

Disclosure to Purchaser

prior to entry into an Agreement for Sale and Purchase

We hereby acknowledge and consent to the following matters relative to the sale of the property located at:

Property Address: 6/26 Fitzherbert Road, Wainuiomata.	Purchaser to Initial
1. That we are not an overseas buyer as defined by the Overseas Investment Act 2005, and no director, trustee or nominee under this Agreement for Sale and Purchase is an overseas buyer. <i>If you are an overseas buyer please strike out the word 'not' above. If you are an overseas buyer or are unsure as to your status, we recommend you seek legal advice before signing any offer.</i>	
2. That we were provided with the New Zealand Residential Property Sale and Purchase Agreements Guide .	
3. That we entered into this Agreement for Sale and Purchase freely and voluntarily, without any undue influence or duress , and Redcoats recommended to us and gave us reasonable opportunity to seek legal, tax, technical or specialist advice before signing. We understand that once signed, this will be a binding contract with only restricted rights of termination.	
4. That if we are signing this agreement on behalf of another party , we have authority to bind the party named as 'vendor' or 'purchaser' on the front page.	
5. That we were provided with a copy of the Record of Title to the property, and we were advised to have a Title Search done by our solicitor as a condition of any offer that we make, so that the Title could be explained in more detail.	
6. That we were advised to obtain our own LIM / Building Report and/or Toxicity Test . <i>If we require a Toxicity Test, we understand that we must first obtain the written permission of the vendor to conduct this test by using the appropriate condition in our offer, and that a Toxicity Test cannot be done as part of our Building Report. Also, that any report provided by the vendor <u>may not</u> be relied upon by a third party.</i>	
7. That we were provided with the following documents : Residence constitution, Residence fee, Break down of levy, CCC.....	
8. That some insurance companies are not currently writing new business and we should check whether we can get insurance , either prior to submitting an offer or as a condition of our offer, particularly if the home is in or near an area GWRC identifies as at risk of sea level rise . We acknowledge the agent recommended we check the Wellington Water Web Map for flood risk in Hutt City: https://wellingtonwater.maps.arcgis.com/apps/MapSeries/index.html?appid=d2c1de318f464ef38a95d3e6438f4bc0	
9. That any house built of monolithic cladding, either Polystyrene or Harditex with a plastered finish and typically built between 1990 and 2006, may be prone to watertightness issues and Redcoats recommend we seek our own expert advice .	
10. That if the property is commercial or mixed use with a purchase price exceeding \$1 million , or a residential property with a purchase price exceeding \$7.5 million , we have been advised to seek specialist advice with regards to the Purchase Price Allocation (PPA). <i>(Note: a PPA addendum should be included in the sales agreement for affected property).</i>	
11. That is the property is on a Unit Title , we were provided with a copy of the Pre-Contract Disclosure Statement at least 24-hours prior.	
12. That all private rental housing (including boarding houses) must be compliant with the Healthy Homes Insulation Standard and the Residential Tenancies Act. Information can be found on tenancy.govt.nz .	
13. That neither we nor any person associated with us has a relationship as defined in section 137 of the Real Estate Agents Act 2008, with the licensee <i>(eg; the purchaser is related to a Professionals, Redcoats Limited staff member)</i> . OR Disclosure of relationship is:..... <i>(Complete and attach Form 2 under section 134 REAA 2008).</i>	
14. Agent disclosure of any relationship between the vendor and the licensee is: <i>Applies where a person related to the licensee may get a financial benefit from the transaction – s 136 REAA 2008 (eg; the vendor is related to a Professionals, Redcoats Limited staff member). Note: A licensee means an agent, branch manager or salesperson.</i>	
15. Any other relevant disclosure:	
16. That Redcoats made us aware that there may be another offer being made on the property and we acknowledge that the offer we have made is our best offer and we have been made aware that we may not have a chance to make a better offer and that we may be unsuccessful if our offer is not accepted.	
17. That Redcoats adheres to all privacy legislation in New Zealand. A copy of our Privacy Policy is available at https://redcoats.professionals.co.nz/privacy-policy	
18. That we have been made aware of Redcoats' complaints procedure , whereby if we have a complaint, we are best to first discuss the issue with the agent or staff member we've been dealing with. If this does not resolve the issue, we can contact the office on 04 566 2233 and ask to speak to the branch manager, or submit feedback in writing to info@redcoats.co.nz . We are aware of our option of accessing the Real Estate Authority (REA) complaints process on rea.govt.nz .	

SIGNED

Purchaser: Date: Time: am/pm

Name Printed:

Purchaser: Date: Time: am/pm

Name Printed:

On behalf of Agent: Date: Time: am/pm

Buying or selling your property?

New Zealand Residential Property
Sale and Purchase Agreement Guide



This guide tells you...

- what a sale and purchase agreement is
- what's in a sale and purchase agreement
- what happens after you sign the sale and purchase agreement
- what happens if you have a problem
- where to go for more information

Where to go for more information

This guide is available in other languages. You can find translated copies of this guide on [rea.govt.nz](https://www.rea.govt.nz) and [settled.govt.nz](https://www.settled.govt.nz).

The New Zealand Residential Property Agency Agreement Guide is also available on [settled.govt.nz](https://www.settled.govt.nz). The guide tells you more about the agreement you sign with the agency helping to sell your property.

We welcome any feedback you have on this publication.

The information in this guide was accurate when published. However, the requirements this information is based on can change at any time. Up-to-date information is available at [rea.govt.nz](https://www.rea.govt.nz).

New Zealand Residential Property Sale and Purchase Agreement Guide

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Key things to know about sale and purchase agreements

- A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property.
- You must sign a written sale and purchase agreement to buy or sell a property.
- You need to read and understand the sale and purchase agreement before you sign it.
- Even if a standard sale and purchase agreement is being used, you should always get legal advice before you sign the agreement and throughout the buying and selling process.
- You can negotiate some of the terms and conditions in a sale and purchase agreement.
- You can include additional clauses, such as what to do if there are special circumstances. Your lawyer plays an important role in providing advice on what the sale and purchase agreement should say.
- A sale and purchase agreement becomes unconditional once all the conditions are met.
- In most cases, the real estate professional is working for the seller of the property, but they must treat the buyer fairly.
- If your real estate professional or anyone related to them wants to buy your property, they must get your written consent to do this. They must also give you a valuation of your property by an independent registered valuer.
- The sale and purchase agreement is only available in English. You may need assistance interpreting it if English is not your primary language.

What a sale and purchase agreement is

A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property. It sets out all the details, terms and conditions of the sale. This includes things such as the price, any chattels being sold with the property, whether the buyer

needs to sell another property first or needs a property inspection and the settlement date.

A sale and purchase agreement provides certainty to both the buyer and the seller about what will happen when.



What's in a sale and purchase agreement

Your sale and purchase agreement should include the following things.

Basic details of the sale

Different sale methods like tender or auction might mean the sale and purchase agreement can look different, but all sale and purchase agreements should contain:

- the names of the people buying and selling the property
- the address of the property
- the type of title, for example, freehold or leasehold
- the price
- any deposit the buyer must pay
- any chattels being sold with the property, for example, whiteware or curtains
- any specific conditions you or the other party want fulfilled
- how many working days you have to fulfil your conditions (if there are any conditions)
- the settlement date (the date the buyer pays the rest of the amount for the property, which is usually also the day they can move in)
- the rate of interest the buyer must pay on any overdue payments (such as being late on paying the deposit or the remaining amount at the settlement date).

General obligations and conditions you have to comply with

The sale and purchase agreement includes general obligations and conditions that you will need to comply with. For example, these may include:

- access rights – what access the buyer can have to inspect the property before settlement day
- insurance – to make sure the property remains insured until the settlement date and outline what will happen if any damage occurs before settlement day
- default by the buyer – the buyer may have to compensate the seller if they don't settle on time, for example, with interest payments
- default by the seller – the seller may have to compensate the buyer if they don't settle on time, for example, by paying accommodation costs
- eligibility to buy property in New Zealand – people who have migrated to New Zealand may not be permitted to immediately buy property or may need to get consent from the Overseas Investment Office.

Your lawyer will explain these clauses to you.

Check...

Always check your sale and purchase agreement with a lawyer before signing.

Buying or selling a property where the owner isn't able to participate, like a mortgagee sale or deceased estate, can mean the real estate professional has limited information about the property. It pays to allow for this when deciding what conditions the buyer and seller might need.

Remember...

Before you sign a sale and purchase agreement, whether you're the buyer or the seller, the real estate professional must give you a copy of this guide. They must also ask you to confirm in writing that you've received it.

Specific conditions a buyer may include

Some buyers will present an unconditional offer, which means there are no specific conditions to be fulfilled. Some buyers will include one or more conditions (that must be fulfilled by a specified date) in their offer such as:

- title search – this is done by the buyer's lawyer to check who the legal owner of the property is and to see if there are any other interests over the property such as caveats or easements
- finance – this refers to the buyer arranging payment, often requiring bank approval for a mortgage or loan
- valuation report – a bank may require the buyer to obtain a valuation of the property (an estimate of the property's worth on the current market) before they agree to a loan
- Land Information Memorandum (LIM) – provided by the local council, this report provides information about the property such as rates, building permits and consents, drainage, planning and other important information
- property inspection – a buyer paying for an inspection provides an independent overview of the condition of the property rather than relying on an inspection that has been arranged by the seller

- engineer's or surveyor's report – similar to the above but more focused on the entire section and the structure of the property
- sale of another home – the buyer may need to sell their own home in order to buy another.

The real estate professional helps the buyer and the seller to include the conditions they each want. Even though the real estate professional works for the seller, they also have to deal fairly and honestly with the buyer. While they're not expected to discover hidden defects, they can't withhold information and must tell the buyer about any known defects with the property. If a buyer needs time to check a property for defects, including a property inspection condition may be important.



What happens after you sign the sale and purchase agreement

Signing the sale and purchase agreement is not the end of the sale or purchase process.

Both parties work through the conditions until the agreement is unconditional

A conditional agreement means the sale and purchase agreement has one or more conditions that must be met by a specified date and before the sale goes through.

The buyer pays the deposit. Depending on what the sale and purchase agreement says, the buyer may pay the deposit when they sign the agreement or when the agreement becomes unconditional. If the deposit is made to the real estate agency, it must be held in their agency's trust account for 10 working days before it can be released to the seller.

An agreement for sale and purchase commits you to buy or sell

Once you've signed the sale and purchase agreement and any conditions set out in it have been met, you must complete the sale or purchase of the property.

The length of time between the conditions being met and the settlement date varies. Settlement periods can be lengthy if the property hasn't been built yet or the sale and purchase agreement includes conditions for one party to buy or sell another property. The real estate professional has obligations to keep you informed of important updates that come up during this time.

Pre-settlement inspection

This is the chance for the buyer to check the property and chattels are in the same condition they were when the sale and purchase agreement was signed and to check that the seller has met any conditions, for example, there is no damage to walls or chattels haven't been removed from the property.

It's important to raise any concerns you find at the pre-settlement inspection with your lawyer and the real estate professional as soon as possible to allow enough time for an issue to be resolved. If it's less than 24 hours before settlement, the vendor may not be obligated to set things right.

Payment of a commission

Once the sale is complete, the seller pays the real estate professional for their services. The real estate agency usually takes the commission from the deposit they're holding in their trust account. The seller should make sure the deposit is enough to cover the commission. The real estate professional cannot ask the buyer to pay for their services if they have been engaged by the seller.

The buyer pays the rest

The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer.

Buying a tenanted property

If the property is tenanted, the agreement for sale and purchase should specify this. It may also contain a specific date for possession that may differ from the settlement date.

If the buyer requires the property to be sold with 'vacant possession', it is the seller's responsibility to give the tenant notice to vacate in accordance with the tenant's legal rights.

It is recommended that you seek legal advice if you are buying a property that is currently tenanted.

What happens if you have a problem

If something has gone wrong, first discuss your concern with the real estate professional or their manager. All agencies must have in-house procedures for resolving complaints.

If you can't resolve the issue with the real estate agency or you don't feel comfortable discussing it with them, you can contact the Real Estate Authority (REA). We can help in a number of ways if your complaint is about the real estate professional. For example, we can help you and the real estate professional or agency to resolve

the issue and remind them of their obligations under the Real Estate Agents Act 2008. When you contact us, we'll work with you to help you decide the best thing to do.

Call us on **0800 367 7322**, email us at info@rea.govt.nz or visit us online at rea.govt.nz

About settled.govt.nz



Settled.govt.nz guides you through home buying and selling.

Buying or selling your home is one of the biggest financial decisions you will make. It's a complex and sometimes stressful process with potentially significant emotional and financial impacts if things go wrong.

Settled.govt.nz provides comprehensive independent information and guidance for home buyers and sellers. You can find information about the risks and how they can impact you and get useful tips on how to avoid some of the major potential problems.

Settled.govt.nz will help to inform and guide you through the process from when you're thinking of buying or selling right through to when you're moving in or out. You'll find valuable information, checklists, quizzes, videos and tools. From understanding LIMs, to sale and purchase agreements, to when to contact a lawyer, settled.govt.nz explains what you need to know.

Settled.govt.nz is brought to you by the Real Estate Authority – Te Mana Papawhenua (REA).

About the Real Estate Authority – Te Mana Papawhenua (REA)

REA is the independent government agency that regulates the New Zealand real estate profession.

Our purpose is to promote and protect the interests of consumers buying and selling real estate and to promote public confidence in the performance of real estate agency work.

What we do

Our job is to promote a high standard of conduct in the real estate profession and protect buyers and sellers of property from harm.

- We provide independent information for people who are buying and selling property through our settled.govt.nz website.
- We provide guidance for real estate professionals and oversee a complaints process.
- We license people and companies working in the real estate industry.

- We maintain a Code of Conduct setting out the professional standards real estate professionals must follow.
- We maintain a public register of real estate professionals that includes information about disciplinary action taken in the last 3 years.

The Real Estate Agents Authority is a Crown agent, established under the Real Estate Agents Act 2008. The Real Estate Authority is the operating name of the Real Estate Agents Authority.

For more information

To find out more about REA, visit rea.govt.nz, call us on **0800 367 7322** or email us at info@rea.govt.nz



AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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

DATE:

VENDOR:

Nicole Jourdane Lim Kwan

PURCHASER:

and/or nominee

The vendor is registered under the GST Act in respect of the transaction and/or will be so registered at settlement:

Yes/No

If "Yes", Schedule 1 must be completed by the parties.

Purchase price allocation (PPA) is relevant to the parties for income tax and/or GST purposes:

Vendor Yes/No

If both parties answer "Yes", use of the PPA addendum for this agreement is recommended.

Purchaser/Purchaser's Nominee Yes/No

PROPERTY

Address: 6/26 Fitzherbert Road, Wainuiomata, Lower Hutt, Wellington

Estate: **FREEHOLD**

LEASEHOLD

STRATUM IN FREEHOLD

STRATUM IN LEASEHOLD

CROSS LEASE (FREEHOLD)

CROSS LEASE (LEASEHOLD)

If none of the above are deleted, the estate being sold is the first option of freehold.

Legal Description:

Area (more or less):

69 sqm

Lot/Flat/Unit:

6

DP:

570516

Record of Title (unique identifier):

1030925

PAYMENT OF PURCHASE PRICE

Purchase price: \$

Plus GST (if any) OR Inclusive of GST (if any)

If neither is deleted, the purchase price includes GST (if any).

GST date (refer clause 13.0):

Deposit (refer clause 2.0): \$ Payable to our Trust Account upon confirmation of this agreement. Account Name: Redcoats LTD, 01 0530 0184206 00 (Particulars - enter purchaser sur

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

(1) By payment in cleared funds on the settlement date which is: or as mutual agreement

OR

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

Interest rate for late settlement:

15% p.a.

CONDITIONS (refer clause 9.0)

Finance required (clause 9.1):

Yes/No

Finance date: Working days from date of this agreement

LIM required (clause 9.3):

Yes/No

LIM date: Working days from date of this agreement

Building report required (clause 9.4):

Yes/No

Building report date: Working days from date of this agreement

Toxicology report required (clause 9.5):

Yes/No

Toxicology report date: Working days from date of this agreement

OIA consent required (clause 9.6):

Yes/No

OIA date (clause 9.8):

Land Act consent required (clause 9.7):

Yes/No

Land Act date (clause 9.8):

TENANCIES

Yes/No

Particulars of any tenancies are set out in Schedule 3 or another schedule attached to this agreement by the parties.

It is agreed that the vendor sells and the purchaser purchases the property, and any chattels listed, on the terms and conditions of this agreement.

Release date: 9 May 2023

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.
- (3) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (7) "Building report date" means the building report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (8) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (9) "Cleared funds" means an electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines.
- (10) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (11) "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.
- (12) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (13) "Finance date" means the finance date stated on the front page of this agreement, or if no date is stated, means the tenth working day after the date of this agreement.
- (14) "Going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (15) "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.
- (16) "Land Act date" means the Land Act date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (17) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (18) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.
- (19) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (20) "LIM date" means the LIM date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement, taking into account clause 1.1(45)(c).
- (21) "LINZ" means Land Information New Zealand.
- (22) "Local authority" means a territorial authority or a regional council.
- (23) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (24) "OIA date" means the OIA date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (25) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the New Zealand Law Society Property Law Section Guidelines, issued by the New Zealand Law Society.
- (26) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (27) "Property" means the property described in this agreement.
- (28) "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.
- (29) "Purchase price allocation" means an allocation of the purchase price, and (if applicable) any other consideration for the property and the chattels included in the sale, to the property, chattels or any part thereof that affects a person's tax position under the Income Tax Act 2007 and/or the GST Act.
- (30) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (31) "REINZ" means the Real Estate Institute of New Zealand Incorporated.
- (32) "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 clause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (33) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (34) "Rules" means body corporate operational rules under the Unit Titles Act.

- (35) "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.
- (36) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under clause 3.8.
- (37) "Settlement date" means the date specified as such in this agreement.
- (38) "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.
- (39) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (40) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (41) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (42) "Toxicology report date" means the toxicology report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (43) "Unit title" means a unit title under the Unit Titles Act.
- (44) "Unit Titles Act" means the Unit Titles Act 2010.
- (45) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of the LIM date, ending on the 15th day of January) in the following year, both days inclusive;
 - (d) the day observed as the anniversary of any province in which the property is situated;
 - (e) the day on which a public holiday is observed to acknowledge Matariki, pursuant to the Te Kāhui o Matariki Public Holiday Act 2022; and
 - (f) any other day that the Government of New Zealand declares to be a public holiday.

A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

1.2 Unless a contrary intention appears on the front page or elsewhere in this agreement:

- (1) 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
- (2) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.3 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 clause 1.3(2).

1.4 Notices

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

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by email; or
 - (iv) 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 clause 1.4(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - (c) in the case of 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) if 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;
 - (d) 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;
 - (e) in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

1.5 Interpretation and Execution

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- (6) Reference to a party's lawyer includes reference to a conveyancing practitioner (as defined in the Lawyers and Conveyancers Act 2006), engaged by that party, provided that all actions of that conveyancing practitioner (including without limitation any actions in respect of any undertaking or in respect of settlement) must strictly accord with the PLS Guidelines.

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties or at such other time as is specified in this agreement.
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until the latest of those of the following matters which are applicable to this agreement:
 - (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and/or
 - (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and/or
 - (3) where the property is a unit title:
 - (a) a pre-contract disclosure statement that complies with section 146 of the Unit Titles Act, and a pre-settlement disclosure statement that complies with section 147 of the Unit Titles Act, have been provided to the purchaser by the vendor within the times prescribed in those sections; and/or
 - (b) all rights of delay or cancellation under sections 149, 149A, 151, or 151A of the Unit Titles Act that have arisen have been waived or have expired without being exercised; and/or
 - (c) this agreement is cancelled pursuant to sections 149A or 151A of the Unit Titles Act; and/or
 - (4) this agreement is:
 - (a) cancelled pursuant to clause 6.2(3)(c); and/or
 - (b) avoided pursuant to clause 9.10(5).
- 2.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to clause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008, but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing.

3.0 Possession and Settlement**Possession**

- 3.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 3.2 If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
 - (1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
 - (2) 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.
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 3.4 On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.

Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date. If the property is a unit title, the vendor's settlement statement must show any periodic contributions to the operating account that have been struck prior to the settlement date (whether or not they are payable before or after the settlement date) and these periodic contributions to the operating account shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.

- 3.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
 - (b) certify and sign the transfer instrument.
- 3.7 The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
 - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 3.8 On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under clause 3.12 or 3.13, or for any deduction allowed to the purchaser under clause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to clause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to clause 10.8);
 - (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in clause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in clause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
 - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.
- 3.9 All obligations under clause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement in accordance with the PLS Guidelines. Where the purchaser considers it is necessary or desirable to tender settlement, this may be effected (in addition to any other valid form of tender) by the purchaser's lawyer providing to the vendor's lawyer a written undertaking that:
- (1) the purchaser is ready, willing, and able to settle;
 - (2) the purchaser's lawyer has certified and signed the transfer instrument and any other instruments in the Landonline Workspace for the transaction that must be signed on behalf of the purchaser; and
 - (3) the purchaser's lawyer holds in their trust account in cleared funds the amount that the purchaser must pay on settlement.

Last-Minute Settlement

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

Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this 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; 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 clause 3.12(1).
 - (3) If the parties are unable to agree upon any amount payable under this clause 3.12, either party may make a claim under clause 10.0.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.13 (1) For the purposes of this clause 3.13:
- (a) the default period means:
 - (i) in clause 3.13(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 clause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in clause 3.13(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 clause 3.13(2)(b) during the default period. A purchaser in possession under this clause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of clause 3.13(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 clause 3.13(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 clause 3.13(2)(b) during the default period.
- (6) The provisions of this clause 3.13 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) If the parties are unable to agree upon any amount payable under this clause 3.13, either party may make a claim under clause 10.0.

Deferment of Settlement and Possession

- 3.14 If:
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.16 If:
- (1) the property is a unit title; and
 - (2) the settlement date is deferred pursuant to either clause 3.14 or clause 3.15; 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 clause 8.3,
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to clause 3.14, to the tenth working day after 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 clause 3.15, to the tenth working day after the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision

- 3.17 (1) Where:
- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,
- 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 after the later of the date on which:

- (i) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (ii) the requisitions procedure under clause 6.0 is complete.
- (2) Clause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.

4.0 Residential Land Withholding Tax

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

5.0 Risk and insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
 - (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
 - (3) if the property is 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 clause 10.8 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

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

7.0 Vendor's warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party; or
 - (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at 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.
- 7.3 The vendor warrants and undertakes that at settlement:
- (1) The chattels included in the sale listed in Schedule 2 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).
 - (2) 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.
 - (3) 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.

- (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.
- 7.4 If the property is or includes part only of a building, the warranty and undertaking in clause 7.3(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - (2) the building has a current building warrant of fitness; and
 - (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 7.5 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.

8.0 Unit title and cross-lease provisions

Unit Titles

- 8.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement and a pre-settlement disclosure statement in accordance with the Unit Titles Act. The requirements of this clause 8 are in addition to, and do not derogate from, the requirements of that Act.
- 8.2 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as follows as at the date of this agreement:
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct to the extent required by the Unit Titles Act.
 - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate.
 - (3) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (4) No order or declaration has been made by any Court or Tribunal against the body corporate or the vendor under any provision of the Unit Titles Act.
 - (5) The vendor has no knowledge or notice of any fact which might result in:
 - (a) the vendor or the purchaser incurring any other liability under any provision of the Unit Titles Act; 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 vendor under any provision of the Unit Titles Act.
 - (6) 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.
 - (7) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property.

- (8) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
- the transfer of the whole or any part of the common property;
 - the addition of any land to the common property;
 - the cancellation of the unit plan;
 - the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan; or
 - any change to utility interest or ownership interest for any unit on the unit plan.
- 8.3 If the property is a unit title, not less than five working days before the settlement date, the vendor will provide:
- a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act; and
 - a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act.
- 8.4 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as at the settlement date:
- Other than contributions to the operating account, long-term maintenance fund, contingency fund, or capital improvements fund that are shown in the pre-settlement disclosure statement, there are no other amounts owing by the vendor under any provision of the Unit Titles Act.
 - All contributions and other moneys payable by the vendor to the body corporate have been paid in full.
 - The warranties at clause 8.2(2), (3), (4), (5), (6), (7), and (8) are repeated.
- 8.5 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of clause 8.3, then in addition to the purchaser's rights under sections 150, 151 and 151A of the Unit Titles Act, the purchaser may:
- postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - elect that settlement shall still take place on the settlement date, such election to be a waiver of any other rights to delay or cancel settlement under the Unit Titles Act or otherwise.
- 8.6 If the property is a unit title, each party specifies that:
- any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act; and
 - 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 Unit Titles Act.
- 8.7 Unauthorised Structures – Cross-Leases and Unit Titles
- Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:
 - in the case of a cross-lease title, any required lessors' consent; or
 - in the case of a unit title, any required body corporate consent,
 the purchaser may demand within the period expiring on the earlier of:
 - the tenth working day after the date of this agreement; or
 - the settlement date,
 that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.
 - Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in clauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under clause 8.6(1) being deemed to be an objection and requisition.

9.0 Conditions and mortgage terms

- 9.1 Finance condition
- If the purchaser has indicated that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date.
 - If the purchaser avoids this agreement for failing to arrange finance in terms of clause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.
- 9.2 Mortgage terms
- Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 9.3 LIM condition
- If the purchaser has indicated on the front page of this agreement that a LIM is required:
 - that LIM is to be obtained by the purchaser at the purchaser's cost; and
 - this agreement is conditional upon the purchaser approving that LIM by the LIM date, provided that such approval must not be unreasonably or arbitrarily withheld.
 - If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the LIM date stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the LIM date and the vendor does not give an extension when requested, then unless the purchaser waives this condition, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.

- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the third working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the fifth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.

9.4 Building report condition

- (1) If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the building report date a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment.
- (2) The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods and it must be in writing.
- (3) Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report.
- (4) The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent.
- (5) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.

9.5 Toxicology report condition

- (1) If the purchaser has indicated on the front page of this agreement that a toxicology report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the toxicology report date, a toxicology report on the property that is satisfactory to the purchaser, on the basis of an objective assessment.
- (2) The purpose of the toxicology report shall be to detect whether the property has been contaminated by the preparation, manufacture or use of drugs including, but not limited to, methamphetamine.
- (3) The report must be prepared in good faith by a suitably-qualified inspector in accordance with accepted principles and methods and it must be in writing.
- (4) Subject to the rights of any tenants of the property, the vendor shall allow the inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of carrying out the testing and preparation of the report.
- (5) The inspector may not carry out any invasive testing in the course of the inspection without the vendor's prior written consent.
- (6) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the inspector's report.

9.6 OIA consent condition

- (1) If the purchaser has indicated on the front page of this agreement that OIA consent is required, this agreement is conditional upon OIA consent being obtained on or before the OIA date on terms and conditions that are satisfactory to the purchaser, acting reasonably, the purchaser being responsible for payment of the application fee. This condition is inserted for the benefit of both parties, but (subject to clause 9.6(2)) may not be waived by either party, and the vendor is not required to do anything to enable this condition to be fulfilled.
- (2) If the purchaser has indicated on the front page of this agreement that OIA consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA consent.

9.7 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date.

9.8 If the Land Act date or OIA date is not shown on the front page of this agreement that date shall be the settlement date or that date 65 working days after the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or that date 20 working days after the date of this agreement, whichever is the sooner.

9.9 Resource Management Act condition

If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

9.10 Operation of conditions

If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:

- (1) The condition shall be a condition subsequent.
- (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
- (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
- (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
- (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.

- (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

10.0 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:
- (1) the purchaser claims a right to compensation (and in making such a claim, the purchaser must act reasonably, but the vendor taking the view that the purchaser has not acted reasonably does not affect the purchaser's ability or right to make such a claim) for:
 - (a) a breach of any term of this agreement;
 - (b) a misrepresentation;
 - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986;
 - (d) an equitable set-off, or
 - (2) there is a dispute between the parties regarding any amounts payable:
 - (a) under clause 3.12 or clause 3.13; or
 - (b) under clause 5.2.
- 10.3 To make a claim under this clause 10.0:
- (1) 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 3.12 or clause 3.13, 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
 - (2) the notice must:
 - (a) state the particular breach of the terms of this agreement, or the claim under clause 3.12, clause 3.13 or clause 5.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set-off; and
 - (b) state a genuine pre-estimate of the loss suffered by the claimant; and
 - (c) be particularised and quantified to the extent reasonably possible as at the date of the notice; and
 - (3) 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(1) or clause 10.2(2)(b) on or before the date that notice is due under clause 10.3(1) 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 11.1, 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(1) but the vendor disputes that the purchaser has a valid or reasonably arguable claim, then:
- (1) 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
 - (2) 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 Auckland 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(1) 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(1) but the amount of compensation claimed is disputed, or if the claim is made under clause 10.2(2) and the amount of compensation claimed is disputed, then:
- (1) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - (2) 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 Auckland District Law Society;
 - (3) the interim amount must be a reasonable sum having regard to the circumstances, except that:
 - (a) where the claim is under clause 3.13 the interim amount shall be the lower of the amount claimed, or 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;
 - (b) 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(4) for the purposes of determining that the requirements of clauses 10.3(2)(b)-(c) have been met.
 - (4) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under clause 5.2, an experienced registered valuer or quantity surveyor appointed by the parties. 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 Auckland District Law Society;
 - (5) the amount of the claim determined to be payable shall not be limited by the interim amount;

- (6) 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;
 - (7) 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
 - (8) 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(2) or clause 10.8(4) 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(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 10.12 Where a determination is made by an appointee under either clause 10.6 or clause 10.8, that appointee:
- (1) 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
 - (2) may make an order that one party must meet all or some the reasonable legal costs of the other party, and in making such an order the appointee may without limitation take into account the appointee's view of the reasonableness of the conduct of the parties under this clause.

11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
- (2) The settlement notice shall be effective only if the party serving it is at the time of service in all material respects ready, willing, and able to proceed to settle in accordance with this agreement, or is not so ready, willing, and able to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to clause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
 - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 11.1.
- (3) The vendor may give a settlement notice with a notice under this clause.
- (4) For the purposes of this clause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to clause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
 - (a) sue the purchaser for specific performance; or
 - (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
 - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
 - (ii) sue the purchaser for damages.
 - (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
 - (3) The damages claimable by the vendor under clause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
 - (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale;
 - (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 shall be retained by the vendor.

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

12.0 Non-merger

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

13.0 Goods and Services Tax and Purchase Price Allocation

- 13.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement, then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 - (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
 - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
 - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST;
 - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to clause 3.8(1).
- 13.2 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.
- 13.3
- (1) Without prejudice to the vendor's rights and remedies under clause 13.1, 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 clause shall be deemed the settlement date for the purposes of clause 11.1.
 - (3) The vendor may give a settlement notice under clause 11.1 with a notice under this clause.
- 13.4 Each party warrants that their response to the statement on the front page regarding purchase price allocation being relevant to the vendor or purchaser/purchaser's nominee for income tax and/or GST purposes is correct.

14.0 Zero-rating

- 14.1 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 and any particulars stated by the vendor in Schedule 1 are correct at the date of this agreement and will remain correct at settlement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 14.3 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.
- 14.4 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.
- 14.5
- (1) If any of the particulars stated by the purchaser in Schedule 1:
 - (a) are incomplete; or
 - (b) alter between the date of this agreement and settlement,the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
 - (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.

- (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered 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.

- 14.6 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,
- then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.

- 14.7 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 clauses 14.3 and 14.4 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.

- 14.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of clause 14.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:

- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of this agreement; and
- (2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with clause 14.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest rate for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

15.0 Supply of a Going Concern

- 15.1 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 in this agreement:
- (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%.
- 15.2 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 13.0 of this agreement shall apply.

16.0 Limitation of Liability

- 16.1 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 16.2 and 16.3 will apply.
- 16.2 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.
- 16.3 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 16.2 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 had the indemnity not been lost.

17.0 Counterparts

- 17.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 17.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 17.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.
- 17.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

18.0 Agency

- 18.1 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.
- 18.2 The scope of the authority of the agent under clause 18.1 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.
- 18.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

19.0 Collection of Sales Information

- 19.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to REINZ.
- 19.2 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.
- 19.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 19.4 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.

20.0 COVID-19 / Pandemic Provisions

- 20.1 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.
- 20.2 Where such a legal restriction on personal movement exists either nationally or in the region or district where the property is located:
 - (1) The date for satisfaction of any condition that has not yet been satisfied or waived will be the later of:
 - (a) 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
 - (b) the date for satisfaction of the condition as stated elsewhere in this agreement.
 - (2) The settlement date will be the later of:
 - (a) the date that is 10 working days after all conditions are satisfied or waived; or
 - (b) 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
 - (c) the settlement date as stated elsewhere in this agreement.
 - (3) Nothing in the previous provisions of this clause is to have the effect of bringing forward a date specified in this agreement.
- 20.3 Clause 20.2 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.
- 20.4 Neither party will have any claim against the other for a deferral of a condition date or the settlement date under this clause 20.0.
- 20.5 For the purposes of this clause 20.0, "Pandemic" means the COVID-19 pandemic, or such other pandemic or epidemic that gives rise to Government orders restricting personal movement.

FURTHER TERMS OF SALE

21. Title Search

This agreement is conditional upon the purchaser's solicitor searching and approving in all respects the title of the said property within 3 (three) working days of the date of this agreement. This condition is inserted for the sole benefit of the purchaser.



SCHEDULE 1**(GST Information – see clause 14.0)**

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

Section 1 Vendor	
1(a) The vendor's registration number (if already registered):	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
Section 2 Purchaser	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)	
2(c) The purchaser's details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No

SCHEDULE 2**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)

Stove ()	Rangehood ()	Wall/under bench oven ()	Cooktop ()
Dishwasher ()	Kitchen waste disposal ()	Light fittings ()	Smoke detectors ()
Burglar alarm ()	Heated towel rail ()	Heat pump ()	Garage door remote control ()
Garden shed ()	Blinds	Curtains	Drapes
Fixed floor coverings	Bathroom extractor fan		

fixed floor coverings, light fittings, keypad (front door), gas hobs, electric oven, rangehood, dishwasher, extractor fan (laundry), extractor fan (toilet downstairs), heat pump, clothesline, drapes, blinds, smoke detector, heater electric (bathroom), extractor fan (bathroom)

Both parties should check that Schedule 2 (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 3**Residential Tenancies****Name of Tenant(s):** Vacant Possession**Rent:****Term:****Bond:****Commercial/Industrial Tenancies**

(If necessary complete on a separate schedule)

1. Name of Tenant(s):**Rent:****Term:****Right of Renewal:****Other:****2. Name of Tenant(s):****Rent:****Term:****Right of Renewal:****Other:****3. Name of Tenant(s):****Rent:****Term:****Right of Renewal:****Other:**

WARNING AND DISCLAIMER

- This agreement is a standard form document. It is therefore likely that amendments and additions may need to be made in order to suit the circumstances of each of the vendor and the purchaser, and to suit the particular property involved. It is also important that you are certain that any amendments made correctly reflect your understanding of what has been agreed. **You should always get legal advice before you sign the agreement and throughout the buying and selling process.**
- ADLS and REINZ accept no liability whatsoever in respect of this document and any agreement which may arise from it.
- The vendor should check the correctness of all warranties made under clause 7, clause 8, and elsewhere in this agreement.
- In the case of a unit title, before the purchaser enters into the agreement, the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act.
- The transaction may have tax implications for the parties and it is recommended that both parties seek their own professional advice regarding the tax implications of the transaction before signing, including:
 - the GST treatment of the transaction, which depends upon the GST information supplied by the parties and could change before settlement if that information changes; and
 - the income tax treatment of the transaction, including any income tax implications of purchase price allocation.

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

Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Authority and a copy of the agency's in-house complaints and dispute resolution process.

The person or persons signing this agreement acknowledge that either:

- they are signing in a personal capacity as the 'vendor' or 'purchaser' named on the front page, or
- they have authority to bind the party named as 'vendor' or 'purchaser' on the front page.

WARNING *(This warning does not form part of this agreement)*

Before signing, each party should read this entire contract and should obtain all relevant professional advice.

This is a binding contract. Once signed, you will be bound by the terms of it and there may be no, or only limited, rights to terminate it.

Signature of Purchaser(s):

Signature of Vendor(s):

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney*

If no option is deleted, the signatory is signing in their personal capacity

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney*

If no option is deleted, the signatory is signing in their personal capacity

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney*

If no option is deleted, the signatory is signing in their personal capacity

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney*

If no option is deleted, the signatory is signing in their personal capacity

*If this agreement is signed under:

- a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ).

Also insert the following wording for the Attorney's Signature above:

Signed for [full name of the donor] by his or her Attorney [attorney's signature].

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE**VENDOR:**

Nicole Jourdane Lim Kwan

Contact Details:

VENDOR'S LAWYERS:

Firm: Devine Law

Individual Acting: Clare Devine

Email: clare@devinelaw.co.nz

Contact Details: P.O. Box 5970
Wellington 6145

Ph: 0273504109

Email address for service of notices (clause 1.4): clare@devinelaw.co.nz

PURCHASER:

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Email:

Contact Details:

Email address for service of notices (clause 1.4):

SALE BY LICENSED REAL ESTATE AGENT: Professionals, Redcoats Limited Lower Hutt
Professionals Lower Hutt

Manager: Morgan Phillips

Salesperson: Luke Johnson

luke.johnson@redcoats.co.nz (027 664 4710)

Second Salesperson:

Contact Details: Ph: 04 5662233
info@redcoats.co.nz
28 Cornwall Street, Lower Hutt 5010
10 Wainuiomata Road Wainuiomata 5014

Licensed Real Estate Agent under Real Estate Agents Act 2008

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RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy




 R.W. Muir
 Registrar-General
 of Land

Identifier **1030925**
Land Registration District **Wellington**
Date Issued 07 October 2022

Prior References

WN549/105

Estate Fee Simple
Area 85 square metres more or less
Legal Description Lot 6 Deposited Plan 570516
Registered Owners
 Nicole Jourdane Lim-Kwan

Interests

Appurtenant hereto are water rights created by Transfer 271704 - 5.7.1943 at 11:00 am

12185562.1 Notification that a building consent issued pursuant to Section 72 Building Act 2004 identifies inundation as a natural hazard - 13.7.2021 at 11:57 am

Subject to a right to drain water over parts marked SE and PE, a right to drain sewage, a right of way on foot and to convey telecommunications, a right to convey electricity over part marked PE and a party wall right over part marked H all on DP 570516 created by Easement Instrument 12517288.2 - 7.10.2022 at 3:27 pm

Appurtenant hereto is a right to drain water and sewage, a right of way on foot and to convey telecommunications and electricity, and a party wall right created by Easement Instrument 12517288.2 - 7.10.2022 at 3:27 pm

The easements created by Easement Instrument 12517288.2 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to convey telecommunications over part marked PE on DP 570516 in favour of Chorus New Zealand Limited created by Easement Instrument 12517288.3 - 7.10.2022 at 3:27 pm

Subject to a right (in gross) to convey water over parts marked PE and WE on DP 570516 in favour of Hutt City Council created by Easement Instrument 12517288.4 - 7.10.2022 at 3:27 pm

The easements created by Easement Instrument 12517288.4 are subject to Section 243 (a) Resource Management Act 1991

12517288.5 Encumbrance to Wainuiomata 26 Residents Society Incorporated - 7.10.2022 at 3:27 pm

12517288.6 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 7.10.2022 at 3:27 pm

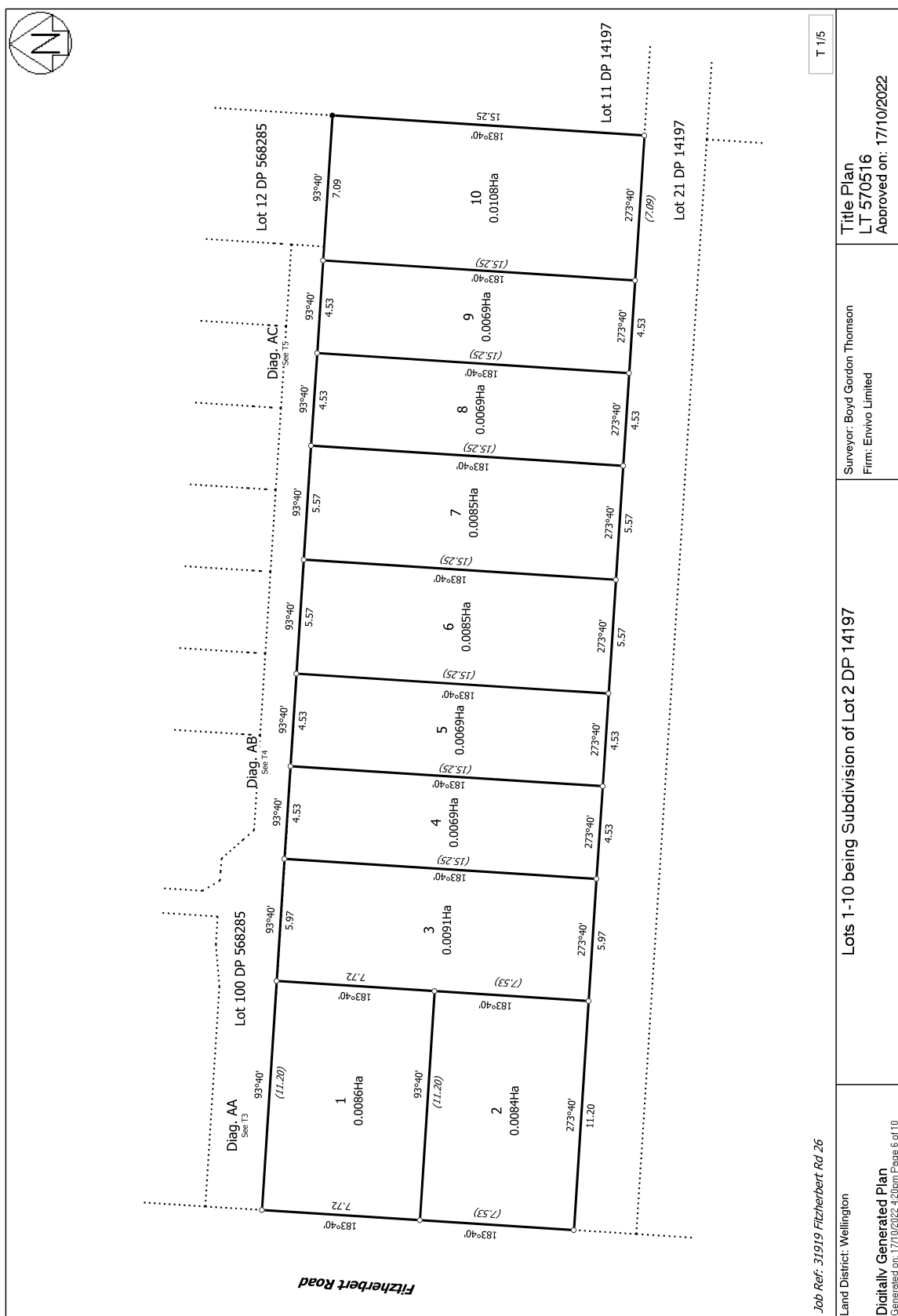
12580227.5 Mortgage to ANZ Bank New Zealand Limited - 11.11.2022 at 1:51 pm

To Purchasers/Interested Parties:

A title shows evidence of events relating to a piece of real estate. A solicitor is the most appropriate person to examine a title. In accepting this title copy from Professionals, Redcoats Limited, you agree that this agency or any of its agents take no responsibility for interpreting it or for providing legal advice on anything out of the ordinary such as, but not limited to:

Caveat, Charging Order, Easement, Encumbrance, Instruments, Restrictive Covenant,
 Covenant, Cross Lease, Joint Tenancy, Tenancy in Common, Company Share

Often more than just the title needs to be searched. Cross Lease, Consent Notices, Easements, Instruments and other documents may place restrictions on use. You should take guidance from a solicitor.



Constitution of Wainuiomata 26 Residents Society Incorporated


Member


Hilary Moyna Anderson
Attorney


Member

Hilary Moyna Anderson
Attorney


Member

Hilary Moyna Anderson
Attorney


Witness:

Kaylee Mary Firmin
Registered Legal Executive
Tauranga

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SCHEDULE 1: SOCIETY RULES

SCHEDULE 2: ENCUMBRANCE

SCHEDULE 3: DEED OF COVENANT

1. NAME AND REGISTERED OFFICE

- 1.1 **Name:** The name of the Society shall be Wainuiomata 26 Residents Society Incorporated.
- 1.2 **Registered office:** The registered office of the Society shall be Crockers Body Corporate Management Limited, 525 Manukau Road, Epsom, Auckland 1023 or such other place as the Committee shall nominate from time to time.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In this Constitution, unless the context otherwise requires:

“2022 Act” means the Incorporated Societies Act 2022.

“Act” means the Incorporated Societies Act 1908.

“Bank” means a registered bank as defined in the Reserve Bank of New Zealand Act 1989.

“Capital Improvements” means structural repairs to, and the replacement or renewal of the Access Lot and Communal Facilities.

“Committee” means the committee members from time to time elected to manage the affairs of the Society pursuant to this Constitution.

“Communal Facilities” means the communal accessways (including the Right of Way Areas) and all plant, equipment, facilities and amenities owned, leased or otherwise held or operated by the Society.

“Consent” means all resource consents and approvals issued by the Relevant Authority for the Development.

“Controlling Member” has the meaning set out in clause 5.7.

“Constitution” means this Constitution as amended or added to, including all schedules to this Constitution.

“Default Interest Rate” means 6% above the Society's Bank's overdraft rate applicable during the continuance of the default.

“Developer” means Wolfbrook Residential Limited and its transferees and assigns.

“Development” means the residential development of the Land into Lots 1 to 10 (inclusive) on Deposited Plan 570516, and the construction of 10 residential townhouses by the Developer, one on each Lot.

"Expense Year" means each 12 month period commencing on 1 April and ending on 31 March, or such other 12 month period as the Committee may from time to time determine.

"First Members" means those people listed on incorporation as being the first Members of the Society.

“Invitee” means any invitee of or any visitor to an Owner and/or an Occupier.

“Land” means all of the land comprised in Lot 2 on Deposited Plan 14197 (Record of Title identifier WN549/105).

“Land Covenants” means the covenants registered by the Developer against each of the Owner’s Titles.

“Lot” means Lots 1 to 10 (inclusive) on Deposited Plan 570516 all within the Development, or where the context requires, any one of them.

“Management Agreement” means the agreement between the Manager and the Society and, in respect of the first Manager, means the management agreement dated on or about the date of this Constitution.

“Manager” means the manager appointed pursuant to clause 11 from time to time.

“Member” means each person who shall from time to time be a member of the Society, as required by clause 5.

“Member's Proportion” means the share of Operating Expenses as set out in clause 6.

“Occupier” means any person occupying (permanently or temporarily) the whole or any part of any Residential Property under any lease, licence or other occupancy right and, where the context requires, shall include all members of an Owner's family.

“Operating Expenses” means the total sum of any rates, taxes, costs and expenses of the Society properly or reasonably assessed or assessable paid or payable or otherwise incurred in respect of the Communal Facilities and the operation of the Society (inclusive, without limitations, the management expenses, management fee and any utility costs) but shall exclude any costs payable for a Special Levy.

“Owner” means each person registered as an owner (whether individually or with others) of a Lot.

“Owner's Title” means the Record of Title issued for an Owner's Residential Property.

“Registrar” means the person holding office from time to time as Registrar of Incorporated Societies in terms of the Act.

“Relevant Authority” means any statutory or local authority having jurisdiction over the Development.

“Residential Property” means a residential property on a Lot within the Development for which a Record of Title has been issued.

“Right of Way Areas” means the pedestrian right of way areas marked PA, PB, PC, PD, PE, PF, PG and PH on Deposited Plan 570516.

“Rules” means rules circulated by the Society including the clauses in this Constitution and the Rules attached as Schedule 1.

“Society” means Wainuiomata 26 Residents Society Incorporated or any successor or replacement entity.

“Special Levy” means a levy made on a Member under clause 6.2

“Special Resolution” means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members present in person or by proxy and entitled to vote provided however that it must include the Controlling Member (if there is one).

“Working Day” means any day of the week, which shall be deemed to commence at 9.00am and to terminate at 5.00pm, other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Matariki Public Holiday and Labour Day; and
- (b) A day in the period commencing on the 23rd day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
- (c) The day observed as the anniversary of any province in which an act is to be done.

2.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) **Clauses and schedules:** References to a clause or to a schedule are references to clauses in, and schedules to, this Constitution. Each schedule forms part of this Constitution.
- (b) **Documents:** References to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.
- (c) **Headings:** The headings in this Constitution are inserted for convenience and reference only and shall not affect the meaning or interpretation of this Constitution.
- (d) **Inclusive expressions:** The term “includes” or “including” (or any similar expression) is deemed to be followed by the words “without limitation”.
- (e) **In writing:** References to “writing” shall be construed as including references to words printed, typewritten, or any words transmitted by facsimile transmission or by email or other electronic form, or otherwise reproduced.
- (f) **Persons:** References to a “person” include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity.
- (g) **Plural and singular:** References to the singular include the plural and vice versa.

- (h) **Statutory Provisions:** References to any statute or statutory provision are to statutes and statutory provisions in force in New Zealand and include any statute and statutory provision which amends, replaces or re-enacts it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it.
- (i) **Currency:** References to dollars or \$ means New Zealand dollars and all amounts payable under this Constitution are payable in New Zealand dollars.
- (j) **Joint and several:** Unless this Constitution expressly provides otherwise, in relation to any persons who are jointly an Owner, the obligations under this Constitution bind those persons jointly and also each of them individually.
- (k) **Negative obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

3. OBJECTS

3.1 **Objects:** The Society is formed to promote the following objects for the benefit of Members:

- (a) the ongoing management and control of the Communal Facilities by the Society;
- (b) to effect and maintain insurance in respect of the Residential Properties and (if it considers prudent) with respect to the Communal Facilities and the Society's affairs;
- (c) to ensure the proper operation, maintenance, repair, renovation and replacement of the Communal Facilities by the levying of Members for the purpose of providing funds for and meeting the costs and expenses of such work;
- (d) to circulate and enforce rules and covenants benefiting Members and the Development generally;
- (e) to promulgate and enforce bylaws and covenants to ensure the obligations regarding the management of the Communal Facilities including compliance with all relevant laws and requirements of Relevant Authorities and Government; and
- (f) to maintain the Communal Facilities generally as a safe, clean and well-presented environment as a whole.

3.2 **No Pecuniary Gain:** The Society does not have any of the following as an object:

- (a) the pecuniary gain of Members, and no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society; or
- (b) the carrying on of trading activities; or

- (c) the carrying on of business for profit.

4. **MEMBERS MAY CONTRACT**

- 4.1 **Ability to Contract:** A Member may enter into any agreement or understanding with the Society for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

5. **MEMBERSHIP OF SOCIETY**

- 5.1 **First Members:** The First Members shall be deemed to have resigned from the Society as soon as there are more than six Owners (excluding the Developer) as Members. The First Members shall be entitled to vote at any meeting of the Society to elect a Committee and exercise all rights of Members set out in this Constitution but shall have no obligations as Members (including but not limited to, the payment of levies).

- 5.2 **Owners to be Members:** Subject to clause 5.1, each Owner shall be a Member and only Owners can be Members, and for that purpose:

- (a) An encumbrance shall be registered against each Owner's Title in favour of the Society under which each Owner covenants to become and remain a Member and to perform the obligations of the Member as set out in this Constitution.

Each Member shall prior to settling the sale of a Residential Property procure the purchaser to enter into, execute and deliver to the Society a deed of covenant in favour of the Society, under which the purchaser covenants to become a Member contemporaneously with the transfer of the Residential Property and remain a Member, and to observe and perform the obligations of a Member as set out in this Constitution. The deed of covenant shall be in the form attached at Schedule 3 and prepared by the solicitors for the selling Member, and the selling Member shall pay the reasonable legal fees and disbursements of the Society's solicitors (if any) in relation to the deed of covenant.

- (b) The selling Member shall at least 5 days prior to settlement of such Member's sale of its Residential Property request from the Manager a certificate of indebtedness and the selling Member shall pay such amount as required by such certificate including the Manager's reasonable fee for providing such certificate.
- (c) A Member shall be deemed to have resigned from the Society immediately upon that Member ceasing to be an Owner, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
- (d) Each Owner shall immediately upon becoming an Owner, (and thereafter as any details change), provide the Society with the details necessary for maintenance of the register of Members pursuant to clause 5.3, and shall upon entry of the details into the register, become a Member.

5.3 **Register of Members:** The Society shall maintain a register of Members recording:

- (a) **For each Member:** name, address, occupation, telephone number, facsimile number, email address and car registration and such other information as may be specified by the Committee.
- (b) **Membership:** the date upon which each Member became a Member.
- (c) **Voting:** where there is more than one Owner of a Residential Property, which of such Owners is entitled to vote in accordance with clause 13.1.
- (d) **Mortgagee:** name, contact person, telephone number and facsimile number of any person holding a mortgage over the Member's Residential Property.

5.4 **Not Assignable:** The rights, privileges and obligations of a Member are not assignable.

5.5 **More than one Owner:** If there is more than one Owner for a Residential Property, each Owner shall be a Member and shall be jointly and severally liable for acts, omissions and/or obligations under this Constitution.

5.6 **Access to Information:**

- (a) On reasonable notice and at reasonable times the Society shall make available for inspection by Members copies of this Constitution, the Rules and the financial reports presented to the last Annual General Meeting and the minutes of previous Annual General Meetings.
- (b) Members shall not be permitted to inspect the Membership register.

5.7 **Developer as Controlling Member:** Until the Development is fully completed, the Developer shall be the controlling member ("**Controlling Member**") of the Society, regardless of whether the Developer is at any time a Member. The Controlling Member shall have only the rights specified in this Constitution, and shall have no other rights or any obligations of a Member. No reference in this Constitution to a Member shall be taken as including a reference to the Controlling Member. Upon the Development being completed, the Developer shall be deemed to have resigned as Controlling Member, and thereafter, there shall be no Controlling Member in respect of the Society.

6. OBLIGATIONS OF MEMBERS

6.1 **Levies:**

- (a) As soon as practicable following a resolution by the Members passed in accordance with the Rules and after the commencement of each Expense Year, the Society shall by written notice advise each Member of their share of Operating Expenses for that Expense Year ("**Society's Estimate**"), plus such contingency sum as the Society may, in its sole discretion, fix. The levies shall be based on an even share for each Lot in the Development and shall be set annually at the relevant communication Meeting of the Society based on a budget provided by the Manager for such purpose.

- (b) Each Member shall pay in each Expense Year their share applicable to that Expense Year. Payment shall be made by each Member in the manner set by the Society from time to time.
- (c) As soon as practicable after the end of each Expense Year, the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the previous Expense Year. If the actual Operating Expenses for the previous Expense Year are less than the total payments made by the Members pursuant to clause 6.1(b), the Society shall determine what to do with such difference at the next following Annual General Meeting of the Society. If the actual Operating Expenses are more than the total payments made by the Members pursuant to clause 6.1(b) the Society may require the Members to each pay an equal share of the shortfall.

6.2 **Special Levies:** The Committee:

- (a) May from time to time fix an additional levy to be paid by each Member together with the Society's Estimate for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements; and
- (b) May from time to time fix such special levies, payable by each Member at such times as are set by the Society, as the Society considers are necessary for it to meet its obligations under this Constitution. Subject to clause 6.1, any levy payable by a Member under this clause shall be an equal share of the total estimated cost to be provided for and met from the proceeds of the levies paid any Members.

6.3 **Sale of Residential Property:**

- (a) Where a Member ("**the Seller**") sells a Residential Property:
 - (i) Notwithstanding any other clause in this Constitution, the Seller shall remain liable for sums owed to the Society by that Seller.
 - (ii) The Seller shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Residential Property to the Society until such time as a deed of covenant specified in clause 5.2(a) is received by the Society.
 - (iii) The buyer of the Residential Property shall be liable as a Member for any indebtedness of the Seller to the Society in respect of the Residential Property purchased and a certificate issued by the Society showing the indebtedness of the Seller to the Society shall be conclusive as to the sum of this indebtedness.
- (b) The Society shall on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application. The statement shall show:

- (i) The Society's estimate of such Member's Proportion of Operating Expenses for the current Expense Year;
- (ii) Payments made by the Member on account of Operating Expenses in the current Expense Year;
- (iii) Payments due from the Member on account of Operating Expenses in the current Expense Year, and not paid by the Member; and
- (iv) Any accumulated unpaid default interest.

6.4 **Covenants and Rules:** Each Member agrees to promptly and duly comply with any rules made by the Society from time to time.

6.5 **Development ongoing:** The Members acknowledge that the Development is on-going and that the Society is required to allow the Developer such access to, and use of the Communal Facilities as is necessary or desirable for the Development to proceed. Each Member agrees:

- (a) To and hereby allows the Developer access the Communal Facilities for the purpose of proceeding with the Development;
- (b) Not to prevent, hinder or obstruct the use by the Developer or anyone so authorised by the Developer of the Communal Facilities; and
- (c) That neither the Member nor the Society shall oppose or take part in any opposition to the Development.

6.6 **Covenants registered on titles:** Covenants regarding the matters set out in clause 6 shall be noted against each Owner's title in favour of the Society. The Society shall not agree to the alteration to the terms of the covenants as first noted against each Owner's title.

7. BREACH OF OBLIGATIONS

7.1 **Occupiers and Invitees:** A reference to an act or omission by any Member shall include any act or omission by any mortgagee in possession of that Member's Residential Property or the occupiers of such Member's Residential Property, the invitees of such occupier and the invitees of such Member.

7.2 **Consequences Upon any breach of this Constitution by a Member ("Offending Member"):**

- (a) Where damage has been caused to the Communal Facilities, the Offending Member shall make good such damage.
- (b) If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default.
- (c) All money paid and expenses incurred by the Society (including any legal costs of the Society) in remedying, or attempting to remedy, any breach by an Offending Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement or attempted

enforcement of any power, right or remedy of the Society in respect of such breach, shall be a debt due from the Offending Member to the Society.

- (d) If any money payable by an Offending Member to the Society is in arrears and unpaid for seven days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money shall be payable on demand and shall bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full.

8. OBLIGATIONS OF THE SOCIETY

- 8.1 **Rules:** The Society shall circulate, amend and distribute to Members from time to time rules in respect of the insurance for the Development and the use and maintenance of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons). The first such rules shall be those rules attached as Schedule 1 to this Constitution.
- 8.2 **Operation of Communal Facilities:** The Society shall ensure the proper operation, maintenance and repair of the Communal Facilities as may from time to time be necessary for the reasonable use and enjoyment of the Communal Facilities by the Owners.
- 8.3 **Insurance:** The Society shall effect and maintain a comprehensive insurance policy in respect of the Residential Properties on either a replacement basis or a sum insured basis reasonably sufficient to replace the Residential Properties, and the Society shall also effect and maintain any insurance it considers prudent with respect to the Communal Facilities and the Society's affairs, and shall meet any costs of such insurance (which shall include any valuations and other professional fees required or deemed desirable for the purposes of such insurance and the cost of certificates relating to such insurances). The Manager shall upon reasonable request provide the Member with a certificate of currency confirming details of insurance held for the Residential Properties and noting the Member's mortgagee (if applicable) as an interested party.
- 8.4 **Courier and Emergency Access:** The Society shall ensure that courier services and emergency service vehicles and other users having a lawful need to access the Right of Way Areas have a practicable right of access over the Right of Way Areas at all times.
- 8.5 **Consents & Territorial Authority:** The Society shall comply with the conditions of any Consent issued by any Relevant Authority in respect of the Communal Facilities.
- 8.6 **Financial Reports:**
 - (a) The Society shall provide to a prospective purchaser of Residential Property, within 5 working days after receiving a request, a copy of the most recent financial statements of the Society.
 - (b) The Society shall ensure that financial statements of the Society are provided to Members. The Society shall audit such financial statements if so required to do by a majority of Members voting at a meeting in accordance with and pursuant to clause 12.3.

9. LIMITATIONS OF THE SOCIETY

- 9.1 **No Indebtedness:** The Society shall not borrow any money other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except by Special Resolution.
- 9.2 **No Investments:** The Society shall hold all funds with a bank registered under the Reserve Bank of New Zealand Act 1989 and shall not invest those funds other than by deposit with such a bank, except by Special Resolution. All moneys paid to the Society by the Members shall only be applied for one or more of the activities referred to in clause 9.4.
- 9.3 **No Improper Use:** The Communal Facilities shall be used only for their proper purposes and the Members shall have the right to use the Communal Facilities in accordance with the Rules.
- 9.4 **No Activities Except Permitted Activities:** The Society shall only be permitted to carry on one or more of the following activities:
- (a) Owning, leasing, licensing, maintaining, administering, or operating the Access Lot and the Communal Facilities;
 - (b) Issuing licences to Members of the Society to confer rights on those Members to use the Communal Facilities, and administering and enforcing those licences in accordance with the rules;
 - (c) Managing and administering the Society and administering and enforcing the rules;
 - (d) Any incidental activities that the Committee considers are beneficial for Members of the Society.

10. OPERATION OF THE SOCIETY – COMMITTEE

- 10.1 **Powers:** The administration of the Society shall be delegated to the Committee. The Committee may exercise any powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as they deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limitation which may from time to time be imposed by the Society, under this Constitution or the Act. For the avoidance of doubt, except where a right, power or discretion is expressly reserved to the Members under this Constitution or the Act, references in this Constitution to the Society having any right, power or discretion are deemed to be references to the Committee having that right, power or discretion on behalf of the Society.
- 10.2 **Delegation of Powers to Subcommittee or Manager:** The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to a Manager. Any committee so formed or Manager so appointed shall in the exercise of the powers so delegated comply with any directions of the Committee.

- 10.3 **Bank Accounts:** The Society shall establish a bank account (and may do so by delegating such matter to the Manager) and any drawings on that account (including any cheque drawn on that account) shall be made only under the signature of the chairperson and one other member of the Committee or the signature of the Manager.
- 10.4 **Documents:** All documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson with the exception of the deed of covenant attached as Schedule 3 which may be signed in accordance with clause 10.11 of this Constitution.
- 10.5 **Composition:** The Committee shall comprise the following persons:
- (a) chairperson; and
 - (b) general Committee members, the number of Committee members to be determined by the Society in a general meeting before election of Committee members.
- 10.6 **Committee Members:**
- (a) The Controlling Member (if there is one) shall be a general Committee member. The balance of the Committee shall be elected by the Society at every annual general meeting and may be elected at any other time by the Society in the general meeting, provided that the Society shall only elect persons as members of the Committee and shall not elect any person specifically as chairperson.
 - (b) A Committee member shall hold elected position until the earliest of:
 - (i) the next annual general meeting following election (when the Committee member shall be eligible for re-election);
 - (ii) the date written resignation from the position is received by the Society;
 - (iii) the date of removal from such position by the Society in general meeting; or
 - (iv) the date of cessation of membership.
 - (c) In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of membership from the Society or some other means) the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Society in general meeting.
 - (d) Notwithstanding any other clause in this Constitution, the Controlling Member shall remain as a general Committee member for so long as they remain Controlling Member, and the Society shall not be entitled to remove either from those positions for any reason whatsoever.

10.7 Duties of Treasurer/Secretary: The Committee shall appoint, remove and replace a treasurer/secretary from time to time to carry out such of the obligations of the treasurer/secretary as the Committee shall see fit. The treasurer/secretary shall be the Manager where a Manager has been appointed and all duties shall be delegated to the Manager accordingly:

- (a) convene general meetings when requested to do so in accordance with this Constitution;
- (b) attend all meetings of the Committee and have full speaking rights at such meetings;
- (c) give all notices required to be given by these clauses or as directed from time to time by the Society or the Committee;
- (d) be and undertake all duties required of a "statutory officer" or similar pursuant to the Act (if any);
- (e) keep minutes at all general meetings and Committee meetings, make these available to Members on request and enter into the minute book:
 - (i) the time, date and venue of such meeting; and
 - (ii) all business considered and resolutions passed at such meeting;
- (f) hold in safe custody the common seal of the Society;
- (g) receive and issue receipts for all annual levies, additional fees and any other moneys paid to the Society;
- (h) operate and maintain a current bank account in the name of the Society;
- (i) pay accounts properly incurred by or on behalf of the Society;
- (j) report immediately to the Society any Member who fails to pay annual levies or additional fees within the prescribed period;
- (k) keep all financial records and any security documents in safe custody;
- (l) compile proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Society; and
- (m) compile the financial statements immediately following each financial year as required by the Act and if required provide for the auditing of those records and the distribution of the audited financial statements to Members.

10.8 Conduct of Meetings: The Committee may meet together, adjourn or otherwise regulate its meeting and procedures for conducting its business as it thinks fit. The Committee may meet at any time and the secretary shall upon the request of the chairperson or not less than 50% of Committee members or the Controlling Member, convene a meeting of the Committee.

- 10.9 **Quorum:** A majority of the members of the Committee from time to time, provided that such majority includes the Controlling Member (if there is one) shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place.
- 10.10 **Chairperson:**
- (a) The Committee from time to time shall appoint, remove and replace a chairperson for such term as it sees fit from one of their number (provided that the Controlling Member shall not be the chairperson) to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
 - (b) In the case of a tie in votes the chairperson may exercise a casting vote.
- 10.11 **Seal:** The Committee will obtain a common seal for the use of the Society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Committee. Every instrument to which the common seal is affixed shall be signed by two members of the Committee or the Manager. Notwithstanding the foregoing, while there is a Controlling Member, the Controlling Member's signature shall bind the Society to such instruments, agreements or deeds as are reasonably necessary to facilitate the completion of the Development. Any deed signed by the Controlling Member must be signed with the common seal in accordance with the Act.
- 10.12 **Voting:** Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote provided that the treasurer/secretary shall not be entitled to vote and further provided that the Controlling Member (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of other Committee members present at any Committee meeting. Notwithstanding any contrary provision in this Constitution a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 10.13 **Validity of Committee's Actions:** All acts properly done by any meeting of the Committee or by any person acting as a Committee member notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member or that they were disqualified, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.
- 10.14 **Committee Minutes and Records:** The Committee shall cause proper minutes to be kept of the proceedings of any meetings of the Society and of the Committee. All business transacted at such meetings signed by the chairperson shall be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

11. MANAGER

- 11.1 **First Manager:** The first Manager shall be Crockers Body Corporate Management Limited or such other Manager as may be nominated by the Controlling Member. The Manager shall manage the Society in accordance with the Management Agreement. On expiry or termination of the Management Agreement, a replacement Manager shall be appointed by the Committee under clause 10.
- 11.2 **Appointment and Duties:** Subject to clause 11.1, the Committee shall appoint, remove and replace a Manager from time to time to carry out such of the obligations of the Society, and exercise such of the discretions and powers of the Society, as the Committee shall see fit. Such appointment shall be for the term, at the remuneration and on such terms and conditions as the Committee may agree with the Manager. The terms and conditions shall be recorded in a Management Agreement on terms approved by the Committee.

12. GENERAL MEETINGS

- 12.1 **Annual General Meeting:** In addition to any other meetings in that year the Society shall hold an annual general meeting each year. Not more than 18 months shall elapse between the date of one annual general meeting and that of the next. The Committee will determine the time and place of each year's annual general meeting.
- 12.2 **Special General Meetings:** A general meeting other than an annual general meeting may be requested by the Committee or by written requisitions signed by not less than 25% of current Members or by the Controlling Member. The secretary shall call a special general meeting within 14 days of receiving an effective request.
- 12.3 **Powers of the Society General Meeting:** The Society in general meeting may, by resolution, exercise all powers, authorities and discretions of the Society notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution a resolution in writing signed by 75% of the Members entitled to vote in person, by proxy or by postal vote at general meetings together with the Controlling Member (if there is one), shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.
- 12.4 **Quorum:** No business shall be transacted at any general meeting of the Society unless the quorum is present when a meeting proceeds to business. Quorums shall be not less than 25% of the Members eligible to vote at general meetings, present in person or by proxy, or present and participating in the meeting by means of audio, audio and visual, or electronic communication, or by those who have cast postal votes, together with the Controlling Member (if there is one).
- 12.5 **Notice of General Meeting:** A notice of general meeting of the Society shall be sent to every Member not less than 10 working days before the date of such meeting. Such notice shall specify the date, time and venue of such meeting. In the case of a general meeting other than an annual general meeting such notice shall specify all business and all notices of motions to be considered at

such meeting. No business or notice of motion which is not specified shall be discussed or transacted at such meeting.

- 12.6 **Postal voting instructions:** If postal voting is permitted the notice of the meeting must state the name of the person authorised by the Committee to receive and count postal votes at that meeting. If no person has been authorised to receive and count postal votes at that meeting, or if the Committee has been named as so being authorised, every member of the Committee is deemed to be so authorised.
- 12.7 **Electronic voting:** Subject to complying with any obligations under the Act, the Committee may conduct a vote of Members by means of electronic voting in such manner as may be approved by the Committee.
- 12.8 **Failure to Give Notice:** The accidental omission to give notice or the non-receipt of such notice by any Member shall not invalidate the proceedings at any such meeting.
- 12.9 **The Chairperson:** The chairperson at any general meeting shall be:
- (a) the chairperson of the Society; or
 - (b) if the Chairperson is unavailable or unwilling then the Society's Manager; or
 - (c) if neither the chairperson or the Manager is present or neither is willing to take the chair then those Committee members who are present may choose one of their number to chair the meeting.
- 12.10 **Adjournment:**
- (a) If a quorum is not present within half an hour from the time appointment for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved.
 - (b) If a quorum is not present within half an hour from the time appointed for the holding of an Annual General Meeting or a general meeting requested by the Committee or by the Controlling Member, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Committee shall determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Controlling Member (if there is one) shall constitute a quorum.
- 12.11 **Adjourned Meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.

- 12.12 **Information that must be presented at a General Meeting:** The Chairperson shall be responsible (or the Manager where these responsibilities have been delegated) for presenting at a General Meeting the annual report, financial statements, disclosure of interests made by officers and minutes from the last annual general meeting.

13. VOTING

- 13.1 **One Residential Property - One Vote:** Each Residential Property entitles its Owner(s) to one vote. Votes may be exercised either in person, or by proxy, or by postal vote. Where there is more than one Owner in respect of any Residential Property, only one such Owner is entitled to vote. In the absence of agreement between the Owners as to who shall exercise this vote, the Owner appearing first on the record of title to the Residential Property will be entitled to exercise that vote. On the death of any Owner and pending the transfer of that Owner's Residential Property, the executor(s) or administrator(s) of that Owner's estate shall be entitled to exercise that Owner's vote.
- 13.2 **Controlling Member's Vote:** The Controlling Member (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of Members present at any general meeting.
- 13.3 **Corporation Representatives:** Any corporation which is a Member may by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers of the corporation which that person represents as that corporation could exercise if it were an individual Member, and references in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this clause, and such person may also stand for election to the Committee.
- 13.4 **No Vote If Fees Unpaid:** Unless all annual levies and additional fees presently payable by the Member to the Society have been paid in full the Member shall not be entitled to vote at any general meeting of the Society, whether in his own right or as a proxy for another person.
- 13.5 **Voting at Meetings:** At any general meeting:
- (a) A resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote.
 - (b) Resolutions put to the vote shall be decided on voices, a show of hands, by proxy or by postal vote unless a poll is demanded on or before declaration of the result by:
 - (i) the chairperson of the meeting; or
 - (ii) at least 50% of the Members present in person or by proxy.
 - (c) In the case of a resolution put to the vote of the meeting by voices, a show of hands, by proxy or by postal vote, a declaration by the chairperson that such resolution has been carried or lost or an entry to that effect in the Society's minute book, shall be conclusive evidence of

that fact without further proof of the number or proportion of votes recorded in favour of or against such resolution.

- (d) Resolutions shall be passed by a majority of votes except where Special Resolution or the unanimous resolution of all Members is required by this Constitution.
- (e) In the case of a tie in votes the chairperson may exercise a casting vote.

13.6 **Postal Vote:** A Member may exercise the right to vote at a meeting by casting a postal vote in accordance with the following provisions:

- (a) Member may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of how that Member has voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- (b) It is the duty of a person authorised to receive and count postal votes at a meeting to collect together all postal votes received and to count the number of votes in favour and against each resolution to be voted on at the meeting, and present the results of the counts in a certificate to the chairperson of the meeting.
- (c) The chairperson must ensure the certificate of postal votes is annexed to the minutes of the meeting.
- (d) A postal vote may be cast using electronic means permitted by the Committee.

13.7 **Form of Postal Vote:** The instrument containing the postal vote may be in the following form or in a common or usual form:

I _____ of _____
being a member of Wainuiomata 26 Residents Society Incorporated hereby vote
at the [annual] general meeting of Wainuiomata 26 Residents Society
Incorporated to be held on the _____ day of _____ and at any
adjournment thereof in favour of/against the following resolutions:

Signed this _____ day of _____ 20____

13.8 **Good Faith:** Members shall in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated fairly by the Society and that each Member shall bear and pay that Members Share of all Operating Expenses and of all costs and expenses to be met by levies made by the Society under clauses 6.1-6.2 irrespective of whether any expenditure by the Society benefits all Members.

13.9 **Instruments Appointing Proxies:** The instrument appointing a proxy shall be in writing under the hand of the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a corporation or body corporate either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct his or her

proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as he or she thinks fit.

13.10 Form of Proxy: The instrument appointing a proxy may be in the following form or in a common or usual form:

I _____ of _____
 being a member of Wainuiomata 26 Residents Society Incorporated hereby
 appoint _____
 _____ of _____
 Or failing him or her of _____
 as my proxy to vote for me on my behalf at the [annual] general meeting of
 Wainuiomata 26 Residents Society Incorporated to be held on the day of
 _____ and at any adjournment thereof.
 My proxy is hereby authorised to vote in favour of/against the following resolutions:

Signed this _____ day of _____ 20____

- 13.11 Notice of Proxy:** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named on the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.
- 13.12 Validity of Proxy:** A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed if no intimation in writing of such death, unsoundness of mind or revocation aforesaid has been received by the association at the registered office by the commencement of the meeting or adjourned meeting for which the instrument is issued.
- 13.13 Objection to Proxy:** No objection shall be raised to the qualifications of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at that meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.
- 13.14 Members of Unsound Mind:** A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by such person as properly has the management of his or her estate and any such person may vote by attorney or by proxy.
- 13.15 Electronic voting:** Subject to complying with any obligations under the Act, the Committee may provide for Members to vote at a meeting of Members (including any general meeting) by means of electronic voting in such manner as may be approved by the Committee.

14. NOTICES

- 14.1 **Notices to Members:** A notice required or authorised to be served, delivered, given or sent to any member will be deemed to have been sufficiently served, delivered or sent if:
- (a) delivered personally to the Member; or
 - (b) sent by ordinary post addressed to the Member at the address of the Member appearing in the Register of Members; or
 - (c) transmitted to the email address appearing in the Register of Members.
- 14.2 **Notice to the Society:** A notice required or authorised to be served, delivered, given or sent to the Society will be deemed to have been served, delivered, given or sent if:
- (a) delivered to the registered office; or sent by ordinary post addressed to the Society at the registered office; or
 - (b) transmitted to the email address of the Manager.
- 14.3 **Deemed receipt:** A notice sent by post pursuant to this clause will be deemed to have been received by the addressee 48 hours after time of posting.
- 14.4 **Omission:** The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Member entitled to receive notice will not invalidate the proceedings at the meeting.

15. GENERAL

- 15.1 **Dissolution/Winding Up:** The Society may be wound up in accordance with section 24 of the Act.
- 15.2 **Alteration of Constitution:**
- (a) This Constitution shall not be amended, added to or rescinded except at an annual general meeting or a general meeting convened for that purpose and unless written notice of the proposed amendment, addition or rescission shall have been given to all Members in accordance with this Constitution.
 - (b) No clause, including this one, shall be amended, added to or rescinded except by Special Resolution.
- 15.3 **Liability of Member:**
- (a) No Member shall be under any liability in respect of any contract or other obligation made or incurred by the Society.
 - (b) The Society shall indemnify each Member against any liability properly incurred by such Member in respect of the affairs of the Society to the extent of property owned by the Society.

- (c) No action in law or otherwise shall lie in favour of any Member against any other Member or the committee or any Committee member in respect of any act or omission pursuant to these Rules.
- (d) Nothing in this clause shall prevent an action in respect of any loss or expense arising from the wilful default of any person against whom such action is taken.

15.4 Indemnity: Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability which the Society may suffer or incur or for which the Society may become liable in respect of or arising from any breach of this Constitution by the Member.

15.5 Dispute Resolution:

- (a) **Good Faith Discussion:** In the event that any dispute arises between the parties in any way arising out of or in connection with this Constitution the parties shall enter into discussions in good faith with a view to resolving the dispute amicably as soon as practicable. Either party may terminate these discussions at any time.
- (b) **Notice of Mediation:** If any dispute or difference arises between the parties in any way arising out of or in connection with this Constitution and such dispute has not been resolved within 15 Working Days of the commencement of discussions pursuant to clause 15.5(a), either party may give written notice of its intention to refer such dispute or difference to mediation.
- (c) **Agreement to Mediate:** If a request to mediate is made then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties (separately or jointly in the discretion of the mediator) and endeavour to resolve it by their agreement. All discussions in the mediation shall be without prejudice and shall not be referred to in any later proceedings. The parties shall bear their own costs in the mediation and shall each pay half of the costs of the mediator.

15.6 Arbitration: If:

- (a) **No Resolution by Discussions:** the dispute has not been resolved by the discussions of the parties pursuant to clause 15.5(a); or
- (b) **No Mediation Notice:** the parties have agreed upon mediation but have been unable within 10 Working Days of such agreement to agree upon a mediator; or
- (c) **No Agreement:** no agreement has been reached in mediation within 1 month of the service of the notice of mediation, or within such further time as the parties may agree,

then the matter in dispute may be referred to arbitration upon the service of a notice of intention to commence arbitration which shall be governed by the Arbitration Act 1996 except to the extent modified by this Constitution.

Arbitrator: The arbitration shall be by a single arbitrator. If the parties cannot agree upon an arbitrator within 10 Working Days of service of the notice of intention to commence arbitration either party may request the president of the Arbitrators Institute of New Zealand Inc. to appoint a sole arbitrator. Either party may request the appointment of an assessor to sit with the arbitrator but any such assessor shall have an advisory role only and shall not have the authority to make a binding decision. If the parties cannot agree upon an assessor in a reasonable time then the arbitrator may appoint an assessor.

16. **ENCUMBRANCE**

- 16.1 **Encumbrance:** Every Member of the Society from time to time shall encumber the land owned by that Member with a memorandum of encumbrance so that at all times every property will be subject to a memorandum of encumbrance in terms of these provisions.
- 16.2 **Form of Encumbrance:** The memorandum of encumbrance shall be in the following form and to the following effect (except as the same is varied from time to time by the Society) as attached as Schedule 2.

17. **RE-REGISTRATION OF SOCIETY**

- 17.1 The Members acknowledge that:
- (a) the Society must re-register on the Incorporated Societies Register in a manner that complies with the 2022 Act prior to April 2026; and
 - (b) Although the 2022 Act had already been passed into law, it was not possible to register under the 2022 Act as at the date of incorporation of the Society.

SCHEDULE 1

SOCIETY RULES

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"Committee" means the committee members from time to time elected to manage the affairs of the Society pursuant to this Constitution.

"Communal Facilities" means the communal accessways (including the Right of Way Areas) and all plant, equipment, facilities and amenities owned, leased or otherwise held or operated by the Society.

"Constitution" means the constitution of the Society as amended or added to, including all schedules to this Constitution.

"Developer" means Wolfbrook Residential Limited and its transferees and assigns.

"Development" means the residential development of the Land into Lots 1 to 10 (inclusive) on Deposited Plan 570516, and the construction of 10 residential townhouses by the Developer, one on each Lot.

"Invitee" means any invitee of or any visitor to an Owner and/or Occupier.

"Land" means all of the land comprised in Lot 2 on Deposited Plan 14197 (Record of Title identifiers WN549/105).

"Lot" means Lots 1 to 10 (inclusive) Deposited Plan 570516 all within the Development, or where the context requires, any one of them.

"Manager" means the manager appointed pursuant to clause 11 of the Constitution.

"Occupier" means any person occupying (permanently or temporarily) of the whole or any part of any Lot or Residential Property under any lease, license or other occupancy right and shall include all members of an Owner's family.

"Owner" means each person registered as an owner (whether individually or with others) of a Lot.

"Residential Property" means a residential property on a Lot within the Development for which a Record of Title has been issued.

"Right of Way Areas" means the pedestrian right of way areas marked PA, PB, PC, PD, PE, PF, PG and PH on Deposited Plan 570516.

"Rules" means rules circulated by the Society including the clauses in the Constitution and these Society Rules.

"Society" means Wainuiomata 26 Residents Society Incorporated or any successor or replacement entity.

“Vehicles” means but is not limited to cars, motorbikes, e-scooters, scooters and bicycles.

2. **USE**

- 2.1 Each Member shall make no improper, offensive or unlawful use of the Right of Way Areas or the Communal Facilities and shall use the Right of Way Areas and Communal Facilities only for the purposes for which they were designed.
- 2.2 No Member shall fetter, obstruct or impede the legal use of the Right of Way Areas or the Communal Facilities by any other Member.
- 2.3 No Member shall place anything in or on the Right of Way Areas or the Communal Facilities without the approval of the Committee.
- 2.4 No Member shall do any act which may prejudice any insurance policy held by the Society or add to the premium payable in respect of any insurance policy of the Society.
- 2.5 No Member shall obstruct or impede the Society from carrying out its obligations and responsibilities under these Rules and the Constitution. Each Member shall provide the Society with access if the Society (acting reasonably) requires access to carry out its obligations and responsibilities under these Rules and the Constitution, provided that no Member shall be required to provide any internal access to its Residential Property.

3. **PROHIBITED ACTS**

- 3.1 No Member shall drop any litter in or on the Right of Way Areas or at any time store any kind of waste, rubbish or recycling material (“refuse”) including refuse bins or other containers for refuse collection on the Right of Way Areas.
- 3.2 No Member shall use the Right of Way Areas for the purpose of driving or operating or the parking of Vehicles.
- 3.3 No Member shall do any act which detracts from the attractiveness or state of repair or operation of the Right of Way Areas and the Communal Facilities. Any Member who discovers any damage to the Right of Way Areas or the Communal Facilities shall immediately report such damage to the chairperson or Manager.

4. **WASTE DISPOSAL**

- 5.1 All Members will transport their own household waste bins to and from the roadside in accordance with any local authority kerbside waste collection requirements that may apply from time to time, and will not neglect to do so in a manner that causes nuisance or annoyance to other Members.

SCHEDULE 2
ENCUMBRANCE

Encumbrance instrument

(Section 100 Land Transfer Act 2017)

Land registration district

Wellington

Record of Title (unique identifier) All/part Area/description of part

1030920 to 1030929 (inclusive)

All

Encumbrancer

Surname(s) must be underlined.

Wolfbrook Residential No4 Limited

Encumbrancee

Surname(s) must be underlined.

Wainuiomata 26 Residents Society Incorporated

Estate or interest to be encumbered

Insert, eg, fee simple, leasehold in lease number, etc.

Fee Simple

Encumbrance memorandum number

N/A

Nature of security

State whether sum of money, annuity, or rentcharge, and amount.

The greater of \$2,000.00 (two thousand dollars) per annum plus GST and three times the amount of the Member's Proportion of the Operating Expenses for the relevant Expense Year (as defined in the Constitution of the Encumbrancee) plus GST applicable to that Lot.

Operative clause

Delete words in [], as appropriate.

The **Encumbrancer encumbers for the benefit of the Encumbrancee** the land in the above record of title(s) **with** the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the Annexure Schedule(s) **and** so as to incorporate in this encumbrance the terms and other provisions set out in the 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 1

Terms *Continue on additional Annexure Schedule(s) if required.*

1. Length of Term: 999 years commencing on the date of registration of this instrument
2. Payment date(s): See Annexure Schedule 2
3. Rate(s) of interest: See Annexure Schedule 2
4. Event(s) in which the sum, annuity, or rentcharge becomes payable: See Annexure Schedule 2
5. Event(s) in which the sum, annuity, or rentcharge ceases to be payable: See Annexure Schedule 2

Covenants and conditions *Continue on additional Annexure Schedule(s) if required.*

See Annexure Schedule 2

Modification of statutory provisions *Continue in additional Annexure Schedule(s) if required.*

See Annexure Schedule 2

Annexure Schedule 2

Background

- A. The Encumbrancer is the registered owner of the land comprised in the Record of Titles described above (the "**Land**").
- B. The Encumbrancer has developed the Land (the "**Development**") and has established the Encumbrancee for the purpose of administering the Development, including but not limited to administering certain communal facilities within the Development.
- C. The registered owner from time to time of each lot described herein ("the **Lot**") comprising the Land is required to become and, for so long as they continue to be the registered owner of a Lot, remain a member of the Encumbrancee and abide by the Constitution of the Encumbrancee.
- D. The Encumbrancer has agreed to encumber each Lot severally for the better performance of the obligations of the registered owner from time to time of a Lot to the Encumbrancee.

Covenants

1. The Encumbrancer hereby encumbers the Land and each Lot severally for the benefit of the Encumbrancee for the Term with an annual rent charge in respect of each Lot being the greater of:

(a) \$2,000.00 plus GST per annum; and

- (b) Three times the amount of the Member's Proportion of the Operating Expenses for the relevant Expense Year (as defined in the Constitution of the Encumbrancee) plus GST applicable to that Lot.
2. The Encumbrancer covenants for itself and its successors in title with the Encumbrancee during the Term of this Encumbrance that upon becoming the registered owner of a Lot the Encumbrancer shall join as a member of the Encumbrancee, and remain a member while owing the Lot, and fulfil and continue to fulfil the obligations of a member as set out in the Constitution of the Encumbrancee (including, if required by the Encumbrancee, ensuring that any transferee of a Lot executes a Deed of Covenant in favour of the Encumbrancee agreeing to be bound by the Constitution as a member of the Encumbrancee).
3. Notwithstanding anything contained in clause 1 of this Encumbrance, for so long as the owner of a Lot fully complies with the obligations of a member pursuant to the Constitution of the Encumbrancee, the rent charge reserved by this Encumbrance shall not apply to that Lot.

Encumbrance Consent

4. The Encumbrancee hereby consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Lot:
- (a) The creation, variation or surrender of an easement (sections 109(3) and 112(4) of the Land Transfer Act 2017);
 - (b) The variation of a mortgage instrument or priority of mortgages (section 101(4) of the Land Transfer Act 2017);
 - (c) The registration of a lease, a lease variation instrument or a surrender of a lease (sections 91(4) and 94(4) of the Land Transfer Act 2017); and
 - (d) The disposal of a licence or shares to which the licence relates (sections 130(1) and 130(2) of the Land Transfer Act 2017).

This consent shall be deemed to be the consent of the mortgagee (which term includes the Encumbrancee) as specified in the Land Transfer Act 2017, to the registration of a particular instrument specified in sub-paragraphs (a) to (d) above.

Implied Terms

5. Without prejudice to the Encumbrancee's rights of action at common law as rent charger or Encumbrancee, and with the exceptions of sections 203, 204, 288, 289 and 302 of the Property Law Act 2007 and section 208 of the Land Transfer Act 2017, none of the rights, powers, remedies and implied covenants provided pursuant to the Property Law Act 2007 and the Land Transfer Act 2017 shall apply to this Encumbrance.
6. References to the Encumbrancer shall mean the initial encumbrancer named in this instrument and its successors in title to the land, and the terms of this Encumbrance shall bind the Encumbrancer only for as long as the Encumbrancer is the registered owner of the Land.

SCHEDULE 3

DEED OF COVENANT

Dated

Parties

[Name of Purchaser]

Purchaser

Wainuiomata 26 Residents Society Incorporated

Society

Deed of Covenant

In respect of Lot [**6**] Deposited Plan 570516
(Title Identifier [])
1030925

Deed dated

Parties

- 1 **[Name of Purchaser]** ("the Purchaser")
- 2 **Wainuiomata 26 Residents Society Incorporated** ("the Society")

Background

- A. The Purchaser has agreed to purchase a property at 26 Fitzherbert Road, Lower Hutt more particularly described in the Schedule ("the Property").
- B. There is an encumbrance registered against the title to the Property in favour of the Society whereby registered owners utilising the communal facilities at 26 Fitzherbert Road, Lower Hutt covenant to become and remain members of the Society (whilst they are registered owners) and to adhere to the Society's rules.
- C. The rules of the Society require all those purchasing "Lots" as that term is defined in the Society rules to enter into a deed of covenant in favour of the Society.

Covenants

1. The Purchaser hereby agrees and consents to be a member of the Society and acknowledges and confirms the rules of the Society and of this covenant and agrees to be bound by and comply with the same.
2. The Purchaser shall upon selling the Property procure the subsequent purchaser, as a precondition of sale, to enter into a deed of covenant with the Society as set out herein.
3. The Society being an Encumbrancee under Encumbrance Number 12517288.5 hereby consents to the registration of the transfer of the Property to the Purchaser (and registration of a mortgage if applicable).
4. The Purchaser acknowledges that due to the Incorporated Societies Act 2022 recently passing into law, the Society must re-register on the Incorporated Societies Register in a manner that complies with the Incorporated Societies Act 2022 prior to April 2026.

The Schedule

Street address *[enter details]* 6/26 Fitzherbert Road, Wainuiomata

Lot *[enter details]* Deposited Plan 570516

6

SIGNED by the purchaser) _____
in the presence of:) _____

(Witness signature)

(Full name of witness)

(Occupation)

(Address)

INFORMATION FOR REGISTER OF MEMBERS

1. MEMBERS DETAILS

Name:

Address:

Occupation:

Email:

Telephone/Fax Nos:

Residential:

Work:

Date of Membership:

Party Authorised to Exercise Member's Vote:

Mortgage:

Contact Person:

Telephone/Fax Nos:

2. EMERGENCY CONTACT OF MEMBER

Name:

Address:

Occupation:

Telephone/Fax Nos:

Residential:

Work:

3. OCCUPIER DETAILS

Name:

Address:

Occupation:

Telephone/Fax Nos:

Residential:

Work:

4. EMERGENCY CONTACT OF OCCUPIER

Name:

Address:

Occupation:

Telephone/Fax Nos:

Residential:

Work:

INCORPORATED SOCIETY LEVIES

Invoice

Nicole Jourdane Lim-Kwan
6/26 Fitzherbert Road,
Wainuiomata,
Lower Hutt 5014

Wainuiomata 26 Residents Society Incor...
26 Fitzherbert Road, Lower Hutt, Wellington ...
Invoice No: 0000028 **Issue Date:** 02/12/24
Amount Payable: \$ 2,655.36
Due Date: 15/01/2025

Wainuiomata 26 Residents Society Incorporated - Plan No. W26RS

Unit No. LOT 6		Previous Balance:		0.00
Unit Entitlements: 1000000		Penalty Interest:		0.00
Description	Fund	Unit rate	Qty	Totals
10/11/2024 to 09/11/2025 for total Levy of \$ 2655.36 pa	Normal - Op Fund	2,655.36	1	2,655.36
Current Invoice Amount				2,655.36
Arrears/Issued at time of printing				0.00
Amount Payable				\$ 2,655.36

Please use the LP number located in the bottom-left corner when making payment. Thank you

Payment Information

Please note, cheques are no longer accepted - make all payments to the bank account listed below and ensure you use the unique reference number as the reference details for this payment.

For details of the Levy Collection Process please go to
<https://www.crockers.co.nz/body-corporate/levies-collection-payment>

Crockers Body Corporate Management Ltd
Unit No. LOT 6
Wainuiomata 26 Residents Society Incorpora...
Invoice No: 0000028
Amount Payable \$ 2,655.36
Due Date: 15/01/2025

Direct Credit:

Financial Institution: Westpac NZ

Account Name: W26RS Wainuiomata 26 Residents Society
Incorporated

Bank Account: 03-0162-0180307-000

Reference: LP0767530006

Expenditure	Actuals 11/23 - 11/24	Budget 11/23 - 11/24	Budget 11/24 - 11/25
Body Corporate Manager - management fees	4,443.97	4,444.00	4,666.20
Garden/Lawn Maintenance	532.50	800.00	80.00
Insurance Premiums	21,325.03	23,016.45	21,718.37
Legal Services - Incorporated Society Act Re-registration	-	-	89.00
Repairs and Maintenance - contingency	940.29	939.55	-
Valuer - insurance valuation	782.00	800.00	-
Total Operating Fund Expenditure	28,023.79	30,000.00	26,553.57

Additional Revenue	Actuals 11/23 - 11/24	Budget 11/23 - 11/24	Budget 11/24 - 11/25
Non-Mutual Revenue - bank interest	312.57	-	-
Sundry Revenue - income tax refund	56.45	-	-
Total Operating Fund Additional Revenue	369.02	-	-

Operating Fund Summary	Budget 11/24 - 11/25
Opening balance	0.00
Expenditure during budget period	26,553.57
	26,553.57
Less Additional revenue during budget period	0.00
Plus Planned surplus at end of budget period	0.00
Budgeted levies to be raised \$	26,553.57
Last years budgeted levies raised	30,000.00
Total Ownership Interest	10000000
*May include insurance contributions	

CODE COMPLIANCE CERTIFICATE

Section 95, Building Act 2004

THE BUILDING:

Street address: 26 Fitzherbert Road WAINUIOMATA 5014

Legal description of land where building is located: LOT 2 DP 14197

Building name: N/A

Location of building within site/block number: Central – Refer Site plan

Level/unit number: N/A

Current lawfully established use: Housing – Multi Unit Dwelling

Year first constructed: 2022

THE OWNER:

Name of owner: Wolfbrook Residential Limited

Contact person: Greg Jarvis

Mailing address:

Wolfbrook Residential Ltd

c/ PO Box 6490

Upper Riccarton

CHRISTCHURCH 8442

Street address/registered office:

Landline:

Mobile: 027 313 1508/

Daytime:

After-hours: 0273131505

Fax:

Email: greg@wolfbrook.co.nz; accounts@wolfbrook.co.nz

Website:

First point of contact for communications with Hutt City Council: Owner

BUILDING WORK:

Building consent number: BC210728

Issued by Hutt City Council

RBW - Housing - 3 New Blocks of Multi-Unit Dwellings - 10 units (demolish existing buildings on site) (solutions)

CODE COMPLIANCE:

The Hutt City Council is satisfied, on reasonable grounds, that the building work complies with the building consent.



J MacNee

Building Officer, Environmental Consents

On behalf of Hutt City Council

Date: 23 August 2022

BC210728