

# PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION

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

## AUCTION DETAILS

Auctioneer: Barfoot & Thompson Limited MREINZ Licensed under the Real Estate Agents Act 2008

Place of Auction: at Chancery, Lvl 4, 50 Kitchener St, Auckland

Date and Time of Auction: Wednesday, 10 August 2011, 10:30am

Licensed Real Estate Agent acting for Vendor: Barfoot & Thompson Limited MREINZ Licensed under the Real Estate Agents Act 2008

Vendor: The Dilworth Trust Board

## PARTICULARS OF PROPERTY

**Address: 4 MacMurray Road, Remuera**

Estate:	<del>FEE SIMPLE</del>	<del>LEASEHOLD</del>	<del>CROSSLEASE(FEE SIMPLE)</del>	<del>CROSSLEASE(LEASEHOLD)</del>
	<del>STRATUM IN FEEHOLD</del>		<del>STRATUM IN LEASEHOLD</del>	(if none is deleted, fee simple)

Legal Description:

**Area (more or less): 766 m2**

**Lot/Flat/Unit: 1**

**DP: 46884**

**Unique Identifier or CT: NA58B/959**

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

**Carpet, Light Fittings, Blinds, Oven/Cooktop.**

## TENANCIES (if any)

Name of tenant: Nil

Bond: \$

Rent: \$

Term:

Right of Renewal:

## CONDITIONS OF SALE

- 1.1 The property and the chattels included in the sale are sold on these Particulars and Conditions of Sale, the General Terms of Sale and any Further Terms of Sale.
- 1.2 GST will be payable in accordance with the statement of the purchase price in the Memorandum of Contract.
- 1.3 The GST date is:
- 1.4 The settlement date is: Thursday, 8 September 2011
- 1.5 The possession date is: Thursday, 8 September 2011
- 1.6 The interest rate for late settlement is 15% p.a.

## CONDUCT OF AUCTION

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

## GENERAL TERMS OF SALE

### 3.0 Definitions, notices and interpretation

#### 3.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Agreement" means this document including the Particulars and Conditions of Sale, these General Terms of Sale, any Further Terms of Sale, the Memorandum of Contract and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
  - (a) cash; or
  - (b) a bank cheque; or
  - (c) an electronic transfer of funds that has been made pursuant to a protocol agreed between the parties.
- (6) "Default GST" means any interest, or late payment penalty, or shortfall penalty, or other sum imposed on the vendor under the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor by reason of a default by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LINZ" means Land Information New Zealand.
- (11) "Local authority" means a territorial authority or a regional council.
- (12) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (13) "Property" means the property described in this agreement.
- (14) "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.
- (15) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (16) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser paying the moneys due and payable on the settlement date directly into a bank account nominated by the vendor, in consideration of the vendor agreeing to meet the vendor's obligations under clause 5.7(2), pursuant to a protocol agreed by the parties.
- (17) "Settlement date" means the date specified as such in this agreement or, if no such date is specified, the possession date. Where the day nominated for settlement is not a working day the settlement date shall be the last working day before the day so nominated.
- (18) "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.
- (19) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (20) "Unit title" means a unit title under the Unit Titles Act 2010.
- (21) The terms "principal unit", "accessory unit", "unit plan" and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (22) 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.
- (23) 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.
- (24) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (25) The terms "going concern", "registered person", "supply" and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (26) "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 9:00am and to terminate at 5:00pm.
- (27) Any act done pursuant to this agreement by a party after 5:00pm on a working day, or on a day which is not a working day, shall be deemed to have been done at 9:00am on the next succeeding working day.
- (28) Where two or more acts (including service of notices) done pursuant to this agreement are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 3.1(27).
- (29) Unless a contrary intention appears in the Conditions of Sale 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;
  - (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.

#### 3.2 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.
- (4) In respect of the means of service specified in subclauses 3.2(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;
  - (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.
- (5) Notice served by a party after 5:00pm on a working day or on a day which is not a working day, shall be deemed to have been served by that party at 9:00am on the next succeeding working day.
- (6) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 3.2(5).
- (7) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

### 3.3 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 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 or the Particulars and Conditions of Sale, the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.

## 4.0 Deposit

- 4.1 The purchaser shall pay the deposit to the vendor's licensed real estate agent immediately on the completion of the auction or, where the property has been sold prior to, or subsequent to, the auction, on the execution of this agreement by both parties, time being of the essence.
- 4.2 If the deposit is not paid as set out in subclause 4.1, the vendor may cancel this agreement by serving notice of cancellation on the purchaser.
- 4.3 The deposit shall be in part payment of the purchase price.

## 5.0 Possession and Settlement

### Possession

- 5.1 Unless particulars of a tenancy are included in this agreement the property is sold with vacant possession and the vendor shall so yield the property on the possession date.
- 5.2 If the property is sold with vacant possession 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 possession 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 possession 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.
- 5.3 Possession shall be given and taken on the possession date. Outgoings and incomings in respect of the possession date are the responsibility of and belong to the vendor.
- 5.4 On the possession 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

- 5.5 The purchaser shall prepare, at the purchaser's own expense, a transfer instrument in respect of the property, executed by the purchaser if necessary. The purchaser shall tender the transfer instrument to the vendor or the vendor's lawyer a reasonable time prior to the settlement date.
- 5.6 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 5.7 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 5.12 or 5.13);
  - (2) The vendor shall concurrently hand to the purchaser:
    - (a) the transfer instrument in respect of the property provided by the purchaser under subclause 5.5, in registrable form;
    - (b) all other instruments in registrable form required for the purpose of registering the transfer instrument and conferring title on the purchaser in terms of the vendor's obligations under this agreement; and
    - (c) LINZ registration fees on each of the instruments referred to in subclause 5.7(2)(b) and the purchaser's lawyer's reasonable agency registration fees.
- 5.8 All obligations under subclause 5.7 are interdependent.

## Electronic Instruments

5.9 Where the instruments conferring title on the purchaser in terms of the vendor's obligations under this agreement must be registered as electronic instruments then:

- (1) the purchaser's obligations under subclause 5.5 shall be satisfied by the purchaser's lawyer preparing, certifying and signing within a reasonable time prior to the settlement date the transfer instrument in the Landonline Workspace created for the transaction by the purchaser's lawyer; and
- (2) the vendor's obligation under subclause 5.7(2) shall be satisfied:
  - (a) by the vendor's lawyer preparing in such Landonline Workspace all other instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement and having those instruments and the transfer instrument certified, signed and pre-validated on or before the settlement date and having them released upon settlement so that the purchaser's lawyer can then submit them as soon as possible after settlement for registration; and
  - (b) by the vendor's lawyer paying the LINZ registration fees on all of the instruments mentioned in subclause 5.9(2)(a), except for the transfer instrument.

5.10 The vendor and the purchaser may agree to complete settlement by way of remote settlement.

## Last Minute Settlement

5.11 If due to the delay of the purchaser, settlement takes place between 4:00pm and 5:00pm on the settlement date ("last minute settlement"), the purchaser shall pay 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

5.12 If the vendor is not in default and if any portion of the purchase price is not paid upon the due date for 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 5.12(1).

## Vendor Default: Late Settlement or Failure to give Possession

5.13 (1) For the purposes of this subclause 5.13:

- (a) the default period means:
    - (i) in subclause 5.13(2), the period from the possession date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
    - (ii) in subclause 5.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
    - (iii) in subclause 5.13(5), the period from the possession 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 possession 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 possession 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 possession date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 5.13(2)(b) during the default period. A purchaser in possession under this subclause 5.13(3) is a licensee only.
  - (4) Notwithstanding the provisions of subclause 5.13(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 5.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the possession date.
  - (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 5.13(2)(b) during the default period.
  - (6) The provisions of this subclause 5.13 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 5.13:
- (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 possession 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

#### 5.14 If –

- (a) this is an agreement for the sale by a residential property developer of a household unit; and
- (b) a code compliance certificate has not been issued by the possession date or 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 possession date and/or the settlement date, as the case may be, shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).

- 5.15 In every case, if neither party is ready, willing and able to settle on the settlement date, the settlement date (and the possession date if the possession date is the same date) shall be deferred to the second working day following the date upon which one of the parties gives notice it has become ready, willing and able to settle.

#### New Title Provision

#### 5.16 (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 fifth working day prior to the settlement date –

then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the fifth working day following the date on which the vendor has given the purchaser notice that a search copy is obtainable.

- (2) This subclause 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.
- (3) Deferment of the settlement date under this subclause shall not constitute deferment of the possession date unless the parties so agree.

## 6.0 Risk and insurance

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

6.2 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 possession 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 possession 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 possession 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.
- (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 of the property exceeds an amount equal to 20% of the purchase price.

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

## 7.0 Title, boundaries and requisitions

7.1 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 possession date.

7.2 The purchaser is deemed to have accepted the vendor's title to the property and the purchaser may not make any requisitions or objections as to title.

7.3 Except as provided by section 7 of the Contractual Remedies Act 1979, no error, omission or misdescription of the property or the title shall enable the purchaser to cancel the agreement but compensation, if claimed by notice before settlement in accordance with subclause 9.1 but not otherwise, shall be made or given as the case may require.

7.4 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

## 8.0 Vendor's warranties and undertakings

8.1 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.
- 8.2 The vendor warrants and undertakes that at the giving and taking of possession:
- (1) The chattels are delivered to the purchaser 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) 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.
- 8.3 The vendor warrants and undertakes that at settlement:
- (1) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
  - (2) 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.
  - (3) Any chattels included in the sale are the unencumbered property of the vendor.
- 8.4 The vendor warrants and undertakes that on or immediately after possession:
- (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 the possession date.
  - (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 comprises of a stratum estate, the vendor will notify the secretary of the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 8.5 If the purchaser has not validly cancelled the 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 7.3 and any right of equitable set-off.

## 9.0 Claims for compensation

- 9.1 If the purchaser claims a right to compensation either under subclause 7.3 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 7.3, state the particular error, omission or misdescription of the property or title in respect of which compensation is claimed;
    - (b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
    - (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
    - (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 9.2 For the purposes of subclause 9.1(1), "settlement" means the date for settlement fixed by the 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 11.1.
- 9.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 9.4 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, it 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.
- 9.5 The procedures prescribed in subclauses 9.1 to 9.4 shall not prevent either party taking proceedings for the specific performance of the contract.

## 10.0 Unit title provisions

### Unit titles

- 10.1 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.
- 10.2 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 copy of all insurance policies or certificates effected by the body corporate under the provisions of section 135 of the Act; and
    - (b) a pre-settlement disclosure statement from the body corporate under section 147 of the Act. Any periodic contributions shown in that pre-settlement disclosure statement shall be apportioned.
  - (3) There are no other amounts owing by the owner under any provisions 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 the giving and taking of possession, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 10.3 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 a copy of all insurance policies or certificates and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 10.2(2):
- (1) The purchaser may postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser.
  - (2) The purchaser may elect that settlement shall still take place on the settlement date, such election not being a waiver of any rights under subclause 10.2(2)(b) to a proper apportionment of outgoings.
  - (3) Postponement of the settlement date under this subclause or sections 149 or 150 of the Act shall not constitute postponement of the possession date unless the purchaser so elects.

## 11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date either party may at any time thereafter serve on the other party a settlement notice; but
- (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with the agreement or is not so ready able and willing to settle only by reason of the default or omission of the other party.
  - (3) If the purchaser is in possession the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to subclause 11.1(3) upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
  - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive – time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.

- (3) The vendor may give a settlement notice with a notice under this subclause.
- (4) For the purpose of this subclause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
- (a) sue the purchaser for specific performance; or
- (b) cancel this agreement by notice and pursue either or both of the following remedies namely:
- (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
- (ii) sue the purchaser for damages.
- (2) Where the vendor is entitled to cancel this agreement the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
- (3) The damages claimable by the vendor under subclause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
- (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
- (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
- (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
- (4) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser then without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
- (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

## 12.0 Non-Merger

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

## 13.0 Agent

- 13.1 If the name of a licensed real estate agent is stated on the front page of this agreement it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.

## 14.0 Goods and Services Tax

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
- (1) The purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date.
- (2) Where the GST date has not been inserted in the Conditions of Sale the GST date shall be the possession 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 purchase price, interest and other moneys, if any, referred to in subclause 5.7.
- 14.2 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.
- 14.3 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.
- 14.4 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1 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 11.1.
- (3) The vendor may give a settlement notice under subclause 11.1 with a notice under this subclause.

## 15.0 Zero-rating

- 15.1 The parties warrant that the particulars stated in Schedule 1 are correct at the date of this agreement.

- 15.2 Where the particulars stated in Schedule 1 indicate that at settlement:
- (1) The vendor is a registered person or will be a registered person;
  - (2) The recipient is a registered person or will be a registered person;
  - (3) The recipient intends to use the goods supplied under this agreement for making taxable supplies; and
  - (4) The recipient does not intend 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.
- 15.3 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 registration number if it is not included in Schedule 1.
- 15.4 If any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered 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 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.
- 15.5 Unless the context otherwise requires, words and phrases used in subclauses 15.1 to 15.4 and in Schedule 1 shall have the same meaning as those words and phrases have in the GST Act.

## 16.0 Supply of a Going Concern

- 16.1 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.
- 16.2 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 14.0 of this agreement shall apply.

## 17.0 Limitation of Liability

- 17.1 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, 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.

## 18.0 OIA Consent Not Required

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

## 19.0 Counterparts

- 19.1 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

- 21.0 Clause 2.4 has been deleted and replaced with:  
A licensed real estate agent acting for the vendor in respect of the sale may submit a bid on behalf of any person except the vendor but only if that person is identified to the auctioneer before the commencement of bidding.
- 22.0 Clause 2.5 has been deleted and replaced with:  
The vendor reserves the right to withdraw the property at any time before it has been sold and without declaring the reserve price.
- 23.0 The Property is sold and bought in its present state and condition in all respects. The Purchaser must satisfy itself as to the state and condition of the land (including any relevant environmental factors), and the state and condition (including weather-tightness) of all buildings and structures forming part of the Property and the chattels, fixtures, fittings, mechanical devices, plant, machinery and equipment therein. The Purchaser must also satisfy itself as to the zoning of the Property and as to all matters of compliance with applicable legislation.
- 24.0 The Vendor is selling in exercise of all its powers under its constitution and also by virtue of the Order of the High Court of New Zealand dated 20 March 1981 a copy of which is filed in the Auckland Land Registry under number 791604.



## Schedule 1

### (GST Information)

1. The vendor is registered under the GST Act or will be so registered at settlement.	Yes/No
2. The vendor's registration number (if already registered):	
3. The purchaser is registered under the GST Act or will be so registered at settlement.	Yes/No
4. The purchaser's registration number (if already registered):	
5. The purchaser's full name:	
6. The purchaser's address:	
7. The purchaser intends at settlement to use the goods supplied under this agreement for making taxable supplies.	Yes/No
8. 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.	Yes/No
9. The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
10. If the answer to question 9 is "Yes":	
(a) The nominee is registered under the GST Act or is expected by the purchaser to be so registered at settlement.	Yes/No
(b) The nominee's registration number (if already registered):	
(c) The nominee's full name:	
(d) The nominee's address:	
(e) The purchaser expects the nominee to intend at settlement to use the goods supplied under this agreement for making taxable supplies.	Yes/No
(f) 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.	Yes/No

## MEMORANDUM OF CONTRACT

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

**PURCHASER'S NAME:**

("the purchaser")

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

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

Purchase price: \$

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

Deposit: \$

**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.**

**Date:**

**Signature of auctioneer or vendor(s):**

**Signature of auctioneer or purchaser(s):**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



**BEFORE BIDDING AT THE AUCTION**

- It is recommended both parties seek professional advice before bidding or, if you sign this agreement before or after the auction, before signing. This is especially so if:
  - there are any doubts.
  - the property is sold as a going concern.
  - 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 cross lease or unit title to be issued.
  - there is any doubt as to the position of the boundaries.
  - you wish to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- You should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- You should investigate whether necessary permits, consents, and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- You should compare the title plans against the physical location of existing structures where the property is a cross lease or unit title. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, you should check the minutes of past meetings of the body corporate and inquire whether there are any issues affecting the units and/or the common property and whether the body corporate holds funds or has imposed or proposed levies for deferred maintenance of, or remedial work to, the common property.
- Both parties should ensure the chattels list on the front page is accurate.
- You should ensure that you understand the GST position, and whether or not GST is payable in addition to the price at which you are bidding.
- Both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.
- You should read the Conduct of Auction in clause 2.

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

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

**PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION**

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**DATE:** Wednesday, 10 August 2011

**Address of Property:**  
4 MacMurray Road, Remuera

**VENDOR:** The Dilworth Trust Board

Contact Details:

Ph (Bus):

Ph (Bus):

**VENDOR'S LAWYERS:**

Firm: Jackson Russell

Individual Acting: Chris Hubbert

Contact Details: DX CP20520

UPPER SHORTLAND ST

Tel: 303-3849 Fax: 309-0902

**PURCHASER:**

Contact Details:

**PURCHASER'S LAWYERS:**

Firm:

Individual Acting:

Contact Details:

Auctioneer: Barfoot & Thompson Limited

Licensed Real Estate Agent Listing Property:

Barfoot & Thompson Limited

Branch Manager:

Salesperson:

Contact Details: