

## FURTHER TERMS OF SALE

### 20. Definitions

20.1 In this Agreement:

"**Act**" means the Unit Titles Act 2010.

"**Carparks**" means the designated carparks as shown on the Provisional Plan.

"**Certificate of Practical Completion**" means a document issued by the Vendor's Architect certifying that the Project achieved Practical Completion.

"**Consents**" means all authorisations and consents applicable to, and required for, completion of the Subdivision/Development Including (without limitation):

- (a) Resource Consent for the Subdivision;
- (b) Land use consents;
- (c) Development permits and consents for all Development to be carried out on the Land;
- (d) Consents or approvals required from any affected parties.

"**Development**" means the unit title development and the building or buildings which have been built or are to be built on the land general in accordance with the Plans and Specifications (subject to the terms of this agreement) and the terms of the Agreement and of which the Unit forms Part.

"**Land**" means the land contained in Record of Title SA979/40 (copy of which is contained in Schedule A).

"**Local Authority**" means any government, local, statutory or non-statutory authority or body having jurisdiction over the Land or over the Project.

"**Maintenance Period**" means 12 months from the Settlement Date.

"**Plans and Specifications**" means the plans and specifications annexed to this Agreement as Schedule B, for the Project as may be varied from time to time by the Vendor in accordance with clause 25 or any other term of this Agreement.

"**Practical Completion**" means the stage of the Project when all residential Units, all Accessory Units to those residential Units and all services necessary for the use of the residential Units are, in the opinion of the Vendor's Architect, complete except for minor omission and minor defects and the Units are capable of being used for residential purposes without material inconvenience and notwithstanding that any there part of the Development may not have reached practical completion at that time.

"**Project**" means the building of the Development and building or buildings which have been built or will be built on the land and any other buildings to be erected, altered or added to and any other work be carried out on the Land and the Common Property generally in accordance with the Plans and Specifications (but subject as provided in clause 25).

**"Provisional Plan"** means the provisional plan of the proposed unit title Subdivision of the Land as contained within the Plans and Specifications in Schedule B which may be varied from time to time by the Vendor in accordance with clause 25 or any other term of this Agreement.

**"Subdivision"** means the subdivision (in accordance with the Act) of the Land and the Development provided in this Agreement.

**"Unit"** means the unit described in the General Terms of Sale which been or will be constructed on the Land as part of the Project being a Unit under the Act. This definition is subject to the terms of this Agreement and in part but without limitation, clauses 25.1 and 25.2 (which the Purchaser acknowledges may, among other things, alter the exact size and/or position of the Unit) and **"Property"** shall have the same meaning.

**"Unit Plan"** means the Unit Plan for the Project to be deposited pursuant to the terms of Agreement and the Act and which will subdivide the Land into units. The Unit will be prepared and based on the Plans and Specifications in accordance with the terms of this Agreement.

## **21. Deposit**

- 21.1 The deposit shall be an amount equivalent to 10% of the Purchase Price payable by the Purchaser as follows:
- (a) \$5,000.00 of the deposit shall be paid immediately upon execution of this Agreement by all parties; and
  - (b) the balance of the deposit shall be paid immediately upon satisfaction of the conditions in clauses 22.1(a), 22.1(b) and 22.1(c) (inclusive) below.
- 21.2 The deposits referred to in sub-clauses 21(a) and (b) above shall together be referred to as the **"Deposit"**. The Deposit shall be paid to the trust account of Harris Tate Limited as stakeholder and will be held in accordance with clause 2.4.

## **22. Conditions**

- 22.1 This Agreement is conditional:
- (a) for 5 working days following the date of signing the Agreement by both parties upon the Purchaser determining, after taking such legal and other advice as the Purchaser considers relevant, that the provisions of this Agreement are in all respects suitable and appropriate for the Purchaser. If the Purchaser does not notify the Vendor of any objections to the provisions of this Agreement within the five working days period then this condition will be deemed to be satisfied. This condition is inserted for the sole benefit of the Purchaser.
  - (b) for 5 working days following the date of signing the Agreement by both parties upon the Vendor determining, after taking such legal and other advice as the Vendor considers relevant, that the provisions of this Agreement are in

all respects suitable and appropriate for the Vendor. If the Vendor does not notify the Purchaser of any objections to the provisions of this Agreement within the five working days period then this condition will be deemed to be satisfied. This condition is inserted for the sole benefit of the Vendor.

- (c) the Vendor obtaining a minimum level of sales of the Units which in the Vendor's sole discretion justifies completion of the Project by **31 March 2022** or such later date or dates elected by the Vendor (in the Vendor's sole discretion but acting reasonably and in a commercial manner) ("**Minimum Sales Date**") by giving notice of such later date(s) to the Purchaser prior to 5pm on the Minimum Sales Date. This condition is inserted for the sole benefit of the Vendor.
- (d) upon the Vendor obtaining all required Consents for the Subdivision on terms and conditions satisfactory to the Vendor in all respects by **31 October 2022** or such later date or dates elected by the Vendor (in its sole and absolute discretion but acting reasonably and in a commercial manner) ("**Consent Date**") by giving notice of such later date(s) to the Purchaser prior to 5pm on the Consent Date. The Vendor shall have sole and complete discretion as to whether it is satisfied (in its subjective judgement) with any aspect of the Consents, and the Vendor may disapprove any part of the Consents without being required to pursue any change to such part. This condition is inserted for the sole benefit of the Vendor.
- (e) the Vendor has the right to cancel this Agreement should the Local Authority amend the Provisional Plan to reduce the number of units allowed for the Land and the Purchaser's Unit is no longer available.
- (f) without limiting the Vendor's obligations under clause 26.1, the Unit Plan depositing under the Land Transfer Act 1952 and the issue of a separate record of title for the Property ("**Title**") by **30 June 2024**.

### ***Sunset Date***

- 22.2 If the Settlement Date has not been triggered by **29 November 2024** ("**Sunset Date**"), other than as a consequence of any default by the Purchaser, then the Purchaser will be entitled at any time after the Sunset Date and prior to the date upon which the Settlement Date is triggered, to cancel this Agreement by notice in writing to the Vendor.
- 22.3 The Vendor may, at its sole discretion, by written notice to the Purchaser, extend the time for confirmation of the Sunset Date contained in clause 22.2 above for a period of six months.

## **23. Resource Management Act**

- 23.1 The Purchaser agrees that the depositing of the Unit Plan by the Vendor within the timeframe stipulated in clause 22.1(f) constitutes reasonable progress for the purposes of Section 225(2)(b) of the Resource Management Act 1991.

## **24. Settlement Date**

- 24.1 The Settlement Date shall be the tenth (10th) Business Day after the later of:
- (a) the date a search copy of the Title for the Unit has been provided to the Purchaser (or the Purchaser's solicitor);
  - (b) the date the Certificate of Practical Completion is issued;
  - (c) the date the Purchaser (or the Purchaser's solicitor) receives a copy of Code Compliance Certificate for the Development; and
  - (d) the date the Purchaser (or the Purchaser's solicitor) receives a copy of pre-settlement disclosure statement under section 147 of the Act for Unit.

## **25. Completion of Project**

### ***Changes and Alterations***

- 25.1 The Purchaser agrees that the Vendor may, without limitation amend, change, vary or alter as appropriate:
- (a) the size (subject to clauses 28.7 to 28.9) and the number of Units and/or Accessory Units on the Land or in the Development;
  - (b) the configuration of the Units and/or Accessory Units;
  - (c) the position of the Units and/or Accessory Units within the Development (provided that for Units such change is limited to one (1) metre in any one direction);
  - (d) the area and location of the Common Property or Accessory Units;
  - (e) the access to the Land, Project or the Common Property;
  - (f) the appearance or design of the of the exterior of the Development and/or Project if required by a Local Authority following a change in the number of Units or accessory Units; and
  - (g) the Plans and Specifications (including the Provisional Plan) during the course of completing the Development or Project for reason beyond the reasonable control of the Vendor. For the purposes of this clause, reasons beyond the reasonable control of the Vendor include the directions or requirements or change of directions or requirements of any Local Authority, the practical demands of construction including good building practice or the availability of materials, or any change of law.

### ***No Objection by Purchaser***

- 25.2 The Purchaser will accept the Unit and any Accessory Unit, and the Development generally as changed, varied altered in accordance with clause 25.1 and accepts that such changes may alter the level of Body Corporal Levies. The Purchaser agrees that it will not be entitled to cancel this Agreement or to claim any compensation, damages, right of setoff or to make any objection or requisition by reason of any

variation between the Plans and Specifications (including the Provisional Plan) and the final Unit Plan, made in accordance with clause 25.1.

### ***Replacement Materials***

25.3 The Vendor may make such amendments to the Plans and Specifications or anything described or shown in the Plans and Specifications as it considers necessary or expedient and may substitute alternative material finishes, products or systems as determined by the Vendor. In its sole discretion provided that the alternatives are not of materially lesser quality than those contained in the Plans and Specifications.

### ***Subdivision and Construction***

25.4 Subject to satisfaction or waiver of the conditions in clause 22.1 the Vendor will subdivide the Land and Development substantially in accordance with the final Unit Plan pursuant to the provisions of the Act and will complete the Unit and the Development more or less in accordance with the Plans and Specifications (subject to the terms and conditions of this Agreement), in accordance with the requirements of the Local Authority and in proper and workmanlike manner.

25.5 In performance of the obligations described in 25.4, the Vendor:

- (a) may at its option include the lobbies, access ways, service areas, toilet facilities and other parts of the Land or Development which are not within the Unit, as Common Property or Accessory Units shared by or some of the units in the Development (including the Unit), as the Vendor determines;
- (b) may alter the Unit Plan in accordance with any provision of the Act as the Vendor deems appropriate;
- (c) will not be responsible for any delays in securing any consent or permits in respect of the Development and/or Project, nor for delays to the Development or Project arising from a cause beyond the reasonable control the Vendor including weather conditions, strikes, lock-outs, accidents, and/or unavailability of any materials, finishes, products or systems referred to in the Plans and Specifications.

25.6 The Purchaser agrees and acknowledges that the Vendor has the right to complete the Development and/or Project and the rectification of any defects in accordance with clause 30, after the Settlement Date.

### ***Access for Work***

25.7 Following the Settlement Date the Vendor, its agents, employees and contractors including the Vendor's Architect and subcontractors, will have the right to enter onto the Land and Development during normal bus hours, along with the plant, equipment and vehicles required to do such works as is in the opinion of the Vendor, the Vendor's Architect or other contractors, necessary or desirable to complete the construction of the Development and/or any part of the Project. The Vendor will use reasonable endeavours to ensure that works disrupt the Purchaser or its tenants as little as possible.

### ***Maintenance Period***

25.8 During, or within a reasonable time after the expiry of the Maintenance Period the Vendor will rectify make good at the Vendor's cost any defects, shrinkage of any finishing or other faults in the Unit due to faulty materials or workmanship and which are notified by the Purchaser in writing to the Vendor prior to expiration of the Maintenance Period (time being of the essence). The Vendor is not liable to repair damage caused be act or omission of the Purchaser (or any person the Purchaser is responsible for) or by fire, earthquake, tempest or other event which is normally covered by a comprehensive insurance policy, or which is responsibility of the body corporate to repair. If there is a dispute regarding the rectification of any default, the matter will be determined by an independent expert appointed by the Vendor. The parties agree that the expert's decision will be final and binding on the parties. The Vendor must not claim setoff compensation, damages or indemnity in relation to the maintenance obligations referred to in this clause.

### ***No Retention Set-Off***

25.9 The Purchaser must not:

- (a) withhold any part of the Purchase Price or claim any retention on Settlement for any defect, shrinkage or fault in the Unit, whether due to defective materials or workmanship or for any other cause, reason or claim; or
- (b) object to or make any requisition, set-off or claim for compensation, damages or Indemnity because any alteration of the Plans and Specifications which are made in accordance with or authorised by terms of this Agreement.

### ***Warranties***

25.10 The Vendor will assign to the body corporate the benefit of all warranties and guarantees relating to supply of services, materials and equipment incorporated or installed in the Unit or the Development in possession of or available to the Vendor and which are capable of assignment. Any warranties or guarantees that cannot be assigned will be held by the Vendor on trust for the benefit of the body corporate at the body corporate's cost.

### ***Utility Interest***

25.11 The Vendor may on the deposit of the Unit Plan (and in its sole discretion) assign utility interests to any unit within the Development which is different from the Units' ownership interests.

## **26. Subdivision and Title**

26.1 Following satisfaction of clauses 22(c), (d) and (e) above and the Vendor obtaining from its surveyor a Unit Plan, the Vendor will at the Vendor's expense proceed to have completed and have deposited at Land Information New Zealand ("**LINZ**") the final Unit Plan generally (but not necessarily exactly) in accordance with the Plans and Specifications, and effect issue of a new separate title for the Property.

26.2 All measurements and areas and easements shown on the Provisional Plan are subject to change and final survey and LINZ approval. The Vendor shall be entitled to incorporate in the final Unit Plan any variations from the Provisional Plan as may be required for the purposes of survey or completion of the Subdivision or compliance with the Consents or otherwise deemed necessary by the Vendor (in its sole and subjective judgement). No such variation shall entitle the Purchaser to damages or compensation nor entitle the Purchaser to make any objection.

## **27. No Caveat**

The Purchaser hereby covenants not at any time prior to the depositing of the Unit Plan at LINZ to lodge any Caveat against the record of title of the Land of which the Property forms part in respect of any interest of the Purchaser whatsoever and 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 have registered in the name of the Purchaser and on the Purchaser's behalf all such consents, notices, withdrawals, documents, papers and any other act or thing which the Vendor shall deem necessary or expedient to have such Caveat removed AND the Purchaser HEREBY AGREES that the production of this Agreement to the District Land Registrar 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 such Caveat shall be payable by the Purchaser to the Vendor forthwith upon the Vendor advising the Purchaser of the amount thereof this power of attorney needs to be registered, this Agreement shall be deemed to comprise a registerable deed at law in accordance with the provisions of the Land Transfer Act 2017 and the Commencement Date of which shall be the date of this Agreement.

## **28. Title & Plans**

28.1 The Purchaser agrees that:

- (a) the Title for the Unit will be a stratum estate in freehold under the Act with such Encumbrances the Vendor determines (in its sole discretion) and those that are provided for in accordance with Agreement which may be noted on the Title to issue for the Unit, the Unit Plan and the supplementary record sheet; and
- (b) Any walking or motor vehicle access ways, lifts, stairs and similar service areas relating to the Land and the Development, will be common property as shown on the Unit Plan.

### ***Varying the Unit Plan***

28.2 At any time before settlement the Vendor may change the Unit Plan and any subsequent or other relating to the Land or Project as the Vendor considers appropriate in the circumstances (including alteration, variation or cancellation of any proposed easement shown on any such plan) and the Purchaser will not be entitled to claim any compensation, damages, right to set-off or to make any objection requisition based on such change, alteration, variation or cancellation.

### ***Transfer***

28.3 Notwithstanding anything else in this agreement, the Purchaser will not be entitled to a transfer of the Unit or to call for settlement or possession in accordance with the provisions of this Agreement until Settlement Date and until all monies payable by the Purchaser to the Vendor under this Agreement have been paid to the Vendor's Solicitors in Cleared Funds.

### ***Timing***

28.4 The Vendor gives no warranty as to the date that a Title for the Unit will be available or that the Unit will be practically complete. Any anticipated timeframes or projected dates expressed are approximate and are not binding on the Vendor. The date of Practical Completion and issue of Title are not essential terms of Agreement. No compensation is payable to the Purchaser for failure to achieve such dates.

### ***Encumbrances***

28.5 The Purchaser agrees and acknowledges that:

- (a) the Vendor reserves to itself and its assigns the right to accept, grant or receive the benefit restrictions of any Encumbrances:
  - (i) that are required under the Consent;
  - (ii) that are required by any statute, regulation or by any Local Authority;
  - (iii) which in the sole discretion of the Vendor are deemed necessary or desirable in respect of Project, the Development, or the Subdivision to be completed to create the Unit.
  
- (b) the Vendor retains the following rights (without limitation) in respect of the Property and the Land up until completion of settlement:
  - (i) to grant to any Local Authority, any state owned enterprise, or any other person such rights as the Vendor may decide (or be required by the Consents) to grant in connection with the Property or Land including (but not by way of limitation) registrations against Title and rights to lay service lines and other connections;
  - (ii) to install physical lines and provide for any rights in respect of stormwater, sewage, drainage, electricity, telecommunications and any rights of way and other requirements by way of easement or otherwise howsoever;
  - (iii) to store soil in the course of development works;
  - (iv) to cut away and remove the soil and substrata of the Land and to kerb and fill adjacent to roads, access ways and rights of way;
  - (v) to excavate, lower, contour, fill, landscape and/or plant any part of the Land; and



- (vi) to enter upon any part of the Land itself or by its servants, agents or workmen and do such work as shall in the opinion of the Vendor be necessary or desirable for the formation, construction or laying of any road, footpath, drain, pipe, cable, line and/or other connection and any transformer or supply box as may otherwise be in the opinion of the Vendor necessary or desirable to complete the Subdivision/Development.
- (c) it must take Title to the Unit with all Encumbrances whether created before the Settlement Date or after the Settlement Date as part of the Project and:
  - (i) do such acts and execute such documents as may be required for the registration implementation of any Encumbrance in respect of the Land and adjoining land, the Project the Unit;
  - (ii) take Title to the Unit subject to any Encumbrances required or requested by any Local Authority to be registered against the Title to the Unit whether before or after the date of the Agreement; and
  - (iii) do such acts and execute such documents as may be required to obtain the deposit of Unit Plan.

### ***Title Objections***

28.6 The Purchaser agrees that it will take title to the Unit subject to the interests and Encumbrances registered against the Title to the Unit and shall not be entitled to requisition the Title to the Unit.

### ***Measurements***

28.7 All measurements and areas under this Agreement are subject to change in accordance with this agreement and may differ from final "as built" measurements as measured by any Local Authority, the Vendor surveyor and/or LINZ.

28.8 No party can claim compensation or other remedy for a variation in measurement or area except accordance with clause 28.9.

28.9 If the final measured area of the Unit is more than 5% less than the area of the Unit indicated in the Plans and Specifications (both being calculated in accordance with the same method of measurement) the Purchase Price will be adjusted by agreement or failing agreement by a single registered valuer agreed between the Vendor and the Purchaser determining the adjustment to the Purchase Price. If the Vendor and Purchaser cannot agree on a valuer, the valuer will be nominated by the President of the New Zealand Law Society. Notwithstanding any such claim the Purchaser must pay to the Vendor on the Settlement Date the full amount required to settle without deduction, set-off or reservation on any account whatsoever.

### ***Errors and Misdescription***

28.10 No error or misdescription of the Land or a Unit or Accessory Unit will entitle the Purchaser to terminate this agreement or annul the sale. If compensation is demanded in writing before the Settlement Date, a claim of compensation will exist

subject to any restrictions on remedies contained in this agreement, otherwise no claim for compensation will exist.

## **29. Appointment of Attorney**

### ***Appointment***

29.1 In consideration of the Vendor entering into this Agreement, the Purchaser irrevocably appoints the Vendor and any nominee of the Vendor to be the lawful attorney of the Purchaser for the purposes of executing all documents and plans, to perform all acts and do all things as may be necessary to:

- (a) complete the Project and to do any other thing in accordance with the terms of this Agreement;
- (b) approve and deposit any redevelopment plan or boundary adjustment plan in relation to any non-residential Unit or Units or Common Property, until final completion of the Project;
- (c) withdraw any Caveat lodged by the Purchaser in breach of clause 27;
- (d) execute any documents referred to in clauses 28.5 and 35 and in relation to any grant of licence, lease, easement or encumbrance over the Common Property for the provision of such services as the Vendor reasonably believes will be of benefit to the body corporate;
- (e) comply with the requirements of any Local Authority, in relation to the Project, including buy without limitation doing all things and executing all document necessary to facilitate the Project in the sole discretion of the Vendor;
- (f) obtain the consent of any mortgagee, chargeholder or other encumbrancer required for the execution or registration of any of the documents referred to at clauses 29.1(a) to (e).

### ***Delivery of Separate Attorney***

29.2 The Purchaser must if requested by the Vendor, execute and deliver to the Vendor a separate power of attorney to record and give further effect to the provisions of this clause 29, in the form notified by the Vendor. That power of attorney will include a deed of covenant under which the Purchaser covenants and undertakes not to sell the Unit without obtaining a replacement power of attorney in favour of the Vendor from any proposed purchase of the Unit. This clause is an essential term of this Agreement.

### ***Attorney to be Authority***

29.3 Production of the power of attorney to the Purchaser's solicitor agent or mortgagee from time to time will without further requirement or reference to the Purchaser comprise an irrevocable authorisation and instruction to the person involved or the Purchaser's mortgagee to execute any consents, plans or documents sought by the Vendor in relation to the Project, any redevelopment and the deposit of any unit plan.

### **30. Building Works**

30.1 Following satisfaction of clause 22.1 above, the Vendor will proceed in a proper and tradesman like manner to complete the construction of the building works on the Land and the Property in accordance with:

- (a) the Plans and Specifications as contained in Schedule B; and
- (b) the Consents and the provisions of all regulations and bylaws of government, territorial and public authorities that may be applicable to such building works.

30.2 If any materials specified in the Plans and Specifications are not reasonably procurable, the Vendor may substitute other materials in accordance with clause 25.3.

30.3 The Vendor may (but is not obliged to) make variations to the proposed building works as may be requested by the Purchaser, but the Vendor will be entitled to charge the Purchaser for such variations and the cost of any variations will be added to and form part of the purchase price and will be payable by the Purchaser upon settlement.

30.4 The Vendor may sub-contract any portion of (including up to the whole of) the proposed building works. Provided that the Vendor shall remain responsible and liable for all works undertaken by its sub-contractors, and management of all building works.

**31.** Prior to completing settlement, the Purchaser shall not be entitled to carry out any works of any kind in or upon the Land or the Property except with the express written consent of the Vendor. Where the Vendor incurs additional labour or material costs from the activity of the Purchaser or their servants and agents which is not otherwise provided for in the purchase price, then the effect of that activity shall be borne by the Purchaser and will be added to, and form part of, the purchase price payable to the Vendor on settlement.

**32.** If a code compliance certificate for the Property is delayed or not issued due to actions or omissions of the Purchaser, then the Vendor shall not be obliged to obtain a code compliance certificate and, provided that the works completed by the Vendor are otherwise to the standard required for a code compliance certificate, the code compliance certificate shall be deemed to be issued for the purposes of clause 24.

**33.** The Vendor shall have no responsibility or liability whatsoever for works or installations on the Land or Property undertaken or arranged by the Purchaser, and the Purchaser indemnifies the Vendor against any additional costs, losses, or damage resulting from such works or installations.

### **Assignment**

**34.** The Purchaser shall not be entitled to assign or nominate its interest under this Agreement nor on sell the Property prior to the date the conditions in clauses 22.1 have been satisfied or waived and without first obtaining the consent in writing of the Vendor and such consent may be given or withheld at the Vendor's absolute discretion. If the Vendor consents to the assignment, nomination or on sale, the Purchaser shall at the cost of the Purchaser prepare

and have executed and stamped a deed in a form acceptable to the Vendor pursuant to which the assignee, nominee or on purchaser covenants with the Vendor that the assignee, nominee or on purchaser is bound by the provisions contained or implied in this Agreement and on the part of the Purchaser to be observed and performed.

**35.** The Vendor may assign, nominate or otherwise dispose of its interest in the Land, the Property or this Agreement at its sole discretion, and the Purchaser acknowledges that it will do such acts and/or execute such documents as may be required for such assignment, nomination or disposal of the Vendor's interest in the Land, Property or this Agreement as required by the Vendor.

**36. Formation of Contract**

The Agreement upon execution by the Purchaser shall constitute an offer by the Purchaser and shall not for any purpose constitute or be deemed to constitute a contract nor shall such offer be or be deemed to have been accepted unless and until this Agreement is also executed by the Vendor or on behalf of the Vendor.

**37. Lowest Price – Accruals**

The parties agree that where in relation to this Agreement it is necessary to determine "acquisition price" for the purposes of the Income Tax Act 2007 and the Tax Administration Act 1994 and its amendments, the purchase price payable hereunder is the lowest price the parties would have agreed upon for the sale and purchase of the Property at the time when the first right under this agreement (other than the right to specifically enforce it) is to pass. The purchase price does not include any capitalised interest.

**38. Building Act Disclosure**

The Purchaser acknowledges receipt of the disclosure information and checklist provided by the Vendor in accordance with Regulations 1 and 2 of the Building (Residential Consumer Rights and Remedies) Regulations 2014.

**39. Body Corporate**

39.1 The body corporate shall have operational rules similar to the draft body corporate operational rules contained in Schedule C. The Vendor may amend these operational rules in its sole and absolute discretion to ensure the proper and efficient functioning of the body corporate having regard to the Subdivision/Development and the regulatory requirements. The Purchaser shall be bound by the body corporate operational rules.

39.2 The Purchaser will have no rights conferred by ownership of a Unit or any Accessory Unit or in relation to the body corporate prior to Settlement.

39.3 The Vendor will arrange administration and secretarial services to be provided to the body corporate by a professional organisation prior to the Settlement Date.

**40. Purchaser Acknowledgement**

40.1 The Purchaser acknowledges that the Purchaser is purchasing the Property solely in reliance upon the Purchaser's own judgement and not upon any representation or

warranty made by the Vendor or any agent of the Vendor other than as contained in this Agreement. It is an essential term of this Agreement that the Purchaser acknowledges that it has entered into this Agreement solely in reliance on its own judgment.

- 40.2 The parties acknowledge that this Agreement and the schedules and attachments contain the entire agreement between the parties, notwithstanding any negotiations or discussions prior to the execution of the Agreement or anything contained in any brochure, showroom, illustration website, report, plan or other document or medium.
- 40.3 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 or its agent, which is not set out in this Agreement.

#### **41. Guarantee**

41.1 If the Purchaser under this Agreement is a Company or a Trust, then the details at clause 41.2 below must be completed and signed, and the following terms will apply:

- (a) In consideration of the Vendor having entered into this agreement with the Purchaser at the Guarantor's request (as is hereby acknowledged by the Guarantor) the Guarantor unconditionally and irrevocably guarantees to the Vendor the payment of all monies payable by the Purchaser, and performance of all of the Purchaser's obligations, under this Agreement.
- (b) The Guarantor's liability to the Vendor shall be that of a Principal obligor under this Agreement. As between the Guarantor and the Vendor, the Guarantor may for all purposes be treated as the Purchaser and the Vendor shall be under no obligation to take proceedings against the Purchaser before taking proceedings against the Guarantor. The Guarantor's liability shall not be affected by any indulgence grant of time, waiver or any other act or thing on the Vendor's part which might affect the Guarantor's liability if the Guarantor was a surety only. This guarantee will continue in the event of the Purchaser assigning its interest in the Agreement.
- (c) The Guarantor indemnifies the Vendor against any losses, damages, expenses, and costs the Vendor may incur by reason of any breach or default on the part of the Purchaser under this Agreement. The Guarantor will pay to the Vendor promptly on request by the Vendor all legal costs and disbursements on a solicitor and own client basis incurred by the Vendor in connection with enforcement or attempted enforcement of this guarantee and indemnity if the Guarantor fails to meet the Guarantor's obligations under this guarantee when due.

41.2 For the purposes of clause 41.1 above:

- (a) The Guarantor is: \_\_\_\_\_
- (b) The terms of clause 41.1 above are accepted and confirmed by the Guarantor.
- (c) Signature of Guarantor:

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## **42. Purchaser Signatory**

Where the Purchaser's signatory to this Agreement signs this Agreement with the provision for a nominee, or as an agent for a principal whether disclosed or undisclosed, or on behalf of a company to be formed, or on behalf of a trust or any other entity, that Purchaser's signatory shall at all times remain personally liable for all obligations on the part of the Purchaser pursuant to this Agreement.

## **43. Unit Title Act Disclosure**

The Purchaser acknowledges that it/he/she/they has or have received a Pre-Contract Disclosure Statement as required under the Unit Titles Act 2010 prior to signing this Agreement.

## **44. No Retention**

On settlement the Purchaser shall not retain any money for extras, setoff, deduction or otherwise unless the Vendor consents to that retention in writing.

## **45. No Credit Contract**

45.1 It is recorded that:

- (a) the Settlement Date is the earliest date on which the parties would in any circumstances have agreed that the balance of the Purchase Price was to be paid;
- (b) neither the period between the date of this Agreement and the Settlement Date nor any other provision in this Agreement evidences any deferment of the Purchaser's obligation to pay the purchase price for the purposes of section 6 of the Credit Contracts and Consumer Finance Act 2003. Accordingly this Agreement is not a "credit contract" for the purposes of or within the meaning of that Act.

## **46. Force Majeure**

In the event that war, civil disorder, monetary or economic developments, acts of Government or Local Authority or other factors beyond the reasonable control of the Vendor whether similar or not ("**Specified Event**") prevents the Vendor from commencing or continuing construction of the Development and, completion of the Project or render it impracticable for the Vendor to commence or continue construction the Development and completion of the Project, then the Vendor may by notice in writing to the Purchaser advise of the Specified Event and cancel this Agreement. If the Agreement is cancelled under this clause the Vendor will return the Deposit to the Purchaser.

## **47. Arbitration Clause**

47.1 The parties agree to use their best efforts to resolve any dispute that may arise under the Agreement through good faith negotiations.

- 47.2 Neither party shall commence any arbitration in relation to this Agreement unless it has notified the other party in writing that there is a dispute (setting out the details of the dispute) and inviting the other party to meet for the purposes of endeavouring to resolve the dispute.
- 47.3 A party may, upon commencing the above negotiation process or receiving notice of a dispute, give notice to the other party requesting that the dispute be resolved by way of mediation. If a request for mediation is made, then the parties shall try to agree upon a mediator. If the parties fail to agree on a mediator within 14 days of the request for mediation the mediator shall be appointed by the then president of the New Zealand Law Society.
- 47.4 Any dispute arising under this Agreement which cannot be settled by negotiation or mediation within 28 days of the notice of dispute/mediation (as applicable) being served shall be submitted to arbitration in accordance with the Arbitration Act 1996. In the absence of agreement to the contrary, the arbitration shall be heard by a single arbitrator being a person agreed between the parties or, if they cannot agree within 7 days of commencing discussions on proposed arbitrators, being a person nominated by the President of the New Zealand Law Society. The decision of the arbitrator or arbitrators shall be final.

#### **48. No Warranty**

The Vendor gives no warranty and makes no representation about the correctness or completeness of the advertising or promotional material which the Purchaser may have received or any statement by any Agent of the Vendor and is not responsible in any way for such.

#### **49. Measurements**

The parties agree that the area of the Unit is calculated as set out in this clause. The measurements are to the centre line of inter-Unit walls, outside of walls where they abut common property, outside of exterior walls on a boundary, and in particular, but without limitation, the measurement includes decks, service ducts (if any) and a share of the common use corridor (if any) and appropriate share of the common use access way (if any) as indicated on the Unit Plan.

#### **50. Disclaimer**

The Vendor's marketing material, marketing brochures, websites and any other materials, any plans showing the concept of the Project (including websites, models and computer generate maps), the Plans and Speculations attached and any unit entitlement assessments advised to the Purchaser have all been prepared prior to the commencement of construction of the Project. While every reasonable effort has been made to ensure that the information and calculations set out in those materials correctly illustrate the Project and the Unit, they are for guidance only and no responsibility will be taken for any differences, errors or omissions which may become apparent upon completion of the Development and the Project and after "as built" plans and specifications and calculations are finalised.

#### **51. Further Assurances**

The Purchaser will fully cooperate with the Vendor to enable the Vendor to complete the Project and hereby consents to the Project and will sign and execute all such further documents and do all such acts, matters and things and provide all consents as are or will be required or necessary to give full effect to the Project and the terms of this Agreement.

**52. Service Disclosure Under the Unit Titles Act 2010**

The Purchaser specifies that the facsimile or email of the Purchaser's Solicitor shall be an address for service for the Purchaser for the purposes of section 205(1)(b) and (d) of the Act; and if the Purchaser is absent from New Zealand, the Purchaser's solicitor shall be the Purchaser's agent for the purposes of Section 205(2) of the Act.

**53. Carparks**

The Purchaser hereby acknowledges and agrees that it is intended that the Carparks as shown on the Provisional Plan are to be privately owned, and will not be available for public use.

**54. Deposit Release**

For the avoidance of doubt, if this agreement is avoided pursuant to sub clause 9.10(5), or where the purchaser has the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 and cancels the agreement pursuant to that section, the purchaser shall be entitled to immediate return of the deposit and any other moneys paid by the purchaser under this Agreement.



**SCHEDULE A**  
**Record of Title**

**SCHEDULE B**  
**Plans & Specifications**

The **attached** are indicative only.

**SCHEDULE C**

**Body Corporate Operational Rules**

The **attached** are in draft form and may be subject to change.