

GENERAL CONDITIONS OF SALE

SIXTH EDITION (2) MAY 1995

1.0 Definitions and notices

- 1.1 All notices and documents to be given or served under this agreement or in relation to this contract 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 by facsimile or otherwise in writing if actually received by the party or the party's solicitor.
- 1.2 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.
- 1.3 "Settlement date" means the possession date or such other date as the parties are to perform their obligations under subclause 3.5. Where the day nominated for settlement is not a working day the settlement date shall be the last working day before the day so nominated.
- 1.4 "Working day" means any day of the week other than:
 - (1) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day and the provincial anniversary day as observed at the place where the property is situated; and
 - (2) A day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year.
- 1.5 A working day shall be deemed to commence at 9.00 a.m. and to terminate at 3.00 p.m.

2.0 Deposit

- 2.1 Unless otherwise expressly provided in this agreement the purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties time being of the essence. Nevertheless the vendor shall not be entitled to cancel this contract for non-payment of the deposit unless the vendor has first given to the purchaser three working days' notice in writing of 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 has been paid.
- 2.2 The deposit shall be in part payment of the purchase price.
- 2.3 The person to whom the deposit is paid shall hold it as a stakeholder until the contract becomes unconditional or is avoided or cancelled, whichever shall happen first.

3.0 Possession and settlement

- 3.1 Possession shall be given and taken upon the possession date.
- 3.2 If from any cause whatsoever the default of the vendor or any portion of the purchase price 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 the portion of the purchase price so unpaid from the due date for payment until payment 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.
- 3.3 (1) Subject to paragraph (2) of this subclause, if for any cause whatsoever save the default of the purchaser the vendor does not offer to give possession and where the agreement calls for vacant possession when the purchaser is entitled to possession the vendor shall pay to the purchaser fair market rent for the property until possession is offered and the vendor shall also compensate the purchaser for any expenses incurred and damages suffered by the purchaser including the purchaser's reasonable costs of temporary accommodation for persons and for chattels resulting from the failure of the vendor to give possession on the date aforesaid to the extent that such expenses and damages are greater than the fair rental for the property. As a condition of giving possession prior to settlement the vendor may require the purchaser to provide reasonable evidence of the purchaser's readiness, willingness and ability to perform the purchaser's obligations and, where the purchaser does not upon request by the vendor provide such evidence, the vendor shall not be required to pay or give credit for any amount under paragraph (1) of this subclause.
- 3.3 (2) Where the purchaser or any person claiming through the purchaser elects to go into possession of the property prior to settlement the purchaser shall pay to the vendor or settlement a fair rental for the property during the period of possession prior to settlement; provided that in respect of any such period when the purchaser is obliged to pay interest under subclause 3.3 the purchaser shall not be required to pay both interest and rent whichever amount or sum of interest or rental is the higher.
- 3.3 (3) If respect of a period when both interest and rental are payable under this paragraph (2) the purchaser shall be deemed to have elected to pay interest to the extent necessary to ensure that the purchaser by paying rental will not be financially disadvantaged by taking possession, by comparison with the position which would obtain if possession had not been taken prior to settlement.
- 3.4 The provisions of this subclause shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- 3.5 Where the parties do not agree upon any amount payable under paragraph (1) or (3) of this subclause an interim amount shall be determined by the court or a stakeholder appointed by the court against whom it is claimed until the amount payable is determined. The interim amount shall be the greater of:
 - (a) the amount claimed by the purchaser or the vendor, as the case may be, or
 - (b) an amount equivalent to interest at the interest rate for late settlement during the period to which the claim relates or such portion of the purchaser's interest as the court or stakeholder determines to be payable until the amount is determined.
 The amount determined to be payable shall not be limited by the amount of the interim amount. If the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated by the application of either party by the president or vice-president for the time being of the Law Society for the District where the property is situated.
- 3.6 Upon the date of the purchase price interest and other moneys if any due hereunder being paid or satisfied as provided in this agreement (it being given for any amount payable by the vendor under subclause 3.4), the vendor shall concurrently hand to the purchaser a registrable memorandum of transfer of the property, to be executed by and at the expense of the purchaser and tendered to the vendor or the vendor's solicitor for a reasonable time prior to the settlement date executed by the purchaser if necessary together with all other instruments in registrable form which may be required for the purpose of registering the memorandum of transfer together with all instruments of title. All outgoings and incomings excluding insurance premiums shall be apportioned at the possession date.
 - (1) The transfer of the property is to be registered against a new title document in the course of issuing (including a new or provisional title document following the loss of the outstanding copy of the title); and
 - (2) A search copy, as defined in section 172A of the Land Transfer Act 1952, of that title document is not obtainable by the fifth working day prior to the settlement date.
 Then the settlement date shall be deferred to the seventh working day following the date on which the vendor has advised the purchaser in writing that a search copy is obtainable unless the purchaser elects that settlement shall still take place on the original settlement date. This clause shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue. Deferral of the settlement date under this subclause shall not constitute delimitation of the possession date unless the parties so agree.
- 3.8 If the property is sold with vacant possession the vendor shall permit the purchaser or any person authorized by the purchaser in writing, upon reasonable notice in writing, to enter the property on one occasion prior to the settlement date for the purposes of examining the property and chattels and fixtures which are included in the sale, and ascertaining the state of repair of the property and the chattels and fixtures, and on like notice to re-enter the property to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and fixtures.

4.0 Risk and insurance

- 4.1 The property and chattels shall remain at the sole risk of the vendor until possession is given and taken.
- 4.2 In the event that prior to the giving and taking of possession the property is destroyed or damaged and such destruction or damage has not been made good by the possession date then the following provisions shall apply:
 - (1) If the destruction or damage has been sufficient to render the property untenable and it is untenable on the possession date the purchaser may in respect of such destruction or damage, less a sum equal to the amount of insurance moneys received or receivable by or on behalf of the vendor, agreed to reinsure for the benefit of the purchaser to the extent of the vendor's insurance cover, or
 - (2) Cancel the contract by serving on the vendor notice in writing whereupon the purchaser shall be entitled to the return of the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other.
 - (3) If the property is not untenable on the possession date the purchaser shall complete the purchase at the above price less a sum equal to the amount of the diminution in value of the property.
 - (4) In the case of a rural property where subclause 4.5 applies, damage to the property shall be deemed to have rendered the property untenable where the diminution in value of the property exceeds an amount equal to 20% of the purchase price.
- 4.3 Either party may serve on the other party notice in writing requiring that any dispute as to the application of this clause be determined by an arbitrator to be appointed by the president or vice-president for the time being of the Law Society for the district where the property is situated, and the party serving the notice may at any time thereafter refer the dispute for determination. If the dispute is not determined by the possession date, then the possession date shall be deferred to the fifth working day following the date on which the dispute is determined. If the dispute is not determined by the settlement date then the settlement date shall be deferred to the fifth working day following the date on which the dispute is determined. The arbitrator may determine that the purchaser shall not be required to take over any insurance policies held by the vendor.

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5.0 Title, boundaries, etc.

- 5.1 The vendor shall not be bound to point out the boundaries of the property save that on the sale of a vacant residential lot which is not limited as to parcels in vendor shall ensure that the property is pegged at the possession date
 - 5.2 (1) The purchaser is deemed to have accepted the vendor's title save as to objections or requisitions on which the purchaser is entitled to make an objection to the vendor or the vendor's solicitor on or before (a) the 15th working day after (the date of this agreement; or (b) the possession date, or (c) in settlement date (whichever is the earlier).
 - (2) If a plan has been or is to be lodged in the Land Transfer Office for deposit in respect of the property, then in respect of objections or requisitions arising out of the plan the purchaser is deemed to have accepted the title save as to objections or requisitions which the purchaser is entitled to make and delivers to the vendor or the vendor's solicitor on or before the 15th working day following the date on which the purchaser has been given the notice required by clause 3.7.
 - (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title so delivered by the purchaser, the vendor shall notify the purchaser in writing of such inability or unwillingness on or before the 15th working day after the date of receipt of such objection or requisition. If the vendor does not so notify the purchaser, the vendor shall be deemed to have accepted the same and it shall be a condition of settlement that such objection or requisition shall be complied with before settlement. If the purchaser does not on or before the 15th working day after the date on which the purchaser is notified in writing of such inability or unwillingness notify the vendor in writing that the purchaser waives the objection or requisition either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice in writing to the other, cancel the contract.
 - (4) In the event of a cancellation under paragraph (3), the purchaser shall be entitled in the return of the deposit and all other moneys paid under the agreement but shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.
- ~~The title to the property, including any building or structure has been erected on the land other than land which is the subject of a restrictive use covenant, dimensions of the flat, or if any building or structure has been erected on the land other than land which is the subject of a restrictive use covenant, if the title to the property is a unit title under the Unit Titles Act 1972 and, if there have been any alterations or additions to the buildings comprised in the title which extend beyond the principal or accessory units, then the purchaser shall be entitled to require the vendor to rectify the title by:-~~
- (a) in the case of a cross lease title
 - (i) effecting the deposit of a cross lease plan which depicts the correct delineation of the flat and/or other buildings or structures as they exist as at the date of this agreement; and
 - (ii) effecting the issue of a new or replacement Certificate of Title
 - (b) in the case of a unit title
 - (i) effecting the deposit of a redevelopment plan or new unit plan whichever the case may be which depicts the correct delineation of the principal and/or accessory units as they exist as at the date of this agreement; and
 - (ii) effecting the issue of a new or replacement Certificate of Title
- (2) The only right or remedy the purchaser shall have for a defective title in terms of clause 5.3(f) shall be the right to requisition pursuant to that clause
 - (3) Any requisition in terms of subclause (1) shall be made pursuant to the provisions of clause 5.2 hereof.
 - (4) The purchaser shall have no right to requisition or other rights or remedies where:-
 - (a) any building or structure has been erected on land the subject of a restrictive use covenant abutting the flat; or
 - (b) any building or structure has been erected within an accessory unit
 provided always that consent in writing of either the lessor or the body corporate to the alteration and addition has been obtained (if such consent was not obtained, then the purchaser shall have the right pursuant to clause 5.2 to requisition the vendor to provide written evidence of such consent.
 - (5) The term "cross lease" shall have the meaning ascribed to that term in the Resource Management Act 1991
 - (6) The terms "principal unit", "accessory unit", "unit plan" and "unit" shall have the meanings ascribed to those terms in the Unit Titles Act 1972
 - (7) The words "alterations and additions" which have altered the external dimensions of the flat" where used in clause 5.3(1) above shall only mean alterations and additions which are enclosed and which are attached to the flat.
 - (8) The words "alterations and additions to the buildings comprised in the title which extend beyond the principal and any accessory units" where used in clause 5.3(1) above shall only mean alterations and additions to the buildings comprised in the title which extend beyond the principal and any accessory units where compensation, if demanded in writing before settlement, but not otherwise, shall be made or given as the case may require.

5.0 Vendor's warranties and undertakings

- 5.3 Except as otherwise expressly set forth in this agreement, no error, omission or misdescription of the property or the title shall annul the sale but compensation, if demanded in writing before settlement, but not otherwise, shall be made or given as the case may require.
- 5.4 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any adjoining land or the vendor but this proviso shall not have effect for the benefit of any subsequent purchaser of the contiguous land, and the vendor shall be deemed to require the inclusion of a fencing covenant in any transfer of the property
- 5.5 The vendor warrants and undertakes that:
 - (1) At the date of this agreement the vendor has not received any notice nor has the vendor any knowledge of any requisition or outstanding "disputes" in respect of the property or any notice from any tenant or any town planning notice which has not been exercised to the purchaser
 - (2) At the time of taking of possession
 - (a) Any chattels included in the sale are the unencumbered property of the vendor
 - (b) The chattels are delivered to the purchaser on the possession date in their present state of repair (fair wear and tear excepted) but subject to (c)
 - (c) As electrical and other installations on the property are free of any charge whatsoever
 - (d) There are no arrears of general or water rates or charges outstanding on the property
 - (3) If the water charges are determined by meter the vendor will on or immediately after the possession date have the water meter read and will pay the amount of the charge payable pursuant to that reading but if the territorial authority will not make special readings the water charges shall be apportioned
 - (4) Any requisitions are paid to the dates shown in the vendor's statement of apportionment to be supplied to the purchaser before the possession date or will be so paid immediately after the possession date; and all incomes receivable have been collected by the vendor to the dates shown in that statement
 - (5) The vendor will pay all charges for electric power and gas supplied to the property down to the possession date.
 - (6) If the vendor receives any notice or demand from the Crown or any territorial authority or from any tenant after the date of this agreement the vendor will, if not paying or complying with such notice or demand forthwith deliver it to the purchaser or the purchaser's solicitor and if the vendor fails to do so the vendor shall be liable for any penalty incurred.
 - (7) Immediately after the possession date the vendor shall give notice of sale to Valuation New Zealand and the territorial authority having jurisdiction and where the property comprises a stratum estate will serve a copy of the notice of sale on the secretary of the body corporate.
 - (8) Where the vendor has done or caused or permitted to be done on the property any works for which a permit or building consent was required by law, such permit or consent was obtained for those works and they were completed in compliance with that permit or consent and, where appropriate, a code compliance certificate was issued for those works.
 - (9) All obligations imposed on the vendor under the Building Act 1991 ("the Act") shall be fully complied with at the settlement date, and without limiting the generality of the foregoing, the vendor further warrants and undertakes that:
 - (a) the vendor has fully complied with the requirements specified in any compliance schedule issued by a territorial authority under section 44 of the Act in respect of any building on the property;
 - (b) any building on the property which is the subject of a compliance schedule issued by a territorial authority under section 44 of the Act has a current building warrant of fitness supplied under section 45 of the Act and the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness complying with section 45 of the Act from being supplied to the territorial authority when the building warrant of fitness is next due; and
 - (c) the territorial authority has not issued any notice under section 45(4) of the Act to the vendor or to any agent of the vendor which has not been removed by the vendor, and the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which could entitle the territorial authority to issue such a notice.

5.4 Unit title provisions

- (1) If the property includes a stratum estate under the Unit Titles Act 1972 ("the Act"), the vendor warrants and undertakes that:
 - (a) As at the date of this agreement, details of regular periodic contributions payable to the body corporate and of the vendor's portion of any fund held by the body corporate, are as disclosed on the front page of this agreement.
 - (b) Not less than 14 working 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 Act, and
 - (ii) A certificate from the body corporate under section 36 of the Act, Any periodic outgoings shown in that certificate (not being amounts referred in paragraph (a) of section 36) shall be apportioned, and the purchaser shall give credit for the vendor's portion of any fund held by the body corporate which is disclosed on the front page of this agreement.
 - (c) There are no amounts owing by the vendor under sections 14, 33 or 34 of the Act.
 - (d) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate in any Court in order or declaration has been made by any Court under sections 28, 37, 40, 42, 43, 46 or 51 of the Act.
 - (e) The vendor has no knowledge or notice of any fact which might give rise to indicate the possibility of any proceedings being instituted by or against the body corporate in any Court, or
 - (f) Any order or declaration being sought under sections 28, 37, 40, 42, 43, 46 or 51 of the Act, or
 - (g) Any order or declaration being sought under sections 28, 37, 40, 42, 43, 46 or 51 of the Act, or

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(8) No lease, licence, easement or special privilege has been granted by the body corporate in respect of any part of the common property.

7.2.1 If the purchaser is or will be materially prejudiced by any breach of or inaccuracy in any warranty or undertaking contained in subclause 7.1 (the proof of which shall lie on the purchaser), the purchaser may cancel this contract prior to settlement by giving notice in writing to the vendor and upon cancellation of the contract the purchaser shall be entitled to the return of the deposit and any other moneys paid by the purchaser and neither party shall have any right or claim against the other.

7.2.2 If the vendor does not provide the copy of all insurance policies or certificates and the certificate under section 36 in accordance with the requirements of subclause 7.1(2), or if details of regular periodic contributions payable to the body corporate have not been disclosed on the front page of this agreement, the settlement date shall be deferred to the fifth working day following the date on which that copy and that certificate and those details, as the case may require, are provided to the purchaser, unless the purchaser shall elect that settlement shall still take place on the original settlement date. If the purchaser does elect that settlement shall still take place on the original settlement date, such election shall not be deemed to be a waiver of any right under subclause 7.1(2)(b) to a proper apportionment of outgoings. Deferral of the settlement date under this subclause shall not constitute deferral of the possession date unless the parties agree.

8.0 Conditions and vendor mortgage

8.1 If particulars of any financial condition(s) are inserted on the front page of this agreement then the contract shall be subject to the condition that the purchaser shall on or before the last day for so doing arrange finance in terms of the particulars.

8.2 In relation to every financial condition and, if this contract is expressed to be subject to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:

- (1) The condition shall be a condition subsequent;
- (2) The condition shall be deemed to be not fulfilled until written notice of fulfillment has been served by one party on the other party. Unless the contrary intentions stated elsewhere in this agreement, notice of fulfillment of a condition received by a party after 5.00 p.m. on a working day, or on a day which is not a working day, shall be deemed to have been received by that party on the next succeeding working day.
- (3) If the condition is not fulfilled by the date for fulfillment (time being of the essence) either party may at any time before the condition is fulfilled or waived avoid this contract by giving notice in writing to the other and upon avoidance of the contract the purchaser shall be entitled to the return of the deposit and any other moneys paid by the purchaser and neither party shall have any right or claim against the other.
- (4) If by agreement between the parties the time for fulfillment of any condition is extended the extended time shall be of the essence.
- (5) At any time before this contract is avoided the purchaser may waive any financial condition and either party may waive any condition inserted for the sole benefit of that party.

8.3 Any mortgage to be arranged pursuant to a financial condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.

8.4 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the "all obligations" form currently being published by the Auckland District Law Society.

8.5

- (1) If the purchaser has either elected "Yes" or made no election on the front page of this agreement under the heading "OIC Consent required" then the purchaser warrants that the purchaser does not require consent from the Overseas Investment Commission (OIC consent) to purchase the property
- (2) If the purchaser requires OIC consent then:
 - (a) The purchaser will do all such things as may be necessary to obtain such consent and
 - (b) This agreement shall be conditional upon OIC consent being obtained by the OIC date as shown on the front page of this agreement.
 - (c) If the OIC date is not shown on the front page of this agreement then the OIC date shall be the possession date or a date two months from the date of the agreement.

9.0 Notice to complete and remedies on default

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

9.2 Upon service of a settlement notice the party on whom the notice is served shall settle within twelve working days after the date of service of the 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. If the settlement notice is served between the 6th day of December and the 20th day of January next following then unless the notice expires before the 24th day of December in that period the party on whom the notice is served shall settle within twelve working days after the date of service of the notice (excluding the day of service) or on the first working day after the 20th day of January next following the date of service of the notice (whichever is the later) time being of the essence, but without prejudice to any intermediate right of cancellation by either party.

9.3 If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable; and the date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 9.2. The vendor may give a settlement notice with a notice under this subclause. For the purpose of this subclause a deposit is not an instalment.

9.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then,

- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
 - (a) sue the purchaser for specific performance, or
 - (b) cancel the contract and pursue either or both of the following remedies namely:
 - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price
 - (ii) sue the purchaser for damages
- (2) Where a vendor is entitled to cancel the contract the entry by the vendor into a conditional or unconditional contract for the resale of the property or any part thereof by the vendor shall take effect as a cancellation of the contract by the vendor if the contract has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
- (3) The damages claimable by the vendor under paragraph (1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser 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 settlement of such resale
 - (b) all costs and expenses reasonably incurred in any resale or attempted resale
 - (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale
- (4) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.

9.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser then the purchaser without prejudice to any other rights or remedies available to the purchaser at law or in equity may:

- (1) Sue the vendor for specific performance, or
- (2) Without prejudice to any right of the purchaser to damages give notice in writing to the vendor cancelling the contract and requiring the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.

9.6 The party serving a settlement notice may at the request or with the consent of the other party extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate accordingly. An extension may be given either before or after the expiry of the period of the notice.

9.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.

9.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

10.0 Non-merger

10.1 The agreements obligations and warranties of the parties in this contract and the agreement evidencing it shall not merge with the transfer of title to the land or with delivery of the chattels (if any).

11.0 Stamp duty

11.1 The purchaser shall before the expiration of six months from the date of this agreement duly stamp either the counterpart or the original copy of this agreement or a transfer in pursuance of it and in default of the purchaser doing so the vendor may stamp this agreement and recover the cost from the purchaser.

11.2 If any stamp duty exemption is available to either party each party shall at any time upon request complete and sign any stamp duty exemption form(s) appropriate to the transaction.

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12.0 Agent

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

13.0 Goods and Services Tax (GST)

13.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:

- (1) The purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date.
- (2) Where the GST date has not been inserted on the front page of this agreement the GST date shall be the possession date.
- (3) Where any GST is not so paid to the vendor the purchaser shall pay to the vendor:
 - (a) Interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST.
- (4) It shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act.
- (5) Any sum referred to in this clause is included in the purchase price interest and other monies referred to in clause 3.5.

13.2 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.

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

14.0 Supply of a Going Concern

14.1 If this agreement relates to the sale of a tenanted property then, unless otherwise expressly stated herein, the parties agree that the supply made pursuant to this agreement is the supply of a going concern under Section 11(1)(c) of the Goods and Services Tax Act 1985 on which GST is chargeable at zero per cent. If however, it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement then the provisions of clause 13.0 of this agreement shall apply.

15.0 General

15.1 If there is more than one purchaser or vendor, the liability of the purchasers or of the vendor, as the case may be, is joint and several.
15.2 Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser hereunder.

SPECIAL CONDITIONS OF SALE

WARNINGS (These warnings do not form part of this contract)

- 1. This is a binding contract. If either party has any doubts professional advice should be sought before signing.
- 2. Before signing this contract the purchaser should make sure that the status of the property under the Resource Management Act 1991 is satisfactory for the purchaser's intended use of it.
- 3. If the property is vacant land which is part of a Head Title, subdivided by cross lease, then it is essential that additional development clauses are included in this agreement.

Signature of vendor(s)

B. Roche

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Signature of purchaser(s)

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SPECIAL CONDITIONS

16. Social Responsibility

16.1 The Purchaser acknowledges that, in the Housing New Zealand Limited Statement of Corporate Intent 1998-99, the social responsibility obligations of the Vendor are described thus:

Housing New Zealand will have regard to the interests of the community in which it operates and exhibit a sense of social responsibility. To that end Housing New Zealand will:

- (a) Be a responsible member of the communities it serves and have regard for the wellbeing of those communities through its operations;
- (b) Consult with, and take account of, local interests and local amenity values in maintaining and planning rental developments; and
- (c) Operate in a manner that maintains a positive public image that is consistent with the role of Housing New Zealand.

16.2 The Purchaser's intention is:

- (a) To honour the tenancy agreements currently in place in respect of the Property and to facilitate access to rental accommodation for those in need with such services to be provided in a manner which not only reflects its obligations to its shareholder Trusts but also contributes to the social needs of the communities in which the Purchaser is involved;
- (b) Where consistent with the social needs of those communities, to enable tenants of individual properties to purchase them;
- (c) To target low income tenants; and
- (d) To honour the Tenure-protected, 55+ Customers and modified property tenancies currently in existence.

16.3 The Purchaser covenants with the Vendor that it will not, in any of the five years following Possession Date, sell more than ten of the individual properties in the schedule to this Agreement to persons who are not, at the time of any such sale, already the tenants of those properties.

17. Due Diligence

17.1 This Agreement is conditional upon the Purchaser completing a due diligence programme in respect of the Property by 1 February 1999. This condition is inserted for the sole benefit of the Purchaser.

17.2 To assist the Purchaser in completing the programme referred to in clause 17.1 above, the Vendor shall immediately following execution of this Agreement provide to the Purchaser all relevant material and information which the Vendor or its

agents have in their actual knowledge, control or possession in relation to all or any part of the Property including, but without limitation:

- (a) The file held by the Vendor in relation to each individual property (but the Vendor may, in order to comply with the Privacy Act, remove any material which is personal in relation to a tenant and the removal of which would have no adverse affect on the Purchaser);
- (b) All general files held by the Vendor in relation to its ownership and administration of the Property;
- (c) All agreements in relation to maintenance, supplies, repairs and upkeep of the Property;
- (d) All tenancy agreements and leases;
- (e) Copies of any consents authorising alteration of buildings forming part of the Property or if applicable a copy of any code compliance certificate or building certificate issued to the Vendor for any building forming part of the Property under the Building Act 1991;
- (f) Copies of any guarantees, warranties, certificates, records, maintenance and operation manuals and any other documents relating to the maintenance and operation of the building or any of its services;
- (g) Particulars of the names of professional consultants, contractors or sub-contractors known to the Vendor to have been engaged in the construction, alteration or maintenance of any of the buildings forming part of the Property;
- (h) Details of any easements or supply arrangements (whether registered or unregistered) with neighbouring property owners concerning access or the supply to a property of any services including (without limitation) electricity, gas, water, sewage, drainage and telephone services;
- (i) Particulars of the payment status and general status of all parties to the leases and tenancies in respect of the Property including details of disputes, variations, waivers, concessions, indebtedness and defaults;
- (j) Details of all chattels situated in the Property;
- (k) Copies of all available valuation and engineering reports made during the period of two years before the date of this Agreement;
- (l) Full details of any existing pending or threatened litigation relating to any of the Property and known to the Vendor;
- (m) Full details of any leaks in any of the individual properties and remedial work taken to repair those leaks.
- (n) Details of all asbestos in the Property.

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18. No Claims

- 18.1 If the condition contained in clause 17.1 above has not been waived or fulfilled on or before the date referred to in that sub-clause, then this contract shall be at an end and neither party shall have any right or claim against the other.

19. Dealings With Tenancies and Tenants

- 19.1 Pending settlement the Vendor shall be entitled to sign any further lease, review rent, or agree any variation renewal or assignment of lease without referral to the Purchaser so long as such dealings are generally in accordance with the Vendor's normal asset management procedures and so long as the Purchaser is immediately informed of those dealings and given copies of any communications in relation to them.
- 19.2 The Purchaser acknowledges that the Vendor has, at the date of this agreement, made offers to sell to [8] tenants, pursuant to its homebuy policy. The properties the subject of those offers shall continue to be included in the sale to the Purchaser and the Purchaser shall proceed with the sale of those properties to those tenants on its own behalf but in accordance with the homebuy policy of the Vendor. For the avoidance of doubt the parties agree that the Vendor shall not be required to provide or fund a suspensory loan in respect of sales to tenants by the Purchaser.
- 19.3 However, the Vendor shall not, from the date of this Agreement, commence any homebuy negotiations with any other tenants of properties which are subject to this Agreement.

20. Additional Warranties

- 20.1 The Vendor warrants and undertakes that:

- (a) The Vendor will pay and discharge all debts and liabilities incurred by the vendor prior to the Possession Date in connection with any part of the Property;
- (b) The Vendor will until Possession Date responsibly carry on the administration of the Property in the same manner as before the date of this contract;
- (c) The Vendor will promptly account to the Purchaser for any monies received by the Vendor from tenants of the Property following Possession Date;
- (d) The Vendor will, at the Vendor's cost, do and execute all such acts and deeds as may reasonably be required to enable the Purchaser to obtain the full benefit of the tenancy agreements, leases or licences, possessed by the Vendor in connection with the Property. *which lease and lic.*
- (e) The Vendor will allow up to two staff members of the Purchaser to attend at the Vendor's premises at all reasonable times between the date of this

Agreement and Possession Date to enable the Purchaser to acquaint itself with the Property and the Vendor's administration of the Property.

20.2 The Purchaser warrants and undertakes that it will, following Possession Date, allow the Vendor:

- (a) Access to the items described in clause 17.2 above on reasonable notice; and
- (b) To borrow for a reasonable time any of those items for the purpose of a claim, Court proceeding, or any other reasonable purpose.

21. Defaulting Tenants

21.1 The Purchaser is aware that the Vendor is and will on Possession Date be, owed sums of money by tenants in respect of some of the individual properties. Notwithstanding that, the apportionments referred to in clause 3.6 shall include apportionments of rent, on the basis that rent has been paid up to Possession Date. The Vendor shall be at liberty to collect all sums owed to it by any tenants of the any of the individual properties. Similarly, the Purchaser shall be at liberty to collect debts incurred from and after Possession Date to it from the tenants of the individual properties. Each party shall, where appropriate, lend its name to any proceeding brought by the other against a tenant and cooperate in every other reasonable way with the endeavours of the other to secure the payment of sums owing to it.

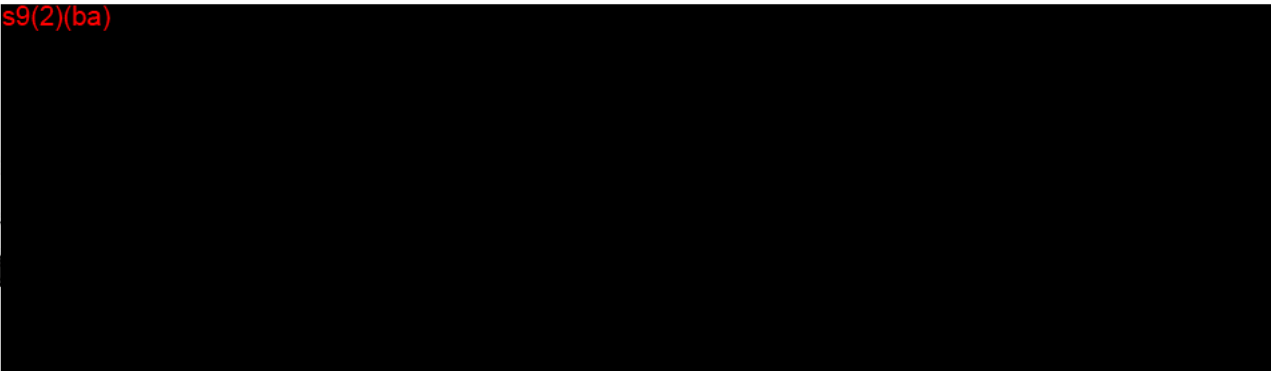
22. Possession

22.1 The Vendor shall, in addition to its obligations under clause 3 of this Agreement, deliver to the Purchaser on settlement:

- (a) All keys to individual properties held by the Vendor;
- (b) The items referred to in clause 17.2 above.

23. Finance

23.1 s9(2)(ba)



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24. Confidentiality

24.1 The Purchaser will treat all information made available by or on behalf of or at the request of the Vendor in connection with this Agreement as strictly private and confidential until settlement. If settlement does not proceed, the Purchaser will return such information to the Vendor and will not divulge it to any third party or use it in any way for the Purchaser's own advantage, unless:

- (a) the information becomes public knowledge otherwise than by the Purchaser's own disclosure; or
- (b) the Purchaser is required by law to make the disclosure; or
- (c) the Vendor has consented in writing to the disclosure.

25.0 Subdivision of Properties

25.1 The Purchaser acknowledges that there are 8 residential properties situated at New Lynn Place, Masterton, which are in the process of being subdivided to provide separate titles in relation to each residential property. The Vendor shall carry out and complete the subdivision of those properties at its own cost and will procure the issue of separate certificates of title in relation to each of the properties and the Purchaser shall raise no requisition and shall not be entitled to delay settlement for any reason associated with the subdivision or issue of titles to those properties.

25.2 The Purchaser shall administer the properties as if they were owned by the Purchaser on and from settlement and shall do all things necessary to assist the Vendor in complying with its obligations contained in clause 25.1.

25.3 In the event that the Vendor shall not have delivered individual separate titles to each of the properties by 31 October 1999, the Purchaser may, by serving written notice on the other, elect that the properties will not be conveyed to the Purchaser in which event the Vendor will agree to a refund of a proportionate amount of the purchase price representing the then current market value of the properties.

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