

PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION (MORTGAGEE SALE)

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

PARTICULARS AND CONDITIONS OF SALE by public auction of the freehold/~~leasehold~~ property situated at 196 Clevedon Kawakawa Road, Clevedon, Auckland (as more particularly described in the Particulars below)

to be sold by PGG Wrightson Real Estate (auctioneers)
 at BNZ Partners Pukekohe, 10 Massey Avenue, Pukekohe 2120 (address)
 on Thursday the 28th day of November 2024 at 11:00 a.m. at the request of the
 first/~~second~~ mortgagee (in the subjoined Conditions and Memorandum of Contract called the "Vendor") in exercise of the
 power of sale contained in Memorandum of Mortgage registered in the Land Registry Office at North Auckland
 under Number 12252672.2 being a first/~~second~~ mortgage~~s~~

PARTICULARS

The Land:

Record of Title: NA26D/128
 Legal Description: Lot 1 Deposited Plan 57651
 Area: 1.3714ha

(legal description of property)

Subject to:

~~Lease:~~

Easements and restrictions:

All instruments recorded on the attached Record of Title but excluding all mortgages and caveats registered after the vendor's mortgage.

(include all easements and restrictions noted on the certificate of title and, if the land is to be sold subject to a prior mortgage, include reference to that mortgage – exclude the mortgage to the vendor)

Holding over and tenancies:

The property is sold subject to existing tenancies or occupations (if any) including holding over by the mortgagor.

(strike out this section if the Property is being sold with vacant possession)

Settlement Date

15

Unless otherwise agreed by the vendor, the settlement date to be inserted in the Memorandum of Contract will be ~~20~~ working days after the date of the auction.

Status of Vendor

The vendor is selling as first/~~second~~ mortgagee and in exercise of the power of sale vested in it by virtue of the above-mentioned mortgage and the purchaser shall assume without evidence that the events have happened and the periods elapsed entitling the vendor to exercise its power of sale.

The vendor is ~~registered~~ ^{deemed to be} under the GST Act in respect of the transaction evidenced by this agreement and ~~or~~ will be ~~so~~ registered at settlement:

Yes/No

~~deemed~~

CONDITIONS

1.0 CONDUCT OF AUCTION

- 1.1 The property is offered for sale on the terms contained in these Particulars and Conditions of Sale.
- 1.2 GST will be payable in accordance with the statement selected opposite the purchase price in the Memorandum of Contract.
- 1.3 The vendor reserves the right to withdraw the property from sale before the property is actually sold and if the property is sold subject to a reserve, without declaring the reserve price.

2.0 CONDUCT OF AUCTION – SALE SUBJECT TO RESERVE

- 2.1 The property is offered for sale on the terms contained in these Particulars and Conditions of Sale subject to a reserve price and, subject to the reserve price being met, the highest bidder whose bid is accepted by the auctioneer will be the purchaser.
- 2.2 The vendor may bid personally, or by a representative, or through the auctioneer, provided that the bid is less than the reserve price. The auctioneer shall identify each vendor bid as it is made.
- 2.3 The auctioneer may nominate the sum by which the bidding can be raised and no person shall advance a bid at a less sum than shall from time to time be fixed by the auctioneer at the direction of the vendor.
- 2.4 The auctioneer may refuse any bid.
- 2.5 If any dispute shall arise respecting any bid during the conduct of the auction, the dispute shall be determined by the auctioneer by putting the property up again for sale at the last previous undisputed bid.
- 2.6 All bids shall be deemed to be made by the bidder on the bidder's personal account unless prior to the commencement of the auction 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.
- 2.7 Bids may be made by a member of the auctioneer's staff or the licensed real estate agent acting in accordance with instructions (via telephone or otherwise) on behalf of persons not present at the auction provided that before the commencement of bidding:
 - (1) the intending bidder shall have sought and obtained the vendor's consent to the intending bidder bidding in such a manner; and
 - (2) the auctioneer shall identify a person so acting.

OR

2.0 CONDUCT OF AUCTION – SALE WITHOUT RESERVE

- 2.1 ~~The property is offered for sale on the terms contained in these Particulars and Conditions of Sale without reserve and the highest bidder whose bid is accepted by the auctioneer will be the purchaser.~~
- 2.2 ~~The auctioneer may nominate the sum by which the bidding can be raised and no person shall advance a bid at a less sum than shall from time to time be fixed by the auctioneer at the direction of the vendor.~~
- 2.3 ~~The auctioneer may refuse any bid.~~
- 2.4 ~~If any dispute shall arise respecting any bid during the conduct of the auction, the dispute shall be determined by the auctioneer by putting the property up again for sale at the last previous undisputed bid.~~
- 2.5 ~~All bids shall be deemed to be made by the bidder on the bidder's personal account unless prior to the commencement of the auction 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.~~
- 2.6 ~~Bids may be made by a member of the auctioneer's staff or the licensed real estate agent acting in accordance with instructions (via telephone or otherwise) on behalf of persons not present at the auction provided that before the commencement of bidding:~~
 - ~~(1) the intending bidder shall have sought and obtained the vendor's consent to the intending bidder bidding in such a manner; and~~
 - ~~(2) the auctioneer shall identify a person so acting.~~

[Only one of the above clauses may apply – please strike out the clause that does not apply – if neither clause is struck out then the first option is to apply and the property is offered for sale subject to a reserve.]

3.0 PAYMENT OF DEPOSIT AND SIGNING OF AGREEMENT

- 3.1 Except where the purchaser is a telephone bidder the purchaser shall immediately upon fall of the hammer:
 - (1) sign the Memorandum of Contract annexed to these Conditions of Sale (in default of which the auctioneer may sign such agreement on behalf of the purchaser);
 - (2) pay to the vendor's licensed real estate agent a deposit of 10% of the purchase price (deposit) unless otherwise agreed; and ~~in accordance with the further terms~~
 - (3) complete its GST information in the schedule (if applicable).
- 3.2 Where the purchaser is a telephone bidder the purchaser shall immediately upon the fall of the hammer:
 - (1) complete and sign the Memorandum of Agreement annexed to these conditions of sale, previously provided by the auctioneer or the Vendor's licensed real estate agent and fax one copy of the agreement through to the auctioneer for immediate signature by the vendor or the auctioneer or vendor's licensed real estate agent as the agent of the vendor. This faxed copy will be a binding contract between the vendor and the purchaser for the purpose of section 24 of the Property Law Act 2007;
 - (2) pay to the vendor's licensed real estate agent a deposit of 10% of the purchase price (deposit) if applicable; and
 - (3) complete its GST information in the schedule (if applicable).
- 3.3 Failure to pay the deposit when it is due shall entitle the vendor to cancel the agreement at any time in writing to the purchaser but without prejudice to any other of the vendor's rights or remedies under this agreement or at law.
- 3.4 The deposit shall be in part payment of the purchase price.
- 3.5 If the property is a unit title, the person to whom the deposit is paid shall hold it as a stakeholder until:
 - (1) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010 and an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2)) have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
 - (2) the purchaser, having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010, has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor or by completing settlement of the purchase.

4.0 DEFINITIONS, TIME FOR PERFORMANCE, NOTICES AND INTERPRETATION

- 4.1 Definitions
 - (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
 - (2) "Agreement" means this document including the 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) "Cleared Funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
 - (5) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
 - (6) "Electronic Instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
 - (7) "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.
 - (8) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
 - (9) "LINZ" means Land Information New Zealand.

- (10) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (11) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (12) "Property" means the property described in this agreement.
- (13) "Rate for Late Settlement" means the interest rate specified in the Memorandum of Contract attached to these Particulars and Conditions of Sale
- (14) "Remote Settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 5.7(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (15) "Risk Date" means the day following auction date, or if the property is passed in at the auction and subsequently sold pursuant to this agreement, the day following the day the Memorandum of Contract is signed by both parties.
- (16) "Secure Web Document Exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (17) "Settlement Date" means the date specified as such in this agreement.
- (18) "Settlement Notice" means a notice served by the vendor on the purchaser in accordance with subclause 12.1.
- (19) "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.
- (20) "Unit Title" means a unit title under the Unit Titles Act 2010.
- (21) The terms "principal unit", "accessory unit", "owner", "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 term "title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (24) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply" and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (25) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (26) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (27) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (28) "Working Day" means any day of the week other than:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
 - if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - 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
 - the day observed as the anniversary of any province in which the property is situated.
- A Working Day shall be deemed to commence at 9:00 am and to terminate at 5:00 pm.
- (29) Unless a contrary intention appears in the Particulars and Conditions of Sale or elsewhere in this agreement:
- the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5 % per annum; and
 - 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.
- 4.2 Time for Performance
- Where the day nominated for settlement or the fulfilment of a condition is not a working day then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
 - Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
 - Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 4.2(1).
- 4.3 Notices
- The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:
- All notices must be served in writing.
 - 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.
 - All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - on the party or on the party's lawyer:
 - by personal delivery; or
 - by posting by ordinary mail; or
 - by facsimile; or
 - by email; or
 - in the case of the party's lawyer only, be sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
 - In respect of the means of service specified in subclauses 4.3(3)(b), a notice is deemed to have been served:
 - In the case of personal delivery, when received by the party or at the lawyer's office;
 - in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - 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;
 - in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;
 - 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;
 - in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
 - Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
 - In accordance with section 222 of the Contract and Commercial Law Act 2017 the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.
- 4.4 Interpretation
- 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.
 - Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the Purchaser shall at all times remain liable for all obligations on the part of the purchaser.
 - 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.
 - Headings are for information only and do not form part of this agreement.
 - References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

5.0 POSSESSION AND SETTLEMENT

Possession

- 5.1 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor. ~~In tendering the settlement statement the vendor is warranting that there are no arrears of rates, water rates or charges outstanding on the property.~~

5.2 Unless the particulars in this agreement specify to the contrary, the property is sold subject to tenancies and subject to holding over by the mortgagor and the vendor shall not be required to deliver vacant possession on the settlement date.

~~5.3 If this agreement provides for vacant possession and if they are in the possession of the vendor, on the settlement date the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.~~

Settlement

5.4 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.

5.5 The purchaser's lawyer shall:

- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a ~~transfer instrument~~ instrument in respect of the property; and
- (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
 - (b) certify and sign the ~~transfer instrument~~ **TPS**

5.6 The vendor's lawyer shall:

- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
- (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
 - (b) have those instruments and the ~~transfer instrument~~ **TPS** certified, signed and, where possible, pre-validated.

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;
- (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the ~~transfer instrument~~ and the other instruments mentioned in subclause 5.6(1) so that the purchaser's lawyer can then submit them for registration; **TPS**
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 5.6(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
 - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.

5.8 All obligations under subclause 5.7 are interdependent.

5.9 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

Last Minute Settlement

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

- (1) one day's interest at the 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

5.11 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:

- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
- (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount during the default period.

5.12 Where subclause 5.11(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:

- (1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
- (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
- (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
- (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
- (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
- (6) the amount determined to be payable shall not be limited by the interim amount; and
- (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.

No duty on vendor to provide information it does not have

5.13 Despite anything to the contrary expressed or implied in this agreement, the vendor shall not be under any obligation:

- (1) to provide at any time details whatsoever of any tenancy, licence or other occupancy arrangement relating to the property or any part thereof unless such details are actually known to the vendor, and/or
- (2) to make at settlement or any other time an apportionment of rents, profits or other income of the property or any part thereof unless the same has been received by the vendor.

Sale of leasehold estate conditional upon lessor's consent

~~5.14 If this property includes a leasehold estate and the name of the lessor is included in the particulars then this agreement is subject to and conditional upon the lessor under and by virtue of Memorandum of Lease referred to in the particulars consenting to the assignment or transfer to the purchaser and the purchaser shall procure at his own expense such consent. The purchaser will immediately following execution of the Memorandum of Contract do all such acts and things necessary to the granting of such consent. If such consent shall not have been granted by the day preceding the settlement date then this agreement shall become voidable at the option of either party and if avoided all moneys previously paid hereunder by or on behalf of the purchaser shall be refunded to the purchaser and neither party hereto shall have any claim against the other.~~

6.0 RESIDENTIAL LAND WITHHOLDING TAX

6.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:

- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
 - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
 - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
- (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
- (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
 - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
 - (b) any costs payable by the vendor under subclause 6.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.

- 6.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 6.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
 - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 6.3 If pursuant to subclause 6.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
 - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 6.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 6.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 6.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under subclause 6.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
 - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

7.0 RISK AND INSURANCE

- 7.1 The property shall remain at the risk of the vendor until the risk date.
- 7.2 If, prior to the risk date, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
 - (2) if the property is not untenable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
 - (3) in the case of a property zoned for rural purposes under an operative district plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
 - (4) if the amount of the diminution in value is disputed:
 - (a) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
 - (b) the interim amount must be a reasonable sum having regard to all of the circumstances;
 - (c) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (d) 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;
 - (e) 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;
 - (f) the amount of diminution determined to be payable shall not be limited by the interim amount; and
 - (g) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.
- 7.3 The purchaser shall not be required to take over any insurance policies held by the Vendor.

8.0 TITLE, BOUNDARIES AND REQUISITIONS

- 8.1 The vendor shall not be bound to point out the boundaries of the property nor any corner or boundary pegs.
- 8.2 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.
- 8.3 The purchaser may not make any objection or claim on the grounds that fences or other structures are incorrectly sited or are not located on or within the proper boundaries. The vendor is and will not be liable if any building or structure on the property is found to encroach upon any adjoining property or vice versa.
- 8.4 The property is believed and shall be taken to be correctly described as to quality and otherwise and no error, misstatement or misdescription whether in these particulars or in these conditions or the advertisement of sale shall annul the sale of the property or entitle either party to compensation nor will the purchaser be allowed to recede from his contract on the ground of any mistake in the description by the auctioneer or the position or character or mistake in the property sold.
- 8.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

9.0 NO VENDOR'S WARRANTIES

Vendor does not provide any warranties

- 9.1 The vendor is selling as mortgagee and in exercise of the power of sale vested in it by virtue of the mortgage referred to in the recitals to this agreement and:
- (1) the purchaser shall be deemed to have inspected the property and to have knowledge of all improvements and the condition of all fences thereon and shall make no requisition in respect thereof; and
 - (2) no covenant or warranty is given by the vendor in any transfer of the property to the purchaser except that the vendor has not knowingly encumbered the property or any part of the property; and
 - (3) the purchaser shall assume without evidence that the events have happened and the periods elapsed entitling the vendor to exercise its power of sale; and
 - (4) no chattels are included in the sale unless stated otherwise in the further terms; and
 - (5) all fixtures are included in the sale unless the vendor has no right to sell them; and
 - (6) no representation is made by the vendor with regard to the zoning of the property under any district or regional planning scheme, or the use to which the same may be put or any designations or restrictions thereon.
- 9.2 The vendor does not warrant the accuracy of any matter or fact in these conditions or in the particulars or in any advertisement of sale or marketing brochure or in any statement by any agent, the auctioneer or any manager or employee or other representative of the vendor and the purchaser must verify such matters to the purchaser's own satisfaction and purchases the property in reliance solely upon the purchaser's own judgment. The purchaser acknowledges that the vendor has no duty to the purchaser to disclose any matter.
- 9.3 Neither the vendor nor the auctioneer nor the vendor's licensed real estate agent shall be liable in respect of the condition of the property particularly but not in limitation, in respect of the condition or structural soundness of the buildings and the condition or functioning of any services or utilities serving the property and compliance with the Building Act 2004. The vendor gives no warranties that Local Body or Government requisitions and/or demolition or other orders do not exist and/or may not be imposed in respect of the property.
- 9.4 The vendor shall not be under any obligation to provide at any time details of any lease, tenancy, licence or other occupation arrangement for the property, or any part. The vendor gives no warranty as to any lease, tenancy, licence or other occupation arrangement for the property nor that vacant possession will be available at the settlement date. Unless the property is sold with vacant possession, the vendor is not under any obligation to provide vacant possession at the settlement date.
- 9.5 The purchaser:
- (1) releases the vendor, the auctioneer and the vendor's licensed real estate agent from and disclaims all claims, whether in contract (including but not limited to claims for breach of express or implied terms or implied representations or warranties) or tort or otherwise, in respect of or arising from this agreement and/or any statement made at any time leading up to the execution of this agreement; and
 - (2) confirms that, in entering into this agreement, it has not relied on, any statement, representation, warranty, condition, promise or undertaking made in the course of communications or negotiations, whether express or implied by conduct, prior to or during the making of this agreement and not expressly set out in this agreement.

10.0 INTERVENING EVENT

- 10.1 Should, as at the date of the auction or at any time up until settlement has been effected, there be any:
- (1) interest or encumbrance registered against the title to the property which would prevent registration of an electronic instrument being a Memorandum of Transfer in favour of the purchaser;
 - (2) injunction or other court order which would prevent registration of an electronic instrument being a Memorandum of Transfer in favour of the purchaser;
 - (3) proper objections or requisitions whatsoever be insisted on upon which the Vendor shall be unable or unwilling to satisfy or comply with;
 - (4) consents that the vendor is required to obtain in relation to the sale;
 - (5) objections, demands, requirements, or requisitions whatsoever be made by any person upon the vendor which the vendor is unwilling to satisfy or comply with; or
 - (6) lawful sale of the property by any other party, and that sale is binding on the vendor.
- then the vendor may in its discretion:
- (a) by notice in writing to the purchaser cancel the contract evidenced by this agreement; or
 - (b) elect, by notice in writing to the purchaser, to pursue the removal or satisfaction of the matter.
- 10.2 In the event that the vendor elects under subclause 10.1(6)(b) to pursue the removal or satisfaction of the matter and that removal or satisfaction is not available by the settlement date, then, the settlement date shall be deferred to that date being the earlier of:
- (1) three (3) working days after the vendor notifies the purchaser, in writing, that it has obtained the appropriate registrable withdrawal, discharge or satisfaction; or
 - (2) ninety (90) days after the date of the auction or such later date as the parties may agree.
- 10.3 If at any time during any negotiation or litigation for removal or satisfaction of a matter specified in subclause 10.1 it becomes apparent to the vendor that it is not going to be able to secure or obtain the appropriate withdrawal, release or satisfaction on terms satisfactory to it (in its discretion), then, the vendor by notice in writing to the purchaser may cancel this agreement.
- 10.4 Nothing expressed or implied in subclauses 10.2 or 10.3 shall compel or oblige the vendor to pursue litigation to secure the appropriate withdrawal, discharge, release or satisfaction nor shall the vendor be obliged or compelled to expend moneys or make payment or provide other consideration to obtain or secure such withdrawal, discharge, release or satisfaction, unless the vendor, in its absolute discretion, agrees to do so.
- 10.5 If the vendor is unable to obtain the appropriate withdrawal, discharge, release or satisfaction of the matter by the date specified or agreed in subclause 10.2 then, but not otherwise, the purchaser may by notice in writing to the vendor cancel this agreement.
- 10.6 In no circumstances shall the vendor be liable to the purchaser for damages or compensation in the event that settlement is delayed pursuant to the provisions of this clause 10.0. In the event that the vendor (under subclauses 10.1 or 10.3) or the purchaser (under subclause 10.5) cancels this agreement, then the purchaser shall be entitled to a refund of its deposit (without interest or costs) and neither the vendor nor purchaser shall have any further right or claim against the other.

11.0 UNIT TITLE PROVISIONS

Unit Titles

- 11.1 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.
- 11.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
 - (2) 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.
 - (3) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor is the vendor aware that there are any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
 - (4) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 11.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, and if the vendor does not provide the pre-settlement disclosure statement under section 147, or any additional disclosure statement under section 148 (if requested) in accordance with the requirements of subclause 11.1, the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - (2) elect that settlement shall still take place on the settlement date.
- 11.4 If the property is a unit title, each party specifies that:
- (1) the facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Act; and
 - (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Act.
- 11.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 5.7(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

12.0 NOTICE TO COMPLETE AND REMEDIES ON DEFAULT

Default in Settlement

- 12.1 If the sale is not settled on the settlement date, other than by reason of default of the vendor, the vendor may at any time thereafter serve on the purchaser notice in writing to settle in accordance with this clause.
- 12.2 Upon service of a settlement notice, the purchaser 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 the vendor.
- 12.3 If the purchaser does not comply with the terms of a 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 the sale of the property to the purchaser and pursue any of the following remedies namely:
 - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser;
 - (ii) sue the purchaser for damages;
 - (iii) resell the property whether by auction or by private contract and either for cash or on credit and on such conditions as the vendor may think proper with power to vary any contract for sale and to buy in at any auction and resell.
 - (2) The damages claimable by the vendor under subclause 12.3(1)(b) above 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 (1) year from the date by which the purchaser must settle 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 date of settlement of such resale;
 - (b) all costs and expenses reasonably incurred in any resale or attempted resale;
 - (c) all outgoings and maintenance expenses in respect of the property from the settlement date to the date of the settlement of such resale.
 - (3) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 12.4 Nothing in this clause shall preclude the vendor from suing for specific performance without giving a settlement notice.
- 12.5 In serving a settlement notice under this clause the vendor shall not be in breach of an essential term by reason only of failure to be ready and able to settle upon the expiry of that notice.
- 12.6 The vendor may at the request or with the consent of the purchaser extend the term of the settlement 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 through this clause stipulated the extended period of notice in lieu of the period otherwise applicable, and time shall be of the essence of the contract accordingly. An extension may be given either before or after the expiry of the period of the settlement notice. Any extension shall not be binding upon the vendor unless given in writing by the vendor.

13.0 NON-MERGER

- 13.1 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) registration of the transfer of title to the property.

14.0 AGENT

- 14.1 If the name of a licensed real estate agent is named in 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.
- 14.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

15.0 GOODS AND SERVICES TAX

- 15.1 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 settlement date;
 - (3) where any GST is not so paid to the vendor the purchaser shall pay to the vendor:
 - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST.
 - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 5.7(1).
- 15.2 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.
- ~~15.3 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.~~
- 15.4 (1) Without prejudice to the vendor's rights and remedies under subclause 15.1, 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 12.1.
- (3) The vendor may give a settlement notice under subclause 12.1 with a notice under this subclause.

16.0 ZERO-RATING

- ~~16.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement is correct at the date of this agreement.~~
- 16.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 16.3 Where the particulars stated on the front page and in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 16.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 1 or they have altered.
- 16.5 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 and of any other relevant particulars in Schedule 1 which may not have been completed by the purchaser as soon as practicable and in any event no later than two (2) working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 16.6 If
- (1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and
 - (2) that part is still being so used at the time of the supply under this agreement,
- the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 16.7 If
- (1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
 - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in subclauses 16.3 and 16.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.

17.0 SUPPLY OF A GOING CONCERN

- 17.1 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 0%.
- 17.2 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 15.0 of this agreement shall apply.

18.0 COUNTERPARTS

- 18.1 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.

19.0 TIME OF THE ESSENCE

- 19.1 In respect of the performance of the obligations of the purchaser under this agreement time is of the essence of the contract.

FURTHER TERMS

See attached



SCHEDULE 1

(GST Information – see clause 16.0)

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

Section 1 mortgagor's

1.	The vendor's registration number (if already registered):	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/ No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 3 and 4 is "No", go to question 7

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

If the answer to question 7 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

8.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
9.	The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 8 and 9 is "No", there is no need to complete this Schedule any further.

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

MEMORANDUM OF CONTRACT

Date of Memorandum:

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

PURCHASER'S NAME: _____ and/or nominee ("the purchaser")

became the purchaser of the property by being the highest bidder.

The Vendor agrees to sell and the purchaser agrees to purchase the property for the purchase price stated below in accordance with these Particulars and Conditions of Sale.

Purchase price: \$ _____ **Plus GST (if any) ~~OR Inclusive of GST (if any)~~**
If neither is deleted the purchase price includes GST (if any)

Deposit: \$ _____

Rate for Late Settlement: 20 _____ % per annum

Settlement Date: 15 working days from the date of this Agreement.

As agent of the vendor, the auctioneer, by signing this memorandum, confirms the sale of the property to the purchaser on the above terms and acknowledges receipt of the deposit.

Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a licensed 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.

Where this agreement relates to the sale of a Unit Title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010.

Signature of Purchaser(s) or Auctioneer

Signature of Vendor(s) or Auctioneer

THIS IS AN AUCTION BY A MORTGAGEE. BEFORE BIDDING AT THE AUCTION YOU ARE STRONGLY ADVISED TO OBTAIN PROFESSIONAL ADVICE REGARDING THESE TERMS AND CONDITIONS.

NON-REGISTRAR'S PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION (MORTGAGEE)

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DATE:

VENDOR:

Property Funding Trustees Limited, as first mortgagee

Contact Details:

130 Saint Georges Bay Road, Parnell, Auckland

VENDOR'S LAWYERS:

Firm: Duncan Cotterill

Individual Acting: Tim Adams

Contact Details:

tim.adams@duncancotterill.com

09 374 7176

Level 1, 37 Galway Street, Auckland

PURCHASER:

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

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LICENSED REAL ESTATE AGENT:

PGG Wrightson

Agent's Name: Adrian van Mil

Manager:

Salesperson:

Contact Details:

avanmil@pggwrightson.co.nz

Further Terms of Sale – 196 Clevedon Kawakawa Road, Clevedon

24 Deposit

- 24.1 The Deposit shall be payable to the Vendor's solicitor's trust account (details of which are set out below) in the manner set out in clause 3. The Vendor's solicitor shall hold the Deposit in its trust account as stakeholder pending settlement or cancellation of this Agreement. Interest on the Deposit (less withholding tax (if applicable) and bank commission will accrue to the party entitled to the Deposit under this Agreement.

Account Name

Duncan Cotterill Trust Account

Bank Account Number

12-3165-0011115-03

Banks Physical Address

ASB Bank Limited
12 Jellicoe Street
Auckland
New Zealand

Swift Code

ASBBNZ2A

25 Purchaser Acknowledgements

- 25.1 The Purchaser acknowledges that the Vendor shall not be under any obligation:
- 25.1.1 to make any apportionment at the Settlement Date of rents, bonds or other income of the Property unless the same has been paid to the Vendor;
 - 25.1.2 to provide details of any tenancy, licence or occupation agreement relating to the Property unless the details are known to the Vendor;
 - 25.1.3 to make available to the Purchaser keys, electronic door openers, or security system codes relating to the Property unless the same are actually in the possession of the Vendor; and
 - 25.1.4 to provide on settlement any original leases, tenancy agreements or bonds unless the same are in the Vendor's actual possession.
- 25.2 The Property is sold subject to the existing tenancies or occupations (if any) including by the mortgagor or persons claiming through the mortgagor, and the Vendor shall not be required to give vacant possession.

26 Easement and Encroachments

- 26.1 The Property is sold subject to all interests (excluding mortgages 12252672.2, 12422504.2 and caveat 13129970.1) registered on the title to the Property and all easements (if any) affecting the same and the Vendor shall not be liable if it shall be found that:
- 26.1.1 any building or erection on the Property encroaches upon an adjoining property;
 - 26.1.2 any building or erection encroaches upon the Property; or
 - 26.1.3 any fence is not erected upon the true boundary; or
 - 26.1.4 there are no boundary or corner pegs setting out the boundary of the Property.

27 Warranties, Acknowledgements and Exclusions

- 27.1 Except as expressly set out herein, all other warranties, representations, conditions, undertakings, rights, duties or liabilities, whether by implication or law or otherwise, of the Vendor are hereby expressly excluded. The Purchaser relies on its own judgement in executing this Agreement and all representations are hereby expressly excluded.
- 27.2 The Property shall be taken to be correctly described. No error, mis-statement or mis-description shall annul the sale and in respect of any such error, mis-statement or mis-description, the Purchaser shall not be entitled to rescind the contract or to claim any compensation, reduction in price, or other remedy in respect of any such errors or mistakes.
- 27.3 The Purchaser acknowledges that:
- 27.3.1 the Purchaser has inspected the Property and buys it:
 - (a) "as is, where is"; and
 - (b) solely in reliance on the Purchaser's own judgement;
 - 27.3.2 the Purchaser does not rely on:
 - (a) any representation of the Vendor or any of the Vendor's agents as to any matter whatever pertaining to the Property or to the use to which it may be put; or
 - (b) the contents of any advertising or information memorandum issued in respect of the Property; and
 - 27.3.3 the Property comprises only the property specified on the front page of this Agreement;
 - 27.3.4 the Vendor shall:
 - (a) have no liability to complete any works about the Property; and

- (b) not be obliged to procure a code compliance certificate, building warrant of fitness or any other Local Authority certificate or clearance in respect of the Property, the building or any other improvements erected on the Property; and
- (c) not be under any obligation to provide vacant possession of the Property;

27.3.5 the Purchaser:

- (a) accepts the title to the Property absolutely; and
- (b) shall pay the Purchase price and all other moneys due in full on the Settlement Date without deduction of set-off or claim for compensation or damages; and
- (c) shall not be entitled to make any claim against the Vendor whatsoever or howsoever arising in respect of the construction of any buildings or other improvements;

27.3.6 the Vendor does not give any warranty whatsoever in relation to the construction, weather tightness or otherwise of any buildings erected on the Property or which the Property forms part of;

27.3.7 the Vendor does not give any warranty whatsoever in relation to the accuracy of any matter or fact in this Agreement or in any advertisement of sale or any statement by any auctioneer or real estate agent or other agent of the Vendor; and

27.3.8 the Property shall be at the sole risk of the Purchaser from the date of this Agreement and no damage or destruction of the Property shall entitle the Purchaser to claim compensation or cancel this Agreement.

27.4 The Purchaser:

27.4.1 releases the Vendor from and disclaims all claims, whether in contract (including but not limited to claims for breach of express or implied representations or warranties) or tort or otherwise (including but not limited to the Fair Trading Act 1986) in respect of or arising from this Agreement or any statement made at any time leading up to the execution of this Agreement; and

27.4.2 acknowledges that except as to any mandatory statutory provisions of the Consumer Guarantees Act 1993 which cannot be contracted out of, all guarantees, warranties and conditions expressed or implied by that Act are hereby expressly excluded.

27.5 If a Purchaser is permitted to make any claim in respect of the Property or this Agreement, then such claim must be advised to the Vendor in writing within two (2) months of the Settlement Date, failing which the Purchaser shall have no rights to pursue any such claim.

27.6 On settlement, there may be chattels at the Property which are not owned by the Vendor (**Third Party Chattels**). Settlement may result in the Purchaser taking

possession of Third Party Chattels by virtue of becoming the owner of the Property. The Vendor:

27.6.1 gives no warranty as to ownership or title of the Third Party Chattels nor that they are free from charges or security interests; and

27.6.2 shall not be required to remove any Third Party Chattels from the Property prior to settlement.

28 Lowest Purchase Price

28.1 The Purchase Price does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of the definition of "consideration" in section EW 32 of the Income Tax Act 2004 is equal to the Purchase Price of the Property.

28.2 The Parties agree that the lowest price the parties would have agreed on for the Property on the date the agreement was entered into, if payment had been required in full at the time the first right in the Property is transferred, is the Purchase Price.

29 Execution

29.1 If the Purchaser is a company, partnership, society, trust or other entity, the purchaser warrants that the signatory or signatories of the purchaser have the authority to bind the purchaser to this Agreement.

30 Confidentiality

30.1 The Purchaser shall maintain as confidential at all times, and shall not at any time, directly or indirectly:

30.1.1 disclose or permit to be disclosed to any person; or

30.1.2 use for itself; or

30.1.3 use to the detriment of the other party;

any Confidential Information except:

30.1.4 as required by the law; or

30.1.5 as is already or becomes public knowledge, otherwise than as a result of a breach by the Purchaser disclosing or using that Confidential Information or any provision of this Agreement; or

30.1.6 as authorised in writing by the Vendor; or

30.1.7 to the extent reasonably required by this Agreement (and, without limiting the effect of this clause), the Purchaser may disclose Confidential Information only to such of their professional advisors, on a strict "need to know" basis, as is reasonably required for the implementation of this Agreement).

- 30.2 For the purposes of clause 30, “**Confidential Information**” means any information:
- 30.2.1 relating to the terms or existence of this Agreement; or
 - 30.2.2 relating to the Property; or
 - 30.2.3 disclosed by the Vendor to the Purchaser on the express basis that such information is confidential; or
 - 30.2.4 which might reasonably be expected by the Vendor to be confidential in nature.

31 No Offer

- 31.1 This Agreement does not constitute an agreement to sell the Property by the Vendor to the Purchaser until it has been signed by the Vendor. Nothing in this Agreement imposes any obligation on the Vendor until it has actually signed the Agreement. The Vendor may withdraw the Property from sale at any time prior to the Vendor executing this Agreement, and if withdrawn, the Purchaser shall have no claim either in law or equity against the Vendor.

32 Conflict of Provisions

- 32.1 If there is any inconsistency or conflict in interpretation or application between the General Terms of Sale and the Further Terms of Sale of this Agreement, the Further Terms of Sale will prevail.