

FURTHER TERMS OF SALE

15. Interpretation and Definitions

15.1 For the purpose of this agreement:

"Consents" means the full and final approvals or consents necessary for the Vendor's development of the Whole Property including but not limited to a land use consent, subdivision consent, the full and final approval of a survey plan, building consent, each on terms and conditions acceptable to the Vendor.

"Council" means Auckland City Council.

"New House" means the New House to be built by the Vendor for the Purchaser on the Property.

"Outline Plans and Specifications" means the concept, site and elevation plans for the New House together with the Proposed Construction Specification attached to this agreement.

"Plans and Specifications" means the plans and specifications for the New House prepared by the Vendor substantially in accordance with the Outline Plans and Specifications and lodged with the Council for the issue of a Building Consent.

"Property" means an estate in fee simple as part of CT NA751/123 North Auckland as shown approximately on the attached Scheme Plan.

"Subdivision" means the subdivision of the Whole Property into four lots generally in accordance with the Scheme Plan.

"Survey Plan" means the Survey Plan to be lodged for approval with the Auckland City Council for the Subdivision substantially in accordance with the Scheme Plan.

"Whole Property" means Lot 11, Deeds S99 being all the land comprised in CT NA751/123 (North Auckland Registry).

"Code of Compliance Certificate" means the final certificate issued by the Relevant local authority stating that the construction of the structure under the issued building consent complies with that consent and the Building Act regulations.

"Practical Completion Certificate" means a certificate issued by Kingstons Partners Quantity Surveyors stating that the building has been completed to the plans and specifications contained within the agreement.

16. Settlement Date and the Possession Date

16.1 The Settlement Date and the Possession Date shall be the later of:

- a. the fifth working day following the date on which the Vendor has advised the Purchaser in writing that a search copy, as defined in section 172a of the Land Transfer Act 1952, of the titles to issue for the Property is obtainable; or

- b. the fifth working day after the date on which the Vendor delivers to the Purchaser or their solicitor a copy of the Code Compliance Certificate in respect of the New House.

17. Conditions

- 17.1 This agreement is conditional upon the Vendor obtaining all Consents on terms and conditions satisfactory to the Vendor on or before 30 July 2011. The Purchaser will not call upon the Vendor to substantiate or justify its decision.
- 17.2 The condition in clause 17.1 is inserted solely for the benefit of the Vendor and may be waived by the Vendor at any time before this agreement is avoided. If the condition is not fulfilled or is not waived by **30 July 2011**, then either party may at any time before the condition is fulfilled or waived, cancel this Agreement.
- 17.3 If the Agreement is cancelled under clause 17.1 then:
 - a. All money paid under this Agreement plus the net interest shall be paid in full to the Purchaser and this Agreement shall be of no further force or effect.
 - b. The Purchaser shall have no claim against the Vendor for any costs, damages or compensation of any nature arising out of this Agreement or its cancellation.
- 17.4 This agreement is conditional upon compliance with section 225 of the Resource Management Act 1991.
- 17.5 If the vendor has not obtained a practical completion certificate for the property by 30 March 2012 or a Code of Compliance Certificate by 30 May 2012, the purchaser will be entitled to cancel this agreement by giving written notice of cancellation to the vendor. On receipt by the vendor of a notice cancelling this agreement, the agreement will be terminated, all money paid under it must be refunded without deduction or set off and neither party will have claim against the other. This clause is inserted for the benefit of the Vendor and the Purchaser and may only be waived by both the vendor and purchaser.

18. Approval and Deposit of Survey Plan

- 18.1 Following approval of the Scheme Plan by Council and following approval of the Consents by the Vendor, the Vendor will forthwith proceed to have a Survey Plan prepared.
- 18.2 The Vendor will forthwith proceed to have the Survey Plan consented to by Council and deposited at Land Information New Zealand to obtain the issue of one title for each lot on the Survey Plan.

19. Measurements and Area

- 19.1 The Vendor reserves the right to make minor boundary adjustments without reducing the overall title coverage by more than 2%, or grant or receive the benefit of any easements, licences, building line restrictions, consent notice or other encumbrances, rights or obligations which may be required in order to satisfy any conditions of Council approvals, or which in the sole discretion of the Vendor are deemed to be necessary or desirable in respect of the Whole Property or any part or parts of the

Whole Property. The Purchaser shall take title subject to or with the benefit of any such adjustments or encumbrances, and shall execute all documents and do such acts as may be required to enable the deposit of the relevant Unit Title Plan, or the registration of the encumbrances.

20. Easements

20.1 The Property is sold subject to all existing easements, building line restrictions, restrictive covenants, consent notices or other encumbrances, rights or obligations affecting the existing title together with any easements, building line restrictions, restrictive covenants, consent notices or other encumbrances, rights or obligations that may be required by Council or that the Vendor deems necessary or desirable for the better or more effective development of the Whole Property in respect of the Subdivision.

21. No Warranty

21.1 The Vendor gives no warranty to the Purchaser as to when the Survey Plan will be deposited at Land Information New Zealand, nor as to when the Purchaser will be able to register a memorandum of transfer of the Property to the Purchaser. Any anticipated or projected dates for completion given by the Vendor or its agents prior to or after execution of this agreement are indicative approximations only.

22. No Caveat

22.1 The Purchaser shall have no right to register a caveat against the titles to the Whole Property (or any titles issuing from it) to protect its interest under this agreement, and any loss or expense to the Vendor in having to obtain either a caveator's consent or a withdrawal of caveat to enable registration of documents affecting the development or sale of units (or any part of the head title) will be met by the Purchaser. This includes (without limitation) solicitor/client costs, costs arising from the Vendor being unable to proceed with its intended form of development and loss of opportunity costs as reasonably determined by the Vendor. Such loss or expense that arises as between the parties shall be deemed to be part of and additional to the unpaid balance of the purchase price to be paid by the Purchaser on effecting settlement.

23. Deposit

23.1 The deposit of \$[_____] shall be paid on the signing of the agreement by both parties into the trust account of Hesketh Henry to be held to the credit of the Vendor until the settlement date. Interest earned on the deposit with the National Bank on interest bearing deposit will be paid to the Purchaser on settlement.

24. Construction of New House

24.1 If there is any disagreement between the Vendor and the Purchaser as to the compliance of the Plans and Specifications with the Outline Plans and Specifications then the same shall be referred to Kingston Partners, Quantity Surveyors whose decision will be final and binding on the parties.

- 24.2 The Vendor will forthwith after this agreement becomes unconditional, carry out and complete construction of the New House on the Property:
- a. Substantially in accordance with the Plans and Specifications (subject to variations pursuant to this agreement); and
 - b. in accordance with the lawful requirements of the Auckland City Council and any other authority having jurisdiction; and
 - c. in a sound and workmanlike manner and with all reasonable diligence.
- 24.3 Should (by mutual agreement) the Plans and Specifications require modification, the Vendor shall at its own expense be responsible for obtaining any necessary Council consent.
- 24.4 If any materials set out in the Specifications are in the sole opinion of the Vendor unprocurable, financially not viable or prohibited by any statute, regulation or by-law, the Vendor shall substitute any materials which are of a value and quality as near as reasonably practicable to the specified materials provided that unless it is impracticable to do so, the Vendor shall consult with the Purchaser before making any such substitution.
- 24.5 The Purchaser acknowledges that the Purchaser has purchased the Property on the basis of the Outline Plans and Specifications which may change slightly as the Vendor develops the design of the Whole Property in conjunction with its architects. The Purchaser shall not make any objection, requisition or claim for compensation because:
- a. of any alteration to plans for the Whole Property, provided that such changes do not alter the shape and dimensions of the Property in a material adverse manner.
 - b. the final dimensions of the Property as constructed differ from the Plans.
- 24.6 The Purchaser shall not:
- a. withhold the balance of the purchase price (or any part of it) or demand any retention on settlement date by reason of any defect, shrinkage or fault in the Property, whether due to any cause, reason or claim. Nothing in this clause will affect the provisions of clause 27 (Maintenance);
 - b. make any objection, requisition or claim for compensation because of any alteration to the Plans and Specifications which are made because of a requirement or direction of the relevant Authority or because of the practical necessities of development including (but not limited to) any design changes as set out in clause 24.5 hereof.

25. Variations

- 25.1 The Vendor will carry out such reasonable variations to the plans and specifications as are agreed with the Purchaser provided that all such variations are ordered in writing by the Purchaser and that the cost of such variations are agreed upon in writing by the Vendor and the Purchaser and become part of the Purchase Price herein set forth but nothing herein will require the Vendor to agree to a variation to the

external design or internal design or structure of the New House or which will unreasonably delay completion of the New House.

- 25.2 Unless the cost of processing the variation is included in the agreed cost of the variation, the Vendor shall be entitled to recover for the cost of processing each variation a sum equal to 10% of the total amount derived by adding together the money value of the additions, reductions or substitutions making up the variation.
- 25.3 The cost of each variation to the plans and specifications and the cost of processing the variation shall be added to and become part of the Purchase Price and be payable at the time provided in this agreement.
- 25.4 If there is any disagreement between the Vendor and the Purchaser as to the cost of such variations or the time to complete any variation then the same shall be referred to Kingston & Partners, Quantity Surveyors whose decision will be final and binding.

26. Chattels

- 26.1 The Vendor warrants that all chattels will be in good working order at the possession date and the Purchaser will receive any guarantees relating to the same which the Vendor is able to transfer to the Purchaser.

27. Maintenance Period

- 27.1 The Vendor shall, at the Vendor's own expense, make good any defective work and materials (but not chattels installed in the New House) which, within the period of 90 days from the earlier of the Purchaser taking possession of the New House or settlement of the New House in terms of this agreement:
- a. appear in the work; and
 - b. are notified in writing by the Purchaser to the developer.
- 27.2 The Vendor shall not be required to repair damage caused by fire, earthquake, tempest, landslide or other occurrence normally covered by a comprehensive insurance policy.
- 27.3 Any cosmetic defects to which clause 27.1 applies, and which are notified, may at the election of the Vendor, not be rectified until the end of the maintenance notification period.

Each purchaser shall be given a comprehensive list of the contractors involved in the building process and to facilitate the work being completed in a timely manner shall arrange convenient times for both parties to carry out the maintenance work. All costs will be borne by the developer or contractor.

28. Accruals Clause for Sale of Land

- 28.1 The purchase price for the property is the lowest price that the parties would have agreed upon for the property at the date this agreement is entered into under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 1994 and on that basis, no income or expenditure arises in respect of the sale and purchase of the property under those rules.

29. Unless otherwise agreed in writing between the parties, risk in the dwelling will pass to the purchaser on the settlement date. Until this date, the vendor shall the dwelling insured under a comprehensive construction insurance agreement.