

FURTHER TERMS OF SALE

20. DEFINITIONS AND INTERPRETATIONS

Definitions

20.1 In this Agreement:

Agreement means this agreement, comprising the “ADLS” General Terms of Sale, these Further Terms of Sale and all Annexures.

Consent means all consents, approvals and permits necessary to give effect to the Outline Plan.

Deposit means the sum of 10% of the Purchase Price payable in accordance with clause 22.1.

Development means the Vendor’s proposed development of part or all of the Land, intended to be developed as a residential subdivision known as “Pembroke Terraces”.

District Plan means the Queenstown Lakes District Plan.

GST Act means the Goods and Services Tax Act 1985 and all amendments and Acts in substitution.

Land means the Vendor’s land currently comprised in Record of Title 850111.

Net Interest means interest earned less Resident Withholding Tax and any collection commission charged by the Stakeholder.

Land Covenant means the land covenant applicable to the Property, an initial draft of which is attached to this Agreement at Annexure B, subject to clause 25.3.

Lodge any Submission means (without limitation) personally or through any agent or servant, directly or indirectly, lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning hearing, or appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise.

Outline Plan means the draft Concept Plan for the Subdivision and attached to this Agreement at Annexure A (which may be amended as provided for in this Agreement).

Planning Proposal includes (without limitation) any application for resource consent and/or plan change and/or variation of any nature under the relevant District Plan and/or proposed District Plan in respect of, or which affects the Land.

Property means the land described as Property in this Agreement, with a new record of title yet to be issued.

Relevant Authority means any corporation, including any government, local, statutory or non-statutory authority or body, having jurisdiction over the Land.

RMA means the Resource Management Act 1991 (and any amendment of that Act or any replacement legislation).

Settlement means the performance by the parties of their settlement obligations under this Agreement.

Settlement Date means the date determined pursuant to clause 26.1.

Stakeholder means the Vendor's solicitor, Aspiring Law Limited.

Subdivision means the proposed subdivision of the Land, as set out in the Outline Plan.

Territorial Authority means Queenstown Lakes District Council (and/or where applicable Otago Regional Council).

Headings

- 20.2 Headings and sub-headings 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 or sub-headings.

Conflict

- 20.3 If there is a conflict between the provisions of the General Terms of Sale, these Further Terms of Sale, the provisions of any of the Annexures to this Agreement, or with any other special conditions which may have been inserted in this Agreement, the same shall be interpreted and determined in the priority of the Further Terms of Sale first; the General Terms of Sale second; the Attachments third; and any other special conditions fourth.

Statutes and Regulations

- 20.4 Reference 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.

Words, references and derivatives

- 20.5 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) 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;
 - (e) derivatives of any defined term have a corresponding meaning to that of the defined term;

- (f) references to this Agreement or derivatives of it shall be deemed a reference to this Agreement for Sale & Purchase, these Further Terms of Sale and all Attachments to this Agreement.

21. CONDITIONS

- 21.1 This Agreement is entirely conditional upon satisfaction of each of the following conditions on or by the date for fulfilment specified in each case:

For the Benefit of the Vendor and Purchaser

- (a) The Vendor notifying the Purchaser in writing that a search copy (as defined by Section 60 of the Land Transfer Act 2017) of the new record of title for the Property is available.

Date for Fulfilment:

The date that is four years from the date of this Agreement.

For the Benefit of the Vendor

- (b) The Vendor being satisfied in its sole opinion that the Development, and/or the sale of the Property as part of the Development is economically feasible.
- (c) The Vendor obtaining all approvals or Consents for the Development, satisfactory to the Vendor in all respects in its sole discretion.

Date for Fulfilment:

If at any time it becomes apparent to the Vendor (in its sole discretion) that either condition will not be fulfilled, the Vendor may notify the Purchaser accordingly and immediately without further notice cancel this Agreement and the Deposit plus any Net Interest will be returned to the Purchaser in accordance with Further Term of Sale 22.4.

For the Benefit of the Purchaser

- (d) The Purchaser being satisfied that the Property is suitable for the Purchaser's requirements, including by way of example and without limitation:
 - (i) the availability of finance;
 - (ii) such other matters as the Purchaser, in the Purchaser's sole discretion, deems pertinent and relevant;
 - (iii) the Purchaser's solicitor approving this Agreement.

The Vendor shall promptly, upon request, provide the Purchaser with all available relevant information and material which the Vendor has in the Vendor's actual knowledge, control or possession in relation to the Property in order to assist the Purchaser to fulfil the requirements of this condition.

Date for Fulfilment:

10 Working days from the date of this Agreement.

22. DEPOSIT

Payment

22.1 The Purchaser shall pay the Deposit to the Stakeholder, in cleared funds, in two instalments, as follows:

- (a) \$1,000 immediately upon confirmation of the Purchaser's condition in clause 21.1(d); and
- (b) the balance within three working days' of the Vendor notifying the Purchaser in writing that it has obtained a Consent for the Development, satisfactory to the Vendor in all respects.

22.2 The Vendor shall not be entitled to cancel this contract for non-payment of the Deposit, unless the Vendor has first given 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 solicitors, the Deposit or relevant instalment has been paid.

Part Payment of Purchase Price

22.3 The Deposit shall be in part payment of the Purchase Price.

Held by Stakeholder

22.4 The Vendor and the Purchaser agree that the Stakeholder shall hold the Deposit in the Stakeholder's trust account on interest bearing deposit in the name of the Vendor and the Purchaser, and:

- (a) Contemporaneous with Settlement being completed under the Agreement, the Deposit plus Net Interest (if any) will be released to the Vendor; or
- (b) In the event that this Agreement is cancelled:
 - (i) As a result of a default of the Purchaser, the Deposit plus any Net Interest (if any) will be immediately released to the Vendor; and
 - (ii) For any other reason save for the default of the Purchaser, the Deposit plus Net Interest (if any) will immediately be refunded to the Purchaser on receipt by the Stakeholder of sufficient bank account evidence from the Purchaser.

22.5 The Purchaser agrees that neither the Vendor nor the Stakeholder shall be held liable or responsible for any default or failure by or of such bank.

IRD Details

22.6 The Purchaser shall provide the Vendor's solicitors with details of the Purchaser's Inland Revenue Department number (if the Purchaser has been assigned such a number), when required.

23. DEVELOPMENT

23.1 The Outline Plan shows the Vendor's intended subdivision scheme for the Development. The Outline Plan may be changed by the Vendor from time to time in its sole and absolute discretion, as the concept of the Development develops and evolves.

23.2 The Purchaser acknowledges that:

- (a) The Vendor reserves the right at any time without limitation at its sole and absolute discretion to not commence, to start, to stop, to restart and to change any aspect of the Development.
- (b) The Purchaser is not purchasing the Property in reliance upon the development of any part of the Development proceeding, other than the development of the Property.
- (c) The Purchaser disclaims any liability on the part of the Vendor to the Purchaser in respect of anything and of the consequences of anything done or omitted to be done by the Purchaser in reliance upon the Development of any part thereof, other than the development of the Property subject to the terms of this Agreement.
- (d) The Purchaser is not entitled to avoid this Agreement or any of its provisions, claim any adjustment in price or any compensation, damages, right of set-off or to make any objection or requisition or other right or remedy under this Agreement or otherwise at law or in equity in respect of any of the matters referred to in clauses 23, 24, 25, 27 and 28.

24. FORCE MAJERUE

24.1 If any event of force majeure, including without limitation: any civil or labour disorders; monetary or economic developments; governmental or local governmental interference; or other factors beyond the reasonable control of the Vendor shall prevent the Vendor from completing the Development or render it impracticable for the Vendor to complete the Development then the Vendor may advise the force majeure circumstances and cancel this Agreement, by notice in writing to the Purchaser or defer the construction or completion of the Development until such event of force majeure shall have dissipated to such an extent as to allow the Vendor to complete the Development and the Purchaser agrees that the Vendor shall not be liable for any deferment of Settlement because of such event of force majeure.

24.2 If this Agreement is cancelled in accordance with the above and the Purchaser has been repaid the Deposit and Net Interest, neither party shall have any right or claim against the other.

25. **ISSUE OF NEW RECORD OF TITLE**

Title

25.1 The Vendor shall as soon as practicable during the Development, use all reasonable endeavours to have a survey plan prepared substantially in accordance with the Outline Plan at its cost and shall do all things reasonably necessary and required to have a separate record of title issued for the Property including (at its cost):

- (a) Applying for any and all required Consents;
- (b) Attending to all matters required to be undertaken pursuant to the Consents and obtaining Territorial Authority certifications that the conditions of the Consents have been met; and
- (c) Applying to Land Information New Zealand Limited for a separate record of title to the Property.

Services

25.2 The Property will have the following services provided to the boundary:

- (a) Electricity;
- (b) Domestic Water;
- (c) Sewage disposal;
- (d) Storm water disposal; and
- (e) Telecommunications and Computer Media,

and the Purchaser will be responsible for all costs of connecting to such services.

Easements and Restrictions

25.3 The Vendor reserves the right to grant or receive the burden or benefit of any easements, building restrictions, covenants or other encumbrances, rights or obligations, including the Land Covenant, which may be required in order to satisfy any conditions of a Consent, or the requirements of any statute, regulation or Relevant Authority, or which at the sole discretion of the Vendor, acting reasonable, are deemed to be necessary or desirable. The Purchaser acknowledges and agrees that the record of title to issue for the Property will be issued subject to such easements, building restrictions, covenants or other encumbrances, rights or obligations which may be required in order to satisfy any conditions of a Consent, or the requirements of any statute, regulation or Relevant Authority, or which in the sole discretion of the Vendor, acting reasonably, are deemed to be necessary or desirable together with any easements and restrictions as appear on the record of title of the Land as at the date of this Agreement.

25.4 The Vendor gives no warranty as to when the record of title for the Property will issue. The Purchaser acknowledges that any dates provided by which the Consents will be obtained, the survey plans required will be deposited or the transfer to the Purchaser will be

registered are not essential dates for the purposes of this Agreement. The Purchaser shall not at any time lodge any caveat against the record title to the Land or any underlying record of title of which the Property and/or the Land forms part. The Purchaser (and if more than one each of them) irrevocably appoints the Vendor and each director of the Vendor jointly and severally as the Purchaser's attorney to execute and complete any withdrawal of caveat lodged in contravention with the requirements of this sub-clause.

- 25.5 Without limiting the terms above the parties acknowledge that the record title to the Property will be subject to the Land Covenant on substantially similar terms to that attached in Annexure B.

No Objection Covenant

- 25.6 The Purchaser (including the Purchaser's successors in title and subsequent assignees of the property) covenant with the Vendor (including any subsidiary or associated company of the Vendor or successor or assigns to the Vendor) that they will not:

- (a) Object to or Lodge any Submission against any Planning Proposal.
- (b) Oppose, object to, frustrate or take any action, or encourage or cause others to oppose, object to, frustrate or take any action, that might in any way prevent or hinder the Vendor from progressing and completing the Development or any other development within a 1 kilometre radius of the Land.

26. SETTLEMENT AND POSSESSION

Settlement Date

- 26.1 The Purchase Price and all other monies payable by the Purchaser to the Vendor under this Agreement shall be paid in cleared funds and legal possession shall be given and taken and Settlement shall take place no later than 4:00pm on the day which is ten (10) working days after the Vendor gives the Purchaser written notice that a search copy (as defined by Section 60 of the Land Transfer Act 2017) of the new record of title for the Property is available.

27. TITLE, BOUNDARIES, ETC

Requisitions

- 27.1 The Purchaser is deemed to have accepted the Vendor's record of title for the Property and will not issue objections or requisitions on it.

Measurements

- 27.2 The Purchaser acknowledges that the areas and measurements of the Property on the Outline Plan are approximate only and are subject to survey.

- 27.3 All areas and measurements if any, shown in the Outline Plan are indicative and are subject to variation in the course of development of working drawings and construction and any variation which may be found necessary upon checking by the Relevant Authority, the Vendor's surveyor, or Land Information New Zealand and the Purchaser shall not be entitled to make any objection or requisition or bring any claim whatsoever against the Vendor 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, provided however that where (for whatever reason) the area of the Property only as indicated on the Outline Plan and the final surveyed area of the Property differ:

- (a) By less than 5% (upwards or downwards) from the area of the Property specified in the Outline Plan, there shall be no adjustment to the purchase price for the Property; or
- (b) By 5% or more (upwards or downwards) from the area of the Property specified in the Outline Plan, the purchase price for the Property will be adjusted in accordance with the following formula:

$$A \times B = C$$

where:

A= the final area of the Property in square metres;

B= the purchase price shown on the front page of this Agreement for the Property, divided by the area of the Property shown on the Outline Plan; and

C= the final purchase price.

- (c) Upwards or downwards by more than 10% from the area of the Property specified in the Outline Plan, the Purchaser shall have a right to cancel this Agreement within five working days of being notified by the Vendor of the final area of the Property (time being of the essence) and, save for the refund of the Deposit and Net Interest, neither party shall have any claim against the other. For the avoidance of doubt if the Purchaser does not elect to cancel this Agreement pursuant to this clause then clause 27.3(b) will apply.

Errors and Misdescriptions

- 27.4 No error or misdescription of the Property or record of title shall annul the sale and no compensation shall be made or given.

28. SALES OF LOTS GENERALLY

Sales Methods

- 28.1 The Purchaser will not object (and waives any right to do so) to methods employed by the Vendor in an endeavour to sell Lots forming part of the Land.

29. GENERAL

Assignment

- 29.1 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 may be granted or withheld at the Vendor's sole discretion. The Vendor has the right to request and receive full financial information on the proposed assignee or transferee to ascertain their credit worthiness as part of the granting or otherwise of the proposed assignment, transfer, or otherwise disposal of or alienation of the benefit of this Agreement.
- 29.2 If the Vendor consents to the assignment, transfer, disposal 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 disponee covenants with the Vendor that they are bound by the provisions contained or implied in this Agreement and on the part of the Purchaser to be observed and performed.

- 29.3 No assignment, transfer, or other disposition or alienation consented to by the Vendor as above shall release the Purchaser from the Purchaser's obligations under this Agreement should any default in performance of Purchaser's obligations occur.

No Merger

- 29.4 Notwithstanding any rule of law to the contrary, the provisions of this Agreement shall not merge in any settlement to be effected, or in any instrument to be executed and given in accordance with the provisions of this Agreement, but shall remain in full force and effect.

Representations

- 29.5 The parties acknowledge that 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 this Agreement and notwithstanding anything contained in any brochure, report or other document. The Purchaser acknowledges that the Purchaser 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. Without limiting the foregoing the Purchaser acknowledges that the Purchaser has relied upon its own taxation advice and has not relied on any information advice or representation made by the Vendor or the Vendor's advisors.

Severability

- 29.6 If any provision of this Agreement or the application of it, is or becomes invalid or unenforceable or of no effect, 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.

Lowest Price

- 29.7 The Purchase Price for the Property is the lowest price that the parties would have agreed upon for the Property under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis no income or expenditure arises under those rules.

Liability

- 29.8 If there is more than one Purchaser, the liability of the Purchasers is joint and several. For the avoidance of doubt General Terms of Sale 16 shall still apply.
- 29.9 Where the Purchaser executes this Agreement with provision for a nominee, or as agent for an undisclosed principal, or on behalf of the company to be formed, the Purchaser shall at all times remain liable for all obligations on the part of the Purchaser hereunder.
- 29.10 The person or persons who sign as directors or who sign for or on behalf of a private limited liability company as Purchaser shall themselves be personally liable jointly and severally with the Purchaser for all the obligations on the part of the Purchaser hereunder. The Vendor at its sole discretion may waive this liability by written advice to the signatories for the Purchaser.

Jurisdiction and Currency

- 29.11 This Agreement shall, in all respects, be construed and applied and take effect as a contract made in New Zealand and shall be governed by and performed according to the law of New Zealand.
- 29.12 All sums payable under this Agreement shall be paid in New Zealand Dollars. The Purchaser shall be responsible for any commissions or charges payable on the exchange of payments made in other than New Zealand Dollars to New Zealand Dollars.

Annexure A - Outline Plan

Annexure B – Land Covenant