

**AGREEMENT FOR SALE  
AND PURCHASE OF UNIT  
AT GRANDVIEW, TAUPO**

**HARKNESS & PETERSON  
SOLICITORS  
WELLINGTON**

**Important Notice to All Purchasers:**

This is an important document. You should seek independent professional advice before signing.

**CONTENTS**

1. Definitions and Interpretations
2. Payment and Investment of Deposit
3. Payment of Purchase Price
4. Completion of Development
5. Settlement and Possession
6. Apportionment of Outgoings and Incomings
7. Conditions and Force Majeure
8. Title, Boundaries, etc
9. Risk and Insurance
10. Vendor's Warranties and Undertakings
11. Default
12. Power of Attorney
13. Sales of Units Generally
14. Goods and Services Tax
15. General
  1. Unit Title Plan
  2. Plans and Specifications
  3. Scheme Plan

AGREEMENT dated the

day of

200

**PARTIES**

THE SCENIC VENTURES LIMITED ("Vendor")

\_\_\_\_\_  
 ("Full Name") ("Purchaser")

**PARTICULARS AND CONDITIONS OF SALE  
 SCENIC VENTURES LTD, ACACIA BAY, TAUPO, NEW ZEALAND**

UNIT	
Unit	Purchase Price NZ\$ (inclusive of GST)
<b>Unit</b> Principal Unit No. Accessory unit(s) No/s.	<b>Purchase Price (total):</b> \$
<p><b>Deposit:</b></p> <p>(a) the sum of \$10,000.00 on the date of this Agreement;            (b) a sum which when added to the deposit referred to in (a) equates to 10% of the Purchase Price on the date being 20 Business Days from the date of this Agreement.</p> <p><b>Payment of Balance of Purchase Price:</b></p> <p>The balance of the Purchase Price shall be paid and satisfied in cash in one sum on the Settlement Date.</p> <p>It is agreed that the Vendor sells and the Purchaser purchases a stratum estate in freehold within the meaning of the Unit Titles Act 1972 in the Unit upon the Particulars and Conditions of Sale set out above and the further Particulars and Conditions of Sale attached.</p>	

**EXECUTION**

\_\_\_\_\_  
**SCENIC VENTURES LIMITED**  
 by its duly authorised representative

\_\_\_\_\_  
**SIGNATURE OF PURCHASER**

**Solicitor for the Vendor:**

J Hoggard

\_\_\_\_\_  
 Harkness & Peterson

PO Box 342

DX SX 11186

WELLINGTON

Phone: 04 4738774

Fax: 04 4738845

Email: jhoggard@mhp.co.nz

**Solicitor for the Purchaser:**

\_\_\_\_\_

---

---

Phone:  
Fax:  
Email:

**Vendor's Details**

**Scenic Ventures Ltd**

Address: PO Box 3139  
Wellington

Phone: 04 4721666

Fax: 04 4721665

Attention: Tony Seager

Mobile: 021 458935  
Email:

**Purchaser's Details**

Purchaser:

Address:

Phone:

Fax:

Attention:

Mobile:

Email:

**FURTHER PARTICULARS AND CONDITIONS OF SALE OF UNIT**

**1. DEFINITIONS AND INTERPRETATION**

**Definitions**

1.1 In this Agreement the following words shall have the meanings set out opposite them:

“Act”	the Unit Titles Act 1972.
“Agreement”	the Particulars and Conditions of sale of the Unit and the Further Particulars and Conditions of Sale of the Unit set out in this Agreement, together with all schedules <b>attached</b> .
“Body Corporate”	the Body Corporate to be incorporated upon deposit of the Unit Title Plan.
“Building”	the Buildings erected or to be erected on the Land of which the Unit forms part generally in accordance with the Plans and Specifications.
“Business Day”	any day in New Zealand other than: <ul style="list-style-type: none"> <li>(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, Waitangi Day and the Provincial Anniversary of Auckland: and</li> <li>(b) a day in the period commencing with the 24<sup>th</sup> day of December in any year, and ending with the 5<sup>th</sup> day of January in the following year.</li> </ul> <p>A Business Day shall be deemed to commence at 9.00am and to terminate at 5.00pm (New Zealand time).</p>
“Certificate of Practical Completion”	the Certificate which is issued by the Vendor’s Architect when the Unit is at a stage of Practical Completion.
“Consent”	approval of the Scheme Plan and the Unit Title Plan by the Relevant Authority and all related statutory permits consents and approvals.
“Date of Practical Completion”	the date on which the Unit is at a stage of Practical Completion.
“Deposit”	the amount referred to in clause 2.1.
“Development”	the construction of the Building and other works on the Land in substantial accordance with the Plans and Specifications.
“GST”	goods and services tax chargeable in accordance with the GST Act.
“GST Act”	the Goods and Services Tax Act 1985.
“Interest Rate for Late Settlement”	16% per annum.
“Land”	an estate in fee simple comprising approximately 2.9071 hectares being Lot 15 on DP 350755 comprised in Certificate of Title 207818 subject to all registered interests shown on the Certificate of Title
“Particulars and Conditions of Sale”	the Particulars and Conditions of Sale and the further Particulars and Conditions of Sale set out in this Agreement.
“Plans and Specifications”	the Plans and Specifications annexed to this Agreement as Schedule 2.
“Practical Completion”	the stage when the Unit, in the opinion of the Vendor’s Architect acting in a professional capacity and acting impartially, is complete so that it is capable of being used by the Purchaser for the purposes for which it was intended without material inconvenience notwithstanding that there may be items of a comparatively minor nature that require finishing, alteration or remedial action and notwithstanding the fact that any other unit or any other part of the Development may not have reached practical completion at that time.

“Purchaser”	the person, persons or corporation named as the Purchaser on the front page of this Agreement and his, her or its personal representatives administrators, liquidators or successors.
“Purchase Price”	the Purchase Price specified in the Particulars and Conditions of Sale.
“Relevant Authority”	any government, local, statutory or non-statutory authority or body having jurisdiction over the Land or over the Building.
“Scheme Plan”	the scheme plan to be deposited in accordance with the terms of this Agreement, a draft copy of which is <b>attached</b> as Schedule 3.
“Settlement Date”	(a) the fifth Business Day after the date the Purchaser (or the Purchaser’s solicitor) receives the Certificate of Practical Completion; or (b) the fifth Business Day after the date that a search copy (as defined by section 172A of the Land Transfer Act 1952) of the Certificate of Title to the Unit is available; (c) the fifth Business Day after the date that a final code compliance certificate covering the Unit is available.  whichever is the later.
“Stakeholder”	Harkness & Peterson , Solicitors, Wellington
“\$”	the lawful currency of New Zealand.
“Unit”	the Principal and Accessory Unit(s) described in the Particulars and Conditions of Sale.
“Unit Title Plan”	the Unit Title Plan to be deposited in accordance with the terms of this Agreement and the Act, a draft copy of which is <b>attached</b> as Schedule 1.
“Vendor”	Scenic Ventures Ltd and its successors and assigns.
“Vendor’s Architect”	the Architect appointed by the Vendor in respect of the Development.

#### **Governing Law**

- 1.2 This Agreement is governed by the laws of New Zealand, and the parties submit to the exclusive jurisdiction of New Zealand courts in respect of any dispute or proceeding arising out of this Agreement.

#### **Heading**

- 1.3 Headings, subheadings and the table of contents are included for ease of reference and none of the provisions of this Agreement are to be construed or interpreted by reference to such headings, subheadings or the table of contents.

#### **Conflict**

- 1.4 If there is a conflict between the provisions of this Agreement and the provisions of any of the schedules to this Agreement, the provisions of this Agreement shall prevail; otherwise the schedules to this Agreement shall have the same force and effect as if they were set out in the body of this Agreement.

#### **Statutes and Regulations**

- 1.5 References to statutes, regulations, ordinances, or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing them.

#### **Language**

- 1.6 All communications and documents relating to and in connection with this Agreement shall be in English.

#### **Amendments**

- 1.7 This Agreement may only be amended, supplemented or novated by the parties in writing.

#### **Words, References and Derivatives**

- 1.8 In this Agreement, unless the context otherwise requires:
- (a) words importing a particular gender include any other gender.

- (b) the singular shall include the plural and vice versa.
- (c) "person" includes a body corporate;
- (d) whenever a body corporate is a party, the words designating such body corporate shall extend to and include such body corporate, its successors and permitted assigns;
- (e) where two or more parties are bound by a provision then, whether those parties are referred to individually or together, the provisions shall bind those parties jointly and each of them severally;
- (f) derivatives of any defined term have a corresponding meaning to that of the defined term.
- (g) references to clauses and schedules are references to clauses in the Agreement.

#### **New Zealand Dollar**

- 1.9 The Purchaser and the Vendor acknowledge that the Purchase Price, Deposit and any other sums referred to in this Agreement are expressed to be and are payable in New Zealand Dollars.

## **2. PAYMENT AND INVESTMENT OF DEPOSIT**

### **Deposit Payment**

- 2.1 The Purchaser shall pay to the Stakeholder a Deposit in the manner set out on the front page of this Agreement. The Deposit shall be payable to the Stakeholder to be held in the Stakeholders trust account with a registered bank, in an account in the name of the Vendor (time being of the essence). The Deposit may be placed on Deposit with interest accruing to the Vendor. Nevertheless the Vendor shall not be entitled to cancel this Agreement for non-payment of the Deposit unless the Vendor has first given to the Purchaser three Business Days notice in writing of the Vendor's intention to cancel and the Purchaser has failed within that time to remedy the default. No notice of cancellation shall be effective if before notice is received by the Purchaser or the Purchaser's solicitor the Deposit is paid.

### **Deposit Release**

- 2.2 On the Settlement Date or, if the Vendor becomes entitled earlier, the Deposit shall be paid to the Vendor, and this clause is sufficient authority to the Stakeholder to make that payment.

### **Stakeholder**

- 2.3 The parties acknowledge that the Stakeholder shall hold the Deposit as stakeholder for the benefit of both parties until this agreement becomes unconditional or is avoided for non fulfilment of any condition under clause 7.1.

### **No Stakeholder Liability**

- 2.4 The Stakeholder will not be liable to any party by reason of any delay in investing the Deposit or any failure on the part of the bank, or any costs deducted by the bank for handling the Deposit or any interest thereon.

## **3. PAYMENT OF PURCHASE PRICE**

### **Payment**

- 3.1 The Purchaser shall pay the Purchase Price set out in the Particulars and Conditions of Sale as follows:
- (a) the Deposit to the Stakeholder in the manner set out in clause 2.1 of this Agreement (time being of the essence); and
  - (b) the balance to the Vendor in the manner set out in the Particulars and Conditions of Sale.

## **4. COMPLETION OF DEVELOPMENT**

### **Subdivision**

- 4.1 To achieve the Development the Vendor shall subdivide the Land substantially in accordance with the Scheme Plan and the Unit Title Plan pursuant to the provisions of the Act.
- 4.2 The Purchaser acknowledges that the Vendor is completing the Development in two stages and that the Unit will be constructed as part of the first stage of the development. Stage One comprises Units 1 to 11 and Stage Two Units 12 to 21. The Purchaser will not object to any aspect of Stage Two of the Development and will

provide any consents or signatures required by the Vendor to obtain any Consents required for Stage Two of the Development.

- 4.3 In constructing Stage Two of the Development the Vendor will be entitled to access the common areas of the Development provided that in so doing the Vendor will cause as little disturbance as possible to the Purchaser.
- 4.4 The Vendor will make good any damage caused to the common areas or the Unit during construction of Stage Two of the Development.
- 4.5 If the Purchaser sells the Unit prior to construction of Stage Two the Purchaser will include a condition in the sale agreement binding the subsequent purchaser to the covenants in this clause.
- 4.6 The Purchaser acknowledges that Stage Two will be built within the Future Development Unit title/s to issue as per the Unit Title Plan and that the Vendor has given no assurance or guarantee when Stage Two will be completed or that the Vendor will be proceeding with Stage Two. The Vendor shall determine in its sole and absolute discretion whether or not to proceed with Stage Two.

#### **Construction**

- 4.7 The Vendor shall complete in a proper and workmanlike manner the Unit and the Building substantially in accordance with the Plans and Specifications and the Consent in a timely manner. The Vendor will not be responsible for any delays beyond its reasonable control in securing consents or permits in respect of the Unit and weather conditions, strikes, lock-outs, accidents, unavailability of any material, finish, product or system referred to in the Plans and Specifications. If it becomes necessary or expedient for the Vendor to undertake or incorporate any amendment in respect of anything shown or described in the Plans and Specifications then the Vendor may make such amendment or may substitute an alternative material, finish, product or system of a kind and nature as near as reasonably practicable to the specified material, finish, product or system.

#### **Replacement Materials**

- 4.8 If any materials set out in the Plans and Specifications are unprocurable or, owing to supply constraints, cannot be procured on reasonable terms or in a timely manner, or the use thereof is prohibited by any statute, regulation or by-law, the Vendor shall substitute any materials authorised by the Purchaser, or failing such authorisation materials which are of a value and quality as near as reasonably practicable to the specified materials.

#### **Maintenance**

- 4.9 There shall be a maintenance period for the Unit of 60 days from the Settlement Date. The Vendor shall rectify and make good at its cost during or within a reasonable time from expiry of such maintenance period any defects, shrinkage or other faults in the Unit due to faulty materials or workmanship notified by the Purchaser or his agent in writing to the Vendor prior to expiry of such maintenance period. In the case of a dispute the matter will be determined by a Master Builders' Association appointee acting as an expert, whose decision shall be final and binding on the parties.

#### **No Withholding etc**

- 4.10 Without prejudice to the provisions of clause 4.9 the Purchaser shall not:
- (a) withhold the balance of the Purchase Price (or any part of it) on Settlement Date by reason of any defect, shrinkage or fault in the Unit, whether due to defective materials, workmanship or any other cause;
  - (b) claim set-off, compensation, damages or indemnity for the obligation referred to in clause 4.9, other than by way of damages (which will be limited to reasonable rectification costs) after a failure of the Vendor to perform its obligations (if any) under clause 4.9;
  - (c) make any objection, requisition or claim for compensation because of any alteration to the Plans and Specifications or finishes which are made because of a requirement or direction of the Relevant Authority or because of the practical necessities of construction including (but not limited to) requirements of good building practice or the availability of materials, provided that this limitation shall not apply to an alteration which has a material adverse effect on the use of the Unit.

#### **Completion after Settlement**

- 4.11 The Purchaser acknowledges that the Vendor shall within a reasonable time after Settlement Date have the right (subject to causing as little inconvenience as is reasonably practicable) to complete the Building including the rectification of all defects.

#### **Assignment of Warranties**

- 4.12 The Vendor shall on the Settlement Date assign to the Body Corporate (for the benefit of all Unit owners) the benefit of all warranties and guarantees relating to the supply of services, materials and equipment

incorporated or installed in all of the units in the Development and which are capable of assignment. If any warranties or guarantees are incapable of assignment, the Vendor shall hold such warranties and guarantees on trust, at the direction of and for the benefit of the Body Corporate.

## 5. SETTLEMENT AND POSSESSION

### Settlement Date

5.1 Settlement shall be effected and completed on the Settlement Date.

### Time for Settlement

5.2 Settlement shall be effected before 3.00 pm on the Settlement Date.

### Interest Rate for Late Settlement

5.3 If for any cause whatsoever save the default of the Vendor any portion of the Purchase Price or any other money is not paid upon the due date for payment the Purchaser shall pay to the Vendor interest at the Interest Rate For Late Settlement on such unpaid money from the due date for payment until actual payment; but nevertheless this stipulation is without prejudice to any of the Vendor's rights or remedies including the right to claim for additional expenses and damages. For the purposes of this clause a payment made on a day other than a Business Day or after termination of a Business Day or after the time for settlement on the Settlement Date (as the case may be) shall be deemed to be paid on the next following Business Day and interest shall be computed accordingly.

### Settlement

5.4 Upon the balance of the Purchase Price interest and other money if any due under this Agreement being paid or satisfied as provided in this Agreement, the Vendor shall concurrently hand to the Purchaser a registrable transfer instrument of the Unit, to be prepared by and at the expense of the Purchaser and tendered to the Vendor or the Vendor's solicitor a reasonable time prior to the Settlement Date together with all other instruments in registrable form which may be required for the purpose of registering the transfer instrument together with all instruments of title.

### Transfer

5.5 The Vendor may at the Vendor's option prepare the transfer instrument at the purchaser's cost and provide the same to the Purchaser for approval.

## 6. APPORTIONMENT OF OUTGOINGS AND INCOMINGS

### Apportionment

6.1 All outgoing and incoming in respect of the Unit will be apportioned on the Settlement Date so that the Vendor bears and pays all outgoing up to and including the Settlement Date and after that date the Purchaser will bear and pay all outgoing in respect of the Unit and so that the Vendor receives all incoming up to and including the Settlement Date and after that date the Purchaser will receive all incoming in respect of the Unit.

### Assessments

6.2 Until separate assessments of outgoing including rates are issued or available in respect of the Unit, the Unit will be treated as liable for the same proportion of those outgoing levied or paid against the Land or against the Unit and other units comprised in the Building as the unit entitlement of the Unit bears to the total unit entitlement of all units on the Unit Title Plan.

## 7. CONDITIONS AND FORCE MAJEURE

### Conditions

7.1 This agreement is conditional upon:

- (a) the Vendor determining in its sole and absolute discretion by 31 December 2006 that it has achieved such minimum level of sales of units which shall allow the Vendor to commence and undertake the Development.
- (b) the Consent being obtained on terms and conditions entirely satisfactory to the Vendor by 31 December 2007 subject to the provisions of clause 7.6.
- (c) the Vendor obtaining issue of a separate certificate of title for the Unit.

**Benefit of Conditions**

- 7.2 The conditions contained in clauses 7.1 (a) and (b) are inserted for the benefit of the Vendor and may be waived by the Vendor.

**Non Satisfaction**

- 7.3 If the conditions mentioned in clauses 7.1 (a) and (b) are not fulfilled or waived by the Vendor by the date for fulfillment (time being of the essence) then either party may thereafter at any time before the conditions are fulfilled or waived cancel this Agreement.

**Force Majeure**

- 7.4 In the event of war, civil disorders, acts of Government or other factors beyond the reasonable control of the Vendor whether similar or not ("specified event") shall prevent the Vendor from commencing or continuing construction of the Building or render it impracticable for the Vendor to commence or continue construction of the Building, then the Vendor may at its option by notice in writing to the Purchaser advise of the specified event and cancel this Agreement.

**Deposit on Cancellation**

- 7.5 If this Agreement is cancelled pursuant to this clause 7, the Purchaser shall be entitled to the return of the Deposit together with interest earned (if any) on the Deposit (less withholding tax)

**Date for satisfaction of condition regarding Consent**

- 7.6 Notwithstanding the date for satisfaction of the condition contained in clause 7.1 (b) of this Agreement, where any application or hearing has proceeded beyond Council hearing stage and is:

- (a) awaiting Council decision; or
- (b) in the position that Council's decision has been received, but there remains the possibility of a valid appeal or appeals being lodged by the Vendor or other parties; or
- (c) an appeal has been lodged and an Environment Court hearing is awaited, or a hearing has been held and a decision is awaited; or
- (d) time is required to satisfy a condition imposed by either the Council or the Environment Court.;

then the time for satisfaction shall be automatically extended until 5 Business Days after Final Determination.

Notwithstanding the foregoing, the date for satisfaction of the condition contained in clause 7.1 (b) shall be postponed by 1 day for each day that Council's decision on the Consent exceeds the statutory time limits for assessment of the necessary resource consent under the Resource Management Act 1991.

For the purpose of this clause 7.6, "Final Determination" means:

- (i) In the case of clause 7.6 (b), that the Vendor has established by such enquires and procedures as it shall entirely in its discretion, determine as appropriate, that the period for filing appeals by any party has expired by not less than 7 Business Days and within these 7 Business Days, has received from the Environment Court confirmation in writing that no appeal has been lodged; or
- (ii) in the case of clause 7.6 (c) that a final decision of the Environment Court has been received by the Vendor; or
- (iii) In the case of clauses 7.6(d) that the condition has been fulfilled or bonded to the satisfaction of the Council or Environment Court as the case may be.

**8. TITLE, BOUNDARIES, ETC****Acknowledgements as to Title**

- 8.1 The Purchaser acknowledges that a separate certificate of title has not yet been issued for the Unit.

**Vendor to have Scheme Plan and Unit Title Plan approved to Deposit Scheme Plan and Unit Title Plan**

- 8.2 The Vendor shall, at the Vendor's expense in all things, as promptly as possible:

- (a) submit the Scheme Plan and the Unit Title Plan to the Relevant Authority for Consent;
- (b) implement the Consent;

- (c) complete all necessary work to enable deposit of the Scheme Plan and the Unit Title Plan;
- (d) deposit the Scheme Plan and Unit Title Pan at LINZ;
- (e) obtain a certificate of title to that Unit.

#### **Transfer**

- 8.3 The Purchaser shall not be entitled to a transfer of the Unit or to call for settlement in accordance with the provisions of this Agreement until:
- (a) all conditions precedent (if any) have been satisfied or waived; and
  - (b) the Vendor has not elected to exercise its right to cancel this Agreement; and
  - (c) the Certificate of Practical Completion has been issued; and
  - (d) a new certificate of title to the Unit has been issued, and a search copy (as defined by section 172A of the Land Transfer Act 1952) is available.

#### **No Warranty**

- 8.4 The Vendor gives no warranty to the Purchaser as to when the Scheme Plan and/or the Unit Title Plan will be deposited at LINZ, nor as to when the Purchaser will be able to register a transfer instrument of the Unit to the Purchaser.

#### **Requisitions**

- 8.5 Subject to the provisions of this Agreement the Purchaser is deemed to have accepted the Vendor's title and shall not raise any objections or requisitions on it.

#### **Easements, Encumbrances, Rights and Obligations**

- 8.6 The Vendor reserves the right to grant or receive the benefit of any easements, rights, leases or licences, building line restrictions or other encumbrances, rights or obligations which may be required in order to satisfy any conditions of any Consent, or which in the sole discretion of the Vendor are deemed to be necessary or desirable in respect of the Land. The Purchaser accordingly shall take title to the Unit subject to or with the benefit of any such easements, building line restrictions, encumbrances, rights or obligations, and shall execute all documents (with the inclusion of all terms considered reasonably desirable by the solicitors for the Vendor's) and do such acts and things as may be required to obtain the deposit of the Scheme Plan and/or the Unit Title Plan, the implementation of any such easements, rights, leases and licences, building line restrictions, encumbrances or other rights or obligations in respect of the Land or the Unit .

#### **Measurements**

- 8.7 All measurements and areas are subject to any variation which may be found necessary upon checking by the Relevant Authority, the Vendor's surveyor and LINZ and neither party shall be entitled (except as provided for in this clause) to bring any claim whatsoever against the other based on any such variation of measurements, nor shall either party be entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on such variation except in circumstances where the area of the Unit as indicated in the Unit Title Plan and the final measured area of the Unit (both being calculated in accordance with the same method of measurement) differ by more than 5%. If the final measured area of the Unit is more than 5% less than the area of the Unit indicated in the Unit Title Plan the Purchase Price for the Unit shall be adjusted down by agreement and failing agreement by arbitration under the Arbitration Act 1996. Notwithstanding any such claim the Purchaser shall pay to the Vendor on settlement the full amount required to settle without deduction, set-off or reservation on any account whatsoever.

#### **Variations to Unit Title Plan**

- 8.8 The Vendor may at any time alter the Scheme Plan and/or the Unit Title Plan and any subsequent plan relating to the Development (including the alteration, variation or cancellation of any proposed easement shown on any such plan) in such manner as the Vendor considers appropriate having regard to the circumstances, and except as provided in clause 8.7 the Purchaser shall not be entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on such alteration, variation or cancellation however that in respect of alterations which have a material adverse affect on the value or usefulness of the unit, then the Vendor must first seek the Purchaser's approval to such alteration. Such approval or otherwise must be given within 5 Business Days of a request for approval. If no response is received within the 5 Business Day period, then approval shall be deemed to be given.

### **Errors and Misdescriptions**

- 8.9 No error or misdescription of the Land or the Unit shall annul the sale but, unless the Purchaser's remedies are limited by this Agreement, compensation if demanded in writing before Settlement Date but not otherwise, shall be made or given as the case may require.

### **No Caveat**

- 8.10 The Purchaser shall not lodge a caveat against the Vendor's title to the Land prior to the deposit of the Unit Title Plan. If the purchaser does register a caveat against the certificate of title in respect of the Land, the Purchaser shall be liable for all costs incurred by the Vendor in connection therewith including the costs of removal of such caveat and the costs and expenses incurred directly or indirectly by any consequent delay in deposit of the Unit Title Plan, or completion of a settlement of a unit in the Development and the Purchaser shall withdraw the caveat forthwith upon being requested to do so by the Vendor. The Purchaser irrevocably appoints the Vendor the Purchaser's attorney to prepare, sign and register a withdrawal of any caveat, and the costs of so doing shall be payable by the Purchaser forthwith upon demand by the Vendor.

## **9. BODY CORPORATE**

### **Rules**

- 9.1 The Body Corporate shall have as its rules such rules as are determined by the Vendor at the Vendor's sole discretion having regard to the nature of the Development.

### **Administration Agreement**

- 9.2 The Vendor may procure the Body Corporate to enter into an agreement for the provision of secretarial services with such party as the Vendor may nominate prior to Settlement Date. The agreement shall be on usual and reasonable terms having regard to the nature of the Development.

### **Management Agreement**

- 9.3 The Vendor may procure the Body Corporate to enter into a management agreement with such party as the Vendor may nominate prior to Settlement Date. The management agreement shall be on usual and reasonable terms having regard to the nature of the Development and provide for a management fee on usual market terms.

## **10. RISK INSURANCE**

- 10.1 The Unit shall be at the sole risk of the Vendor until the Settlement Date. The Vendor shall insure the Building forming part of the Development against loss or damage by fire and/or earthquake to its full insurable value. In the event of any fire and/or earthquake all insurance moneys shall be paid to the Vendor and subject to the rights of any mortgagee and shall be applied in or towards the reinstatement of the Building to the stage of completion reached prior to such loss or damage occurring. It is acknowledged that any fire and/or earthquake shall constitute a "specified event" for the purposes of clause 7.4.

## **11. VENDOR'S WARRANTIES AND UNDERTAKINGS**

### **General**

- 11.1 The Vendor warrants and undertakes that:
- (a) At the date of this Agreement the Vendor has not received any notice or demand and has no knowledge of any requisition or outstanding requirements:
    - (i) imposed by any Relevant Authority; or
    - (ii) given by any person under the Resource Management Act 1991; or
 which directly or indirectly affects the Land, the Building or the Unit, and which has not been disclosed in writing to the Purchaser.
  - (b) At the date of this Agreement the Vendor has not given any consent of waiver in relation to any application under the Resource Management Act 1991 which directly or indirectly affects the Land, the Building or the Unit, and which has not been disclosed in writing to the Purchaser.
  - (c) If the Vendor receives any notice or demand from any Relevant Authority in relation to the Land, the Building or the Unit after the date of this Agreement but before the Settlement Date the Vendor will make payment or comply with such notice or demand forthwith and if the Vendor fails to do so the Vendor shall be liable for any penalty incurred.

11.2 The Vendor warrants and undertakes that on Settlement Date:

- (a) Any chattels and fixtures included in the sale are in good and operational order and are the unencumbered property of the Vendor;
- (b) All electrical and other installations in the Unit are free of any charge whatsoever;
- (c) There are no arrears of general or water rates or charges outstanding on the Unit;
- (d) Any adjustments are paid or will, immediately following Settlement Date, be paid to the dates shown on the Vendor's statement of apportionments and that all incomings receivable have been collected by the Vendor to the dates shown in the settlement of apportionments;
- (e) The Vendor will pay all charges for utilities supplied to the Unit down to Settlement Date;
- (f) Immediately after Settlement Date the Vendor shall give notice of sale in accordance with section 106 of the Rating Powers Act 1988 to the Relevant Authority and serve a copy of the notice of sale on the secretary of the Body Corporate;
- (g) Where the Vendor has done or caused or permitted to be done on the Building or the Unit any works for which a permit or building consent was required by law, such permit or consent was obtained for those works and they were completed in accordance with that permit or consent and in accordance with all the requirements of the Building Act 2004 and, where appropriate, a code compliance certificate pursuant to the Building Act 2004 has been obtained for the works.
- (h) Where, under the Building Act 2004 ("the Act") the Building or the Unit 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:
  - (i) the Vendor has fully complied with any requirements specified in any compliance schedule issued by a Relevant Authority under the Act in respect of the Building or the Unit; and
  - (ii) the Building or the Unit has a current warrant of fitness supplied under Sections 108 or 110 of the Act; and
  - (iii) the Vendor is not aware of any reason which would prevent a building warrant of fitness complying with Sections 108 or 110 of the Act from being supplied to the Relevant Authority when the building warrant of fitness is next due; and
  - (iv) the Relevant Authority has not issued any notice under Sections 108 or 110 of the 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 which could entitle the Relevant Authority to issue such a notice.
  - (v) 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 Land, the Building or the Unit;
  - (vi) There are no unregistered easements, covenants or agreements affecting the Land, the Building and the Unit except as disclosed in writing by the Vendor to the Purchaser.
  - (vii) The Building and the Unit are in good, sound repair and condition and there are no inherent defects.

**Unit Title**

11.3 The Vendor warrants as follows:

- (a) As at the Settlement Date, regular periodic contributions payable to the Body Corporate will have been paid in full.
- (b) Not less than two Business Days before the Settlement Date the Vendor will provide:
  - (i) 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; and
  - (ii) A certificate from the Body Corporate under Section 36 of the Unit Titles Act 1972. Any periodic outgoings shown in that certificate (not being amounts referred to in paragraph (d) of section 36) shall be apportioned.
- (c) There are no amounts owing by the Vendor under Sections 14, 33 or 34 of the Unit Titles Act 1972.

- (d) There are no unsatisfied judgments against the Body Corporate and no proceedings have been instituted against or by the Body Corporate.
- (e) No order or declaration has been made by any Court under Sections 28, 37, 40, 42, 43, 46 or 51 of the Unit Titles Act 1972.
- (f) The Vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
  - (i) the Vendor or the Purchaser incurring any liability under Sections 14, 33 or 34 of the Unit Titles Act 1972; or
  - (ii) any proceedings being instituted by or against the Body Corporate; or
  - (iii) any order or declaration being sought under Sections 28, 37, 42, 43, 46 or 51 of the Unit Titles Act 1972.

11.4 If the Vendor does not provide a copy of all insurance policies or certificates and the certificate under Section 36 of the Act in accordance with the requirements of subclause 11.3 (b) then the Purchaser may elect that a settlement shall still take place on Settlement Date, such election not being a waiver of any rights under subclause 11.4 (b)(ii) to a proper apportionment of outgoings.

## 12. DEFAULT

### Settlement Notice

12.1 If the sale is not settled on the Settlement Date either party may at any time thereafter (unless the Agreement has first been cancelled or become void) serve on the other party notice in writing (hereafter called a "Settlement Notice") to settle in accordance with this clause; but the Settlement Notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with the Settlement Notice or is not so ready able and willing to settle only by reason of the default or omission of the other party to the Agreement. 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.

### Service

12.2 Upon service of a Settlement Notice the party on whom the Settlement Notice is served shall settle within 5 Business Days after the date of service of the Settlement Notice (excluding the day of service) and in respect of that period time shall be of the essence but without prejudice to any intermediate right of cancellation by either party.

### Vendor's Remedies

12.3 If the Purchaser does not comply with the terms of the Settlement Notice served by the Vendor then:

- (a) without prejudice to any other rights or remedies available to the Vendor at law or in equity the Vendor may:
  - (i) sue the Purchaser for specific performance; or
  - (ii) cancel this Agreement and pursue either or both of the following remedies:
    - (aa) forfeit and retain for the Vendor's own benefit the entire Deposit paid by the Purchaser;
    - (bb) sue the Purchaser for damages;
- (b) where the Vendor is entitled to cancel the Agreement the entry by the Vendor into an unconditional contract for the resale of the Unit or any part thereof by the Vendor shall take effect as a cancellation of the Agreement by the Vendor if the Agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation;
- (c) the damages claimable by the Vendor under clause 12.3 (a)(i)(bb) shall include all damages claimable at common law and 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 when the Purchaser must settle in compliance with the settlement notice. The amount of that loss may include:
  - (i) 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;
  - (ii) all costs and expenses reasonably incurred on any resale or attempted resale;

- (iii) all outgoings (other than interest) on or maintenance expenses in respect of the Unit from the Settlement Date to the settlement of such resale;
- (d) any surplus money arising from a resale as aforesaid shall be retained by the Vendor.

#### **Purchaser's Remedies**

- 12.4 If the Vendor does not comply with the terms of a Settlement Notice served by the Purchaser then the Purchaser may without prejudice to any other rights or remedies available to the Purchase at law or in equity:
- (a) sue the Vendor for specific performance; or
  - (b) without prejudice to any right of the Purchaser to damages give notice in writing to the Vendor canceling the Agreement and requiring the Vendor forthwith to repay to the Purchaser the Deposit and any other money paid on account of the Purchase Price together with interest earned on such sums (less withholding tax) equal to a rate from time to time paid by the Stakeholder's bank for upon demand deposits (non compounded) lodged through a solicitor's trust account from the date or dates of payment by the Purchaser until repayment.

#### **Extension**

- 12.5 The party serving a Settlement Notice may at the request or with the consent of the other party extend the term of the Settlement Notice for one or more specifically stated period or 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 of the agreement accordingly. An extension may be given either before or after the expiry of the period of the Settlement Notice.

#### **Specific Performance**

- 12.6 Nothing in this clause shall preclude a party from suing for specific performance without giving a Settlement Notice.

#### **Expiry of Notice**

- 12.7 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 Settlement Notice.

### **13. POWER OF ATTORNEY**

- 13.1 In consideration of the Vendor entering into this Agreement the Purchaser does hereby irrevocably nominate constitute and appoint the Vendor or any nominee of the Vendor to be the true and lawful attorney of the Purchaser for the purposes of executing all documents and plans and to perform all acts matters and things as may be necessary to:
- (a) complete the Development;
  - (b) to exercise the Purchaser's voting rights with respect to the Unit until such time as the earlier of all certificates of title for the units in the Development have been issued or a period three years from the Settlement date.
- 13.2 Production of this power of attorney to the Purchaser's solicitor, agent or mortgagee from time to time and with out further requirement or reference to the Purchaser will comprise an irrevocable authorization and instruction to the person involved or the Purchaser's mortgagee to execute any consents sought by the Vendor in relation to the Development and the deposit of any plan and issue of title therefrom.
- 13.3 If required the Purchaser will on settlement provide a separate deed appointing the Vendor the Purchaser's attorney in terms of this clause 13. Such deed shall be in a form prepared by the Vendor's solicitor at the cost of the Vendor.
- 13.4 The Vendor will be entitled to register a caveat against the Purchaser's title following settlement to ensure compliance with this clause 13.

### **14. SALES OF THE UNITS GENERALLY**

- 14.1 The Purchaser will not object (and waives any right to do so) to methods employed by the Vendor in an endeavour to sell or lease other units forming part of the Building including, without limitation, as to the use of signs, the placement of signs on common property and the maintenance of display units and/or a sales office, provided that the Vendor does not cause unreasonable interference to the comfort and convenience of the Purchaser and its use and enjoyment of the Unit.

15. **GENERAL**

**Assignment**

- 15.1 The Purchaser shall not assign, transfer, or otherwise dispose of or alienate the benefit of this Agreement, without the prior written consent of the Vendor, which consent shall not be unreasonably, or arbitrarily, withheld or delayed.
- 15.2 If the Vendor consents to the assignment, transfer, disposal of, or alienation of, the benefit of this Agreement by the Purchaser, the Purchaser shall at the cost of the Purchaser, prepare and have executed a deed in a form acceptable to the Vendor, pursuant to which the assignee, transferee or disposee, and if a corporation then also by its directors and major shareholders, do all covenant with the Vendor to:
- (a) observe and be bound by all the provisions of this Agreement (to the extent that they have not already been performed by the Purchaser) in the same manner as if the subsequent assignee, transferor or disposee had entered into this Agreement as the Purchaser;
  - (b) grant to the Vendor a power of attorney in the same form as the power of attorney form as the described in clause 13.1;
  - (c) to not sell transfer or otherwise dispose of the Unit without first procuring the execution by the subsequent purchaser, assignee, transferee or disposee of a similar deed and power of attorney in favour of the Vendor
- 15.3 The Vendor shall be free to assign, transfer, or otherwise dispose of or alienate the benefit of this Agreement to a third party on such terms and conditions as they think fit.

**Further Assurances**

- 15.4 Each party agrees to sign such further documents and do such further things within its powers as may be reasonably necessary from time to time to carry out the intent of this Agreement.

**Purchaser's Directors' Guarantees**

- 15.5 If the Purchaser or its nominee is a private company it shall procure that at least two ( unless otherwise agreed) of its directors enter into a form of guarantee to perform and observe the conditions and obligations of the Purchaser as set out in this Agreement.

**Undisclosed Principal**

- 15.6 If the Purchaser buys as an agent of an undisclosed principal the Purchaser shall remain personally liable under this Agreement at all times.

**Nominees**

- 15.7 The Purchaser may on execution of this Agreement indicate an intention to appoint a nominee or indicate that he or she buys as a trustee of a company to be formed and if so he or she may appoint one or more persons or corporations provided only that the provisions of clause 15.5 are observed and notwithstanding the appointment of such nominee or company to be formed the named Purchaser in this Agreement shall continue to be personally liable to make all payments under this Agreement and to observe and perform the obligations and agreements set out in this Agreement until completion of all settlement matters.

**Costs**

- 15.8 Each party shall pay its own costs of and incidental to the negotiation, preparation, execution and delivery of this Agreement.

**Sole Agreement**

- 15.9 The parties acknowledge that this Agreement, and the schedules and attachments to this Agreement, together with any approvals and consents in writing provided for in this Agreement and given prior to the execution of this Agreement, contain the entire Agreement between the parties, notwithstanding any negotiations or discussions prior to the execution of the Agreement, and notwithstanding anything contained in any brochure, report or other document. The Purchaser acknowledges that it has not been induced to execute this Agreement by any representation, verbal or otherwise, made by or on behalf of the Vendor, which is not set out in this Agreement.

**Severability**

- 15.10 If any provision of this Agreement or the application thereof to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions shall not be affected by that event and each provision shall be valid and enforceable to the fullest extent permitted by law.

**Lower Price Clause**

- 15.11 The Purchase Price for the Unit is the lowest price that the parties would have agreed upon for the Unit under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 1994 and on that basis no income or expenditure arises under those rules.

**Liability**

- 15.12 Where the Purchaser executes this Agreement with the 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.

**Notices**

- 15.13 Any notice permitted or required to be given under this Agreement shall be in writing and shall either be:

- (a) delivered;
- (b) mailed by pre-paid registered mail; or
- (c) sent by facsimile transmission;

to the addressee at the addressee's last known address or facsimile number in New Zealand or, in the case of a corporation, to its registered office or, to the addressee's solicitor if details of such solicitor have been completed in this Agreement.

- 15.14 Any notice required to be given under this Agreement or implied by statute shall be valid and effectual if given under the hand of the party, the party's solicitor, or any authorised representative for the time being of the party, and if the party is a corporation, by its general manager, company secretary or a director.
- 15.15 Any notice sent by registered mail shall be deemed to have been received on the third Business Day following the date of mailing. A notice sent by facsimile transmission during a Business Day between 9.00 am and 5.00 pm (New Zealand time) shall be deemed to be received upon completion of an error free transmission and in every other case shall be deemed to be received at 9.00 am (New Zealand time) on the next Business Day after it is sent.

**Purchaser's Right of Inspection**

- 15.16 The Vendor agrees to allow the Purchaser or any person authorised by the Purchaser in writing, to enter the Unit on one occasion at a date and time to be nominated by the Vendor being a date and time between the Date of Practical Completion and Settlement Date for the purposes of inspecting the Unit.

**Grandview Residents Association Incorporated**

- 15.17 The Body Corporate will be a member of the Grandview Residents Association and this will entitle the Purchaser the right to use the common facilities being such things as the private road and recreational facilities. The Body Corporate will enter into an agreement with the Grandview Residents Association covering the payment of operating expenses that properly and fairly reflects the Body Corporate's share of the Grandview operating expenses.