

**AGREEMENT** dated 2005

**PARTIES**

**SCENIC VENTURES LIMITED** ("Vendor")

("Purchaser")

**PROPERTY**

That part of Grandview comprising  
contained in certificate of title  
Special Conditions of Sale.

ha. more or less being Lot on Deposited Plan 350755  
(South Auckland Registry) subject to Clause 2 of the Additional

**PURCHASE PRICE**

Purchase Price: \$ (including GST)

**PAYMENT**

**Deposit:** \$ payable on the signing of this agreement by both the  
Vendor and the Purchaser

**Balance:** The balance of the purchase price shall be paid in one sum on the  
Possession Date.

**OIC consent required:** Yes/No

**Interest rate for  
late settlement:** 15%

**DATES**

**Possession Date:**

## BACKGROUND AND EXPLANATION

The Purchaser is purchasing the Property from the Vendor which is developing Grandview in stages by creating up to 60 house lots and a possible condominium and/or lodge development lot(s) within a rural lifestyle subdivision. Each Purchaser of a lot from the Vendor acquires:

- ✍ Freehold title to the Property.
- ✍ The right to build in the area on the Property designated as a House Site one house (subject to each owner securing applicable building consents from all Relevant Authorities and conforming with the design and landscaping requirements of the Land Covenants, Consent Notice, and Encumbrance registered against the title to the Property and any applicable provision of the District Plan),
- ✍ The right, along with all other owners of lots at Grandview, to equal access and use of the Common Facilities, including internal roads, common open space, walking tracks, golf driving range and tennis court.
- ✍ The benefit of Land Covenants granting ownership and use rights (and maintenance obligations) in favour of each of the lot in respect of the Common Facilities.
- ✍ Membership of the Grandview Residents Association Incorporated, the entity which owns and manages the Common Facilities on behalf of all owners and to which all owners pay annual levies for such maintenance.

Infrastructure has been constructed by the Vendor (being water, power and telephone services) as well as a private road access to the boundary of the Property.

Each Purchaser will be responsible for all collecting and discharging via a suitable stormwater soakage system any stormwater soakage from the house and driveway.

The Vendor will provide and install at its cost a suitable sewerage system for the Property. The sewerage system is available for immediate installation by the Vendor. The Purchaser will arrange for and connect to at its cost the sewerage system.

The Vendor has provided a natural stone wall either side of the gated entrance with coloured steel security gates designed by the Vendors Registered Architect at the entrance to Grandview. Access for owners and guests will be via a code security system to open the gate.

The Vendor has extended Grandview Drive to provide access to all house lots using a asphaltic concrete finish over a basecourse designed by a Registered Engineer to N.Z. Standards. The road has a mountable kerb and stormwater will be collected and discharged to the soakage lagoon located on Lot 15 Deposited Plan 350755.

Low level designer street lighting is provided to N.Z. Standards to Grandview Drive.

The Vendor will provide and construct at least one full size tennis court, and clubhouse in the area indicated on the attached Plan. The court(s) and clubhouse will be completed and operational by 1 December 2006. The tennis clubhouse will be of a minimum 36m<sup>2</sup> of enclosed area together with a suitable size patio deck area for viewing. It will be designed by the Vendors Registered Architect.

The Vendor will also in time develop a golf driving range for the use of all Grandview lot owners and their guests on part of the area shown T1 on Deposited Plan 350755.

The tennis court(s), clubhouse and golf driving range and the land surrounding the same will be either transferred to the Grandview Residents' Association Incorporated after completion or be available for use by lot owners by means of access agreements and the Association will have responsibility for and/or a role in the ongoing management of such facilities.

The Vendor has developed and is landscaping a common open space area on part of the area shown T1 on DP 350755 for the use of all lot owners as an open space area. The area shall be linked back to the Grandview Drive via pedestrian walkways. Suitable landscaping of the above common open space area is being undertaken by the Vendor in accordance with the vegetation controls set out in the Association's Rules, the Land Covenants and the Encumbrance with the Taupo District Council.

The Grandview Residents' Association has been incorporated to protect and enhance the financial investment and lifestyle interests of all lot owners in the Grandview subdivision. The Association will own and manage the Common Facilities. The Association provides the mechanism for lot owners to act collectively on maintenance and other issues in respect of the Common Facilities. The Association acts through general meetings and a board appointed by the Lot owners.

Each lot owner will be levied a proportion of the operating expenses of the Association being a fraction thereof the numerator of which is one (1) and the denominator of which is the number of subdivided lots that will comprise the Grandview Community, the proprietors of which have been granted the right to use the Common Facilities. The Association will not have responsibility for maintenance or operating expenses until the Association is the registered proprietor of the land on which the Common Facilities are situated.

To preserve all lot owners' rights permanently, the Land Covenants registered against each lot require owners to belong to the Association and to comply with the Association's Rules. The Land Covenants and Consent Notices also impose specific covenants in relation to the use of certain lots.

The Land Covenants will provide that no lot owner shall erect any more than one single family dwelling house on the land nor subdivide the land further. The Vendor reserves the right to construct on any of the remaining lots being a future subdivision of the balance of the original title (54D/829) a number of buildings possibly in the form of condominiums and/or lodges which may operate as a business. In such circumstances, or to accommodate such possibility the Land Covenants and Rules may be amended accordingly.

**OPERATIVE CLAUSE**

It is agreed that the Vendor sells and the Purchaser purchases the Property included in the sale, upon the Terms, the Special Conditions of Sale, the Additional Special Conditions of Sale and the General Terms of Sale attached.

Signature(s) of Vendor:

Signature(s) of Purchaser:

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## SPECIAL CONDITIONS OF SALE

### Conflict:

If there is a conflict between the Special Conditions of Sale and the General Terms of Sale, the Special Conditions of Sale shall apply.

### Definitions

In this agreement, unless the context otherwise requires:

**"Association"** means the Grandview Residents' Association Incorporated which will be incorporated under the Incorporated Societies Act 1908, whose functions are described in the Rules.

**"Common Facilities"** means all Infrastructure within Grandview together with the roads, and together with the open space and walkways which are the common areas identified as T1 on DP 350755, together with any land or further facilities intended for common use by all lot owners which may be created, designated, vested, transferred, installed, erected or constructed on any of the lots by the Vendor or the Association from time to time.

**"District Plan"** means all operative or notified district and regional plans issued by the Taupo District Council and Environment Waikato from time to time applicable to Grandview or activities within it.

**"Encumbrance"** means encumbrance 6426312.9 registered against the title to the Property.

**"Grandview"** means the property located in Acacia Bay, Taupo comprising 37.5270 hectares more or less and being legally described as Part Lot 3 Deposited Plan South Auckland 67095 and being all of the Land in Certificate of Title 54D/829 (South Auckland Registry).

**"Grandview Subdivision"** means the staged subdivision of Grandview.

**"House Site"** means that part of the Property shown on the title to the Property designated as the site for the construction of a dwelling.

**"Infrastructure"** means the items and works constructed by the Vendor, or the Association at Grandview and initially comprising water, power and telephone services.

**"Land Covenants"** means the land covenants registered against or in favour of (as the case may be) the title to the Property.

**"Property"** means the Lot described under the heading Property on page 1 the subject of this agreement being the Lot which the Vendor has agreed to purchase.

**"Relevant Authority"** means any corporation, including any government, local, statutory or non-statutory authority or body having jurisdiction over the Property or any part of it.

**"Rules"** means the rules and bylaws of the Association.

## 1. GRANDVIEW

- 1.1. The Purchaser acknowledges and agrees that the property is being purchased for the purpose of having a residential dwellinghouse erected thereon, and that as soon as practicable a dwellinghouse will be erected and occupied primarily as a residence.

## 2. WORKS AND COMMON FACILITIES

### 2.1. Right of the Vendor to carry out Works:

The Purchaser acknowledges and agrees that the Vendor and the Vendor's surveyors, agents, consultants, engineers, contractors, sub-contractors, employees or any of them shall have the right to enter the Property at all times prior to or after settlement with such plant, machinery, vehicles and equipment and to do such work as shall in the opinion of the Vendor, the Vendor or the Vendor's contractors be necessary to desirable for the Vendor to comply with the obligations imposed on it by the Resource Consent granted for Grandview and the Encumbrance.

### 2.2. Common Facilities

The Purchaser acknowledges that the Common Facilities to be provided by the Vendor may differ in location and format from that show on any advertising but that no such variation shall annul the sale or entitle the Purchaser to make any objection or requisition to the Vendor in respect thereof.

## 3. RISK

- 3.1. The Property shall be at the sole risk of the Vendor until the Possession Date, thereafter ~~at~~ the sole risk of the Purchaser

## 4. OBJECTIONS TO TITLE AND LIABILITY OF VENDOR

- 4.1. If any pegs for the property are missing or if there is any damage to any structure, road or footpath on, near or adjacent to the property the Vendor will have no responsibility unless notified in writing 5 working days prior to the Possession Date. In the event that the Purchaser has not notified the Vendor by that date, then the Purchaser shall be deemed to have accepted the property and its surrounding structures, roads or footpaths in the condition then evident on the date for possession.
- 4.2. No error omission or misdescription of the lot or the title shall annul this contract of sale but compensation, if demanded in writing before settlement but not otherwise, may be made or given by the Vendor in appropriate cases.
- 4.3. The Purchaser acknowledges that the Purchaser has entered into this agreement in reliance on the Purchaser's own judgement and not on the basis of any representation made by or on behalf of the Vendor. The Purchaser further acknowledges that it is the Purchaser's own responsibility to make full enquiry into matters which could influence the Purchaser's judgement to enter into this agreement. The Purchaser acknowledges and agrees that the Vendor accepts no responsibility to the Purchaser for any failure of the Purchaser to be fully informed of the conditions of the Resource Consents for the subdivision, the provisions of the Transitional Plan for the Taupo District and the Proposed Plan and the Ordinances and all easements, encumbrances, restrictive covenants, and building line conditions affecting the Lot or the use thereof. The Vendor accepts no responsibility for any omission or lack of completeness in any information provided by or on behalf of the Vendor to the Purchaser.

## 5. LAND COVENANTS

- 5.1 The Purchaser acknowledges and agrees that the Property is subject to and enjoys the benefit of (as the case may be) the Land Covenants which are registered against the titles to other Lots in Grandview Subdivision (including the Property). The Land Covenants oblige the Purchaser and the owners of all other lots having the right to use the Common Facilities to become members of the Association and to

comply with the Association's Rules regarding the use and maintenance of the Common Facilities and impose specific restrictions on certain lots and grant certain rights over certain lots in favour of all lots as specified in the Land Covenants.

## **6. GRANDVIEW RESIDENTS ASSOCIATION**

6.1 The Association has a key role in:

- (a) preserving the lifestyle interests of all owners;
- (b) maintaining the Infrastructure and Common Facilities;
- (c) regulating common access and other co-operative features of the Grandview subdivision.

Each owner of a Lot containing a House Site having the right to use the Common Facilities is required to be a member of the Association. Total membership of the Association will be no greater than 60 being the maximum number of lots that the Vendor may subdivide Grandview into over the subdivision stages.

6.2 The Association will:

- (a) provide, through its rules and bylaws, an agreement between the lot owners dealing with their respective rights and obligations and a forum through which individual lot owners are to act collectively;
- (b) manage the Common Facilities;
- (c) develop further facilities where approved by the Association to form part of the Common Facilities;
- (d) administer the services and facilities provided to lot owners and levy lot owners for their contributions to the resultant costs;
- (e) deal with issues which arise in respect of the Land Covenants and the Rules of the Association; and
- (f) issue to the Vendor an irrevocable power of attorney for a period of five years from its incorporation appointing the Vendor or any nominee of the Vendor the attorney of the Association for the purpose of making all applications and executing all caveats, approvals, documents and plans required to be signed by the Association in relation to the completion of the entire Grandview Subdivision and to ratify and confirm any act matter or thing which the Vendor does or purports to do in pursuance of that power of attorney.

6.3 The Purchaser therefore agrees and acknowledges that the Association may:

- (a) provide appropriate services for the lot owners and residents of the Grandview Subdivision, including but without limitation rubbish disposal services, security services, any necessary repair and maintenance work in respect of roads and buildings, the Common Facilities, or beautification and conservation work or any other work appropriate by the Association pursuant to its Rules;
- (b) enter into management contracts for the provision of these services;
- (c) hire any employees for the purpose of provision of these services;

all as more fully described in the Rules.

6.4 The Purchaser acknowledges and agrees that the Purchaser and any subsequent owner of the Property will be required to become a member of the Association and be bound by the Rules and to pay all costs and contributions levied by the Association.

- 6.5 The Purchaser acknowledges that the Property is subject to a Memorandum of Encumbrance registered against the title to the Property to secure to the Association the Purchaser's (and any successor in title's) obligation to pay all charges or contributions levied by the Association.

## **7. ASSIGNMENT BY PURCHASER**

- 7.1 The Purchaser may assign (which for the purposes of this Special Condition of Sale includes sell, lease or otherwise dispose of) the Purchaser's interest in the Property prior to the Possession Date provided the Purchaser first obtains and delivers to the Vendor a Deed of Covenant to be prepared by the Vendor's solicitors, at the expense of the Purchaser, in favour of the Vendor from the assignee, and the directors and major shareholders where the assignee is a corporation, whereby the assignee (and, where applicable, its directors and major shareholders) covenants to observe and perform all the provisions of this agreement on the part of the Purchaser to be observed and performed.

## **8. POWER OF ATTORNEY / DEED OF COVENANT**

- 8.1 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 making all applications and executing all consents, approvals and other documents and plans and performing all acts, matters and things as may be necessary:

- (a) to complete the Grandview Subdivision future stages;
- (b) to exercise the Purchaser's voting rights in relation to the Association until such date that is five years after the date of incorporation of the Association

- 8.2 If the Purchaser sells, disposes or transfers the Property or assigns the benefit of this agreement at any time prior to the date five years after the date of incorporation of the Association the Purchaser shall obtain from the transferee or assignee an appropriate deed (to be prepared by the Vendor's solicitors at the expense of the Purchaser) whereby the subsequent transferee or assignee:

- (a) covenants to 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 transferee or assignee had entered into this agreement as the Purchaser; and
- (b) grants to the Vendor a power of attorney in the same form as the power of attorney described in Special Condition 8.1 hereof;
- (c) covenants not to sell, transfer or otherwise dispose of the Property without first procuring the execution by the purchaser, transferee or other assignee of a similar deed and power of attorney in favour of the Vendor.

## **9. GENERAL**

### **9.1 Contracts Privity**

The parties acknowledge and agree that where this agreement contains an acknowledgement or agreement by the Purchaser in respect of the Vendor, that acknowledgement or agreement is intended to benefit the Vendor for the purposes of section 4 of the Contracts (Privity) Act 1982.

### **9.2 No Caveat**

The Purchaser shall not lodge a caveat against the title to the Property.

### **9.3 Arbitration**

If any dispute or difference shall arise between the Vendor and the Purchaser of any lot as to any matter arising from the Agreement for purchase and these Conditions and annexures then the parties shall first

endeavour in good faith to resolve the matter promptly but if the matter is not resolved promptly then either party may at any time invite the chairperson for the time being of the N Z Chapter of Lawyers engaged in Alternative Dispute Resolution (LEADR) to appoint a mediator to enable the parties to mediate and settle the matters on a without prejudice basis. However should the matters not be solved by mediation then such dispute or difference shall be referred to an Arbitrator to be appointed by the President for the time being of the Waikato Bay of Plenty District Law Society whose decision shall be final. The conduct of the Arbitration shall in all other respects be carried out in accordance with the provisions of the Arbitration Act 1996 or any amendment or re-enactment thereof for the time being in force.

#### 9.4 **Currency**

All sums referred to herein are in New Zealand currency.

#### 9.5 **Costs**

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

#### 9.6 **No Vendor warranty**

The Purchaser acknowledges that they have entered into this agreement and are purchasing the Property solely in reliance on their own judgment and not upon any representation or warranty made by the Vendor or any agent of the Vendor.

#### 9.7 **Non-Merger**

The agreements obligations and warranties of the parties in this Agreement shall not merge with the transfer of title to the land.

#### 9.8 **Definitions and Notices**

- (a) All notices and documents to be given or served in accordance with the terms hereof may be given or served as provided in Section 152 of the Property Law Act, 1952 and in any event shall be sufficiently given or served if actually received by the party or its Solicitors.
- (b) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings as in Section 2 of the Property Law Act, 1952.
- (c) "Working day" means any day of the week other than:
  - (i) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day and the Provincial Anniversary as observed at the place where the property shown on the annexed plan is situated; and
  - (ii) a day in the period commencing with the 25<sup>th</sup> day of December in any year, and ending with the 5<sup>th</sup> day of January in the following year.
- (d) Unless the context requires a different interpretation the singular shall be deemed to include the plural and vice versa the masculine gender shall be deemed to include the feminine gender and reference to persons shall be deemed to include companies and corporations and vice versa.

#### 9.9 **Agreement by facsimile**

The parties agree:

- (a) the execution and transmission of a facsimile copy of this agreement shall constitute a valid and binding offer or acceptance as the case may be;

- (b) the production of a facsimile copy or copies of this agreement signed by the party to be charged therewith shall be deemed sufficient to satisfy the requirements of section 2 Contracts Enforcement Act 1956;
- (c) a document sent by facsimile machine shall be deemed to have been received on the working day following the day on which it was sent;
- (d) in providing service of a document by facsimile machine it shall be sufficient to prove that the document was properly transmitted by facsimile machine to the party concerned.

### **ADDITIONAL SPECIAL CONDITIONS OF SALE**

**NOTWITHSTANDING** anything else to the contrary herein contained these Additional Special Conditions of Sale represent a further Agreement between the Vendor and the Purchaser and in the event of any conflict between the Additional Special Conditions of Sale and any other provisions of this agreement these Additional Special Conditions of Sale shall take precedence.

1. The Purchaser acknowledges that the Purchaser has inspected the Property and that the Purchaser purchases it solely in reliance on the Purchaser's own judgment and not on the reliance of any representation or warranty made by the Vendor or any agent of the Vendor.
2. The Property is sold subject to all existing fencing covenants, drainage or water rights, building line restrictions and other easements, encumbrances, restrictions, rights, reservations and exceptions of any kind shown on the present title.
3. The Purchaser acknowledges that the Vendor makes no representation generally as to the further subdivisional stages or use of Grandview.
4. The Purchaser acknowledges that the Vendor reserves the right to intensively develop a lot or lots possibly by the construction of condominiums and/or lodges which may operate as a business and, if doing so or to allow for such development the Land Covenants and Rules may be amended accordingly. Such lot or lots will be a member of the Association enjoying like benefits and obligations as all other lots in Grandview Subdivision.

**GENERAL TERMS OF SALE  
(Attached)**

**(Auckland District Law Society and Real Estate Institute of New Zealand,  
Seventh Edition (3) July 1999)**

**SCENIC VENTURES LIMITED**

**Vendor**

**Purchaser**

**AGREEMENT FOR SALE AND PURCHASE  
OF LOT AT GRANDVIEW**

**HARKNESS & PETERSON**

**SOLICITORS**

**WELLINGTON**