

## ADDITIONAL FURTHER TERMS OF SALE RUSSELL PROPERTIES LIMITED

### 1. Definitions continued

In these Further Terms, unless the context otherwise requires:

- a) **Agreement** includes these Additional Further Terms, the Agreement for Sale and Purchase of Real Estate and the Plans and Specifications.
- b) **Building Consent** means the building consent obtained or to be obtained from the Wellington City Council (Council) in relation to the construction of the House.
- c) **Further Terms** means these Additional Further Terms of Sale.
- d) **House** means the dwelling and other work to be completed by the Vendor on the property in accordance with this Agreement.
- e) **Plans and Specifications** means the House specifications and plans attached to this Agreement.
- f) **Practical Completion** means the date the Council issues a final inspection site notice for the House with a “pass” outcome.
- g) **Variation** means a variation from the Plans and Specifications.

### 2. House Construction

- a) The Vendor will or will continue to construct the House on the property with all reasonable speed to achieve Practical Completion.
- b) The Vendor will not be liable for any delay in achieving Practical Completion due to circumstances beyond its control, such as strikes, accidents, civil commotions, epidemics, floods, bad weather in excess of the norm for that time of year, transportation delays, shortage of materials and acts of God.
- c) The Vendor will construct and complete the House in a thorough and workmanlike manner and in strict accordance with the Building Consent, the Council bylaws, all applicable legislation and regulations, and the Plans and Specifications. The Vendor may subcontract part of the construction of the House but will remain fully liable for the subcontracted work.
- d) The Purchaser is able to choose the colours of any product or item to be supplied and installed in the House provided that -
  - i) any colour selected shall be from the manufacturer’s or supplier’s standard colour range and
  - ii) at the time this Agreement becomes unconditional the item or product is not already supplied, installed or ordered and the order cannot be changed.

- e) To comply with the provisions of the Health and Safety at Work Act (2015) and the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, the Purchaser may not have access to the property without being accompanied either by the Vendor or the Vendor's agent.

### **3. Materials**

- a) Unless otherwise agreed by the parties, all materials placed by the Vendor on the property and not actually incorporated in the House are owned by the Vendor and will be removed by the Vendor prior to the Settlement Date. The Vendor will clear the property of all trade materials and debris before the Settlement Date.
- b) If any materials set out in the Specifications cannot reasonably be obtained or are prohibited by any legislation or bylaw, the Vendor may, with the Purchaser's consent (which will not be unreasonably withheld), substitute materials of a value and quality as near as reasonably practicable to the specified materials. Any difference in the cost of the substituted materials shall be treated as an extra or a deduction to the Purchase Price, as the case may be.

### **4. Variations**

- a) If the parties agree on any Variations, the parties will fix the price of the Variations in writing before the Vendor carries them out. The Purchaser will pay for the Variations on the Settlement Date. All Variations must be agreed in writing.
- b) If, as a result of a Variation, the Purchaser undertakes to complete part of the work on the House or to supply certain materials for the House, the Purchaser will accept full responsibility for such work and materials and any delays caused by such work. All materials supplied by the Purchaser are at the Purchaser's risk and should be insured by the Purchaser.
- c) Unless the cost of processing the Variation is included in the agreed cost of the Variation, the Vendor shall be entitled to charge \$150 (plus GST) per Variation to recover the cost of processing the Variation.

### **5. Insurance**

- a) The Vendor will, until the Settlement Date, keep the House insured against fire, explosion, earthquake, lightning, flood, storm and tempest, theft and damage pursuant to the Vendor's Contract Works Insurance Policy.
- b) The Vendor will maintain a policy of public liability insurance until the Settlement Date. The insurance will cover liability to third parties in respect of personal injury, death or damage arising out of or in connection to the construction of the House.

### **6. Maintenance and Warranties**

- a) The Vendor will rectify, at its own cost and within a reasonable time, any defects or other faults which appear and are notified in writing by the Purchaser to the Vendor within 12 months from the Settlement Date and which arise from faulty materials or workmanship in breach of this Agreement or the implied warranties in the Building Act 2004. When completing maintenance pursuant to this clause, the Vendor will not be liable to do more

than it, or Master Build Services Limited, would be required to do if a claim was made under the Building Guarantee referred to in clause 6(c) below.

b) **Manufacturers and Suppliers Guarantees and Warranties:**

The benefit of all product and materials warranties and guarantees from suppliers or manufacturers of goods or equipment used in the construction of or installed in the House will be held by the Vendor on trust for the Purchaser.

c) **Building Guarantee**

The Vendor will, at its own cost, obtain for the Purchaser a standard 10 Year Master Build New Home Guarantee for the House subject to the approval of Master Build Services Limited. The Vendor will transfer the Master Build Guarantee, to the Purchaser on the Settlement Date.

## 7. **Insolvency of Vendor**

If the Vendor has a receiver appointed or is placed into liquidation, the Purchaser may terminate this Agreement by written notice to the Vendor and the Purchaser shall be entitled to a full refund of any monies paid, including any deposit paid plus net interest earned on the deposit (if any).

## 8. **Dispute Resolution**

If a dispute arises between the parties concerning the construction of this Agreement or as to any matter or thing arising under this Agreement which the parties cannot resolve, such dispute shall be referred to Fairway Resolution Limited, an independent dispute resolution company used by Master Build Services Limited, for resolution.

## 9. **Payment Schedule**

The purchase price shall be paid in the following manner:

- a) A deposit of \$\_\_\_\_\_ shall be paid to the Vendor's Solicitor's Trust Account within five (5) working days of confirmation of any conditions set out in this Agreement. This deposit shall be held in the Vendor's Solicitor's Trust Account on interest bearing account until the Settlement Date or cancellation of the contract under clause 16.
- b) The balance of the Purchase Price, together with any extra amounts payable by the Purchaser as a result of Variations agreed under clause 4 of these Further Terms, shall be paid to the Vendor's Solicitor's Trust Account on the earlier of the following:
  - i) Fifteen (15) working days after the date of Practical Completion or
  - ii) Five (5) working days after the issue of a Code Compliance Certificate for the House.
- c) Notwithstanding clause 9 b), if a new title is being issued for the property, the balance of the Purchase Price payable under clause 9 b) shall not be payable before the fifth (5th) working day after the date the Vendor advises the Purchaser that the new title has issued.
- d) The Purchaser acknowledges that it may be required to pay the balance of the Purchase Price under clause 9 b) above before the Council issues a Code Compliance Certificate for

the House and confirms that this Agreement is also a written agreement pursuant to section 362V(2) of the Building Act 2004 allowing settlement of the property without the issue of a Code Compliance Certificate.

- e) The Vendor will notify the Purchaser five (5) working days prior to each payment due under this clause 9. On the giving of such notice the Vendor will allow the Purchaser's valuer reasonable access to the property if required.

#### 10. **Fixed Price Contract**

Subject to the provisions contained in clauses 3 and 4 of these Further Terms, the Purchase Price shall be deemed to be a fixed contract price and the Vendor shall not be entitled to increase the Purchase Price as a result of any additional costs.

#### 11. **Purchase of Land**

- a) The Vendor warrants that it has entered into an unconditional contract for the purchase of the property from the current registered proprietor and has been granted possession of the property for the purposes of construction of the House. Settlement of the purchase of the property from the current registered proprietor will take place on the same day as the Settlement Date.
- b) Plans for the House have been approved in accordance with the covenant registered on the Title to the property and the Vendor will comply with all terms and conditions in its purchase contract with the current registered proprietor and all conditions of any Consent Notice registered on the title to the property.

#### 12. **Rates**

The parties acknowledge and agree that for the purposes of clause 3.6 of the General Conditions of Sale, Council rates for the property are deemed to be \$900.00 per annum plus GST until such time as the property shall be separately rated and the rates apportionment for the property shall be calculated accordingly. The Purchaser is responsible for payment of rates from the date of possession.

#### 13. **Easements, Covenants & Caveats on Title**

If a separate title for the property has not been issued at the date of this Agreement, the Purchaser acknowledges and accepts that:

- a) a covenant, generally in the form attached to this Agreement, will be registered on the new title for the property.
- b) The property is sold subject to such easements, consent notices, certificates, fencing and restrictive covenants, building line restrictions and other encumbrances (other than mortgages) as are shown on the head title (being the title in which the property is currently included) or the Land Transfer Plan attached (if any), or which are required by the Council.
- c) The Purchaser will not lodge or register a caveat against the head title. In the event that such a caveat is lodged or registered in breach of this clause the Purchaser hereby irrevocably appoints the Vendor, and any director or authorised officer of the Vendor jointly and severally, as its attorney, to do all such things and in the name of the Purchaser to

enter into and execute all such documents that may be required to remove or withdraw the caveat. The Purchaser will indemnify the Vendor in respect of all costs, expenses and losses for breach of this clause or for acting in its capacity as the attorney of the Purchaser pursuant to this clause.

#### 14. **Lowest Price**

The purchase price does not include any capitalised interest and the parties agree that the "lowest price" for the purposes of valuing the property under subpart EW and in particular section EW 32(3) of the Income Tax Act 2007 is equal to the purchase price.

#### 15. **Precedence of Documents**

If there is any discrepancy discovered between the documents which together comprise the Agreement then the following shall be the order of precedence:

- a) these Further Terms;
- b) the Agreement for Sale and Purchase of Real Estate;
- c) the Specifications;
- d) the Plans.

#### 16. **Withdrawal from Agreement**

- a) The Vendor may terminate this Agreement by written notice to the Purchaser if:
  - i) a building consent for the House is not granted by the Council within 2 months of the date of this Agreement, or
  - ii) House has not reached Practical Completion within 2 years of the date of this Agreement through no fault of the Vendor.
- b) The Purchaser may terminate this Agreement by written notice to the Vendor if the House has not reached Practical Completion within 2 years of the date of this Agreement through no fault of the Purchaser.
- c) If this Agreement is terminated by either party under clauses 16 a) or 16 b), no compensation shall be payable to either party but any money already paid by the Purchaser under this Agreement will be refunded to the Purchaser by the Vendor together with the net interest earned on such money (if any).

#### 17. **Checklist acknowledged**

The Purchaser acknowledges that prior to entering into this Agreement, the Vendor provided the Purchaser with the prescribed checklist and disclosure information required under section 362D of the Building Act 2004.

## LAND COVENANT

(To be registered on the Title to the property in accordance with clause 13(a) of the Further Terms if a separate title for the  
Property has not yet issued)

### 1.0 DEFINITIONS AND INTERPRETATION

1.1 In this covenant unless the context otherwise requires:

“**Improvements**” means any dwellings, buildings, or other structures.

“**Lot**” means one of the lots enumerated in the definition of Lots.

“**Lots**” means and includes Lots [        ] (inclusive) on Deposited Plan [        ] being all of the land in Computer Freehold Registers [        ] (inclusive) (all Wellington Registry).

### 2.0 LAND COVENANT

2.1 No Improvements shall be commenced or erected or permitted to be erected commenced or erected on any of the Lots except where:

- a. Plans for the Improvements have been submitted to Evergreen Management Limited (Evergreen) and the prior consent in writing of Evergreen obtained to such plans and the situation of the Improvements on the Lot concerned; and
- b. the Improvements are constructed erected and situated in accordance with the plans and situation approved by Evergreen or in such other manner as Evergreen shall approve in writing.

The approval of Evergreen is required for aesthetic purposes only, to ensure a high quality of housing within the subdivision and Evergreen will have no input or liability in relation to the construction of the Improvements.

2.2 Full landscaping plans must be submitted to Evergreen for approval by the registered proprietor of each Lot and the consent in writing of Evergreen obtained to such plans no later than six months after the completion of the dwelling on each Lot and prior to undertaking any landscaping work on the Lot. Such landscaping plans are to encompass sufficient plants, trees and shrubs to enhance the street appeal of the Lot. The landscaping work is to be completed by the registered proprietor of each Lot no later than twelve months after the completion of the dwelling on the Lot.

2.3 Once the consent or approval of Evergreen has been given pursuant to clauses 2.1 and 2.2 in respect of any Lot and the Improvements and landscaping are constructed and sited on that Lot in accordance with the consent or approval, the restrictive covenants contained above shall thereupon be extinguished in relation to that Lot to the extent that thereafter those clauses need not be complied with in respect of any alteration to the Improvements or landscaping or any further dwelling, building or structures erected on the Lot concerned.

2.4 The registered proprietor of each Lot covenants to at all times keep and maintain the Lot and any lawn on the road reserve in front of each Lot in a neat and tidy condition to prevent it from becoming unsightly and not to allow any Improvements or landscaping to fall into disrepair.

2.5 No caravan, truck, bus, trailer, boat, machinery or other unsightly object (not including any motor vehicle, small van, or utility truck that is in good working order, repair and appearance) shall be parked or permitted to remain on that part of any Lot that is situated between the dwelling situated on the Lot concerned and the street frontage of such Lot for any material period of time.

- 2.6 The registered proprietor of each Lot covenants not to require Best Farm Limited/Hunters Hill Limited (as applicable) to contribute towards the cost of erection or repair of any dividing or boundary fence between the Lot and any adjoining land owned by Best Farm Limited/Hunters Hill Limited (as applicable), but the benefit of this fencing covenant shall not benefit the transferee of such adjoining land.
- 2.7 The registered proprietor of each Lot adjoining land owned by Wellington City Council (Council) ("Reserve") covenants that they will pay the costs of erection or repair of any dividing or boundary fence between the Lot and a Reserve and will not seek any contribution from Best Farm Limited/Hunters Hill Limited (as applicable) or the owner of the Reserve.
- 2.8 If there should be any breach or non-observance of any of the foregoing covenants and without prejudice to any other liability which the registered proprietor of a Lot may have to any person having the benefit of this covenant, should the registered proprietor of a Lot not rectify the breach or non-observance of any of the foregoing covenants within 15 working days of written notice being made by Evergreen then the registered proprietor in breach will pay to Evergreen as liquidated damages the sum of \$100 per day for every day that such breach or non-observance continues after the date upon which written demand has been made until the breach is remedied, together with any costs and expenses incurred by Evergreen to remedy the breach or non-observance.
- 2.9
- a. Evergreen shall not be required, nor liable to enforce, nor answerable to the registered proprietors of the Lots, for the breach or non-observance of any covenants binding the Lots; and
  - b. Best Farm Limited/Hunters Hill Limited shall not be required, nor liable to enforce, nor answerable to the registered proprietors of the Lots, for the breach or non-observance of any covenants binding the Lots unless Best Farm Limited/Hunters Hill Limited is the owner for the time being of the Lot in respect of which there is a breach or non-observance of a covenant in this Easement Instrument.
- 2.10 Evergreen (or its successors appointed by deed) may in special circumstances grant such exemptions or waivers from any of the covenants in this Easement Instrument on such terms and subject to such conditions as it deems fit. Any exemption or waiver shall be binding upon all registered proprietors from time to time of the Lots. Nothing in this Easement Instrument shall be construed to impose any obligation on Evergreen (or its successors) to enforce, or grant exemptions or waivers from any of the covenants in this Easement Instrument and Evergreen will not be liable for any decision that it makes or does not make.
- 2.11 The registered proprietors of the Lots will keep Evergreen and Best Farm Limited/Hunters Hill Limited indemnified from all proceedings, costs, claims and demands in respect of any breaches by a registered proprietor of a Lot of any of the stipulations, restrictions and covenants contained in this Easement Instrument.
- 2.12 This Easement Instrument shall be extinguished in relation to any land over which this Easement Instrument is registered which vests in Council as road or reserve without the need to obtain the consent of the registered proprietors of the Lots benefiting from this Easement Instrument or their mortgagees. The Easement Instrument will be extinguished over the land vesting as road or reserve contemporaneously with the deposit of the plan which vests the land as road or reserve.