

TENDER – WERANUI ROAD, WAINUI

PROPERTY TABLE:

Property Description	Price	Settlement Date	Order of preference (if applicable)
Lot 1, DP 471392 comprised in Certificate of Title 640499 yet to issue (Weranui Road, Wainui) AND/OR	\$	Pursuant to clause 19.1 of the agreement for sale and purchase	
Lot 2 DP 471392 comprised in Certificate of Title 640500 yet to issue (Weranui Road, Wainui) AND/OR	\$	Pursuant to clause 19.1 of the agreement for sale and purchase	
Lot 3 DP 471392 comprised in Certificate of Title 640501 yet to issue (Weranui Road, Wainui) AND/OR	\$	Pursuant to clause 19.1 of the agreement for sale and purchase	
Lot 4 DP 471392 comprised in Certificate of Title 640502 yet to issue (Weranui Road, Wainui)	\$	Pursuant to clause 19.1 of the agreement for sale and purchase	

RAHOPARA FARMS LIMITED being a duly incorporated company having its registered office at 17 Kahikitea Flat Road, Albany ("the Vendor") invites tenders for the purchase of any one or more of the above properties on the terms contained in the attached REINZ/ADLS form of agreement for sale and purchase of real estate **Ninth Edition 2012 (2)** including the further terms 18.0 – 24.0 ("the agreement for sale and purchase").

CONDITIONS OF TENDER

1 Instructions to Tenderer's on form of tender

- (a) You may choose to tender for one or more properties.
- (b) If you only wish to tender for one property only, strike out the properties you do not wish to tender for in the property description column.
- (c) If you wish to tender for one property but you have more than one preference, strike out the properties you do not wish to tender for in the property description column (if any), strike out the word AND between the property descriptions and note your order of preference in the right hand column.
- (d) If you wish to tender for more than one property, strike out the properties you do not wish to tender for in the property description column (if any) and strike out the word OR between the properties you wish to tender for. If you tender for more than one property the Vendor may choose to accept the tender for one or more of the properties selected.

2 Closing date and place of tender

Tenders must be received at the offices of NORTH HARBOUR LAW, 3 Alice Avenue, Orewa 0931 / PO Box 104, Orewa 0946 / Email:deanne@nhlaw.co.nz not later than 4 pm on Wednesday 23 September 2015.

3 Acceptance obligations

The Vendor reserves the right to:

- (a) reject any or all tenders, including the highest tender;
- (b) accept any tender including any non-complying tender at any time prior to the deadline for acceptance of tenders in clause 5;
- (c) negotiate with any Tenderer to the exclusion of other Tenderers;
- (d) re-advertise for tenders;
- (e) waive any minor irregularities or informalities in the tender documentation or tendering process;
- (f) withdraw any or all of the properties from sale by tender at anytime without notice.

4 Formation of contract

- (a) The Vendor's invitation to tender contains no contractual offer of any kind. It is merely an invitation to treat and a tender will be regarded as an offer not as an acceptance of any offer.
- (b) A contract for the amount of the successful tender shall be formed when:
 - (i) the Vendor has informed the successful tenderer ("the purchaser") by written notice to the purchaser or the purchaser's solicitor ("the Vendor's notice") that the Vendor accepts the tender for the property; and
 - (ii) the Vendor provides the form of the agreement for sale and purchase to the purchaser's solicitor and subject to these conditions; and
 - (ii) the purchaser returns a signed agreement in the form of the agreement for sale and purchase and subject to these conditions, to the Vendor within 2 working days of the date of the Vendor's notice along with a bank cheque or solicitors trust account cheque for payment of the deposit which must be 10% of the purchase price.

Having communicated acceptance, the Vendor will then forward an executed copy of the agreement for sale and purchase to the purchaser's solicitor.

5 Period during which all tenders to remain open

Every tender shall be a continuing offer and irrevocable until Friday 25 September 2015 even if the Vendor has accepted a tender before that date. The Vendor may accept any tenders during this period.

FORM OF TENDER

To: RAHOPARA FARMS LIMITED

C/- North Harbour Law
North Harbour Law House
3 Alice Avenue
Orewa 0931

- 1 **[I/We] tender** for the purchase of the property or properties selected by us in the Property Table on the terms and conditions expressed and implied in the agreement for sale and purchase as modified by the Conditions of Tender.
- 2 If this tender is accepted **[I/we] agree** to complete the purchase in accordance with the attached agreement for sale and purchase as modified by the Conditions of Tender.

Dated thisday of2015

Where the tenderer is an individual:

SIGNED by *name*)
as the tenderer)

Where the tenderer is a company:

Signed on behalf of.....) _____ Director
.....LIMITED)
) _____ Director

Tenderer's particulars:

Full Name:

Address:

Telephone:

Facsimile:

Solicitor Details:

The above offer for lot(s)is accepted/not accepted.

SIGNED by RAHOPARA FARMS)
LIMITED the Vendor)
in the presence of:)

Witness

address of witness

occupation of witness

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: RAHOPARA FARMS LIMITED, being a duly incorporated company having its registered office at 17 Kahikitea Flat Road, RD4 Albany.

PURCHASER: _____ and/or nominee

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

Yes/~~No~~

PROPERTY

Address: Lot Weranui Road, Wainui as per plan attached as Schedule A

Estate: **FEE SIMPLE** ~~LEASEHOLD~~ ~~STRATUM IN FREEHOLD~~ ~~STRATUM IN LEASEHOLD~~
GROSSLEASE (FEE SIMPLE) **GROSSLEASE (LEASEHOLD)** (if none is deleted fee simple)

Legal Description:

Area (more or less):

Lot/Flat/Unit:

DP:

Unique Identifier or CT:

Title yet to issue

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 (clause 2.0): \$ 10% of the purchase price payable to the vendor's solicitor's trust account.

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

(1) By payment in cleared funds on the settlement date which is pursuant to clause 19.1

OR

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

Interest rate for late settlement: 14 % p.a.

~~CONDITIONS (clause 9.0)~~

~~Finance condition~~

~~Lender:~~

~~Amount required:~~

~~Finance date:~~

~~LIM required:~~

~~Building report required:~~

~~OIA Consent required:~~

~~Land Act/OIA date:~~

~~Yes/No~~

~~Yes/No~~

~~Yes/No~~

~~TENANCIES (if any)~~

~~Name of tenant:~~

~~Bond:~~

~~Rent:~~

~~Term:~~

~~Right of renewal:~~

SALE BY:

Private Treaty

Licensed Real Estate Agent

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 1, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

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) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (15) "Property" means the property described in this agreement.
- (16) "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.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "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.
- (20) "Settlement date" means the date specified as such in this agreement.
- (21) "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.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title under the Unit Titles Act 2010.
- (24) The terms "principal unit", "accessory unit", "unit plan" and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (25) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (26) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit" and "residential property developer" have the meanings ascribed to those terms in the Building Act.
- (27) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (28) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply" and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (29) "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, and
 - (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
 - (c) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (30) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) 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 cent per annum;
 - (b) 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.

1.2 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.2(2).

1.3 Notices

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

- (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 facsimile, or 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 subclause 1.3(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 second 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 facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
 - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;
 - (e) 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;

- (f) In the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 20(1) of the Electronic Transactions Act 2002, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

1.4 Interpretation

- (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.

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 and/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:
 - (1) the requisition procedure under clause 5.0 is completed without either party cancelling this agreement; and
 - (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
 - (3) where the property is a unit title:
 - (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and
 - (b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2));
 - (c) have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
 - (4) this agreement is cancelled pursuant to subclause 5.2(3)(c) or avoided pursuant to subclause 9.8(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor or by completing settlement of the purchase.

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 on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and 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, electronic door openers relating to the property and the keys and/or security codes to any alarms which may be situated on the property. 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.
- 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 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 have those instruments and the transfer instrument certified, signed and 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 subclause 3.12 or 3.13);
 - (2) The vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them as soon as possible for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 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.
- 3.9 All obligations under subclause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

Last Minute Settlement

- 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 subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly.
 - (2) The vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).

Vendor Default: Late Settlement or Failure to give Possession**3.13 (1) For the purposes of this subclause 3.13:**

- (a) the default period means:
 - (i) in subclause 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 subclause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 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 subclause 3.13(2)(b) during the default period. A purchaser in possession under this subclause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 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 subclause 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 incomes 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 incomes, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.13(2)(b) during the default period.
- (6) The provisions of this subclause 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) Where the parties are unable to agree upon any amount payable under this subclause 3.13:
- (a) An interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined.
 - (b) The interim amount shall be the lower of:
 - (i) the amount claimed; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date.
 - (c) Any 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.
 - (d) The amount determined to be payable shall not be limited by the interim amount.
 - (e) If the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Deferment of Settlement and Possession**3.14 If –**

- (1) this is an agreement for the sale by a residential property developer 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 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;
 - (2) the settlement date is deferred pursuant to either subclause 3.14 or subclause 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 the warranty by the vendor in subclause 8.2(2) –
- (4) then the vendor may extend the settlement date –
- (5) where there is a deferment of the settlement date pursuant to subclause 3.14, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
- (6) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision**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 172A of the Land Transfer Act 1952, of that title is not obtainable by the tenth working day prior to the settlement date –
- (c) then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
- (d) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (e) the requisitions procedure under clause 5.0 is complete.
- (2) Subclause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

4.0 Risk and insurance

4.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.

4.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:

- (1) If the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation.
- (2) If the property is not untenable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair.
- (3) In the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price.
- (4) If the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 7.4 for when an amount of compensation is disputed.

- 4.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

5.0 Title, boundaries and requisitions

- 5.1 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.
- 5.2 (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 172A of the Land Transfer Act 1952 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.~~
- (4) In the event of cancellation under subclause 5.2(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.
- 5.3 (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 user 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 subclause 5.2 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.
- 5.4 Except as provided by section 7 of the Contractual Remedies Act 1979, no error, omission or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 7.1 but not otherwise, shall be made or given as the case may require.
- 5.5 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.

6.0 Vendor's warranties and undertakings

- 6.1 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.
- 6.2 The vendor warrants and undertakes that at settlement:
 (1) The chattels are delivered to the purchaser in reasonable working order, where applicable, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver the chattels shall only create a right of compensation.
 (2) All electrical and other installations on the property are free of any charge whatsoever.
 (3) There are no arrears of rates, water rates or charges outstanding on the property.
 (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
 (5) Where the vendor has done or caused or permitted to be done on the property any works:
 (a) any permit, resource consent or building consent required by law was obtained; and
 (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
 (c) where appropriate, a code compliance certificate was issued for those works.
 (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
 (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 (b) the building has a current building warrant of fitness; and
 (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
 (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
 (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
 (a) from any local or government authority or other statutory body; or
 (b) under the Resource Management Act 1991; or
 (c) from any tenant of the property; or
 (d) from any other party -
 has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
- (9) Any chattels included in the sale are the unencumbered property of the vendor.
- 6.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 6.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
 (1) To the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 (2) The building has a current building warrant of fitness; and
 (3) The vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 6.4 The vendor warrants and undertakes that on or immediately after settlement:
 (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings the water and wastewater charges shall be apportioned.
 (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
 (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.

- (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 6.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 5.4 and any right of equitable set-off.

7.0 Claims for compensation

- 7.1 If the purchaser claims a right to compensation either under subclause 5.4 or for an equitable set-off:
- (1) The purchaser must serve notice of the claim on the vendor before settlement; and
 - (2) The notice must:
 - (a) in the case of a claim for compensation under subclause 5.4, state the particular error, omission or misdescription of the property or title in respect of which compensation is claimed;
 - (b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
 - (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
 - (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 7.2 For the purposes of subclause 7.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given by the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 10.1.
- 7.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 7.4 If the amount of compensation is disputed:
- (1) An interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined.
 - (2) The interim amount must be a reasonable sum having regard to all of the circumstances.
 - (3) If the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society.
 - (4) The stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser.
 - (5) The interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount.
 - (6) The amount of compensation determined to be payable shall not be limited by the interim amount.
 - (7) If the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.
- 7.5 The procedures prescribed in subclauses 7.1 to 7.4 shall not prevent either party taking proceedings for the specific performance of the contract.

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 2010 ("the Act") require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.
- 8.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- (1) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
 - (2) Not less than five working days before the settlement date the vendor will provide:
 - (a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and
 - (b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
 - (3) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.
 - (4) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (5) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
 - (6) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
 - (a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or
 - (b) any proceedings being instituted by or against the body corporate; or
 - (c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
 - (7) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
 - (8) No lease, licence, easement or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
 - (9) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
 - (a) the transfer of the whole or any part of the common property;
 - (b) the addition of any land to the common property;
 - (c) the cancellation of the unit plan; or
 - (d) the deposit of an amendment to the unit plan, a redevelopment plan or a new unit plan in substitution for the existing unit plan which has not been disclosed in writing to the purchaser.
 - (10) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 8.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 8.2(2), the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - (2) elect that settlement shall still take place on the settlement date.
- 8.4 If the property is a unit title, each party specifies that:
- (1) The facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Act; and
 - (2) If that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Act.
- 8.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

Unauthorised structures - Cross leases and unit titles

- 8.6 (1) Where structures (not stated in clause 5.0 to be requisitionable) have been erected on the property without:
- (a) in the case of a cross lease title any required lessors' consent; or
 - (b) in the case of a unit title any required body corporate consent –
- the purchaser may demand within the period expiring on the earlier of:
- (i) the tenth working day after the date of this agreement; or
 - (ii) 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.
- (2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 5.2(3) and 5.2(4) shall apply with the purchaser's demand under subclause 8.6(1) being deemed to be an objection and requisition.

9.0 Conditions and mortgage terms

Particular conditions

- 9.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.

- 9.2 (1) 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;
 - the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) 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 fifteenth working day after the date of this agreement 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 fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 9.8(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth 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 tenth 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 subclause 9.8(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.
- 9.3 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 tenth working day after the date of this agreement 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. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. 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. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 9.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 9.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required then the purchaser warrants that the purchaser does not require OIA Consent.
- (2) 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 Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- 9.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 9.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.
- 9.7 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.
- Operation of conditions**
- 9.8 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:
- The condition shall be a condition subsequent.
 - 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.
 - Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
 - 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.
 - 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.
- Mortgage terms**
- 9.9 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.
- 9.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

10.0 Notice to complete and remedies on default

- 10.1 (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; but
- The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with this agreement or is not so ready able and willing to settle only by reason of the default or omission of the other party.
 - 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.
- 10.2 Subject to subclause 10.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- on or before the twelfth working day after the date of service of the notice; or
 - 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.
- 10.3 (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.
- The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 10.1.
 - The vendor may give a settlement notice with a notice under this subclause.
 - For the purpose of this subclause a deposit is not an instalment.
- 10.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 10.1(3):
- Without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
 - sue the purchaser for specific performance; or
 - cancel this agreement by notice and pursue either or both of the following remedies namely:
 - 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
 - sue the purchaser for damages.
 - 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.
 - The damages claimable by the vendor under subclause 10.4(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:
 - interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
 - all costs and expenses reasonably incurred in any resale or attempted resale; and
 - all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
 - Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 10.5 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:
- sue the vendor for specific performance; or
 - 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.

- 10.6 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.
- 10.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 10.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

11.0 Non-merger

- 11.1 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.

12.0 Agent

- 12.1 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 appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.

13.0 Goods and Services Tax

- 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.
 - (5) Any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 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 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.
- 13.4
- (1) Without prejudice to the vendor's rights and remedies under subclause 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 subclause shall be deemed the settlement date for the purposes of subclause 10.1.
 - (3) The vendor may give a settlement notice under subclause 10.1 with a notice under this subclause.

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 is correct at the date of this agreement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 2 are correct at the date of this agreement.
- 14.3 Where the particulars stated on the front page and in Schedule 2 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 zero per cent pursuant to section 11(1)(mb) of the GST Act.
- 14.4 If GST is chargeable on the supply under this agreement at zero per cent 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 2 or they have altered.
- 14.5 If any of the particulars stated by the purchaser in Schedule 2 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 2 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 14.6 If the particulars stated in Schedule 2 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, the reference in clauses 14.3 and 14.4 to "the supply under this agreement" shall be deemed to mean the supply under this agreement of the remainder of the property, excluding that part. The supply of that part of the property intended to be used as a principal place of residence will comprise a separate supply in accordance with section 5(15)(a) of the GST Act.

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 herein:
- (1) Each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) Each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) The parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) The parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at zero per cent.
- 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 any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that:
 - (a) that person has power to enter into this agreement under the terms of the trust;
 - (b) that person has properly signed this agreement in accordance with the terms of the trust;
 - (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this agreement.
 - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

17.0 Counterparts

- 17.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

FURTHER TERMS OF SALE

See further terms of sale attached

DRAFT

DRAFT

SCHEDULE 1

List all chattels included in the sale
(strike out or add as applicable)

~~Stove~~ ~~Fixed floor coverings~~ ~~Blinds~~ ~~Curtains~~ ~~Drapes~~ ~~Light fittings~~

DRAFT

FURTHER TERMS OF SALE

18.0 The Subdivision

- 18.1 The Vendor has obtained resource consent ("the Consent") for a subdivision of land shown on the plan prepared by C & R Surveyors Limited attached as Schedule A ("the Plan of Subdivision"). The Vendor reserves the right to further subdivide areas adjoining the land shown on the Plan of Subdivision.
- 18.2 The Vendor will use its best endeavours to have the Plan of Subdivision deposited at Land Information New Zealand and new title for the property issued as soon as reasonably practicable and at the Vendor's entire cost.
- 18.3 The property is sold subject to any building line and/or height restriction and easement shown on the Plan of Subdivision and on the covenants attached as Schedule B, all existing encumbrances, restrictions, easements and drainage rights and to any further encumbrances, restrictions, easements or drainage rights that may be required by the Vendor, the terms of the Consent or any other statutory body in relation to or in respect of the subdivision and the purchaser agrees to purchase the property and to take title subject to all such encumbrances, restrictions, easements and drainage rights.
- 18.4 All measurements and areas shown on the Plan of Subdivision are or may be approximations and are subject to any variation which may be found necessary upon checking by the relevant authority, the Vendor's surveyor and Land Information New Zealand and neither the Vendor nor the purchaser will be entitled to bring a claim whatsoever against the other based on any such variation of measurements, nor will either party be entitled to claim any compensation, damages, set off or make any objection or requisition based on such variation except where the area of the property as indicated on the Plan of Subdivision and the final measured area of the property (both being calculated in accordance with the same method of measurement and by a registered surveyor) differ by more than 5% in which case if the final measured area of the property is less than the area of the property indicated on the Plan of Subdivision by more than 5% the purchase price will be reduced by the percentage exceeding 5% that the area is reduced.

19.0 Settlement Date

- 19.1 The Settlement date is the date being 10 working days following the date the purchaser's solicitor is advised by the Vendor or its solicitor that a search copy (as defined by section 172A of the Land Transfer Act 1952) of the certificate of title to the Property is available.

20.0 No Caveat and No Warranty

- 20.1 The Purchaser shall not lodge a Caveat against the Certificate of Title to the property prior to deposit of the Plan of Subdivision after which time the Purchaser may only lodge a Caveat against the new title issued for the lot sold pursuant to this Agreement.
- 20.2 The Purchaser acknowledges that he/she has inspected the property and that he/she purchases the same solely in reliance upon his/her own judgment and not upon any representation or warranty made by the Vendor or agent of the Vendor.

21.0 Land Covenants

- 21.1 The Purchaser acknowledges that the lots on the Plan of Subdivision will be subject to land covenants applicable to and for the benefit of lots in the subdivision as the vendor stipulates.
- 21.2 The Vendor will create land covenants so as to run with the property and to bind the Purchasers and all subsequent registered proprietors. The Vendor may make the covenants appurtenant only to any one or more of the said lots as the Vendor shall decide and notwithstanding this, the Purchaser shall not be entitled to require the Vendor

to make the covenants of any other Purchaser appurtenant to the property or to call upon the Vendor to enforce the covenants against any other Purchaser. The land covenants shall generally be in the form attached as Schedule B. The Vendor reserves the right to make amendments and adjustments to the covenants as it deems necessary or desirable.

22.0 No Agent

22.1 The Purchaser warrants that they have not been introduced to the property by any real estate agent.

23.0 Lowest Price

23.1 The parties acknowledge that:

23.1.2 despite any deferred or extended date for settlement or the giving and taking of possession under this agreement, the purchase price of the property set out in this agreement is the lowest price at which the property could be purchased;

23.1.3 the purchase price of the property set out in this agreement does not include any capitalised interest; and

23.1.4 the "lowest price" for the purposes of section EW 32(3) of the Income Tax Act 2007 is equal to the purchase price of the property set out in this agreement.

24.0 Fax/Email Execution

24.1 The parties acknowledge that execution of a facsimile or scanned copy of this agreement and transmission thereof by facsimile or email, each to the other or their respective agents or solicitors, shall be sufficient to constitute an offer and acceptance and to satisfy the requirements of Section 2 of the Contracts Enforcements Act 1956.

SCHEDULE 2

(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

1.	The vendor's registration number (if already registered): 093-482-166	
2.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
3.	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 and 3 is 'No', go to question 6

4.	The purchaser's details are as follows:	
	(a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
5.	The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or 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 as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
	That part is:	
	(e.g. "the main farmhouse" or "the apartment above the shop")	
6.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee")	Yes/No

If the answer to question 6 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

7.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
8.	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 7 and 8 is 'No', there is no need to complete this Schedule any further.

9.	The nominee's details (if known to the purchaser) are as follows:	
	(a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
10.	The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or 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 as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
	That part is:	
	(e.g. "the main farmhouse" or "the apartment above the shop").	

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

This is a binding contract. **Read the information set out on the back page before signing.**

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 Agents Authority.

Signature of vendor(s)

Signature of purchaser(s)

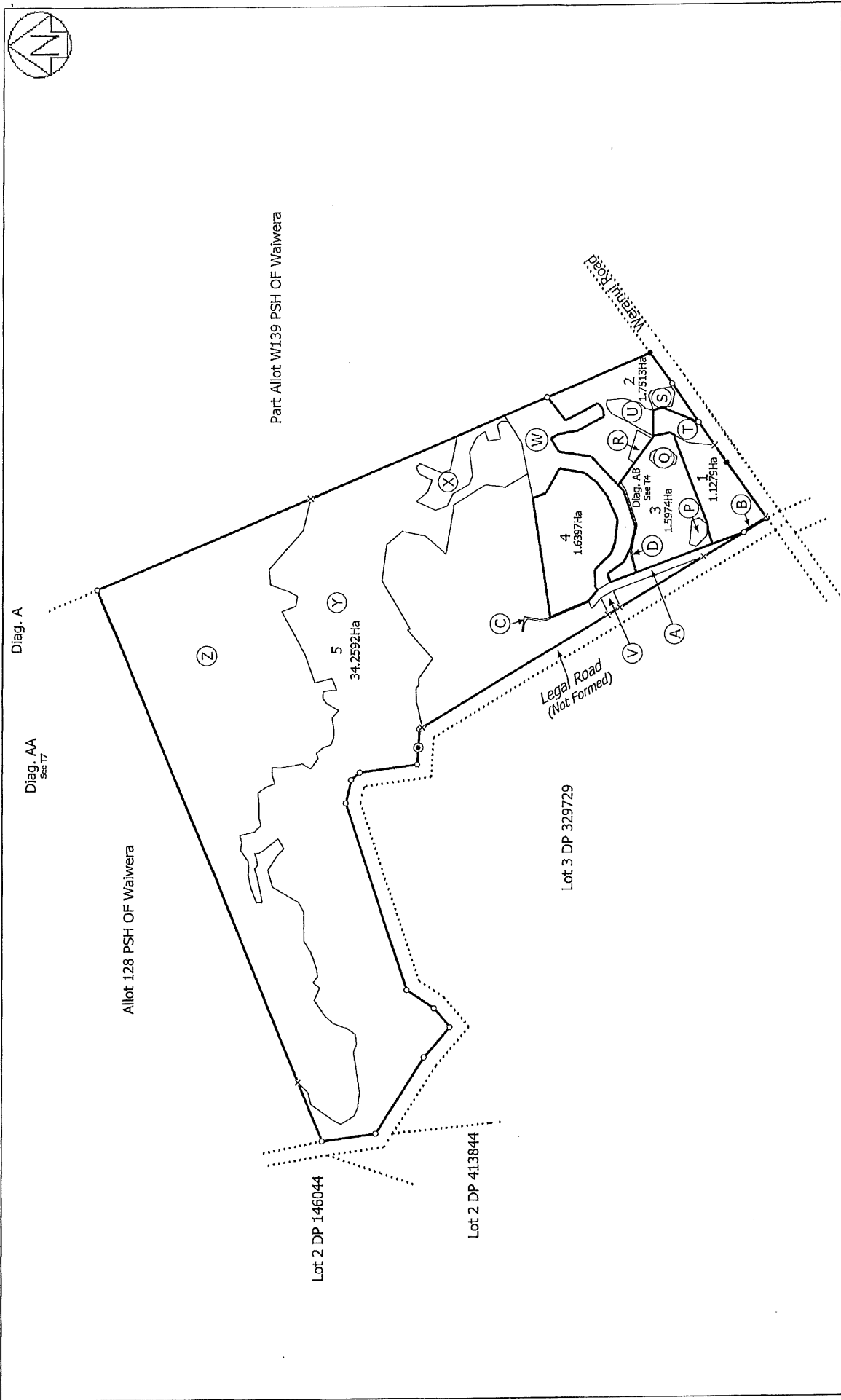
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SCHEDULE A



Areas P, Q, R, S, T, U, V, W, X, Y and Z to be subject to land covenant		T 1/12
Land District: North Auckland	Lots 1 - 5 Being a Subdivision of Allotment 373 Parish of Waiwera	Surveyor: Richard Alan Bull Firm: C & R Surveyors Ltd
Digitally Generated Plan Generated on: 31/03/2015 12:55pm Page 3 of 14	Title Plan LT 471392 DRAFT	

SCHEDULE B

Form B

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

RAHOPARA FARMS LIMITED

Grantee

RAHOPARA FARMS LIMITED

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or **creates** the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land covenants	See first schedule; Annexure A		
Land covenants: Vodafone Booster	See clause 4.1; Annexure A		
Fencing covenant	See clause 5.1; Annexure A		

Form B - continued

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

~~Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007~~

The implied rights and powers are hereby ~~[varied]~~ ~~[negatived]~~ ~~[added to]~~ or ~~[substituted]~~ by:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in Annexure Schedule _____]~~

Covenant provisions

Delete phrases in [] and insert Memorandum number as require; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[Annexure Schedule A]~~

Insert instrument type

Land Covenant

BACKGROUND

- A. The Grantor is the registered proprietor of the Covenanting Lots and the Benefiting Lots.
- B. The Covenanting Lots and the Benefiting Lots are part of a rural residential estate ("the rural estate").
- C. The Grantor has agreed to create the covenants as set out herein in favour of the Grantee in order to ensure that the character of the rural estate is maintained, preserved and enhanced.

DEFINITIONS AND INTERPRETATION

1.1 Definitions

"the Developer" means Rahopara Farms Limited or any person or entity appointed or nominated in writing by them to be the Developer. Where the Developer has been dissolved, wound up, deregistered or otherwise passed out of existence any approval or consent required from the Developer shall mean approval or consent by any party previously appointed and/or nominated in writing by the Developer for this purpose.

"Benefiting Lot" means Lot 5 and any lot in respect of which a separate Certificate of Title issues as a result of a subdivision of Lot 5 provided that such lot shall only be a benefiting lot for so long as the Developer is the registered proprietor of that lot.

"Covenanting Lot" means the Lots shown as covenanting lots set out in the First Schedule.

"the Grantee" means the Developer.

"the Grantor" means the owners for the time being of the Covenanting Lots and includes their respective successors transferees and assigns.

"Lot 5" means Lot 5 DP 471392.

"Lot 1" means Lot 1 DP 471392.

"Relevant Authority" means the local or regional authorities with jurisdiction over the Development.

1.2 Interpretation

- (a) words and expressions denoting the singular shall where the context so requires include the plural and vice versa.
- (b) headings have been inserted for guidance only, and shall not be deemed to form part of the context of this instrument.

COVENANTS

2. Agreement

- 2.1 The Grantor, for itself so as to bind the Covenanting Lots in the First Schedule ("Covenanting Lots" and each one of them a "Covenanting Lot"), covenants and agrees with the Grantee that the Grantor shall always observe and perform all of the covenants set out in clause 3.0 of this

instrument until the Developer ceases to be registered as proprietor of the Benefiting Lot at which time the covenants shall cease to apply to the end and intent that each of the covenants shall enure for the benefit of the Benefiting Lot for so long as the Developer is the registered proprietor of the Benefiting Lot.

- 2.3 The Grantor, for itself so as to bind Lot 1, covenants and agrees with the Grantee that the Grantor shall always observe and perform all of the covenants set out in clause 4.1 of this instrument until 1 September 2018.
- 2.4 The covenants in this instrument shall be enforceable by the Grantee (and the Grantee's assigns, transferees or successors) against the Grantor as owner of the Covenanting Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenanting Lots.
- 2.5 No delay or failure by the Grantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Grantor by the Grantee shall prejudice the right of the Grantee to enforce any of the covenants or provisions of this instrument.
- 2.6 The Grantor shall bear any costs which may be incurred by the Grantee as a result of any default by the Grantor under this instrument including but not limited to all costs incurred on a solicitor/client basis.
- 2.7 The Grantee shall not be required to nor obliged to enforce all or any of the covenants and the Grantor shall be liable only in respect of breaches of the covenants which occur while the Grantor is registered as proprietor of the Covenanting Lot.
- 2.8 If there is any breach or non-observance of the covenants set out in this Instrument then the Grantor must (without prejudice to any other liability the Grantor may have to any person having the benefit of the covenants):

- (a) cease any activity in breach or non-observance of the covenants;
- (b) otherwise remedy any breach or non-observance of the covenants.

3.0 The Grantor shall:

- 3.1 not permit or suffer the use of the Covenanting Lot for any purpose other than predominantly residential use nor use the Covenanting Lot for commercial farming of any description including but not limited to pig farming, poultry farming or goat farming.
- 3.2 not permit any horses, cattle or donkeys to be kept on a Covenanting Lot.
- 3.3 not permit or suffer any rubbish to accumulate or to be placed upon the Covenanting Lot, and at all times to maintain the house and curtilage on a Covenanting Lot in a neat and tidy condition including keeping the grass mowed or grazed so the grass does not exceed 150mm in height.
- 3.4 not permit any immobile/unroadworthy vehicles to be stored on the Covenanting Lot unless those vehicles are stored within an enclosed shed or garage.
- 3.5 ensure that pasture areas are regularly grazed or mown.
- 3.6 not construct on the Covenanting Lot:
 - (a) a dwelling with a floor area less than 200 square metres (excluding garage, carports and decking) or such lesser area as approved in writing by the Developer.
 - (b) any dwelling in the shape of a simple rectangle.
 - (c) a dwelling, garage, carport, barn or shed which is other than predominantly clad in the following materials of neutral colours:
 - i. kiln fired or concrete brick; and/or
 - ii. stucco finish on fibrous sheet or polystyrene, concrete block or solid concrete; and/or

- iii. stone; and/or
 - iv. timber; and/or
 - v. painted "weatherboards" (such as "Linear™"); and/or
 - vi. glass; and/or
 - vii. any other cladding approved in writing by the Developer.
- (d) any dwelling or building on the property that has a "mono-cladding" appearance unless approved in writing by the Developer.
- 3.7 construct roofing of any building on the Covenanting Lot only of tile, shingle, glass or any pre-painted iron material.
- 3.8 complete the exterior construction of any dwelling, or accessory building on the Covenanting Lot within six months of the date of commencement of the building.
- 3.9 construct no more than two dwellings on the Covenanting Lot
- 3.10 not erect on the Covenanting Lot or relocate to the Covenanting Lot a dwelling which is "second hand" or is pre constructed.
- 3.11 not subdivide, or permit any subdivision of the Covenanting Lot including subdivisions by way of cross-leases and subdivisions under the Unit Titles Act 1972 provided that this covenant shall not apply while the covenanting Lot is owned by the Developer.
- 3.12 not allow any temporary building or structure to be erected on the Covenanting Lot except that which may be used in conjunction with the construction of permanent buildings and which will be removed from the Covenanting Lot upon completion of the said construction.
- 3.13 not commence the construction or erection of improvements on the Covenanting Lot whether buildings, accessory buildings, or fences (and this shall also include exterior finishes and excavation of foundations upon the Covenanting Lot) unless plans and specifications and all other details of construction and finish as the Developer in its absolute discretion may require have been submitted to the Developer and have received the Developer's written approval which approval shall not be unreasonably withheld where the Developer is satisfied that the proposed building is reasonably sited, compliments adjoining properties and does not detract from the standard of housing in the rural estate and the neighbouring properties and otherwise complies with the Covenants set out in this instrument.
- 3.14 not erect a fence on the Covenanting Lot constructed of materials other than brick, wood, plastered concrete block, or minimum five-wire post and/or battens and no fence shall exceed 1.80 metres in height above natural ground level, and not allow any advertisement, sign or hoarding of a commercial nature to be erected on any part of the Covenanting Lot.
- 3.15 not permit any telecom or electricity services to be provided by "overhead" means to the dwelling (and any other structures/buildings to be erected on the Covenanting Lot). All other utilities and services must be by underground means from the road to the dwelling and other structures/buildings to be erected on the Covenanting Lot.
- 3.16 in respect of any Covenanting Lot that has been landscaped or planted by the Developer over areas marked O, T, S, U, Q, P, R or D on LT plan 471392 ("planted areas"):
- (a) allow access to the Developer, or its agents, workmen, employees or invitees, upon reasonable notice being given, for the purpose of maintaining the planted areas and replacing any damaged or dead plants, trees or shrubs prior to 1 September 2017.
 - (b) take all reasonable steps to ensure that the planted areas are not damaged or harmed in any way including but not limited to ensuring that the existing fences are maintained and the planted areas are kept free of any livestock or other animals;
 - (c) maintain and preserve any existing vegetation on the planted areas from 1 September 2017 onwards;

- (d) ensure that if any plants, trees or shrubs forming part of the planted areas are damaged or die after 1 September 2017, the Grantor will replace the same with similar species;
- (e) allow the Auckland Council to register a consent notice on the title to the Covenanted Lot to give effect to the protection of the planted areas generally as described in sub-clauses (a)-(d) above if required by the Developer.

The Grantor acknowledges and agrees that any planted areas can only be removed or replaced with alternative planting if the Developer's written approval has been obtained.

- 3.17 ensure that all existing fencing is maintained and not tampered with, modified, painted or stained without the written consent of the Developer.
- 3.18 for so long as the Developer is the registered proprietor of the Benefiting Lot, not make any objection to any application by the Developer for a resource consent for the subdivision of the Benefiting Lot into no more than five lots and otherwise in the configuration that the Developer may in its absolute discretion stipulate and the Grantor shall when requested by the Developer execute any document, submission or consent in support of that application and any document required to be executed to enable the Developer to complete the subdivision.
- 3.19 not sell, transfer or otherwise dispose of a covenanted lot without procuring the new purchaser, transferee or donee to enter into, execute and deliver to the Developer:
 - (a) a deed of covenant in favour of the Developer in which the new purchaser, transferee or donee covenants to support and not make any objection to the applications set out in clause 3.18 above and;
 - (b) a Power of Attorney in a form prepared by the Developer in favour of the Developer being in the form stipulated by the Grantee such power of attorney enabling the Developer to complete and execute any documents, submissions and consents in support of the applications referred to in clause 3.18 above.

4.0 Vodafone Booster

- 4.1 In respect of Lot 1 the Grantor covenants that:
 - (a) it will allow the Vodafone equipment supplied by the Developer ("the Vodafone Equipment") to be attached to the dwelling at Lot 1;
 - (b) it will take all reasonable steps to ensure that the Vodafone Equipment is not damaged or destroyed;
 - (c) it will allow access to the Developer or its agents, workmen, employees or invitees upon reasonable notice being given, for the purpose of maintaining the Vodafone Equipment at Lot 1;
 - (d) it will maintain, at its cost, an internet connection at Lot 1 until 1 September 2018 at which time the registered proprietor of Lot 1 may either continue to have the Vodafone Equipment attached to the dwelling at Lot 1 or advise the Developer that the Vodafone Equipment must be removed;
 - (e) ownership of the Vodafone Equipment remains with the Developer.

5.0 Fencing

- 5.1 The Developer shall not be required nor shall it be called upon to repair or contribute towards the cost of erection or repair of any dividing or boundary fence between any of the Lots and any contiguous land owned by the Developer, but this proviso shall not enure for the benefit of any subsequent registered proprietor of such contiguous land.

6.0 Indemnity and Consequences of Breach

- 6.1 The Grantor covenants with the Grantee that it will at all times save harmless and keep indemnified the Grantee from all proceedings, costs including those on a solicitor/client basis, claims and demands in respect of breaches by the Grantor of the covenants on its part contained or implied herein, and also the enforcement of such covenants by the Grantee.

- 6.2 The Grantor acknowledges that the value of the Benefiting Lot will be affected by any non-compliance with or breach of any of the covenants contained or implied herein and the Grantor covenants for the benefit of the Benefiting Lot and of each registered proprietor of the Benefiting Lot from time to time that should the Grantor fail to comply with, observe, perform or complete any of the covenants contained or implied herein then without prejudice to any other liability the Grantor may have to the Grantee (which includes any other person or body having the benefit of such covenants) the Grantor shall:
- (a) immediately cease any activity in breach of these covenants; and
 - (b) immediately permanently remove or cause to be permanently removed from the Covenanting Lot any offending improvements or structure or other cause of any breach or non-observance of such covenants; and otherwise forthwith remedy the breach or non-observance thereof and replace any building materials used in breach or non-observance of these covenants; and
 - (c) if the breach or failure is not remedied within 15 working days of the date of written notice of such breach or failure then the Grantee (together with its agents, employees or contractors) shall be entitled to enter onto the Covenanting Lot to arrange for rectification of the Grantor's breach or failure at the cost of the Grantor; and
 - (d) if the breach or failure is not remedied within 15 working days of the date of written notice of such breach or failure then the Grantor must pay to the person making such demands as liquidated damages the sum of \$200 per day for every day that such breach or non-observance continues after the date upon which written demand has been made together with any costs and expenses incurred by the Developer or any registered proprietor to remedy the breach or non-observance.

7.0 General

- 7.1 The covenants set out in clause 3.0 of this Instrument shall run with each Covenanting Lot set out in the First Schedule for the benefit of the Benefiting Lot described in the First Schedule TO THE INTENT that the Grantor and Grantee shall continue to be bound until the earlier of the date the Developer ceases to be registered proprietor of the Benefiting Lot or the date upon which they cease to hold a fee simple estate in a Covenanting Lot as the case may be but without prejudice to any liability for any breach of covenant under this Instrument arising before such date.
- 7.2 The covenants set out in clause 4.1 of this Instrument shall run with Lot 1 for the benefit of the Benefiting Lot defined in clause 1.1 TO THE INTENT that the Grantor and Grantee shall continue to be bound until the earlier of the date the Developer ceases to be registered proprietor of the Benefiting Lot or 1 September 2018 or the date upon which they cease to hold a fee simple estate in Lot 1 as the case may be but without prejudice to any liability for any breach of covenant under this Instrument arising before such date.

FIRST SCHEDULE

Covenanting Lot

Lot 1 DP 471392
Lot 2 DP 471392
Lot 3 DP 471392
Lot 4 DP 471392

Benefiting Lot is defined in clause 1.1

Power of Attorney

This Power of Attorney is made on this day of 2015.

By

1.

(“Appointor”)

In favour of:

2. **RAHOPARA FARMS LIMITED (“Attorney”)**

INTRODUCTION

- A. The Appointor and the Attorney are parties to an Agreement for Sale and Purchase dated 2015 (“the Agreement”) for Lot DP 471392.
- B. Under the Agreement, the Appointor is required to appoint the Attorney as the Appointor’s attorney, to enable the Attorney to complete and execute certain documents and do certain things in relation to the Benefiting Lot.
- C. This deed records the appointment by the Appointor of the Attorney as their attorney.

IT IS AGREED AS FOLLOWS:

1. **Definitions**

- 1.1 **Definitions:** In this deed, the words and phrases have the meanings alongside them, unless the context requires otherwise:

Attorney includes the Attorney’s successors, assigns and delegates.

Covenants means the land covenants created by Easement Instrument No. [] North Auckland Registry.

Benefiting Lot means Lot 5 DP 471392 (“lot 5”) and any lot in respect of which a separate Certificate of Title issues as a result of a subdivision of Lot 5 provided that such lot shall only be a benefiting lot for so long as the Developer is the registered proprietor of that lot.

Developer means Rahopara Farms Limited.

Documents means:

- (a) all documents and instruments referred to, and contemplated in the Agreement and the Covenants relating to the Appointor:
 - (i) supporting and not objecting to an application or applications for resource consent for the subdivision of the Benefiting Lot by the Developer;

- (ii) supporting the completion of any subdivision of the Benefiting Lot proposed by the Developer;
together "the documents".

(b) any documents ancillary to the documents;

(c) any documents referred to in the documents;

(d) any other documents which the Attorney considers necessary or expedient to give effect to a transaction to which any of the documents relates.

Execute includes executing under hand and delivering either conditionally or unconditionally.

Land means the land sold to the Appointor pursuant to the Agreement;

2. **Appointment**

2.1 In consideration of the Agreement, the Appointor irrevocably appoints the Attorney as the Appointor's attorney to:

2.1.1 Execute the documents;

2.1.2 Do all things which the Attorney considers necessary or expedient to give effect to the documents or a transaction to which any of the documents relates, in accordance with the laws of New Zealand, including but not limited to:

2.1.2.1 Completing any blanks in the documents;

2.1.2.2 Making any amendments, alterations or additions to the documents, and

2.1.3 In the Appointor's names do such other things and give such further assurances as may be required to give effect to or as otherwise required by the documents.

3. **Inquiry**

No person dealing with the Attorney will be concerned to see or enquire as to the propriety or expediency of any assurance, act, matter or thing which the Attorney does, or purports, or agrees to do or perform in the names of the Appointor by virtue of this deed.

4. **Ratification and Indemnity**

4.1 The Appointor:

4.1.1 Ratify and confirm everything done by the Attorney in the exercise or purported exercise in good faith of the powers conferred by this deed;

4.1.2 Indemnify the Attorney against all claims, costs, damages, losses and expenses arising from the exercise or purported exercise in good faith of the powers conferred by this deed.

5. Application of the Property Law Act 2007

5.1 Section 21 of the Property Law Act 2007 will apply to the powers granted to the Attorney by the Appointor under this deed.

5.2 This Power of Attorney is given for valuable consideration being in consideration of the Agreement and the land Covenants.

6. Governing Law

6.1 This deed is governed by, and construed in accordance with, the laws of New Zealand.

EXECUTED AS A DEED

SIGNED by
as Appointor in the presence of:

Witness Signature

Print Name:

Occupation:

Address:

Print full name

SIGNED by
as Appointor in the presence of:

Witness Signature

Print Name:

Occupation:

Address:

Print full name

DATED

2015

PARTIES

RAHOPARA FARMS LIMITED

("Covenantee")

("Covenantor")

DEED OF COVENANT

NORTH HARBOUR LAW
LAWYERS
OREWA

DEED OF COVENANT

Dated 2015

Parties

1. ("Covenantor")
2. Rahopara Farms Limited ("Covenantee").

BACKGROUND

- A. The Covenantor is or will be the registered proprietor of the land described in the First Schedule ("Servient Land").
- B. The Covenantee is the registered proprietor of the land described in the Second Schedule ("Dominant Land").

Under certain agreements between them, the Covenantor and the Covenantee have agreed to enter into this Deed of Covenant for the benefit of the Dominant Land described in the Second Schedule.

DEFINITIONS:

"Covenantor" means [] and any successors or assigns.

"Covenantee" means **Rahopara Farms Limited** or any person or entity appointed or nominated in writing by Rahopara Farms Limited.

"Agreement" means the agreement for sale and purchase dated the day of 2015 made between the parties relating to Lot [] Deposited Plan 471392.

"Subsequent Agreement" means any agreement for sale and purchase entered into by the Covenantor as vendor for the sale or otherwise disposal of the Servient Land to a third party purchaser.

"Covenants" means the covenants in clause **3.18** and **3.19** of the easement instrument no [] North Auckland Registry.

This Deed records that in consideration of the terms and conditions of an agreement between the parties:

1. The Covenantor for itself, its successors in title, assigns, lessees, licensees or occupiers of the Servient Land covenants with the Covenantee that:
 - (a) the Covenantor shall comply with the Covenants;
 - (b) the Covenantor will ensure that any subsequent agreement is conditional upon the third party purchaser entering into a similar deed of covenant as set out herein, such deed to be prepared by the Covenantee's solicitors at the cost of the Covenantor and providing an executed power of attorney pursuant to the Covenants.

SIGNED BY:

Rahopara Farms Limited

As Covenantee by:

Director _____ Print Name _____

Director _____ Print Name _____

[name]

As Covenantor by:

In the presence of:

Signature of Covenantor

Witness Signature

Print Name: _____

Occupation:

Address:

First Schedule

Lot [] Deposited Plan

Second Schedule

Lot 5 Deposited Plan 471392 ("Lot 5") and any lot in respect of which a separate Certificate of Title issues as a result of a subdivision of Lot 5 provided that such lot shall only be the Dominant Land for so long as the Developer is the registered proprietor of that lot.

BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - the purchaser wishes to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before 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 2010;
 - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 6.0 and 8.0:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 1 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

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

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE:

VENDOR:

RAHOPARA FARMS LIMITED

Contact Details:

VENDOR'S LAWYERS:

Firm: North Harbour Law

Individual Acting: Chris Hunt / Deanne Taylor

Contact Details:

3 Alice Avenue, Orewa 0931

PO Box 104 / DX BP 60001, Orewa 0946

Ph 09 427 0550

Fax 09 426 3426

PURCHASER:

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details: