

FURTHER TERMS OF SALE

20. Definitions

20.1 In these further terms of sale:

“**Council**” means the Whangarei District Council

“**Guarantor**” - see Schedule 3.

“**Property**” means the property agreed to be sold pursuant to this agreement.

“**Development**” means the residential land development undertaken by the Vendor on the land.

“**Land**” means the land described in CFR NA53D/1030 of which the property forms part.

“**Resource Consent**” means the resource consent granted by Council on 20 November 2019 for subdivision under number SL1900025 and P35809 and section 127 change of consent dated 15 October 2020 under number SL2000130 and P35809 and includes all variations to and consents issue in addition to or substitution for that consent.

“**Scheme Plan**” means the scheme plan of subdivision approved under the Resource Consent and attached to this agreement as Schedule 2.

“**Survey Plan**” means the plan to be lodged with and approved by Council and LINZ which, subject to the terms of this agreement, is based on the Scheme Plan.

21. Subdivision

21.1 The Purchaser acknowledges and accepts the terms and conditions of the Resource Consent.

21.2 The Vendor will at its cost and with all reasonable speed and diligence:

(a) Undertake all work and do all things necessary to enable the Survey Plan to be deposited with LINZ.

(b) Arrange for the Survey Plan to be deposited with LINZ and for a separate records of title for the Property to be issued.

21.3 The Survey Plan will generally be in accordance with the Scheme Plan, provided that all measurements and areas are subject to approval by LINZ and Council. The Vendor expressly reserves the right to make such changes to the Survey Plan as it may in its sole discretion deem necessary or desirable for the purposes of its development.

(a) If a change in the area of the Property results in a reduction of the area of the Property by greater than 3% the Purchaser shall be entitled to a reduction in the purchase price calculated on an area basis for each m2 of reduction in excess of the 3% threshold.

(b) If a change in the area of the Property results in a reduction or increase in the area of the Property by less than 3% the Purchaser shall have no claim whatsoever against the Vendor in respect of such change.

21.4 The Vendor gives no warranty as to whether the final appearance of the development or that the Property will be similar to any representation or advertisement provided to or viewed by the Purchaser.

22. **Vendors Rights**

22.1 The Purchaser acknowledges that the Vendor retains the following rights in respect of the Property:

(a) To enter onto the Property itself or by its servants, agents or workmen and do such work as shall in the opinion of the Vendor be necessary or desirable to complete the development.

22.2 The Purchaser acquires the Property subject to the following:-

(a) All existing interests and encumbrances on the existing record of title/s of the land;

(b) All new easements as may be required in connection with the development where required either as a condition of the Resource Consent or by the Vendor in connection with the development. These may include but not be limited to access, service and other easements;

(c) Any other encumbrance, consent notice, covenant or other interest as may be required as a condition of the Resource Consent;

(d) The land covenants outlined in Schedule 1;

(e) Any other interest or encumbrance which the Vendor considers as reasonably necessary or desirable in connection with the development.

22.3 The Purchaser acquires the Property together with the following:-

(a) All existing appurtenant benefits (if any) shown on the existing record of title/s of the land;

(b) All new appurtenant rights which are either required as a condition of the Resource Consent or required by the Vendor in connection with the development.

22.4 The Purchaser accepts that the terms of any instruments registered in accordance with clauses 22.2 and 22.3 will be on the terms used by the Vendor's solicitor subject to such variations as the Vendor in its sole discretion deems necessary or desirable in respect of the development.

22.5 The Vendor reserves the right to create or register any interest or encumbrance pursuant to this clause either prior to or concurrent with, the transfer of the Property to the Purchaser. In

that regard the Purchaser will to the extent that is necessary sign any documents and do such things as may be reasonably necessary in order to give effect to this Agreement.

- 22.6 None of the matters referred to in this condition shall entitle the Purchaser or any person claiming under him to damages or compensation or to make any objection or requisition pursuant to the provisions of the general conditions of sale. The Purchaser will sign all such documents, do all such things and obtain all such consents as may be necessary to facilitate implementation of these rights.
- 22.7 For clarity the parties acknowledge the settlement date is 5 working days after issue of title and clause 3.17 of the general terms of sale is deleted accordingly and shall have no effect.

23. **Caveat**

- 23.1 The Purchaser will not at any time prior to the date of possession lodge any caveat pursuant to the provisions of the Land Transfer Act 2017 (or any substitute for it) against the record of title/s of the land. In the event of the Purchaser so doing, the Purchaser hereby irrevocably appoints the Vendor or its nominee to be the Purchaser's true and lawful attorney to make execute and register in the name of the Purchaser and on the Purchaser's behalf all consents, notices, withdrawals, documents and papers and to do any other act or thing which the Vendor deems necessary or expedient to have such caveat removed from the record of title/s. The Purchaser hereby agrees that the production of this agreement to Land Information New Zealand shall be sufficient evidence of the appointment of the Vendor or its nominee as the attorney of the Purchaser for any such purpose. The costs of removal of any caveat shall be payable by the Purchaser to the Vendor immediately the Vendor advises the Purchaser of the amount of those costs.

24. **Lowest Price**

- 24.1 The purchase price does not include capitalised interest and the parties agree that the purchase price is the "lowest price" under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007.

25. **Land Covenants**

- 25.1 The Vendor and Purchaser acknowledge and agree that the Property forms part of a modern and well-designed residential subdivision. In recognition of this objective, the Vendor and Purchaser agree that the land covenants contained in Schedule 1 shall run with the land and be registered against the record of title to the land so as to bind the Purchaser, their successors and assigns. The Vendor expressly reserves the right to modify, add to or remove any land covenants if the Vendor considers it necessary or desirable for the purposes of its development. The Purchaser will comply with the land covenants from the date of possession notwithstanding that they may not have been registered against the record of title for the Property.

25.2 The Purchaser further acknowledges that they will not commence construction on the Property without first obtaining written approval from the developer for the plans.

26. Rates

26.1 The Purchaser shall from the settlement date pay all rates, taxes and other outgoings assessed, levied or payable in respect of the Property. Until the property is separately rated, the Purchaser will pay on demand to the Vendors or their solicitors a levy in lieu of rates on the basis of \$1,000.00 plus GST per lot per annum. Should the Purchaser default under this clause then the Vendor may at its discretion charge interest from the possession date until payment is made to the Vendor and or their solicitors at the rate of 16% per annum.

27. No Objection

27.1 The Purchaser covenants with the Vendor not to either personally or by directly or indirectly cooperating with or assisting others, lodge or submit any objection to any application for any statutory, regulatory or other consent and approval made by the Vendor for any use or activity affecting any land within the Vendor's development and/or the adjacent property. The Purchaser shall promptly at the cost of the Vendor support any application made by the Vendor to any authority for the purposes of obtaining any statutory, regulatory or other consents considered necessary or desirable by the Vendor for its development. The Vendor may include this clause as one of the land covenants to be registered against the title to the Property.

28. Indemnity

28.1 In the event that the Purchaser is granted access to or otherwise obtains possession of the Property prior to the settlement date the Purchaser shall from the date of such access or possession to the settlement date indemnify the Vendor against all actions, losses and expenses for which the Vendor is or becomes liable arising out of:

- (a) negligent use, waste or abuse by the Purchaser and/or persons under the control of the Purchaser of any consumables, services or facilities in or about the Property;
- (b) loss or damage to Property from any cause whatsoever in or about the Property caused or contributed to by the condition of the Property (such as may be attributable to the Purchaser) or by the use of the Property or by any act, omission, neglect, breach or default by the Purchaser and persons under the control of the Purchaser; and
- (c) failure by the Purchaser to comply with the provisions of any Acts, ordinances, regulations, bylaws or other enactments related to the use, occupation or operation of the Property (including the Resource Management Act 1991, the Building Act 2004 and the Health and Safety in Employment Act 1992).

29. Force Majeure

29.1 In this clause "Force Majeure Event" means an event or circumstances beyond the reasonable control of a party that makes it impossible or illegal to perform, or prevents compliance with or the performance of, such party's obligations under this agreement, including:

- (a) Acts of God;
- (b) Earthquake, landslide, flood, fire, drought or other natural events for which provision could not reasonably have been made;
- (c) Public enemy, sabotage, riot, civil disturbance, insurrection, national emergency (whether in fact or law), act of war (whether declared or not) or the order of any court or governmental authority;
- (d) Strike, lockout, work stoppage or other labour hindrance;
- (e) The requirement of any governmental or regulatory authority other than as a result of any act or omission or event under that party's control;
- (f) Epidemic, pandemic or the effect of any infectious disease,

But does not include an event to the extent that:

- (g) The effect of that event could have been substantially prevented, avoided or overcome by exercising a reasonable standard of care;
- (h) Such event was caused by an act or omission of the party affected; or
- (i) That event is constituted or caused by lack of finance or the insolvency of either party or a subcontractor or supplier of the party.

29.2 No party will be liable for any act, omission, or failure to fulfil its obligations under this agreement if such act, omission or failure arises from a Force Majeure Event. In the event a Force Majeure Event arises, the affected party shall:

- (a) Immediately notify the other parties in writing, and provide full information concerning the Force Majeure Event, including an estimate of the time likely to be required to overcome the event;
- (b) use its commercially reasonable endeavours to avoid or remove such cause or non-performance or delay and resume performance whenever such cause is avoided or removed; and
- (c) continue to perform its obligations as far as practicable

30. Reports and Qualifications

30.1 The Vendor will use all reasonable endeavours to ensure that all building sites will be either existing cut ground or engineered fill suitable for raft type foundation works however the

Vendor provides no warranty regarding the soil stability to the Property and accordingly it is the sole responsibility of the Purchaser to satisfy themselves:

- (a) that the Property will be suitable for the Purchaser's purposes.
- (b) as to the accuracy of any information given to the Purchaser.

30.2 The Vendor is not liable to contribute towards the cost of any foundation work for the construction of a dwelling by the Purchaser.

30.3 Any warranties set out or implied within this Agreement do not apply to the extent they relate to matters which are or could be disclosed through a search of the record of title to the land, the relevant resource consents, a LIM prepared by the relevant territorial authority or a search of any information contained in any public register.

30.4 The Purchaser has entered into this Agreement solely in reliance of the Purchaser's own judgement and has not relied on any representation or statement whether verbal or otherwise by or on behalf of the Vendor. The Purchaser has made its own independent and comprehensive enquiry and investigation of all publicly available information concerning the Property, the subdivision and the adjacent area and enters this agreement relying solely upon their own skill, judgement and due diligence. The Purchaser expressly acknowledges neither the Vendor nor its agents have made any representations or warranties that have been relied upon by the Purchaser or have induced it to enter into this Agreement.

30.5 The Vendor may assign its rights (including its rights to receive payment of the purchase price) under this Agreement to any person at any time. If so:

- (a) Any rights the Purchaser may have to exercise the remedies of damages in respect of this Agreement shall be enforceable only against the Vendor and not against the assignee; and
- (b) The assignee shall not be liable in damages, whether by way of set-off, counterclaim or otherwise to the Purchaser in respect of this Agreement.

30.6 Any assignment by the Vendor of its rights under this Agreement will not affect any rights the Purchaser may have against the Vendor in respect of this Agreement.

30.7 All measurements and areas are subject to any variation which may be found necessary upon checking by the local authority, the Vendor's surveyor and Land Information New Zealand and the Purchaser shall not be entitled to bring any claim whatsoever against the Vendor based on any such variation of measurements, nor other than as provided in clause 21.3 be entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on such variation.

31. Attorney

31.1 In consideration of the Vendor entering into this Agreement the Purchaser irrevocably nominates, constitutes and appoints the Vendor or any nominee of the Vendor to be the true and lawful attorney of the Purchaser for the purposes of signing all documents, plans and consents and to perform all acts, matters and things as may be necessary to:-

(a) Complete the subdivision and development contemplated by this Agreement and the consent;

(a) Approve and deposit any plan or variation to any proposed plan or any substitutes for the subdivision plan in relation to the development until final completion of it.

31.2 The Purchaser will not sell, transfer, assign or mortgage the Property or nominate another party as Purchaser except where such Purchaser, transferee, assignee, mortgagee or nominee first executes a power of attorney on the same terms in favour of the Vendor.

32. OIA Warranty

32.1 The Purchaser warrants that OIA consent is not required in respect of the sale and purchase of the Property. If OIA consent is required then this agreement shall, at the option of the Vendor, be void. Without prejudice to any other right or remedy available to the Vendor, the Vendor may forfeit and retain the deposit for its own benefit.

33. Guarantee

33.1 Where the Purchaser is a company, any person signing this agreement as an agent, attorney, authorised signatory or director of that company agrees and acknowledges that they personally guarantee the performance by the Purchaser of the covenants in this agreement and indemnifies the Vendor against any cost, loss or expense the Vendor may incur as a result of any default by the Purchaser.

34. Consent Notice

34.1 The Purchaser acknowledges that a consent notice will be registered on the record of title(s) for the development and will include the following condition:

(a) Any vehicle crossing shall be designed to minimise the loss of on-street parking where a parking bay has been constructed on the roadway adjacent to the Lot. The crossing shall be located to ensure that a minimum parking space length of 5.5 metres remains between the crossing and the end of the parking bay. The maximum width of the crossing shall be limited to 5.5 metres including the splays (unless a wider crossing is approved by WDC through the vehicle crossing permit process). The details of the crossing shall be submitted as part of the vehicle crossing permit application. The application shall be made prior to or in conjunction with the Building Consent application.

35. **Site Coverage**

- 35.1 The Purchaser acknowledges that the Resource Consent provides for a maximum building coverage of 40% on Lots 1 – 66 in the Vendor's development.