

## Particulars and Conditions of Sale by Auction

The property to be sold at auction by Barfoot & Thompson Limited MREINZ, Level 4 / 50 Kitchener Street, Auckland City, Licensed Auctioneers (hereinafter "the auctioneer")

On behalf of (hereinafter "the vendor")

### Particulars of Property (hereinafter "the property")

Address:

Legal Description:

Estate: Fee Simple	Leasehold	Cross Lease	Unit Title	(if none is deleted then Fee Simple)
Area:	Lot:	DP:	CT:	

**Chattels:** The following chattels (if now situated on the property) are included in the sale.

### Conditions of Sale:

#### 1.0 Terms

- 1.1 Property is sold subject to these Conditions and to the General Terms of Sale and the Further Terms of Sale (if any).
- 1.2 Property is sold free of existing tenancies (if any) unless referred to in the Further Terms of Sale.
- 1.3 Property is sold subject to a reserve price.
- 1.4 Interest rate for late settlement is 15%.
- 1.5 Purchase price is inclusive of GST (if any) unless otherwise stated in the Memorandum Recording Sale.
- 1.6 Possession date is that date specified in the Memorandum Recording Sale.

#### 2.0 Conduct of Auction

- 2.1 Subject to the reserve price being reached, the highest bidder whose bid is accepted by the auctioneer shall be the purchaser. The amount of the highest accepted bid shall be the purchase price.
- 2.2 If a dispute arises concerning any bid the property shall be put up for sale at the last undisputed bid.
- 2.3 The auctioneer has the right to nominate the sum by which the bidding can be raised.
- 2.4 The auctioneer may refuse any bid.
- 2.5 No bid shall be retracted.
- 2.6 The vendor may withdraw the property from sale before the property is actually sold without declaring the reserve price.
- 2.7 The purchaser shall immediately on the fall of the hammer;
  - (1) Sign the Memorandum Recording Sale annexed (in default of which the auctioneer may sign on behalf of the purchaser who shall be bound accordingly).
  - (2) Pay to the auctioneer a deposit, being 10% of the purchase price (excluding GST) which is also in part payment of the purchase price.
- 2.8 Where the purchaser has become the purchaser other than at the auction then the purchaser shall pay the deposit to the agent immediately the Memorandum Recording Sale has been signed by both parties.
- 2.9 Non payment of the deposit when due will entitle the vendor to cancel this agreement at any time by notice in writing to the purchaser but without prejudice to any other of the vendor's rights or remedies under this agreement or at law.

## 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 as in section 2 of the Property Law Act 1952 or section 2 of the Resource Management Act 1991.
- (2) "Settlement date" means the possession date or such other date as the parties are to perform their obligations under subclause 4.2(3). 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.
- (3) "Unit title" means a unit title issued under the Unit Titles Act 1972.
- (4) The terms "principal unit", "accessory unit", "unit plan" and "unit" shall have the meanings ascribed to those terms in the Unit Titles Act 1972.
- (5) "Working day" means any day of the week other than:
  - (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day and the provincial anniversary day as observed at the place where the property is situated; and
  - (b) A day in the period commencing on the 24<sup>th</sup> day of December in any year and ending on the 5<sup>th</sup> day of January in the following year, both days inclusive.A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (6) Any act done pursuant to this agreement by a party after 5.00 pm on a working day, or on a day which is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (7) 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(6).
- (8) Unless a contrary intention appears on the front page or elsewhere in this agreement:
  - (a) the interest rate for late settlement is double the 90 day bank bill buy rate;
  - (b) the applicable 90 day bank bill buy rate is that as advised by the vendor's solicitor's bank and if more than one such rate then the highest rate during the relevant period;
  - (c) 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.
- (9) "Conditions of Sale" means and includes the Conditions of Sale on the front page together with the General Terms of Sale and Further Terms of Sale.

#### 3.2 Notices

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

- (1) All notices must be served in writing.
- (2) All notices must be served by one of the following means:
  - (a) on the party as provided in section 152 of the Property Law Act 1952, or
  - (b) on the party or on the party's solicitor by personal delivery, or by posting by ordinary mail, or by facsimile, or by e-mail or, in the case of the party's solicitor only, by sending by document exchange.
- (3) In respect of the means of service specified in subclause 3.2(2)(b), a notice is deemed to have been served:
  - (a) in the case of personal delivery, when received by the party or at the office of the party's solicitor;
  - (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 office of the party's solicitor;
  - (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 office of the party's solicitor;
  - (d) in the case of e-mail, when acknowledged by the party or by the party's solicitor orally or by return e-mail 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 office of the party's solicitor.
- (4) Notice served by a party after 5.00 pm 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 9.00 am on the next succeeding working day.
- (5) 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(4).
- (6) 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 purchaser or vendor, the liability of the purchasers or of the vendors, 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 hereunder.
- (3) If the bidder shall have handed to the auctioneer a written authority to act on behalf of another person or on behalf of a body corporate then such written authority must be signed by the principal with the full name and description of that principal fully detailed. Where the principal is a body corporate then the written authority must be duly executed by the body corporate by its directors.
- (4) Where any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted terms shall prevail.
- (5) Headings are for information only and do not form part of this agreement.

3.4 Bids may be made by a member of the auctioneer's staff acting in accordance with the telephone instructions on behalf of persons not present at the auction, provided that before the auction the intended bidders shall have delivered to the auctioneer a telephone bidding authority in the form prescribed by the vendor, duly completed and signed.

### 4.0 POSSESSION AND SETTLEMENT

#### 4.1 Possession

- (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.
- (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:
  - (a) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
  - (b) to re-enter the property 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) Possession shall be given and taken on the possession date.
- (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.

#### 4.2 Settlement

- (1) The purchaser shall prepare, at the purchaser's own expense, a memorandum of transfer of the property, executed by the purchaser if necessary. The purchaser shall tender the memorandum of transfer to the vendor or the vendor's solicitor a reasonable time prior to the settlement date.

- (2) The vendor shall prepare, at the vendor's own expense, a statement of apportionments, showing all outgoings and incomings apportioned at the possession date. The vendor shall tender the statement of apportionments to the purchaser or the purchaser's solicitor a reasonable time prior to the settlement date.
- (3) On the settlement date:
  - (a) the purchaser shall pay or satisfy the balance of the purchase price, interest and other moneys, if any, due as provided in this agreement (credit being given for any amount payable by the vendor under subclauses 4.4 and 4.5); and
  - (b) the vendor shall concurrently hand to the purchaser:
    - (i) the memorandum of transfer of the property provided by the purchaser under subclause 4.2(1), in registrable form; and
    - (ii) all other instruments in registrable form required for the purpose of registering the memorandum of transfer; and
    - (iii) all instruments of title
 the obligations in subclauses 4.2(3)(a) and 4.2(3)(b) being interdependent.

- 4.3 Last minute settlement
- If through no fault of the vendor, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
- (a) 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
  - (b) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

- 4.4 Purchaser default: late settlement
- (1) If the vendor is not in default and if any portion of the purchase price is not paid upon the due date for payment:
    - (a) The purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); 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.
    - (b) 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:
      - (i) account to the purchaser for rents received in respect of the property during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
      - (ii) retain such rents in lieu of receiving interest from the purchaser pursuant to subclause 4.4(1)(a).

- 4.5 Vendor default: late settlement or failure to give possession
- (1) For the purposes of this subclause 4.5:
    - (a) the default period means:
      - (i) in subclause 4.5(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 4.5(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
      - (iii) in subclause 4.5(5), the period from the possession date until the date when settlement occurs;
    - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession; and
    - (c) the purchaser shall be deemed not to be in default if the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement.
  - (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 is not in default:
    - (a) the vendor shall pay the purchaser, at the purchaser's election, either:
      - (i) compensation for any reasonable costs incurred for temporary accommodation by 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 solicitor's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the 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 is not in default, 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 4.5(2)(b) during the default period. A purchaser in possession under this subclause 4.5(3) is a licensee only.
  - (4) Notwithstanding the provisions of subclause 4.5(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 4.5(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 is not in default, the vendor shall on settlement account to the purchaser for rents 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 rent, 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 4.5(2)(b) during the default period.
  - (6) The provisions of this subclause 4.5 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 4.5:
    - (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 or vice-president for the time being of the Law Society for the district where the property is situated.

- 4.6 Deferment of settlement
- If neither party is ready, willing and able to settle on the settlement date, the settlement date and the possession date shall be deferred to the second working day following the date upon which one of the parties gives notice that it has become ready, willing and able to settle.

5.0 **RISK AND INSURANCE**

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

5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the 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 above price, less a sum equal to the amount of 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 purchaser shall be entitled to the return of the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other.
- (2) If the property is not untenable on the possession date the purchaser shall complete the purchase at the above price less a sum equal to the amount of the diminution in value of the property.
- (3) In the case of the 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.

5.3 There will be no assignment of any insurance policy held by the vendor.

6.0 **TITLE, BOUNDARIES AND REQUISITIONS**

6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that the property is pegged at the possession date.

- 6.2
- (1) The purchaser is deemed to have accepted the vendor's title.
  - (2) No error, omission or misdescription of the property or the title shall annul the sale or entitle either party to compensation.
  - (3) The vendor shall not be liable to pay for or contribute towards the expense or 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.
  - (4) The purchaser acknowledges that the purchaser has inspected the property and that the purchaser purchases the same solely upon the purchaser's own judgement and not in reliance upon any representation of the vendor's agent or the auctioneer.

7.0 **VENDOR'S WARRANTIES AND UNDERTAKINGS**

7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:

- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
  - (a) imposed by any local or government authority; or
  - (b) given by any person under the Resource Management Act 1991 and its amendments; or
  - (c) given by any tenant; or
- (2) given any consent or waiver in relation to any application under the Resource Management Act 1991 and its amendments which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.

7.2 The vendor warrants and undertakes that at the 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 general or water rates or charges outstanding on the property.
- (4) All incomings receivable have been collected by the vendor to the date shown in the statement of apportionments.
- (5) Where the vendor has done or caused or permitted to be done on the property any works for which a permit or building consent was required by law:
  - (a) the required permit or consent was obtained; and
  - (b) where appropriate, a code compliance certificate was issued for those works; and
  - (c) all obligations imposed under the Building Act 1991 and/or the Building Act 2004 (together "the Building Act") were fully complied with.
- (6) Where, under the Building Act, any building on the property sold ("the building") requires a compliance schedule, all obligations imposed on the vendor under the Act are fully complied with. Without limiting the generality of the foregoing, the vendor further warrants and undertakes that:
  - (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; and
  - (b) the building has a current building warrant of fitness supplied under the Building Act; 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 complying with the Building Act from being supplied to the territorial authority when the building warrant of fitness is next due; and
  - (d) the territorial authority has not issued any notice under the Building Act to the vendor or to any agent of the vendor which has not been remedied by the vendor, and the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which could entitle the territorial authority to issue such a notice.

7.3 The vendor warrants and undertakes that at settlement:

- (1) Since the date of this agreement, the vendor has not given any consent or waiver in relation to any application under the Resource Management Act 1991 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 from:
  - (a) any local or government authority; or
  - (b) any person under the Resource Management Act 1991; or
  - (c) any tenanthas been delivered forthwith by the vendor to either the purchaser or the purchaser's solicitor, 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.

7.4 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 adjustments are paid to the dates shown in the vendor's statement of apportionments or will be so paid immediately after the possession date.
- (3) The vendor will give notice of sale in accordance with section 106 of the Rating Powers Act 1988 to the territorial authority in whose district the land is situated and to every other local authority that makes and levies rates on the land.
- (4) Where the property comprises a stratum estate, the vendor will advise the secretary of the body corporate of the transfer of the property and the name and address of the purchaser.

7.5 Breach of any warranty or undertaking contained in this clause does not defer the obligation to settle. Settlement shall be without prejudice to any rights or remedies available to the parties at law or in equity, including but not limited to the right to cancel this agreement under the Contractual Remedies Act 1979.

## 8.0 UNIT TITLE PROVISIONS

8.1 If the property is a unit title the vendor warrants as follows:

- (1) As at the date of this agreement, regular periodic contributions payable to the body corporate have been paid in full.
- (2) By no later 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 15 of the Unit Titles Act 1972 ("the Act"); and
  - (b) a certificate from the body corporate under section 36 of the Act. Any periodic outgoings shown in that certificate (not being amounts referred in paragraph (d) of section 36) shall be apportioned.
- (3) There are no amounts owing by the vendor under sections 14, 33 or 34 of the Act.
- (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 under sections 28, 37, 40, 42, 43, 46 or 51 of the Act.
- (6) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
  - (a) the vendor or the purchaser incurring any liability under sections 14, 33 or 34 of the Act; or
  - (b) any proceedings being instituted by or against the body corporate; or
  - (c) any order or declaration being sought under sections 28, 37, 40, 42, 43, 46 or 51 of the Act.
- (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 to the purchaser.
- (8) As far as it is reasonably aware no lease, licence, easement or special privilege has been granted by the body corporate in respect of any part of the common property.

8.2 If the vendor does not provide a copy of all insurance policies or certificates and the certificate under section 36 in accordance with the requirements of subclause 8.1(2):

- (1) The settlement date shall be deferred to 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 settlement date, such election not being a waiver of any rights under subclause 8.1(2)(b) to a proper apportionment of outgoings.
- (3) Deferment of the settlement date under this subclause shall not constitute deferment of the possession date unless the parties so agree.

## 9.0 LAND ACT CONSENT

9.1 If this transaction requires consent under the Land Act 1948 the prospective purchaser shall not be entitled to enter any bid unless consent to a purchase has been granted and satisfactory written evidence of such consent is produced to the Vendor or the Agent prior to the auction.

## 10.0 FOREIGN PURCHASER

10.1 A prospective purchaser who would only be entitled to complete a purchase if consent is obtained under the Overseas Investment Act 2005 may not enter any bid unless consent to a purchase has been granted and written evidence of such consent is produced to the vendor prior to the auction.

## 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 notice ("a settlement notice") to settle in accordance with this clause; but
- (2) The 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 notice 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 a settlement notice may incorporate or be given with a notice under section 50 of the Property Law Act 1952.

11.2 Upon service of a settlement notice the party on whom the notice is served shall settle:

- (a) on or before the twelfth working day after the date of service of the notice; or
  - (b) on the first working day after the 20<sup>th</sup> day of January if the period of twelve working days expires during the period commencing on the 6<sup>th</sup> day of January and ending on the 20<sup>th</sup> 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 or part of 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:

- (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:

- (a) sue the vendor for specific performance; or

- (b) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.

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 the transfer of title to the land or with delivery of the chattels (if any).

## 13.0 GOODS AND SERVICES TAX (GST)

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 on the purchase price in one sum no later than the GST date.
- (2) 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.
- (3) It shall not be a defence to a claim against the purchaser for payment to the vendor of any Default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the Goods and Services Tax Act 1985 ("Act").
- (4) Any sum referred to in this clause is included in the purchase price, interest and other moneys, if any, referred to in subclause 4.2(3).

13.2 If the supply under this agreement is a taxable supply the vendor will deliver a GST tax invoice to the purchaser on or before five (5) working days prior to the GST date or such earlier date as the purchaser is entitled to delivery of a GST invoice under the Act.

13.3 "Default GST" means any interest, or late payment penalty, or shortfall penalty, or other sum imposed on the vendor under the Tax Administration Act 1994 by reason of non-payment of the GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor by reason of a default by the vendor after payment of the GST to the vendor by the purchaser.

13.4 "GST date" means that date which is five (5) working days prior to the date on which the Vendor is liable to account to the Inland Revenue Department for GST on this transaction or the Possession date whichever is the earlier.

## 14.0 SUPPLY OF A GOING CONCERN

14.1 If this agreement relates to the sale of a tenanted property (not being an exempt supply within the meaning of the Goods and Services Tax Act 1985) ("Act") then, unless otherwise expressly stated herein:

- (a) each party warrants that it is a "registered person" within the meaning of the Act; and
- (b) 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 percent.

14.2 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.

## 15.0 LOWEST PRICE

15.1 The purchase price for the property does not include any capitalised interest and the parties agree that the purchase price is the "lowest price" which the parties would have agreed upon at the date of this agreement in terms of the rules relating to the accrual treatment of income and expenditure under the Income Tax Act 2004 or any supervening tax legislation.

## 16.0 AGENT

16.1 It is acknowledged that the sale evidenced by this agreement, whether made before or after or at auction conducted by the auctioneer named on the front page of this agreement, has been made through the named auctioneer whom the vendor appoints as the real estate agent ("agent") for the vendor. The vendor shall pay the agent's charges, plus GST, for effecting the sale in accordance with the agent's listing authority which the vendor has signed.



**Before Bidding at the Auction**

*If you are the successful bidder or you sign this agreement before or after the auction this sale will be legally binding on you under the terms of this agreement, with only restricted rights of termination if there has been a breach of warranties. You cannot object to the vendor's title.*

**It is recommended you seek professional advice.**  
*This is especially so if;*

- \* *There are any doubts.*
- \* *The property is sold as a going concern.*
- \* *Property such as a hotel or farm is being sold. The agreement is designed primarily for the sale of residential and commercial land.*
- \* *There is any doubt as to the position of the boundaries.*

*Before bidding at the auction you should investigate the status of the property under the local Council's District Plan. The property and those surrounding it are affected by zoning and other planning provisions regulating their use and future development.*

*You should investigate whether necessary permits and certificates have been obtained from the Council where building works have been carried out by an earlier owner. The investigation can be assisted by obtaining a LIM from the Council. The vendor's warranties under the agreement may not extent to such works.*

*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 enquire whether the body corporate holds funds for deferred maintenance of common property.*

*You should ensure the chattels list at the bottom of the front page is as understood with the vendor.*

*You should ensure that you understand the GST position, in particular whether or not GST is payable in addition to the price at which you are bidding.*

**The above matters 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.**

**Barfoot and Thompson accepts no responsibility for any error or omission in the recommendations on this page.**

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**SALE OF REAL ESTATE  
 BY AUCTION**

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**Vendor:**

Ph (Bus)  
 (Pvt)

**Purchaser:**

Ph (Bus)  
 (Pvt)

**Address of Property:**

**Date, Time & Place:**

**Solicitor for Vendor:**

Firm:

Address:

Person Acting:

Tel:

Fax:

P O Box:

DX:

**Solicitor for Purchaser:**

Firm:

Address:

Person Acting:

Tel:

Fax:

P O Box:

DX:

**Barfoot & Thompson Ltd.**

Member of the Real Estate Institute of New Zealand

Office: .....

Address: .....

Telephone: .....

Fax: .....

Email: .....

Manager: .....

Salesperson: .....