


Agreement for Sale and Purchase of Shares

2/1 Aurora Street, Petone

David O'Byrne & Judith O'Byrne
(Vendor)

[**and/or nominee]**
(Purchaser)



Agreement dated the _____ day of _____ 20____

Parties

1. **David O'Byrne & Judith O'Byrne** ("the Vendor")
2. [_____] **and/or nominee**, ("the Purchaser")

Background

- A. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Shares on the terms and conditions set out in this agreement.

The parties agree

1. Interpretation

- 1.1 In this agreement, unless the context otherwise requires:

"Company" means SOMES FLATS LIMITED, a duly incorporated company having its registered office at 294 Jackson Street, Petone, Lower Hutt and being register under number 19127.

"Company's Representative" means Brian Pike.

"Interest Rate for Late Settlement" means 14% per annum.

"Property" means the property situated at 2/1 Aurora Street, Petone, Lower Hutt, PT 45-46, DP 393, WN365/264 - WN365/265

"Purchase Price" means \$[_____] [inclusive/exclusive] of GST (if any).

"Settlement Date" [_____] or earlier by mutual agreement

"Share Transfer" means a memorandum of transfer in respect of the Shares from the Vendor to the Purchaser properly executed in accordance with all applicable statutes and/or laws.

"Shares" means 10,500 shares held by the Vendor in respect of the Company being the shares numbered 10801 to 21300 (both numbers inclusive) in respect of the Property.

“Working Day” means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Matariki, Labour Day, New Zealand’s Anniversary Day and Wellington Anniversary Day; and
- (b) A day in the period commencing 24th day of December in any year and ending on the 5th day of January of the following year, both days inclusive.

A Working Day shall be deemed to commence at 9:00am and terminate at 5:00pm. Any act done pursuant to this agreement by a party after 5:00pm on a Working Day or on a day which is not a Working Day, shall be deemed to have been done at 9:00am on the next succeeding Working Day. With two or more acts (including service of notices) done pursuant to this agreement 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 the second sentence of this clause.

- 1.2 **Parties:** references to parties are references to parties to this agreement and shall be deemed to include the executors, administrators and successors of the parties. If there is more than one Vendor or Purchaser, the liability of the Vendors of Purchasers, as the case may be, is joint and several. Where the Purchaser executes this agreement with provision for a nominee, or as an 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.
- 1.3 **Persons:** references to persons shall be deemed to include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- 1.4 **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background;
- 1.5 **Headings:** clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this agreement;
- 1.6 **Clauses and Schedules:** references to clauses and schedules are references to clauses of and schedules to this agreement;
- 1.7 **Plural and Singular:** words importing the singular number shall include the plural and vice versa;
- 1.8 **Schedules:** the schedules to this agreement and the provisions and conditions contained in such schedules shall have the same effect as if set out in the body of this agreement; and

- 1.9 **Negative Obligations:** any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.10 **Statutory Provisions:** References to statutory provisions shall be constructed as references to there provisions as they may be amended of re-charted or as their application is modified by other provisions from time to time.

2. [Pre-Emptive Rights]

- 2.1 [The Vendor confirms that prior to entering into this agreement it has followed the share transfer process set out at clause [3.1] of the Company's registered constitution and that it has not received an offer from any other shareholder to purchase the Shares.]

3. Conditions

- 3.1 This agreement is subject to and conditional upon:
- (a) The Vendor obtaining the consent of the board of the Company to the transfer of the Shares to the Purchaser and agreement to the entry of the Purchaser's name on the register of shareholders of the Company within [] working days from the date of this agreement. This condition is inserted for the sole benefit of the Vendor.
 - (b) The Purchaser's approval of due-diligence.
This agreement is conditional upon the purchaser being satisfied with the results of a due diligence investigation of the property within () working days of the date of this agreement. If the purchaser is dissatisfied with any aspect of this investigation the purchaser may at the purchaser's absolute discretion by notice in writing terminate this agreement and in such case any deposit paid must immediately be refunded in full. This condition is inserted for the sole benefit of the purchaser and the purchaser is under no obligation whatsoever to supply any reasons for the purchaser's dissatisfaction with any aspect of the investigation.

The vendor undertakes and agrees to:

- (a) allow the purchaser together with consultants employed by the purchaser full access to the property for the purposes of the due diligence investigation; and
- (b) provide to the purchaser any information held relating to the property relevant to the due diligence investigation.

4. Provisions relating to condition

- 4.1 In relation to the conditions set out in clause 3 above, the following will apply:
- (a) The conditions will be condition subsequent;
 - (b) The party for whose benefit the condition has been inserted must do all things which may be reasonably necessary to enable the condition to be fulfilled by the date for fulfilment;
 - (c) Time will be of the essence for the fulfilment of the condition, and for any extended time for fulfilment of that condition to a fixed date;
 - (d) The condition will not be deemed to be fulfilled until written notice of fulfilment has been served by one party on the other;
 - (e) If the condition is not fulfilled by the date for fulfilment either party may, at any time before the condition is fulfilled or waived, avoid this agreement by giving notice to the other. Upon avoidance of this agreement any party that has paid money to the other will be entitled to the return of that money, without deduction or set-off, and neither party will have any right or claim against the other.

5. Sale and Purchase

- 5.1 Subject to clause 5.2, the Vendor agrees to sell to the Purchaser who agrees to purchase the Shares for the Purchase Price.
- 5.2 The Shares are sold subject to an occupation licence to be entered into in substitution for the current occupation licence in respect of the Property pursuant to clause 8.

6. Deposit

- 6.1 The sum of []% of the Purchase price shall be paid on confirmation of this agreement becoming unconditional in all respects to be paid to Professionals, Redcoats Limited Trust Account who shall hold the deposit:
- (a) as stakeholder pursuant to section 123 of The Real Estate Agents Act 2008; and
 - (b) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived.
- 6.2 If the deposit is not paid on the due date for payment, the Vendor may at any

time thereafter serve on the Purchaser notice requiring payment, if the Purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the Vendor may cancel this agreement by serving notice of cancellation on the Purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.

6.3 The deposit shall be in part payment of the purchase price.

7. Payment of Balance of Purchase Price

7.1 The balance of the Purchase Price (being the Purchase Price less any deposit paid, together with any apportionments of any outgoings and incomings in respect of the Shares) shall be paid in one lump sum in cleared funds, on the Settlement Date in accordance with clause 8.

8. Possession and Settlement

8.1 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.

8.2 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:

- (a) 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
- (b) to re-enter the Property no later than the day prior to the Settlement Date to confirm compliance by the Vendor with any agreement made by the Vendor to carry out any work on the Property, the chattels and the fixtures.

8.3 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.

8.4 Upon this agreement becoming unconditional in all respects, the Purchaser shall prepare, at the Purchaser's own expense, a memorandum of transfer in respect of the Shares, executed by the Purchaser if necessary. The Purchaser shall tender the memorandum of transfer to the Vendor or the Vendor's solicitor at a reasonable time prior to the Settlement Date.

8.5 The Vendor shall prepare at the Vendor's own expense, a settlement statement showing all outgoings and incomings in respect of the Shares apportioned at the Settlement Date. The Vendor shall tender the settlement statement to the Purchaser or the Purchaser's solicitor at a reasonable time prior to the

Settlement Date.

8.6 In addition to undertaking the matters set out in clauses 8.4 and 8.5:

- (a) The Vendor shall:
 - (i) procure the Company's Representative to prepare and have executed a surrender of the current occupation licence in respect of the Shares;
 - (ii) subject to the matters contained in clause 8.6(b) having been complied with in all respects, procure the Company's Representative to prepare and have executed by the Company a new occupation licence relating to the Property on the form of licence required pursuant to the Company's registered constitution, which the holder of the Shares is entitled to occupy by virtue of owing the Shares;
 - (iii) procure the Company's Representative to issue a share certificate for the Shares in the name of the Purchaser to be handed to the Purchaser on or shortly after settlement; and
 - (iv) procure a full release and/or discharge of any and all charges, liens, mortgages and/or security interests against the Shares and provide such release(s) and/or discharge(s) to the Purchaser to the intent that the Shares are sold free of all such charges.
- (b) The Purchaser shall on receipt of the new occupation licence relating to the Property which the holder of the Shares is entitled to occupy by virtue of owning the Shares, duly execute the said licence and forward the same to the Vendor's solicitor in good time prior to the Settlement Date.

8.7 On the Settlement Date:

- (a) The Purchaser shall pay or satisfy the balance of the Purchase Price, interest and other monies, if any, due in cash or as otherwise provided in this agreement.
- (b) The Vendor shall concurrently:
 - (i) provide to the Purchaser the memorandum of transfer in respect of the Shares properly executed so as to cause the Company's share register to be updated upon presentation of the memorandum of transfer to the Company's secretary, together with the new occupation licence referred to in clause 8.6(a)(ii); and

- (ii) provide to the Purchaser the share certificate issued by the Company for the Shares in the name of the Purchaser.

(together "the Settlement Documents").

- (c) 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.

8.8 The obligations in subclauses 8.7(a) and (b) are interdependent.

8.9 **Purchaser Default:** If due to the delay of the Purchaser settlement takes place between 4:00pm and 5:00pm on the Settlement Date ("Last Minute Settlement"). The Purchaser shall pay to Vendor:

- (a) One day's interest at the Interest Rate for Late Settlement upon the portion of the Purchase Price paid in the Last Minute Settlement; and
- (b) 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.

8.10 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:

- (a) 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);
- (b) 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 purpose of this clause, 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.

8.11 **Vendor Default:** For the purposes of subclauses 8.11 to 8.13:

- (a) The default period means in subclause 8.12, the period from the Settlement Date until the date when the Vendor is able and willing

to provide the Settlement Documents.

- (b) The Vendor shall be deemed to be unwilling to give ownership of the Shares if the Vendor does not offer to give the Settlement Documents; and
- (c) The Purchaser shall be deemed not to be in default if the Purchaser provides reasonable evidence of the Purchaser's ability to perform the Purchaser's obligations under this agreement.

8.12 If the Vendor is unable or unwilling to hand the Settlement Documents to the Purchaser on the Settlement Date, then, provided that the Purchaser is not in default:

- (a) The Vendor shall pay the Purchaser, an amount equivalent to interest at the Interest Rate for Late Settlement on the 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 solicitor'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 Shares.

8.13 The provisions of subclauses 8.11 and 8.12 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.

8.14 **Deferment of Settlement:** If neither party is ready, willing and able to settle on the Settlement Date, the Settlement Date shall be deferred to the second Working Day following the date upon which one of the parties gives notice it has become ready, willing and able to settle.

9. Notices to Complete and Remedies on Default

9.1 If the sale is not settled on the Settlement Date either party may at any time thereafter serve on the other party notice ("Settlement Notice") to settle in

accordance with this clause; but 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 the Settlement Notice or is not so ready able and willing to settle only by reason of the default or omission of the other party.

9.2 Upon service of the Settlement Notice the party on whom the notice is served shall settle:

- (a) On or before the twelfth Working Day after the date of service of the Settlement Notice; or
- (b) On the first Working Day after the 20th 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 20th day of January, both days inclusive,

time being of the essence, but without prejudice to any intermediate right of cancellation by either party.

9.3 If the Purchaser does not comply with the terms of the Settlement Notice served by the Vendor then:

- (a) Without prejudice to any other rights or remedies available to the Vendor at law or in equity the Vendor may:
 - (i) sue the Purchaser for specific performance; or
 - (ii) cancel this agreement by notice and pursue either or both of the following remedies namely:
 - A. 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
 - B. sue the Purchaser for damages.
- (b) 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 Shares 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.
- (c) The damages claimable by the Vendor under subclause 9.3(a)(ii)B 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:

- (i) 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
 - (ii) all costs and expenses reasonably incurred in any resale or attempted resale.
- (d) Any surplus money arising from a resale as aforesaid shall be retained by the Vendor.

9.4 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:

- (a) Sue the Vendor for specific performance; or
- (b) 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.

9.5 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 Settlement Notice.

9.6 Nothing in this clause shall preclude a party from suing for specific performance without giving a Settlement Notice.

9.7 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 Settlement Notice.

10. Claims for Compensation

10.1 If the Purchaser has not purported to cancel this agreement, the breach by the Vendor of any term of this agreement does not defer the Purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 10.0.

10.2 The provisions of this clause apply if:

- (a) The Purchaser (acting reasonably) claims a right to compensation for:

- (i) a breach of any term of this agreement;
 - (ii) a misrepresentation;
 - (iii) a breach of section 9 of the Fair Trading Act 1986;
 - (iv) an equitable set-off, or
- (b) there is a dispute between the parties regarding any amounts payable:
 - (i) under clause 8.9, 8.10, 8.11 or 8.12.

10.3 To make a claim under this clause 10.0:

- (a) the claimant must serve notice of the claim on the other party on or before the last Working Day prior to the Settlement Date, time being of the essence (except for claims made after the Settlement Date for amounts payable under clause 8.9, 8.10 or clause 8.11 or clause 8.12, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
- (b) the notice must:
 - (i) state the particular breach of the terms of this agreement, or the claim under clause 8.9, 8.10 or 8.11 or 8.12, or for misrepresentation, or for breach of section 9 of the Fair Trading Act 1986, or for an equitable set-off; and
 - (ii) state a genuine pre-estimate of the loss suffered by the claimant; and
 - (iii) be particularised and quantified to the extent reasonably possible as at the date of the notice; and
- (c) the claimant must not have made a prior claim under this clause 10.0 (to the intent that a claimant may make a claim under this clause 10.0 on only one occasion, though such claim may address one or more of the elements in clause 10.2).

10.4 If the claimant is unable to give notice under clause 10.3 in respect of claims under clause 10.2(a) or clause 10.2(b) on or before the date that notice is due under clause 10.3(a) by reason of the conduct or omission of the other party, the notice may be served on or before the Working Day immediately preceding the last Working Day on which settlement must take place under a Settlement Notice served by either party under clause 9, time being of the essence.

10.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the Purchaser on settlement.

- 10.6 If the Purchaser makes a claim for compensation under clause 10.2(a) but the Vendor disputes that the Purchaser has a valid or reasonably arguable claim, then:
- (a) the Vendor must give notice to the Purchaser within three working days after service of the Purchaser's notice under clause 10.3, time being of the essence; and
 - (b) The Purchaser's right to make the claim (on the basis that such claim is valid or reasonably arguable) shall be determined by an experienced property lawyer or an experienced litigator appointed 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 Wellington District Law Society. The appointee's costs shall be met by the party against whom the determination is made or otherwise as determined by the appointee.
- 10.7 If the Purchaser makes a claim for compensation under clause 10.2(a) and the Vendor fails to give notice to the Purchaser pursuant to clause 10.6, the Vendor is deemed to have accepted that the Purchaser has a valid or reasonably arguable claim.
- 10.8 If it is accepted, or determined under clause 10.6, that the Purchaser has a right to claim compensation under clause 10.2(a) but the amount of compensation claimed is disputed, or if the claim is made under clause 10.2(b) and the amount of compensation claimed is disputed, then:
- (a) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - (b) 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 Wellington District Law Society;
 - (c) the interim amount must be a reasonable sum having regard to the circumstances, except that:
 - (i) where the claim is under clause 8.11 or 8.12 the interim amount shall be the lower of:
 - A. the amount claimed; or
 - B. 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.

- (ii) neither party shall be entitled or required to undertake any discovery process, except to the extent this is deemed necessary by the appointee under clause 10.8(d) for the purposes of determining that the requirements of clauses 10.3(b)(ii) and -(iii) have been met.
 - (d) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, or an experienced litigator. The appointee's costs shall be met equally by the parties, or otherwise as determined by the appointee. 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 Wellington District Law Society;
 - (e) the amount of the claim determined to be payable shall not be limited by the interim amount;
 - (f) the stakeholder shall lodge the interim amount on an 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;
 - (g) 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; and
 - (h) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.
- 10.9 Where a determination has to be made under clause 10.6(b) or clause 10.8(d) and the Settlement Date will have passed before the determination is made, the Settlement Date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these clauses, the Settlement Date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations. However, the Settlement Date will only be deferred under this clause 10.9 if, prior to such deferral, the Purchaser's lawyer provides written confirmation to the Vendor's lawyer that but for the resolution of the claim for compensation, the Purchaser is ready, willing, and able to complete settlement.

- 10.10 The procedures prescribed in clauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of this agreement.
- 10.11 A determination under clause 10.6 that the Purchaser does not have a valid or reasonably arguable claim for compensation under clause 10.2(a) shall not prevent the Purchaser from pursuing that claim following settlement.
- 10.12 Where a determination is made by a person appointed under either clause 10.6 or clause 10.8, that person:
- (a) shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination; and
 - (b) may make an order that one party must meet the reasonable legal costs of the other party.

11. GST

- 11.1 If this agreement provides for the Purchaser to pay any GST which is payable in respect of the supply made under this agreement then:
- (a) The Purchaser shall pay to the Vendor the GST which is so payable in one sum on the Settlement Date.
 - (b) Where any GST is not so paid to the Vendor the Purchaser shall pay to the Vendor:
 - (i) interest at the Interest Rate for Late Settlement on the amount of GST unpaid from the Settlement Date until payment; and
 - (ii) any default GST.
 - (c) 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 Goods and Services Tax Act 1985 ("the Act").
 - (d) Any sum referred to in this clause is included in the Purchase Price, interest and other moneys, if any, referred to in subclause 7.1.
 - (e) If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the Act then on or before the Settlement Date the Purchaser will provide the Vendor with the recipient's name, address and registration number.
- 11.2 If the supply under this agreement is a taxable supply the Vendor will deliver a tax invoice to the Purchaser on or before the Settlement Date or such earlier date as the Purchaser is entitled to delivery of an invoice under the Act.

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- 11.3 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 Act applies.
- 11.4 "Default GST" means any interest, or late payment penalty, or shortfall penalty, or other sum imposed on the Vendor under the Tax Administration Act 1994 by reason of non-payment of the GST payable in respect of the supply made under this agreement but does not include any such sum levied against the Vendor by reason of a default by the Vendor after payment of the GST to the Vendor by the Purchaser.
- 11.5 Without prejudice to the Vendor's rights and remedies under clause 11, where any GST is not paid to the Vendor on or within one month of the Settlement Date, then whether or not the Purchaser is on 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. The date of service of the notice under this clause shall be deemed the Settlement Date for the purposes of clause 11.1. The Vendor may give a settlement notice under clause 9 with a notice under this clause.

12. Warranties

- 12.1 The Vendor warrants and undertakes to the Purchaser that:
- (a) The Vendor is the beneficial owner of the Shares;
 - (b) The Shares will, on the Settlement Date, be transferred to the Purchaser free of any mortgage, encumbrance or other charge;
 - (c) All calls or other consideration payable in respect of the Shares has been paid on the due date;
 - (d) The Shares will be transferred to the Purchaser on the Settlement Date with all rights attached to them;
 - (e) The Vendor is not, and has not been, in breach of the terms of the Vendor's licence to occupy in respect of the Property;
 - (f) The Vendor has not received any notice of forfeiture in relation to the Shares.
 - (g) The Vendor warrants and undertakes that at the date of this agreement the Vendor has not:
 - (i) 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

(ii) given any consent or waiver,

which directly or indirectly affects the Property and which has not been disclosed in writing to the Purchaser.

(h) The Vendor warrants and undertakes that at the date of this agreement the Vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the Vendor or the Purchaser in respect of the Property.

(i) The Vendor warrants and undertakes that at settlement:

A. The chattels included in the sale listed in Schedule 1 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).

B. All electrical and other installations on the Property are free of any charge whatsoever and all chattels included in the sale are the unencumbered Property of the Vendor.

C. There are no arrears of rates, water rates or charges outstanding on the Property and where the Property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.


D. 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.

E. Where the Vendor has done or caused or permitted to be done on the Property any works:

- (i) any permit, resource consent, or building consent required by law was obtained; and
 - (ii) to the Vendor's knowledge, the works were completed in compliance with those permits or consents; and
 - (iii) where appropriate, a code compliance certificate was issued for those works.
- (j) Since the date of this agreement, the Vendor has not given any consent or waiver which directly or indirectly affects the Property.
- (k) Any notice or demand received by the Vendor, which directly or indirectly affects the Property, after the date of this agreement:
- (i) from any local or government authority or other statutory body; or
 - (ii) under the Resource Management Act 1991; or
 - (iii) from any tenant of the Property; or
 - (iv) 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.

- (l) The Vendor warrants and undertakes that on or immediately after settlement:
- (i) 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.

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- (ii) 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.

13. Risk and Insurance

- 13.1 The Property and chattels shall remain at the risk of the Vendor until possession is given and taken.

14. Notices

- 14.1 All notices and other communications required or permitted under this agreement shall be in writing and shall be delivered personally, sent by post or by email. Any such notice shall be deemed given when so delivered:

- (a) personally;
- (b) or two days after sending by post to the last known address of the person to whom the notice or other communication is given or, in the case of company, to its registered office;
- (c) or in the case of email:
 - (i) when sent to the email address provided for the party or the party's lawyer on the back page; or
 - (ii) any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
 - (iii) in no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website.

- 14.2 Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

15. Arbitration

- 15.1 Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment thereof or any statutory provision then relating to arbitration.
- 15.2 If the parties are unable to agree on the arbitrator, an arbitrator shall be

appointed, upon request of any party, by the president or vice president for the time being of the Wellington District Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.

16. Non-Waiver

- 16.1 The failure of any party to insist in any one or more instances on strict performance of any of the terms of this agreement or the waiver by any party of any term or right under this agreement or of any default by any other party shall not be taken as a waiver by such party of any such term, right or default in the future.

17. Non-Merger


- 17.1 The obligations of the parties contained in this agreement shall not merge on settlement and shall remain fully effective after settlement has occurred.

18. Lowest Price Clause

- 18.1 The parties agree:
- (a) That they are independent parties dealing at arm's length with each other in relation to the sale and purchase contemplated by this agreement; and
 - (b) For the purposes of Subpart EW and particularly section EW32(3) of the Income Tax Act 2004, the parties confirm that the Purchase Price does not include any capitalised interest and it is the lowest price the parties would have agreed, on the date the agreement was entered into, if payment had been required in full at the time the first right in the property was transferred.

19. Limitation of Liability

- 19.1 If a person enters into this agreement as trustee of a trust and is not a beneficiary of the trust, then that person will be known as an "independent trustee" and clauses 19.2 and 19.3 will apply.
- 19.2 The liability of an independent trustee under this agreement is limited to the extent of the indemnity from the assets of the trust available to the independent trustee at the time of enforcement of that indemnity.
- 19.3 However, if the entitlement of the independent trustee to be indemnified from the trust assets has been lost or impaired (whether fully or in part) by reason of the independent trustee's act or omission (whether in breach of trust or otherwise), then the limitation of liability in clause 19.2



does not apply, and the independent trustee will be personally liable up to the amount that would have been indemnified from the assets of the trust has the indemnity not been lost.

20. Agency

- 20.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the Vendor has appointed as the Vendor's agent according to an executed agency agreement.
- 20.2 The scope of the authority of the agent under clause 20.1 does not extend to making an offer, counteroffer, or acceptance of a Purchaser's offer or counteroffer on the Vendor's behalf without the express authority of the Vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 20.3 The Vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

21. Collection of Sale Information

- 21.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to the Real Estate Institute of New Zealand Incorporated (REINZ).
- 21.2 This information will be stored on a secure password protected network under REINZ's control and may include (amongst other things) the sale price and the address of the property, but will not include the parties' names or other personal information under the Privacy Act 2020.
- 21.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 21.4 Despite the above, if REINZ does come to hold any of the Vendor's or Purchaser's personal information, that party has a right to access and correct that personal information by contacting REINZ at info@reinz.co.nz or by post or telephone.

22. Covid-19/Pandemic Provisions

- 22.1 The parties acknowledge that the Government of New Zealand or a Minister of that Government may, as a result of public health risks arising from a Pandemic, order restrictions on personal movement pursuant to the COVID-19 Public Health Response Act 2020 (or other legislation), and the effect of such restrictions may be that personal movement within or between particular regions

is unlawful for the general population of those regions.

Where such a legal restriction on personal movement exists either nationally or in the region or district where the property is located:

- (a) The date for satisfaction of any condition that has not yet been satisfied or waived will be the later of:
 - (i) the date that is 10 working days after the restriction on personal movement in the region or district in which the property is located is removed; or
 - (ii) the date for satisfaction of the condition as stated elsewhere in this agreement.
- (b) The settlement date will be the later of:
 - (i) the date that is 10 working days after all conditions are satisfied or waived; or
 - (ii) the date that is 10 working days after the date on which the restriction on personal movement in the region or district in which the property is located is removed; or
 - (iii) the settlement date as stated elsewhere in this agreement.
- (c) Nothing in the previous provisions of this clause is to have the effect of bringing forward a date specified in this agreement.

22.2 Clause 22.2 applies whether such legal restriction on personal movement exists at, or is imposed after, the date of this agreement, and on each occasion such restriction is imposed.

22.3 Neither party will have any claim against the other for a deferral of a condition date or the settlement date under this clause 22.

22.4 For the purposes of this clause 22, "Pandemic" means the COVID-19 pandemic, or such other pandemic or epidemic that gives rise to Government orders restricting personal movement

23. Counterparts

23.1 This agreement may be executed in any number of 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 counterparty copy and sending it to the other parties, including by facsimile or email.



Execution

Signed by _____)
David Mark O'byrne & Judith O'byrne as Vendor)

Signed by _____)
[])
as Purchaser)

Schedule 1 - Chattels

List all chattels included in the sale

(Strike out or add as applicable. If necessary complete on a separate schedule or the further terms of sale)

**Rangehood, Wall Oven, Cooktop, Dishwasher, Light fittings, Heat pump, Blinds, Curtains,
Smoke detectors, Rugs x2**

Both parties should check that Schedule 1 (list of chattels) includes an accurate list of all items which are included with the sale and purchase (in addition to, or as part of any building).

Schedule 2 – Tenancies

Residential Tenancies

Name of Tenant(s): Vacant Possession

Rent:

Term:

Bond:

AGREEMENT FOR SALE AND PURCHASE OF SHARES

DATE:

VENDOR:

David O'Byrne & Judith O'Byrne

Contact Details:

VENDOR'S LAWYERS:

Firm:

The Law Connection Limited

Individual Acting: Jeannine
Muir

Email:

Jeannine@lawconnect.co.nz

Contact Details: 042993192

Email address for service of notices

PURCHASER:

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Email:

Contact Details:

Email address for service of notices

SALE BY LICENSED REAL ESTATE AGENT: Professionals, Redcoats Limited

Manager: Morgan Phillips

Salesperson: Luke Johnson

Second Salesperson:

Contact Details:

Ph: (04) 566 2233 (Lower Hutt)

(04) 564 5151 (Wainuiomata)

Email: info@redcoats.co.nz