.7. **Invalidity:** the invalidity or unenforceability of any part or provision of these covenants in this instrument will not affect the validity or enforceability of any other part or provision of this instrument.
- 2.8. **New Zealand Law:** these covenants will be governed by and construed in accordance with the laws of New Zealand.

## SCHEDULE ONE

It is agreed:

### FENCING

3. The Covenantor shall not require the Developer to repair or contribute towards the cost of erection or repair of any dividing or boundary fence between the Burdened Land and any adjoining land owned by the Developer, but the benefit of this fencing covenant shall not enure to any transferee of such adjoining land.
4. The Covenantor shall ensure that any boundary fence initially erected by the Developer on the Lot is maintained and retained in the same or similar materials, height and colour until 31 December 2025.
5. The Covenantor shall erect boundary fences:
- 5.1. on the boundary of Lot [402] fronting [the accessway];
- 5.2. on the boundary of Lot [403] fronting [the accessway];
- 5.3. on the boundary of Lot [404] fronting [the accessway];
- 5.4. on the boundary of Lot [405] fronting [the accessway];
- 5.5. on the boundary of Lot [406] fronting [the accessway];
- 5.6. on the boundary of Lot [407] fronting [the accessway];
- 5.7. between Lots [401] and [408];
- 5.8. between Lots [402] and [403];

- 5.9. between Lots [403] and [401];
- 5.10. between Lots [403] and [407];
- 5.11. between Lots [404] and [405];
- 5.12. between Lots [405] and [406];
- 5.13. between Lots [406] and [407];
- 5.14. between Lots [407] and [408];
- 5.15. between Lots [407] and [409]; and
- 5.16. between Lots [408] and [409]

within three (3) months from the initial transfer of the Lot from the Developer to the Covenantor taking place. Any fence constructed shall be in the same or similar materials, height and colour as those boundary fences initially erected on the Lot by the Developer, and the Covenantor shall ensure that all boundary fences shall be retained and maintained in the same or similar materials, height and colour until completion of the Development.

For the avoidance of doubt, the Covenantor is only required to erect, repair, maintain or replace a boundary fence bounding his, her or their own land.

## **LAND AND BUILDING**

- 6. The Covenantor shall not erect or place (or permit to be erected or placed) on the Lot any Building, Attachment, trees or other vegetation which is more than 5.5 metres from the ground height at the time of the initial transfer of the Lot from the Developer to the Covenantor taking place, to the intent that any Building, Attachment, trees or other vegetation do not block sunlight and views on any part of the Benefited Land and Burdened Land.
- 7. All habitable dwelling(s) shall be built on piles such that they achieve the greater of either the joists being not less than 0.5 metres clear height above the ground or a height required to meet the residual level specified by any Consent Notice or any other requirement(s) from the relevant Authority.
- 8. The Covenantor shall ensure that the maximum impervious site coverage on the Lot is not greater than 50%, and generally shall ensure that the design of any Building and landscaping does not create unreasonable run-off from the Lot.
- 9. The Covenantor shall ensure that the Lot has and maintains an on-site primary stormwater disposal, and that the on-site primary stormwater disposal is constructed and installed to the current building code at the time of construction and installation.
- 10. The Covenantor shall not accumulate or place (or permit to accumulate or be placed) any rubbish on the Lot, at and all times shall maintain the Lot in a tidy condition.
- 11. The Covenantor may undertake (or permit to be undertaken) on the Lot any activity as approved by the relevant Authority as a "home occupation" with the exception of prostitution, tattooing, and the sale or supply of alcohol or other drugs. The Covenantor may undertake other commercial activity with the approval of the relevant Authority for that activity.
- 12. The Covenantor shall not use (or permit to be used) the Lot for any gang-related or criminal activities, and shall ensure that no gang insignia or paraphernalia are worn, displayed or placed on any part of the Lot.
- 13. In respect of Lots 402 through 405 inclusive, the Covenantor shall ensure that entry to and exit from the particular Lot is achieved only from the northeast corner (Lots 404 and 405) or northwest corner (Lots 402 and 403) accessway, utilising the minimum area of the right of way for entry and exit.

14. The Covenantor acknowledges that the Lot is adjacent to industrial activities, and therefore the noise, smell activities associated with a working industrial environment should be expected.
15. Maintenance of shared services, right of way and stormwater disposal system: The Covenantor shall operate and maintain the private stormwater system in full working order on an ongoing basis. In respect of Lots 402 through 407 inclusive, the Covenantor will be liable, not the Authority, for any damage that may occur downstream as a result of the failure to maintain and operate the stormwater system to its design requirements and capacity. Upon the issue of the certificate pursuant to section 224 of the RMA, or at such earlier time as may be required, a Consent Notice pursuant to section 221 of the RMA will be issued. The Consent Notice will specify the aforementioned conditions to be registered against the Record of Title to issue in respect of Lots 401 through 409 inclusive of the Development.
16. Stormwater – disposal to ground – individual system: is there is no public gravity stormwater network available, discharge from Lots 402 through 409 inclusive shall be to ground. It must be demonstrated at Building Consent stage that flows can be controlled such that there is no adverse effects on the environment. The soakage systems must be designed and constructed by a suitably qualified engineer who shall also supervise its construction and provide a manual for its regular maintenance in addition to the following:
  - 16.1. The soak pit system must be designed for all events up to the 10% AEP storm event, 60- minute storm.
  - 16.2. To allow for sedimentation of the soak pit, a permeability reduction factor of 0.5 is to be applied to the field soakage rate to derive the design soakage rate.
  - 16.3. The consent holder shall install heavy duty cast iron lids on all new soak pits in trafficable areas.
  - 16.4. All connections to the soakage system / soak pit must be trapped to minimise debris entering in the soakage system.
  - 16.5. All soak pits shall be designed and constructed to enable the owners to carry out the regular maintenance of the soak pits as detailed in the maintenance manual.
  - 16.6. Ensure the flow of stormwater across any boundary post development does not exceed that of pre-development.
  - 16.7. Ensure adequate provision has been made to deal with all surface water so as to not cause any nuisance to adjacent land.

The Covenantor will be liable, not the Authority, for any damage that may occur downstream as a result of the failure to maintain and operate the stormwater system to its design requirements and capacity. Upon the issue of the certificate pursuant to section 224 of the RMA, or at such earlier time as may be required, a Consent Notice pursuant to section 221 of the RMA will be issued. The Consent Notice will specify the aforementioned conditions to be registered against the Record of Title to issue in respect of Lots 402 through 409 inclusive of the Development.

17. Minimum floor levels: Where modelled results indicate that a Lot within the Development is affected by flooding a Consent Notice shall be registered on the Record of Title for the Lot containing the following provision:

Consent: 200167 11 of 14 26

Any residential building constructed on Lot [TBC] must have a minimum floor level of [TBC] m RL (Wellington 1953 Datum) or Wairarapa datum.

Upon the issue of the certificate pursuant to section 224 of the RMA, or at such earlier time as may be required, a Consent Notice pursuant to section 221 of the RMA will be issued. The Consent Notice will specify the aforementioned conditions to be registered against the Record of Title to issue in respect of Lots 402 through 409 inclusive of the Development.

## **BREACH OF COVENANTS AND ENFORCEMENT**

18. If at any time any part of a Burdened Land is to vest in a relevant local or territorial Authority these covenants shall be deemed to have been surrendered on the date of the deposit of the plan identifying the land that is to so vest (or such replacement process as is required to enable registration of the vesting of the land) in respect of that part of the Burdened Land (as the case may be) that is to vest. No further consents of either the Covenantor or the Covenantee shall be required in order to affect the surrender and any such consents that would otherwise have been required shall be deemed to have been given.
19. If there is any breach or non-observance by any Covenantor of any of these covenants then without prejudice to the liability which the Covenantor in breach may have to any other Covenantor or any other persons or entity having benefit of the covenants, the Covenantor in breach will, upon written demand being made by any other Covenantor:
  - 19.1. Pay to Featherston's Own Charitable Trust, or if Featherston's Own Charitable Trust is no longer in existence or otherwise not accepting donations then any other registered and reputable charitable entity with the designated purpose of improving the health and wellbeing of the local community, as liquidated damages the sum of \$500.00 per day for every day or part thereof that such breach or non-observance or non-compliance continues, calculated from the date that is five working days from the date that such written notice was served on the Covenantor (to the intent that no liquidated damages shall be payable if the breach or non-observance or non-compliance is remedied within five working days of the demand being served). The amount of \$500.00 shall be increased annually by reference to the Consumer Price Index (All Groups) or an equivalent replacement index. For a repeat of a previous non-compliance, liquidated damages shall be payable from the date written notice is served.
  - 19.2. Obtain from the relevant Authority any building consents required under the Building Act 2004 (or any legislation in replacement of that Act) for the removal of the non-complying Building, structure or materials (as the case may be);
  - 19.3. Remove or cause to be removed from the Lot any Building or Attachment or materials used in the construction of the Building or Attachment that is in breach or non-observance of the covenants;
  - 19.4. Obtain from the relevant Authority all building consents required under the Building Act 2004 (or any legislation in replacement of that Act) for the re-instatement and/or replacement of a complying Building, structure or materials; and
  - 19.5. Reinstate and/or replace the non-complying Building or Attachment and/or materials in accordance with the building consent and so that the Building or Attachment constructed on the Lot comply fully with these covenants.
20. If the Covenantor in breach fails to remedy any such breach within a reasonable time following receipt of such notice, the Covenantor may take whatever action they consider necessary to remedy the breach (including entering the Lot).
21. All expenses and costs incurred in enforcing the covenants will constitute a debt due that shall be a charge against the Covenantor in breach and shall be recoverable as liquidated damages.
22. The Covenantor in breach shall be liable only in respect of breaches or non-observance of these Covenants which occur while the Covenantor in breach is the registered owner of any Lot. The Covenantor indemnifies the Covenantee from all proceedings, losses, claims, liabilities, costs and demands in respect of any breach or non-observance of these covenants by the Covenantor.
23. The Covenantee shall not be required to enforce these covenants against any Covenantor and the Covenantee shall not be liable for any breach of these Covenants by the registered owner of any Lot which the Covenantee is not the registered owner.
24. No waiver of any breach or failure to enforce any provision of these covenants at any time shall in any way limit or waive the right of the Covenantee and any other Covenantor to subsequently require strict compliance with these covenants.



25. If any covenant in this instrument is or becomes invalid or unenforceable, that covenant shall be deemed deleted from this instrument and such invalidity or unenforceability shall not affect the other provisions of this instrument, 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.

#### **DISPUTE RESOLUTION**

26. The parties shall meet and discuss in good faith any dispute between them arising out of this instrument. If the discussions fail to resolve the relevant dispute, any party may (by written notice to the other parties) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:

26.1. the mediator shall be deemed to be not acting as an expert or as an arbitrator;

26.2. the mediator shall determine the procedure and timetable for the mediation; and

26.3. the cost of the mediation shall be shared equally between the parties.

**Schedule 4**  
**(Reverse sensitivity covenant)**

## Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

### Covenantor

**BROOKSIDE DEVELOPMENTS - FEATHERSTON LIMITED**

### Covenantee

**BROOKSIDE DEVELOPMENTS - FEATHERSTON LIMITED**

### Grant of Covenant

**The Covenantor**, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

### Schedule A

*Schedule, if required*

*Continue in additional Annexure*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant		[TBC – Lots 401 through 409 inclusive]	Brookside Developments - Featherston Limited (in gross)

### Covenant rights and powers (including terms, covenants and conditions)

~~Delete phrases in [ ] and insert memorandum number as required.~~

~~Continue in additional Annexure Schedule if required.~~

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017].~~

Annexure Schedule 1.

## ANNEXURE SCHEDULE 1

### BACKGROUND

- A. The Covenantor is the registered owner of the estate described in Schedule A as the "Burdened Land".
- B. The Covenantor has agreed with the Covenantee to accept restrictions upon the Burdened Land for the benefit of the Covenantee.

### COVENANTS

The Covenantor for itself and successors in title to the Burdened Land hereby covenants and agrees with the Covenantee that the Covenantor will henceforth and at all times hereafter observe and perform the stipulations and restrictions contained in Schedule One to the end and intent that each of the stipulations and restrictions in the matter and to the extent prescribed, enure for the benefit of, and be appurtenant to, the Covenantee (in gross).

This instrument shall be registered against the estate described in Schedule A as the Burdened Land and shall run forever in favour of the Covenantee PROVIDED ALWAYS that the owners of the Burdened Land shall as regards the stipulations and restrictions be personally liable only in respect to breaches thereto which shall occur while they are registered owner(s) of the Burdened Land in respect of which any such breach shall occur (or is alleged to have occurred).

### DEFINITIONS AND INTERPRETATION

- 1. Definitions:
  - 1.1. **"Benefited Land"** means all the land to be contained in Records of Titles [TBC – 871419 except for Lots 400 through 409] inclusive.
  - 1.2. **"Burdened Land"** means all the land to be contained in Records of Title [TBC – Lots 400 through 409] inclusive.
  - 1.3. **"Covenantee"** means means Brookside Developments - Featherston Limited or any other person(s) or party nominated by Brookside Developments - Featherston Limited.
  - 1.4. **"Covenantor"** means the registered owner(s) for the time being of the Burdened Land.
  - 1.5. **"Development"** means the development and subdivision to be carried out on the Benefited Land by the Developer.
- 2. Interpretation: in these Covenants, unless the context otherwise requires:
  - 2.1. **Parties:** references to parties are references to parties under these covenants.
  - 2.2. **Gender:** words importing one gender will import all genders.
  - 2.3. **Plurality:** words importing the singular will have the plural interpretation, and vice versa.
  - 2.4. **Persons:** references to persons is a reference to all entities or bodies whether or not having a separate legal personality or not, including but not limited to individuals, companies, trusts, corporations, firm, partnerships, joint ventures, associations, organisations, charitable entities, Crown or agencies of the Crown, government departments or local authorities.
  - 2.5. **Headings:** headings are included for reference only and will not form part of the interpretation of these covenants.
  - 2.6. **Statutes:** any reference in these covenants to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to the relevant statute.

2.7. **Invalidity:** the invalidity or unenforceability of any part or provision of these covenants in this instrument will not affect the validity or enforceability of any other part or provision of this instrument.

2.8. **New Zealand Law:** these covenants will be governed by and construed in accordance with the laws of New Zealand.

## **SCHEDULE ONE**

It is agreed:

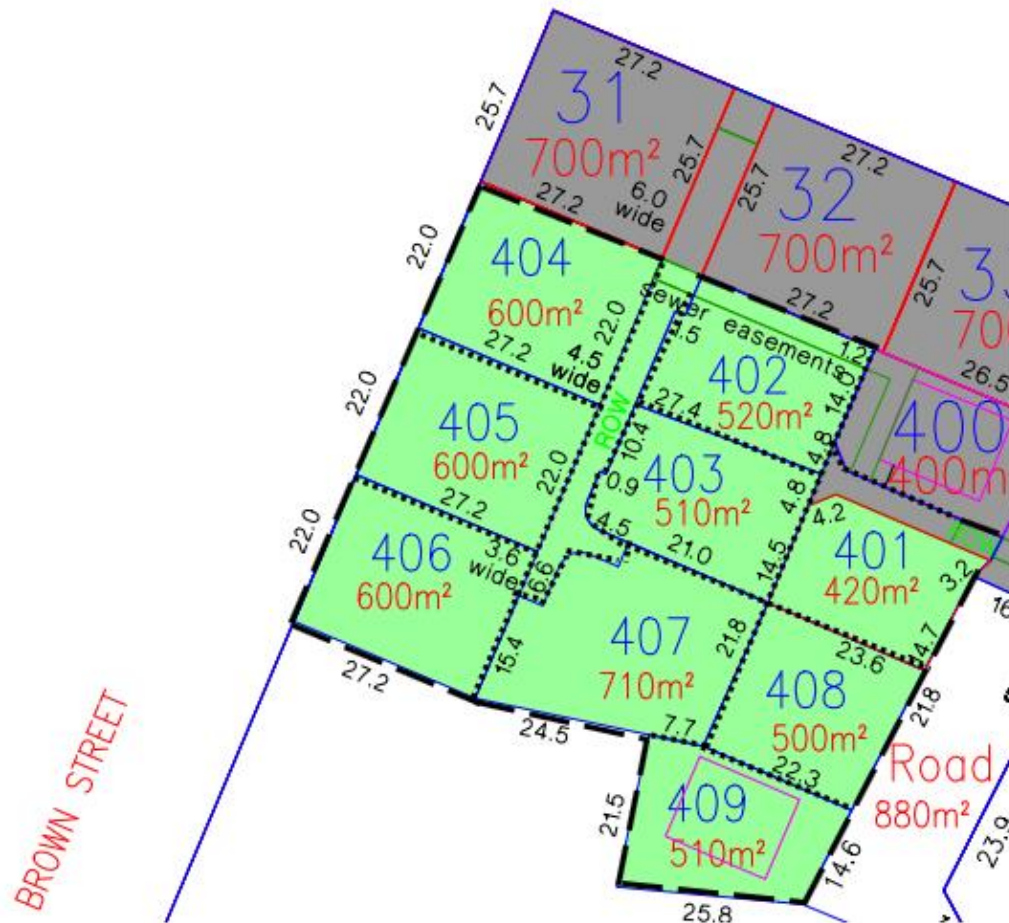
3. The Covenantor will not in any way inhibit, design or intend to limit, prohibit or restrict any existing, current or future use or any activities proposed by the Covenantee in respect of the Development and/or any land which the Covenantee shall be the registered owner of including without limitation all development, subdivision and construction projects, and all associated activities in all forms by the Covenantee.
4. The Covenantor will not make complaint or submission or rejection relating to the existing, current or future uses of the Development and/or any land owned by the Covenantee or any adverse effects and/or loss of amenity in respect of any use including but not limited to loss of visual amenity and outlook, loss of privacy, security, adverse noise, glare or light spill, traffic, smell and the use of equipment.
5. The Covenantor will not make nor lodge, nor be party to, nor finance or contribute to the cost of any submission, application or proceeding designed to limit, prohibit or restrict any existing, current or future uses of the Development and/or any land owned by the Covenantee.
6. In the event that the Covenantee makes application for any consent to the relevant local or territorial Authority for any re-development of any land owned by the Covenantee, whether wholly or in part, the Covenantor shall execute any affected person consent form required for obtaining such consent for any such re-development or use.
7. The restrictions imposed by this reverse sensitivity covenant shall continue to apply notwithstanding that there may be changes from time to time to the manner, extent or scale of activities and/or the effects thereof.

**Schedule 5  
(Development Plans)**

### **Lots 401-409 Brookside – Featherston: Fencing Condition**

Fences built by the vendor to be maintained by the lot owners in current form until 2025. — — — —

Fences to be built and maintained by adjoining owners of the relevant lots .....



## BEFORE SIGNING THE AGREEMENT

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

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

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

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

© Auckland District Law Society Inc. (ADLS) & Real Estate Institute of New Zealand Inc. (REINZ)

**IMPORTANT:** All copyright in and associated with this form is owned by ADLS & REINZ. The purchaser only acquires a limited non-exclusive licence to use this form *once within a single transaction only*. The standard ADLS or REINZ contract terms apply which also prohibit any form of reproduction, including copying, digitising or recreating the form by any means whatsoever.

**WARNING:** ADLS & REINZ monitor the use of its forms and may take enforcement action against any person acting in breach of these obligations.

These forms cannot be distributed or on sold to another party by the purchaser unless the written agreement of ADLS or REINZ has been obtained.

## AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

© The copyright to the form is owned by the Real Estate Institute of New Zealand Incorporated and Auckland District Law Society Incorporated.

**DATE:**

**VENDOR:**

Brookside Developments - Featherston Limited

**Contact Details:**

Ian McComb  
ian@smallhome.nz

**VENDOR'S LAWYERS:**

Firm: HomeLegal (a division of Gillespie Young Watson)

Individual Acting: Patrick Rozendaal

**Contact Details:**

patrick@homelegal.co.nz  
Tel: 04 891 2183  
Fax: 04 569 3933  
PO Box 30940, Lower Hutt 5040

**PURCHASER:**

**Contact Details:**

**PURCHASER'S LAWYERS:**

Firm:

Individual Acting:

**Contact Details:**

**LICENSED REAL ESTATE AGENT:**

Agent's Name:

Manager:

Salesperson:

**Contact Details:**

Private Treaty