

Further Terms of Sale

Contents

20. Further Definitions	1
21. Conditions to be satisfied	1
22. Deposit	2
23. Possession and Settlement	2
24. Subdivision	2
25. Title matters	3
26. General Provisions	4
27. Disclosures and acknowledgments	5

20. Further Definitions

20.1 In this Agreement the following terms will have the following meanings:

Agreement means the General Terms and these further terms of sale, together with all schedules and attachments.

Consents means all consents and approvals for the Subdivision each on terms and conditions acceptable to the Vendor.

Covenants means the land covenants registered or to be registered against the title to the Lot substantially in the form annexed as Schedule 2.

General Terms is reference to the attached General Terms of Sale forming part of the standard form of Agreement for Sale and Purchase of Real Estate Tenth Edition 2019 (2) as approved by the Real Estate Institute of New Zealand and the Auckland District Law Society.

Land means the land at Great South Road, Pokeno comprised in Record of Titles 1084422 and 1084423 together with any additional land acquired by the Vendor and incorporated into the Development.

Lot means the Property as identified on the front page of this Agreement being part of the Subdivision and being purchased by the Purchaser.

Net Interest means any interest actually earned on the deposit less any withholding tax payable and less any commission payable to the Stakeholder (which will not be more than 5% of the gross interest received).

OIA means the Overseas Investment Act 2005.

Relevant Authority means the Waikato District Council and any other government, local, or statutory or non-statutory authority or body having jurisdiction over the Land.

Scheme Plan means the Vendor's scheme plan for the Subdivision (a copy of which is annexed as Schedule 1).

Settlement means actual settlement whether or not it occurs on the Settlement Date.

Settlement Date means the 10th working day after the date that a search copy (as defined by section 60 of the Land Transfer Act 2017) of the title to the Lot is available

Stakeholder means the Vendor's lawyers.

Subdivision means the subdivision of the Land into fee simple titles generally in accordance with the Scheme Plan or such amended plans as may be adopted by the Vendor.

Sunset Date means the **30th November 2024** (subject to clause 26.1.b).

Vendor means the Vendor named on the front page of this Agreement, and its successors, transferees and assigns.

Vendor's Agent means the real estate agent(s) for the Subdivision appointed from time to time by the Vendor.

21. Conditions to be satisfied

21.1 **Due Diligence Condition:** This Agreement is conditional on the Purchaser being entirely satisfied that the property is suitable for the Purchaser's intended use at the agreed purchase price within 10 working days of the date of this Agreement. In determining whether this condition is satisfied the Purchaser may undertake a due diligence investigation including (but not limited to) an investigation of:

- a. entering into an unconditional building contract;
- b. finance;
- c. LIM report;
- d. all legal and title issues relating to the property and any encumbrances or memorials registered on it.
- e. compliance by the Vendor with applicable statutory and regulatory requirements including the Building Act 2004, the Resource Management Act 1991 and by-laws;

The parties acknowledge that the satisfaction of this condition shall be at the sole and absolute discretion of the Purchaser. The Purchaser is not obliged to state any reasons for the Purchaser's lack of satisfaction. The Vendor will co-operate with the Purchaser in the prompt provision to the Purchaser of all documentation held by the Vendor and reasonably required by the Purchaser to satisfy this condition.

21.2 **Sunset Date Condition:** This agreement is conditional upon the title for the Lot issuing on or before the Sunset Date.

21.3 **Benefit of Conditions:** The condition in clause 21.1 is for the benefit of the Purchaser. The condition in clause 21.2 is for the benefit of both parties.

21.4 **Non-Satisfaction of Conditions:** If any condition is not fulfilled or waived (waiver been deemed to be satisfaction) by the benefitting party by the relevant date for fulfilment, then either party may thereafter at any time before such condition is fulfilled or waived cancel this Agreement.

22. Deposit

- 22.1 **Deposit:** The Deposit is in part payment of the purchase price and is payable to the Stakeholder on the date of this Agreement. The Stakeholder will not be liable to any party for any delay in investing the Deposit or any part of it or any failure on the part of the bank or any costs deducted by the bank for handling the Deposit. The parties acknowledge that current deposit rates it is not economic for the Stakeholder to hold the funds in an interest-bearing deposit account.
- 22.2 **Held By Stakeholder:** The Deposit will be held by the Stakeholder in the Stakeholders' trust account until the Settlement Date or earlier cancellation of this Agreement. The net interest on the Deposit (if any) will be paid to the party entitled to receive the Deposit. This clause constitutes authority to the Stakeholder to make payment in accordance with the terms of this Agreement.

23. Possession and Settlement

- 23.1 **Settlement:** The Purchaser will be entitled to take possession of the Property at the time of Settlement.
- 23.2 **No Withholding or Objection:** The Purchaser will not:
- a. withhold the balance of the purchase price (or any part of it) or demand any retention on Settlement or make any objection or claim for compensation arising out of the exercise by the Vendor of a right under this Agreement, including, but not limited to the creation of any scheme of land covenants, easements, consent notices, licences, encumbrances, memorials and/or other property right or restriction affecting or relating to the Property; or
 - b. subject to the Purchaser's rights in clause 25.5, make any objection, requisition, delay Settlement, or claim for compensation because of any variation or alteration to the Subdivision, or other change made because of a requirement or direction of the Relevant Authority or because of the practical necessities of construction; or
 - c. 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 Subdivision and/or effecting any zone change and/or the Subdivision and/or the Consents needed to generally give effect to the Subdivision. This clause applies (without limitation) to any application for Consents, Environment Court application or other necessary consent process. The benefit of this clause also applies to any adjoining or neighbouring property the Vendor may own or subsequently purchase to add to the Subdivision.
- 23.3 **No transfer or assignment of Purchaser's rights:** The Purchaser is not entitled to assign the benefit of this Agreement or otherwise sell, transfer, mortgage or dispose of any interest in the Property, or any other interest the Purchaser has by virtue of this Agreement prior to completing Settlement in accordance with this Agreement unless the assignee is a trust or other entity related to the Purchaser or otherwise with the written consent of the Vendor.
- 23.4 **No caveat:** The Purchaser will not register a caveat against the Vendor's title prior to issue of a title for the Property. In the event that the Purchaser does register a caveat the Purchaser will remove the caveat forthwith upon being requested to do so by the Vendor. The Purchaser will be responsible for all costs incurred by the Vendor in connection with the caveat including the Vendor's solicitor's costs on a solicitor/client basis, all costs of removal and all costs and/or expenses incurred whether directly or indirectly by any consequential delay in the Subdivision or any part thereof.

24. Subdivision

- 24.1 **Subdivision:** The Vendor will, subject to its rights of variation in this Agreement, subdivide the Land.
- 24.2 **Obligations of the Vendor:** The Vendor will, with all due speed and diligence (but subject to delays beyond its control):
- a. do all things reasonably necessary to obtain the Consents and, once obtained, implement them;
 - b. arrange for a survey or surveys of the Land as may be necessary to prepare the subdivision plans and showing any easements, land covenants, encumbrances, consent notices and other property interest as may be required by the Subdivision and/or deemed necessary or desirable for the purposes of the Subdivision by the Vendor;
 - c. prepare and register a scheme of easements, land covenants, encumbrances, consent notices, memorials and other property interests as permitted by this Agreement;
 - d. lodge the necessary deposited plan with the relevant office of Land Information New Zealand in accordance with the Land Transfer Act 2017; and
 - e. obtain a separate title for the Lot.

- 24.3 **Variations:** If the Vendor in its sole discretion is of the view that it is necessary or expedient to undertake or incorporate changes to the Subdivision, then the Vendor may:
- a. make variations and alterations to anything shown or described in the Scheme Plan and any subsequent plan relating to the Land, the Subdivision and/or the Property (including the alteration, variation or cancellation of any proposed easements or land covenants shown on any such plan);
 - b. alter the layout and/or design of the Subdivision;
 - c. bring additional land into the Subdivision;
 - d. adjust the boundaries of properties (including the Property) within the Subdivision, in such manner as the Vendor in the Vendor's sole discretion thinks necessary and, except as provided in clause 25.5 the Purchaser will not be entitled to claim any compensation, damages, set-off or to make any objection or requisition based on such alteration, adjustment, variation, cancellation, allocation or re-allocation.
- 24.4 **Completion in stages:** The Purchaser acknowledges that the Purchaser is to purchase the Property on the basis that the Property is part of the Subdivision, the construction and subdivision of which will be carried out in one or more stages, and for that purpose the Vendor will be permitted access to the Land, after the Settlement Date at all reasonable times with or without workers, machinery, motor vehicles and other equipment as necessary or required for the purpose of the Subdivision. In doing so the Vendor will cause the reasonable minimum of inconvenience possible to the Purchaser. Any damage to the property and/or amenities thereon caused by the Vendor accessing the land for the purpose of the Subdivision either prior to or after settlement has been completed shall be made good by the Vendor who shall reinstate/ repair (if necessary) same with materials of equal or better value at its cost.
- 24.5 **Vendor's right to complete the Subdivision:** The Vendor will have the free and unrestricted right to complete the Subdivision in such manner as it thinks fit and the Vendor will have the right to delay completion of any portion of the Subdivision if necessary.
- 24.6 **Purchaser to assist:** The Purchaser will immediately upon request to do so by the Vendor, give or procure or join in giving and procuring any consents and execute and do all such documents, plans, deeds, acts, matters or things considered by the Vendor as being necessary or expedient for completing the Subdivision.
- 24.7 **Completion after Settlement:** The Purchaser acknowledges that later stages of the Subdivision will not be completed until after Settlement.
- 24.8 **No warranty:** The Vendor gives no warranty to the Purchaser as to when:
- a. a separate title for the Property will issue from Land Information New Zealand. Any anticipated or projected dates for deposit or completion given by the Vendor or the Vendor's Agent prior to or after execution of this Agreement are indicative only; or
 - b. the Purchaser will be able to effect a transfer of the title to the Property.

The Purchaser acknowledges that the timing of such matters is not an essential term of this Agreement and that such matters may not be made essential terms of this Agreement.

25. Title matters

- 25.1 **Requisitions:** Subject to the provisions of this Agreement, the Purchaser is deemed to have accepted the title. The Purchaser will not raise any objections to, or requisitions on, the title or claim any compensation as a result of any covenants, easements, encumbrances or other memorials appearing on the title.
- 25.2 **Easements, Covenants and Property Rights:** The Vendor reserves the right to create, grant or receive, and register against the title to the Property, during the Subdivision Period, any scheme of land covenants, easements, encumbrances, consent notices, memorials and other property interests affecting the Land (or any part) which are implicit in or may be required to satisfy the conditions of any of the Consents affecting the Land, the Subdivision and/or the Lot or are otherwise necessary or desirable, in the Vendor's opinion, to create and enhance the Subdivision, including, without limitation:
- a. right of way easements to confer pedestrian and vehicular rights of access and egress to and from the Subdivision;
 - b. light, air and fire easements to provide protection buffer zones between adjoining properties within or adjoining the Subdivision;
 - c. consent notices under the Resource Management Act 1991 and Building Act notices;
 - d. building line restrictions; and
 - e. the Covenants.

- 25.3 **Forms:** Any scheme of land covenants, easements, encumbrances and consent notices affecting the Lot (or any part) and other agreements and property interests which may be entered into, created or granted by the Vendor in accordance with this Agreement will be prepared in a form/forms determined by the Vendor's solicitors acting reasonably and in their professional capacity having regard to the nature of the Subdivision.
- 25.4 **Vendor's right to amend:** The Vendor reserves the right to rescind, amend or vary the form of the Covenants so long as the amendment or variation is necessary or desirable in the Vendor's opinion for the completion and/or operation of the Subdivision
- 25.5 **Measurements:** All measurements and areas shown on the Plans and Specifications are or may be approximations and are subject to any variation which may be found necessary upon checking by the Relevant Authority, the Vendor's surveyor and Land Information New Zealand and neither party will be entitled (except as provided in this clause) to bring a claim whatsoever against the other based on any such variation of measurements, nor will either party be entitled to claim any compensation, damages, set-off or to make any objection or requisition based on such variation except where the area of the Property and the final measured area of the Lot (both being calculated in accordance with the same method of measurement and by a registered surveyor) differ by more than 5%, in which case if the final measured area is less than the area specified by more than 5%, the Purchase Price will be reduced by the percentage exceeding 5% that the area is reduced. If the final measured area of the land is greater than specified in this agreement the purchase price for the Property will not be increased. In the event the final measured area of the Property is less than the area specified in this agreement by more than 10% the purchaser has the right to cancel this agreement and in that event any deposit paid will be refunded in full.
- 26. General Provisions**
- 26.1 **Force Majeure:** In the event that war, acts of terrorism, civil disorders, pandemic, monetary or economic Subdivisions, acts of Government, delays caused by the Local Authority, difficulties with the Land or the process of construction of the Subdivision or other factors beyond reasonable control of the Vendor (whether similar or not) will prevent the Vendor from commencing or continuing construction of the Subdivision or render it impracticable for the Vendor to commence or continue construction of the Subdivision, then the Vendor may by notice in writing to the Purchaser advise of the specified event and either:
- a. cancel this Agreement (in which case the Deposit will be refunded to the Purchaser); or
 - b. advise the Purchaser that the Sunset Date is extended by the period that the specified event causes a delay in completion of the Subdivision.
- In the event that the Vendor exercises its option under clause 26.1.b then the Sunset Date will be extended accordingly.
- 26.2 **Agreed lowest price:** The purchase price is the lowest price (within the meaning of section EW 32(3) of the Income Tax Act 2007) that the parties would have agreed on 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 and expenditure arises under those rules.
- 26.3 **Incorporation of General Terms:** The General Terms are incorporated in this Agreement for sale and purchase. In the event of a conflict between these further terms and conditions of sale and the General Terms, these further terms and conditions of sale will prevail.
- 26.4 **Purchaser to keep Property tidy:** The Purchaser:
- a. shall ensure that as from the date of possession, the Property is kept free of weeds and noxious plants and debris and is mowed regularly. If in the Vendor's opinion the Property is not adequately maintained by the Purchaser, the Vendor shall have the right at any time and from time to time to arrange at the Purchaser's cost, for the Property to be cleared of weeds and noxious plants and debris and mowed; and
 - b. will minimize any adverse effects of construction on the Property by the Purchaser or its contractors and will make good any damage caused to berms, driveways, or adjacent properties.
- 26.5 **OIA:** The Purchaser hereby warrants as an essential term of the Agreement that the Purchaser is eligible to purchase the Property under the OIA and does not require OIA consent for the acquisition of the Property. The Purchaser will on request by the Vendor deliver to the Vendor a completed Residential Land Statement confirming eligibility.
- 26.6 **Additional Information:** The Purchaser will if requested by the Vendor provide additional information for the purposes of:
- a. AML/CFT compliance; and/or
 - b. the Purchaser's compliance with the Overseas Investment Act 2005; and/or

- c. satisfying the requirements of the Vendor's funders as to the Purchaser's financial ability to perform the Purchaser's obligations under this Agreement.

The Purchaser authorises the Vendor by its agents to verify the Purchaser's ID and address details via any independent identity verifier. The Purchaser acknowledges information provided by the Purchaser and/or obtained by the Vendor from the identity verifier may at the Vendor's discretion be disclosed to third parties for the purposes of funding.

27. Disclosures and acknowledgments

- 27.1 **No reliance:** The Purchaser acknowledges that it has entered into this Agreement in reliance upon its own judgement and not upon any representation made by or on behalf of the Vendor or as to any matter of fact relating in any way to the Subdivision, the Plans and Specifications, the amenity (including any view) to be enjoyed by the Purchaser or the new title to be issued for the Property.
- 27.2 **Indicative only:** The Scheme Plan and brochure (if any) showing the concept of the Subdivision have all been prepared prior to commencement of the Subdivision. While every reasonable effort has been made to ensure the information and calculations correctly illustrate the Subdivision, they can only be for guidance and no responsibility will be taken for any non-material differences, errors or omissions which may become apparent during or upon completion of the Subdivision.
- 27.3 **Vendor disclosures:** The Vendor discloses, and the Purchaser acknowledges and agrees, that:
 - a. a separate title has not issued for the Property;
 - b. the title for the Property will be subject to the Covenants and other easements, encumbrances and covenants provided for in this Agreement;
 - c. the Purchaser is required to give its full cooperation to the Vendor to allow for completion of the Subdivision; and
 - d. the Purchaser is not buying the Property in reliance on completion of the overall Subdivision other than completion of the Property and the issue of a separate title for the Property.

SCHEDULE 1
The Scheme Plan

SCHEDULE 2 Covenants

1. Intent of Scheme

- 1.1 The Grantee acknowledges and accepts that the lots are or will be subject to a building scheme which will run with the land, applicable to and for the benefit of all the lots and that the owners and occupiers for the time being of each of the Covenanting Lots will be bound by the stipulations and restrictions contained in the covenants set out in this schedule.

2. Grantee's Covenants

- 2.1 The Grantee, for itself and its successors in title, covenants with and for the benefit of [Developer] and all and any of:
- a. the Grantor and its successors in title; and
 - b. the registered owners for the time being of the Benefiting Lots, as set out in this document.
- 2.2 With the exception of clause 4.6 below, Fred Number 1 Limited reserves the right at any time to waive or vary any of these covenants and if called upon to do so the Grantee will sign any documentation required to give effect to this waiver and/or variation.
- 2.3 Fred Number 1 Limited shall not be required to enforce these covenants notwithstanding that Fred Number 1 Limited may retain ownership of lots in the development for a period of time.

3. No Subdivision or Amalgamation

- 3.1 The Grantee will not subdivide the Lot further in order to create any additional Lot or lots whether by fee simple titles, unit titles, cross leases or otherwise.
- 3.2 In the event of the Grantee amalgamating the Lot with any other Lot then for the purposes of these covenants the amalgamated property will be deemed to be one single lot. Thereafter the Grantee will not be entitled to subdivide the amalgamated property into a greater number of lots than those which made up the amalgamated property. On any such Subdivision each of the new lots will be subject to these covenants.

4. Buildings

- 4.1 **House size:** the minimum dwellinghouse including any closed in lock up garage but excluding any verandas, patios and other attached structures must have a closed in floor area as measured over the external framing of no less than 150m², provided that the house size excluding garage shall comprise no less than 110m².
- 4.2 **Other structures:** No building which is ancillary to any dwelling or house is to be constructed unless the ancillary building is built in a manner consistent with the design and construction of such dwellinghouse and using the same or similar materials.
- 4.3 **Temporary buildings:** The Grantee shall not erect on the Lot any temporary building or structure whether purpose built or previously erected on other land except as may be necessary during the construction of the permanent buildings provided that all temporary buildings or structures will be removed from the Lot upon completion of the permanent buildings. The Grantee shall not permit or suffer on the Lot any bus, caravan, trailer or similar that is parked on anything other than a hard stand area.
- 4.4 **Consent required:** The Grantee shall not erect (or permit or suffer) on the lot:
- a. any dwelling, building, structure or fence or landscaping that has not first received prior written approval from Fred Number 1 Limited or its appointed agent prior to submission of final plans, specifications and finish. Fred Number 1 Limited reserves the right to refuse consent to any plans which, in Fred Number 1 Limited's sole discretion, do not satisfy minimum standards of design and quality;

- b. any dwelling that has the same plan, building shape and materials as any other dwelling within 150 metres of the lot, unless the final plans, specifications and finish have been approved by Fred Number 1 Limited or its appointed agent;
- c. any dwelling or other building which does not satisfy the construction and material requirements set out in clause 4.2 and clause 4.5;
- d. any building that does not comply with the Waikato district plan side yard setback rules or any other Territorial Authority;
- e.
 - (i) unpainted sheds, fences or unpainted garages;
 - (ii) any garden shed that is visible from any road, jointly owned access way Lot or reserve;
 - (iii) any building in the course of construction to be left without substantial work being carried out on it for a period of two or more months;
 - (iv) any rubbish including garden or household waste to accumulate or be placed upon the Lot or permit any excessive growth of grass so that it exceeds 100mm in height or otherwise becomes unsightly.
 - (v) any removal of soil from the Lot except as shall be necessary for the construction of the dwelling and ancillary buildings.
 - (vi) the erection of any fence and/or wall on the lot;
 - (aa) on or within three metres of a road boundary;
 - (bb) on the balance of the Lot unless that fence or wall is a retaining wall, is on a side boundary and does not exceed 1.8 metres measured from the original ground level of the land, does not exceed 1.5 metres where it is within five metres of a road boundary, or is approved by the Grantor.
- f. Any sign larger than 900mm x 600mm where such sign is visible from any road or jointly owned access way Lot or reserve unless Fred Number 1 Limited in its sole and unfettered discretion shall consent in writing to such larger sign being erected.
- g. Any satellite dish on the Lot which is over 100cm in diameter that is visible from any road or jointly owned access way Lot or reserve.
- h. Any second-hand or relocated dwelling or building structure whatsoever.

4.5 **Building Materials:** Unless Fred Number 1 Limited in its sole and unfettered written discretion permits a variation or waiver of this clause 4, the Grantee shall not erect or place on the Lot any building, dwelling, carport, garage or other structure:

- a. unless all roofs are sheathed in either pre-coated metal tiles, chip-coated metal tiles, concrete tiles, clay tiles, asphalt shingles, glass fibre shingles or coloursteel roofing provided that roofing materials may not be red or orange in colour;
- b. unless exterior walls are sheathed in brick or textured plaster or stone or glass or timber weatherboards or linear board or any combination of those materials;
- c. having fibrous cement products used for exterior finish other than for soffit lining or backing for textured plaster finish;
- d. with a flat roof of one single pitch; and
- e. of a single rectangle or single square shape (after excluding recesses or protrusions for the front and rear entries, verandas, patios, bay windows or other like structures or appurtenances).

4.6 **Public Service Lines:** Public service line(s) are located in Affected Lots and the Grantee shall not erect (or permit) on the Affected Area any dwelling, building or structure of any form, other than retaining walls, boundary fences, planting, driveways, pathways and non-permanent structures (which are in the nature of chattels). Boundary fences and retaining walls are subject to the covenants in the foregoing clause 4.4.e(vi) and retaining walls may require the consent and approval of the Territorial Authority. This clause

4.6 is intended for the benefit of and may be enforced by the Territorial Authority pursuant to the provisions of the Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

5. Property Use

5.1 The Grantee shall:

- a. only use any buildings on the Lot as a residence or other permitted activity authorised under the district plan after buildings have been substantially completed in accordance with the terms of this covenant including a final signoff by Fred Number 1 Limited or its appointed agent and the requirements of the Territorial Authority;
- b. complete the landscaping of the Lot in accordance with plans preapproved by Fred Number 1 Limited prior to using any buildings on the land as a residence or other permitted activity by providing lawns and/or paving, trees, shrubs and flowers;
- c. ensure that upon completion of any building on the Lot and prior to use of any building as a residence or other permitted activity:
 - (i) any concrete on the footpath, kerb or driveway is reinstated to the same standard specification required by Fred Number 1 Limited of all lots within the subdivision;
 - (ii) ensure that any kerb entrance crossing shall be reinstated to the original saw cuts and kerb details as per the Territorial Authority's specifications; and
 - (iii) at all times comply with any plans, conditions, consents or similar imposed on it by any Territorial Authority;
- d. Not permit the Lot to be directly or indirectly leased or sold or possession otherwise given to Housing New Zealand Limited, the New Zealand Government or any similar institution or entity responsible for providing public 'state housing' services. This covenant shall not prevent private property investors leasing their Lot to private tenants.

6. No Opposition

- 6.1 The Grantee shall not oppose, frustrate, object to, nor take any action or encourage others to oppose, frustrate, object or take any action that might, in any way, prevent or hinder Fred Number 1 Limited and/or the Territorial Authority from progressing or completing the Subdivision. This covenant extends to and includes (but is not limited to) development planning, zone changes, resource consents, consent authority applications or Environment Court proceedings, building consent matters, any other consents, earthworks, developments and general work. The benefit of this covenant applies to any adjoining or neighbouring properties now or hereafter owned by Fred Number 1 Limited and its Related Companies.
- 6.2 The Grantee will at the request of Fred Number 1 Limited provide written consents to any of the applications or matters referred to above in a timely manner, and to dispensations or consents required therewith or to progress and complete the Subdivision.
- 6.3 Notwithstanding any rights or powers granted or available to either the Grantor or the Grantee pursuant to the Resource Management Act 1991, the Land Transfer Act 2017 or the Property Law Act 2007, each of the Grantor and the Grantee (to the extent permitted by law) irrevocably waives in favour of Fred Number 1 Limited any rights of objection, requisition or requirement to provide consent in relation to the Subdivision and by their execution of this Instrument irrevocably consent to any vesting, dedication, disposition or other dealing in relation to the Subdivision. The provisions of this clause shall extend to Fred Number 1 Limited and shall be binding on the Grantor's and the Grantee's successors in title.

7. Fencing

- 7.1 Fred Number 1 Limited shall not be liable to pay for or contribute towards the expense of construction or maintenance of any fence between the Lot and any adjacent land of Fred Number 1 Limited and its Related Companies but this provision shall not enure for the benefit of any subsequent purchaser or owner of the adjacent land.

8. Breach

- 8.1 If there is any breach or non-observance by the Grantee of any of the stipulations or restrictions contained in these covenants, then without prejudice to any other liability which the Grantee may have to Fred Number 1 Limited or any other person or persons having the benefit of these covenants, the Grantee will

upon written demand made by all or any of Fred Number 1 Limited or any of the owners of the Benefiting Lots:

- a. immediately remedy the breach or non-observance; and
- b. pay to the person making such demand as liquidated damages the sum of \$250.00 per day for every day or part day that such breach or non-observance continues from and after the date upon which written demand is made provided that, where the Grantee is in breach of more than one provision of this covenant, the Grantee will not be liable under this provision to pay in the aggregate an amount in excess of \$250.00 per day during the continuance of the breach (or non-observance). The Grantor and Grantee agree that the sum of \$250.00 per day represents a genuine and realistic pre-estimation by them of the actual loss suffered by the person making demand.

8.2 In the event of any dispute which cannot be resolved by agreement between Fred Number 1 Limited (or other owner of a Dominant Lot) and the Grantee as to any matter relating to the abovementioned restrictive covenants, the same shall be resolved by arbitration under the provisions of the Arbitration Act 1996 or any Act passed in substitution or amendment thereof by a single arbitrator appointed for that purpose by the nominee of the president of the New Zealand Law Society and the decision of that arbitrator shall be final and binding on the parties.

8.3 There shall be no obligation on Fred Number 1 Limited or any other person or persons having the benefit of these covenants to take any steps to enforce these covenants.

8.4 If there is more than one Grantee for any servient Lot the liability of the Grantees for the servient Lot shall be joint and several.

9. Definitions

9.1 In this covenant unless the context otherwise requires:

Affected Lot or Affected Lots means any or all of the Lots referred to in Schedule B;

Affected Area means part of the Affected Lot which is within 3 metres of any boundary and contains any public stormwater and/or wastewater pipes;

Subdivision means the subdivision of Fred Number 1 Limited's property comprised in Record of Title 664094 into a residential development comprising the Lots and further lots to be subdivided in staged development phases;

Lot or Lots means any or all of the Lots referred to in Schedule A;

Related Company has the meaning given to that term in the Companies Act 1993 and "Related Companies" has a corresponding meaning; and

Territorial Authority means the Waikato Regional Council or any other authority having jurisdiction over the land.