

BEFORE THE TIMARU DISTRICT COUNCIL

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

An application for Resource Consent
by Bayhill Developments Limited

STATEMENT OF EVIDENCE OF ALLAN PETER BOOTH

Dated: 23 November 2016

GREENWOOD ROCHE
LAWYERS
CHRISTCHURCH
Solicitor: L J Semple
(lauren@greenwoodroche.com)

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INTRODUCTION

- 1 My name is Allan Peter Booth. I am the joint owner of Bayhill Developments Limited (the Company), the owner of the Hydro Grand site and adjacent properties. I am authorised to give this evidence on behalf of the Company.
- 2 I have lived in Timaru for more than 30 years and am a director of several companies in New Zealand and Australia. My principal business, which is based in Timaru, manufactures wooden eating products (Skewers) and exports mainly into Australia and Continental Europe. Our Australian operations include warehouses in all major states, for the distribution of our NZ made products and imported products, which service all the major dairy and poultry manufacturers throughout Australia and the Pacific. Our company employs around 15 people here in Timaru.
- 3 I live in one of the oldest houses in Timaru and enjoy heritage buildings, however I am also very passionate about the future of Timaru. In that regard I consider that the town needs to look to its future as well as respecting its past.
- 4 I purchased the Hydro Grand site from a syndicate of local Timaru people in 2013. At that time it was my preference and hope that the building might be able to be restored to its former glory. I was aware that previous plans for the site had not panned out but felt that the site and the location still held considerable potential. I was also extremely keen to inject some life into a part of the Timaru townscape which was becoming increasingly run down and forgotten.
- 5 As set out in the Application and accompanying documents, at the time of purchase, the Hydro Grand had been unoccupied for over a decade and was in a dilapidated state. Subsequent investigations revealed that it was earthquake prone being only 10% of the New Building Standard (NBS). It had also been significantly altered internally with the loss of a number of its heritage features, contained potentially dangerous asbestos ceiling linings and was inhabited by pigeons with subsequent health risks related to excrement. All in all the building was a major undertaking.

- 6 Despite this I was still optimistic about the prospect of a restoration when we initially purchased and during 2014 I undertook some work alongside the Civic Trust to assess different restoration options for the site. Unfortunately it soon became clear to me that restoration was unlikely to be a financially viable option and that the opportunities to fund a restoration were extremely limited, if not non-existent.
- 7 As a result, during 2015, I put together a team of experts including architects, heritage advisors, planners and engineers to consider a range of alternative options for the site. These are set out in the Business Case Report which was attached to the Application and are discussed in detail in the evidence of Mr Charity. As can be seen from that analysis, we were open to considering a wide range of options for the site, but did need to know that whatever option was chosen was logistically and financially feasible.
- 8 The results of that analysis confirmed to the Company that the options to restore the Hydro Grand or use the façade were definitely not viable. Given that, our focus shifted to making the best possible use of this important location, atop The Bay Hill and overlooking Caroline Bay, the Port and the Southern Alps.
- 9 Because the current building had been unoccupied for some years and had become increasingly dilapidated, the surrounding area was also being negatively affected. We therefore determined that any new development on the site must integrate with the surrounding area including the piazza and bring life back to this part of town. Specifically we wanted to consider the idea of a mixed use development for the site which would take account of the location, the site's history and the surrounding buildings.
- 10 Our vision for the site was to create a development that encouraged people to come back into the CBD, providing opportunities for people to live and work and also utilize the many recreational activities of Caroline Bay. I believe that the development plan which Mr Burgess has arrived at meets those objectives.
- 11 The hotel component will comprise a new high quality hotel providing an accommodation option that Timaru is currently lacking. The office building will provide high quality office space bringing people back to

this part of town and the apartments will provide the opportunity to live within the Timaru CBD, an option which doesn't really exist at the moment. In addition, the cafes and shops at ground floor will provide more reasons to come to this end of town and will complement the existing piazza development.

- 12 The use of local materials, such as Timaru bluestone and references to unique parts of South Canterbury's short but proud heritage are also very important and will be incorporated where possible.
- 13 On 17 November this year the Company purchased an additional car park site located on The Bay Hill, approximately 200 metres from the Hydro Grand site. The title for the new car parking area will be subject to an encumbrance requiring that the site continues to be used for car parking. The Agreement for Sale and Purchase is attached and marked "A".
- 14 I firmly believe that this development will enhance Timaru generally and this part of town specifically. Although the loss of the Hydro Grand is regretted, it is simply not possible for us to feasibly restore the building to its former glory and re-use it in an efficient way. I am satisfied that we have looked at every option with an open mind and that we have explored every available method to sensibly save the building. It is my view that it simply cannot be done without an enormous injection of cash from a philanthropic source. I am not aware of any such source which is open to us.
- 15 It is accepted that the new building will be different but in my view it will still appropriately contribute to the townscape of Timaru. I am satisfied that it will add value to Timaru and will be something I am immensely proud of in the years to come.

Allan Peter Booth

23 November 2016

Attachment A

PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION

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

AUCTION DETAILS

Auctioneer: Peter H. Wilson
 Place of Auction: 167 - 169 Stafford Street, Timaru (the rooms of First National Reid & Wilson Licensed Agent REAA 2008)
 Date and Time of Auction: 17 November 2016 at 1.00pm
 Licensed Real Estate Agent acting for Vendor: Peter H. Wilson First National Reid & Wilson
 Vendor: THE TIMARU DISTRICT COUNCIL

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

PARTICULARS OF PROPERTY

Address: 0 The Bay Hill, Timaru, Timaru District

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): 1129 m² **Lot/Flat/Unit:** **DP:** **Unique Identifier or CT:** 8914

Section 22 Survey Office Plan 20153 and Lot 1 Deposited Plan 302425

Chattels: The following chattels are included in the sale (strike out or add as applicable):

~~Stove~~ ~~Fixed Floor Coverings~~ ~~Blinds~~ ~~Curtains~~ ~~Light Fittings~~

TENANCIES (if any) Vacant possession

Name of tenant:

Bond: Rent: Term: Right of Renewal:

CONDITIONS OF SALE

- 1.1 The property and the chattels included in the sale are sold on these Particulars and Conditions of Sale, the General Terms of Sale and any Further Terms of Sale.
- 1.2 GST will be payable in accordance with the statement of the purchase price in the Memorandum of Contract.
- 1.3 The GST date is: Settlement date
- 1.4 The settlement date is: 28 February 2017
- 1.5 The interest rate for late settlement is 12 % p.a.

CONDUCT OF AUCTION

- 2.1 The property is offered for sale subject to a reserve price and, subject to the reserve price being met, the highest bidder whose bid is accepted by the auctioneer shall be the purchaser.
- 2.2 The auctioneer may nominate the sum by which the bidding can be raised.
- 2.3 The auctioneer may refuse any bid.
- 2.4 The auctioneer or the licensed real estate agent acting for the vendor in respect of the sale may submit a bid on behalf of any person. The auctioneer shall identify a person so acting before the commencement of bidding.
- 2.5 The vendor may bid personally, or by a representative, or through the auctioneer, provided that the bid is less than the reserve price. The auctioneer shall identify each vendor bid as it is made.
- 2.6 The vendor may withdraw the property at any time before it has been sold and without declaring the reserve price.
- 2.7 If a dispute arises concerning any bid, the auctioneer may determine the dispute or re-offer the property at the last undisputed bid.
- 2.8 The purchaser shall immediately on the completion of the auction:
 - (a) Sign the Memorandum of Contract failing which the auctioneer may sign on behalf of the purchaser,
 - (b) Pay to the vendor's licensed real estate agent the deposit being 10% of the purchase price unless otherwise agreed; and
 - (c) Complete its GST information in Schedule 1, if applicable.

Release date: 22 August 2016



first national | Reid and Wilson

Licensed Agents REAA 2008

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GENERAL TERMS OF SALE

3.0 Definitions, time for performance, notices, and interpretation

3.1 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 Particulars and Conditions of Sale, these General Terms of Sale, any Further Terms of Sale, the Memorandum of Contract, and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
- An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 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 (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LINZ" means Land Information New Zealand.
- (11) "Local authority" means a territorial authority or a regional council.
- (12) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (13) "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.
- (14) "Property" means the property described in this agreement.
- (15) "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.
- (16) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (17) "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 5.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (18) "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.
- (19) "Settlement date" means the date specified as such in this agreement.
- (20) "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.
- (21) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (22) "Unit title" means a unit title under the Unit Titles Act 2010.
- (23) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (24) 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.
- (25) 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.
- (26) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (27) 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.
- (28) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 1952.
- (29) 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.
- (30) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (31) "Working day" means any day of the week other than:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
 - if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive;
 - 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.
- (32) Unless a contrary intention appears in the Conditions of Sale or elsewhere in this agreement:
- the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
 - a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

3.2 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 3.2(2).

3.3 Notices

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

- All notices must be served in writing.
- Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property must be served in accordance with section 353 of that Act.
- All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - on the party or on the party's lawyer:
 - by personal delivery; or
 - by posting by ordinary mail; or
 - by facsimile; or
 - by email; or
 - in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.

- (4) In respect of the means of service specified in subclauses 3.3(3)(b), a notice is deemed to have been served:
- in the case of personal delivery, when received by the party or at the lawyer's office;
 - in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
 - in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;
 - 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;
 - in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 20(1) of the Electronic Transactions Act 2002, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

3.4 Interpretation

- 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.
- 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.
- If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale or the Particulars and Conditions of Sale, the inserted term shall prevail.
- Headings are for information only and do not form part of this agreement.
- 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.

4.0 Deposit

- 4.1 The purchaser shall pay the deposit to the vendor's licensed real estate agent immediately on the completion of the auction or, where the property has been sold prior to, or subsequent to, the auction, on the execution of this agreement by both parties, time being of the essence.
- 4.2 If the deposit is not paid as set out in subclause 4.1, the vendor may cancel this agreement by serving notice of cancellation on the purchaser.
- 4.3 The deposit shall be in part payment of the purchase price.
- 4.4 If the property is a unit title, the person to whom the deposit is paid shall hold it as a stakeholder until:
- a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010 and 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
 - 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.

5.0 Possession and Settlement

Possession

- 5.1 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.
- 5.2 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:
- 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
 - 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.
- 5.3 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.
- 5.4 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

- 5.5 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.
- 5.6 The purchaser's lawyer shall:
- 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
 - prior to settlement
 - lodge in that workspace the tax information contained in the transferee's tax statement; and
 - certify and sign the transfer instrument.
- 5.7 The vendor's lawyer shall:
- 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
 - prior to settlement
 - lodge in that workspace the tax information contained in the transferor's tax statement; and
 - have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 5.8 On the settlement date:
- 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 5.12 or 5.14);
 - the vendor's lawyer shall immediately thereafter:
 - release or procure the release of the transfer instrument and the other instruments mentioned in subclause 5.7(1) so that the purchaser's lawyer can then submit them for registration;
 - pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 5.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
 - deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.
- 5.9 All obligations under subclause 5.8 are interdependent.
- 5.10 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

- 5.11 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:
- 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
 - 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

- 5.12 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 5.12(1).
- 5.13 Where subclause 5.12(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 regards 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

- 5.14 (1) For the purposes of this subclause 5.14:
- (a) the default period means:
 - (i) in subclause 5.14(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 5.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 5.14(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 5.14(2)(b) during the default period. A purchaser in possession under this subclause 5.14(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 5.14(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 5.14(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 5.14(2)(b) during the default period.
- (6) The provisions of this subclause 5.14 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 5.14:
- (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

- 5.15 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) prescribing 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).
- 5.16 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.
- 5.17 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 5.15 or subclause 5.16; 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 11.2(3),

- (4) then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 5.15, 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 5.16, 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

- 5.18 (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 172A of the Land Transfer Act 1952, of that title is not obtainable by the tenth working day prior to the settlement date,
- then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the date on which the vendor has given the purchaser notice that a search copy is obtainable.
- (2) Subclause 5.18(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.

6.0 Residential Land Withholding Tax

- 6.1 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 6.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 6.2 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 6.1(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.
- 6.3 If pursuant to subclause 6.2 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.
- 6.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 6.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 6.5 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 6.1(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.

7.0 Risk and insurance

- 7.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 7.2 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 10.4 for when an amount of compensation is disputed.
- 7.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

8.0 Title, boundaries and requisitions

- 8.1 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.
- 8.2 The purchaser is deemed to have accepted the vendor's title to the property and the purchaser may not make any requisitions or objections as to title.
- 8.3 Except as provided by section 7 of the Contractual Remedies Act 1979, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 10.1 but not otherwise, shall be made or given as the case may require.
- 8.4 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.

9.0 Vendor's warranties and undertakings

- 9.1 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.

- 9.2 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.
- 9.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 9.2(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.
- 9.4 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.
- 9.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 8.3 and any right of equitable set-off.

10.0 Claims for compensation

- 10.1 If the purchaser claims a right to compensation either under subclause 8.3 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 8.3, 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.
- 10.2 For the purposes of subclause 10.1(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 12.1.
- 10.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 10.4 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.
- 10.5 The procedures prescribed in subclauses 10.1 to 10.4 shall not prevent either party taking proceedings for the specific performance of the contract.

11.0 Unit title provisions

- Unit Titles
- 11.1 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.
- 11.2 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 provisions 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.
- 11.3 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 11.2(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.
- 11.4 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.
- 11.5 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 5.8(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.

12.0 Notice to complete and remedies on default

- 12.1 (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.
- 12.2 Subject to subclause 12.1(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.
- 12.3 (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 12.1.
 - (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.
- 12.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 12.1(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 12.4(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.
- 12.5 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.
- 12.6 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.
- 12.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 12.8 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.

13.0 Non-merger

- 13.1 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.

14.0 Agent

- 14.1 If the name of a licensed real estate agent is stated on the front page of 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.
- 14.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

15.0 Goods and Services Tax

- 15.1 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 in the Conditions of Sale 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 5.8(1).
- 15.2 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.
- 15.3 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.
- 15.4 (1) Without prejudice to the vendor's rights and remedies under subclause 15.1 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 12.1.
- (3) The vendor may give a settlement notice under subclause 12.1 with a notice under this subclause.

16.0 Zero-rating

- 16.1 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.
- 16.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 16.3 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.
- 16.4 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.
- 16.5 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.
- 16.6 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.
- 16.7 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 16.3 and 16.4 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.

17.0 Supply of a Going Concern

- 17.1 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%.
- 17.2 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 15.0 of this agreement shall apply.

18.0 Limitation of Liability

- 18.1 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.

19.0 OIA Consent Not Required

- 19.1 The purchaser warrants that the purchaser does not require OIA Consent.

20.0 Counterparts

- 20.1 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 ATTACHED



FURTHER TERMS OF SALE

21.0 REMOVAL OF PARKING VENDING MACHINE

The parties acknowledge that the Timaru District Council parking vending machine is not included in the sale. Such machine to be removed by settlement date. Furthermore any subsequent damage to the seal or property shall be reinstated at the Timaru District Council's expense.

22.0 ENCUMBRANCE

The Purchaser acknowledges that prior to entering into this agreement the Vendor or its agent has disclosed the Vendor will prior to or contemporaneously with settlement register an encumbrance instrument against the Title to the property in the form attached.

23.0 NZTA DESIGNATION

The Purchaser acknowledges that prior to entering into this agreement the Vendor or its agent has disclosed that the Operative District Plan for the Timaru District includes a designation by the New Zealand Transport Agency ("NZTA") affecting the property and further that the Purchaser was advised that all inquiries concerning the effect and implications of the designation were to be directed to the NZTA and the Purchaser has satisfied itself in terms of the designation and shall have no recourse against the Vendor concerning the designation.

24.0 PURCHASER ACKNOWLEDGEMENTS

The Purchaser acknowledges and accepts the following:

- (a) the description of the Property is believed to be accurate but the Vendor makes no warranty in this regard. The Purchaser acknowledges that its offer is made solely on its own judgement and not in reliance on any representation or warranty (other than the express warranties included in this Agreement) made by the Vendor or its agent;
- (b) neither the Vendor nor the Vendor's agent make any warranty as to the completeness or accuracy of the Land Information Memorandum issued by the Timaru District Council in its regulatory capacity or any other information or report provided to the Purchaser;
- (c) no error, misstatement or miss-description in any advertisement or in this Agreement or by the Vendor or its agent shall give rise to a right to cancellation of this Agreement by the Purchaser nor entitle the Purchaser to compensation;

- (d) it is the sole responsibility of the Purchaser to have satisfied itself prior to entering into this Agreement as to any Government or Local Body requisition or requirement in respect of the Property and its zoning; and
- (e) prior to entering into this Agreement, the Purchaser relied solely on its own judgement as to the structural integrity and repair status of the Property, and has made all enquiries the Purchaser deems appropriate or necessary to satisfy itself with regard to those matters.

Encumbrance Instrument

(Section 101 Land Transfer Act 1952)

Attached instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
8914	All	

Encumbrancer

TIMARU DISTRICT COUNCIL

Encumbrancee

TIMARU DISTRICT COUNCIL

Estate or interest to be encumbered

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

Fee Simple

Encumbrance Memorandum Number

Nature of security

State whether sum of money, annuity or rent charge and amount

Annual rent charge of \$10.00

Encumbrance

Delete words in { }, as appropriate

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

ANNEXURE SCHEDULE

MEMORANDUM OF ENCUMBRANCE (TO SECURE PERFORMANCE OF COVENANT IN GROSS)

1. The Encumbrancer ENCUMBERS THE LAND for a term of 999 years for the benefit of the Encumbrancee with an annual rent charge in each year of \$10.00 to be paid by the Encumbrancer to the Encumbrancee on the 17th day of November 2017 and on the 17th day of November in every year thereafter (but subject to clauses 2 to 4 of this Memorandum).
2. If on the 17th day of November 2017, and on the 17th of November in each year thereafter during the continuance of this Encumbrance, for the preceding 12 months there has been no breach of any of the secured covenants, or if any breach of the secured covenants has been rectified by the Encumbrancer within 15 working days of the issue of a written notice by the Encumbrancee to the Encumbrancer, and no further breaches of such covenants are committed by the Encumbrancer, then the Encumbrancee shall waive the annual rent charge otherwise payable and the Encumbrancer shall be entitled upon request to a written acknowledgement from the Encumbrancee to that effect.
3. Section 203 of the Property Law Act 2007 applies to this Memorandum of Encumbrance but otherwise, and without prejudice to the Encumbrancee's rights of action in common law as a rent charge:
 - a) The Encumbrancee shall be entitled to none of the powers and remedies given to Mortgagees and Encumbrancees by the Land Transfer Act 1952 and the Property Law Act 2007; and
 - b) No covenants on the part of the Encumbrancer and the Encumbrancer's successors in title are implied in this Memorandum other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.
4. This rent charge shall immediately determine and the Encumbrancer shall be entitled to a discharge of the Memorandum of Encumbrance when the secured covenants are fully performed and no longer enforceable and any monies that may have become owing under this security are fully paid.
5. The Encumbrancer for itself and its successors in title covenants with the Encumbrancee (such covenants being called the "secured covenants") that:

(a) The Encumbrancer will not erect, or allow to be erected, on any part of Lot 1 Deposited Plan 302425 and Section 22 Survey Office Plan 20153 as comprised in Computer Freehold Register 8915 (Canterbury Land Registration District) ("the servient land") any building (as that term is defined in the Building Act 2004).

(b) The Encumbrancer will not use, or allow the use of, the servient land, or any part of it, for any purpose other than the provision of car parking. The Encumbrancer shall at all times preserve on the servient land the landscaped areas in existence as at the date of registration of this Encumbrance and maintain those landscaped areas to a reasonable standard.

PROVIDED THAT the covenants shall be enforceable only against the registered proprietor of the Land for the time being and its successors in title, and not otherwise enforceable against the Encumbrancer.

6. The Encumbrancee consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the servient land:
- (a) The registration of a mortgage including a variation of a mortgage instrument (sections 102 (4) Land Transfer Act 1952).
 - (b) The creation, variation or surrender of a land covenant.
7. Notwithstanding anything contained in clause 6 above, where an instrument referred to in clause 6:
- (a) contains any restrictions, conditions or agreements which may be contrary to the terms of this Instrument; or
 - (b) would have required the Encumbrancee's consent or signature other than in its capacity as chargeholder pursuant to this Instrument; or
 - (c) would otherwise materially affect the Encumbrancee;
- then the provisions of clauses 6 shall not apply and the written consent of the Encumbrancee shall still be sought by the Encumbrancer.

MEMORANDUM OF CONTRACT

Date of Memorandum: 17/11/2016

At the auction of the property, or ~~prior to, or subsequent to, the auction,~~ (delete as applicable)

PURCHASER'S NAME: Bayhill Developments Ltd and/or nominee ("the purchaser")

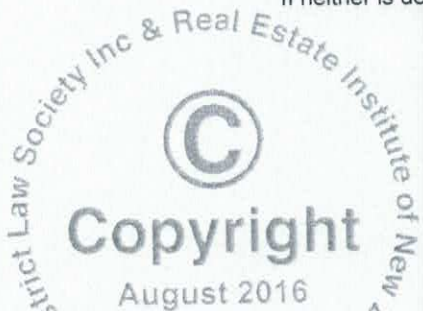
became the purchaser of the property by being the highest bidder, or by agreeing with the vendor to purchase the property.

The vendor agrees to sell and the purchaser agrees to purchase the property and the chattels included in the sale for the purchase price stated below in accordance with these Particulars and Conditions of Sale, General Terms of Sale and Further Terms of Sale (if any).

Purchase price: \$ 255,000 —

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

Deposit: \$ 25,500 —




Acknowledgements

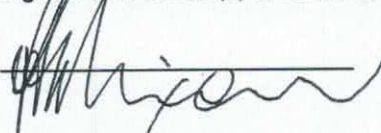
Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a licensed real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the 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) or auctioneer:



Signature of vendor(s) or auctioneer:



BEFORE BIDDING AT THE AUCTION

If you are the successful bidder or you sign this agreement before or after the auction this sale will be legally binding on you.

If you are the successful bidder, the auctioneer may sign the Memorandum of Contract on your behalf if you should fail or refuse to do so.

- It is recommended you seek professional advice before bidding or, if you sign this agreement before or after the auction, before signing. This is especially so if:
 - there are any doubts.
 - 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.
 - there is any doubt as to the position of the boundaries.
 - you wish to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- You should investigate the status of the property under the local Council's District Plan. The property and those around it may be affected by zoning and other planning provisions regulating their use and future development.
- You 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 Land Information Memorandum (LIM) from the Council.
- You should check the title to the property because there is no right of objection or requisition.
- You 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 you enter into the agreement:
 - the vendor must provide you with a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010;
 - you 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.
- Both parties should ensure the chattels list on the front page is accurate.
- You should ensure that you understand the GST position, and whether or not GST is payable in addition to the price at which you are bidding.
- 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.
- You should read the Conduct of Auction in clause 2.

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 ENTERING A BID AT THE AUCTION.

PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF BECOMING THE SUCCESSFUL BIDDER AT THE AUCTION.

PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION

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DATE: 17/11/2016

Address of Property:

0 The Bay Hill, Timaru, Timaru District

VENDOR: THE TIMARU DISTRICT COUNCIL

Contact Details: Matt Ambler
Property Manager
Timaru District Council
Phone: 6877200
Email: matt.ambler@timdc.govt.nz

VENDOR'S LAWYERS:

Firm: Gresson Dorman & Co
Individual Acting: Craig O'Connor
Contact Details: Level 1
24 The Terrace, PO Box 244
Timaru 7940
Office: 6878004
DD: 6878053
Fax: 6844584
Email: craig@gressons.co.nz

PURCHASER: Bay Hill Developments Ltd

Contact Details:

PURCHASER'S LAWYERS:

Firm: Rsm Law
Individual Acting: Ken McKenzie

Contact Details: DDI: 6879083
Fax: 6879777
Email: mckenzie@rsm.co.nz

Auctioneer:
Licensed Real Estate Agent Listing Property:
Reid & Wilson First National
Manager: Peter Wilson
Salesperson: Peter Wilson (027 476 5329)

Contact Details:
167-169 Stafford Street
TIMARU 7910
Ph: 03 688 4084
Email: mail@reidwilson.co.nz

 **first national** | Reid and Wilson
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