

## **FURTHER TERMS OF SALE – STAGE 24 GREENHILL PARK**

### **Greenhill Park**

#### **21.0 Definitions**

##### **21.1** In these further terms of sale:

- (a) "Council" means the Hamilton City Council.
- (b) "Deposit" means the sum of 10% of the purchase price payable to the Vendor's Solicitors Trust account upon the signing of this agreement.
- (c) "Greenhill Park" means the development contained in Records of Title 1167208 and 880926 and any further records of title derived therefrom.
- (d) "Greenhill Park Design Guidelines" means the design principles for building on the lot, a copy of which can be accessed through the Greenhill Park Website <https://www.greenhillpark.co.nz/current-design-guidelines/>
- (e) Guarantor" – see Appendix 4
- (f) "Property" means the property agreed to be sold pursuant to this agreement.
- (g) "Resource Consent" means the Land Use resource consent 010.2016.8788.003 granted by Council on 20 October 2020 (copy to be provided on request) , resource consent to change conditions of consent 011.2019.7140.003 dated 12 November 2021 (copy to be provided on request) and Subdivision resource consent 011.2019.7140.001 granted by Council on 20 October 2020 for Land Development Plan for Areas K, L and U (copy to be provided on request), including any subsequent variations or variations to the plan which do not require a variation of the Land Use resource consent or Subdivision consent.
- (h) "Scheme Plan" means the plan prepared by S&L Consultants Limited, numbered 19-30410–21-RC1 (Appendix 1) which was lodged with and approved by Council as part of the Subdivision resource consent 011.2019.7140.001 granted by Council on 20 October 2020 and the variations of such consent.
- (i) "Settlement" means the balance of the purchase price to be satisfied as outlined in Further Term 27.0.
- (j) "Survey Plan" means the plan to be drafted, lodged and approved by Council and LINZ in respect of Scheme Plan 19-30410-21-RC1 and Subdivision resource consent 011.2019.7140.001 granted by Council on 20 October 2020 and the variations of such consent for the Greenhill Park subdivision, Hamilton.

#### **22.0 Investment and Accounting for Deposit**

##### **22.1** The deposit will be paid to the vendor's solicitors trust account to hold as stakeholder. The stakeholder will hold the deposit and the net interest earned thereon on trust for the vendor and the purchaser on the following terms and conditions:

- (a) The deposit will be invested by the stakeholder in an interest bearing trust account ("stakeholder account") established in the name of the stakeholder. The stakeholder account shall be with such bank and on such conditions as the stakeholder determines

but in any event, with a registered bank under the Reserve Bank of New Zealand Act 2021.

- (b) The interest earned on the deposit will be disbursed by the stakeholder as provided for in this clause.
- (c) On the settlement date or if the vendor otherwise becomes entitled earlier, the deposit and all interest accrued less the vendor's withholding tax, bank and stakeholder handling charges (net interest) will be paid to the vendor.
- (d) Subject always to the provisions of this agreement in any other case the deposit and the net interest (calculated on a daily basis from the date of investment of the deposit by the stakeholder until the date the deposit is uplifted by the stakeholder from the stakeholder account for the purpose of payment) will be paid to the purchaser.
- (e) The vendor and the purchaser hereby irrevocably and unconditionally authorise the stakeholder to make the payments referred to in sub-paragraph (c) and (d) as the case may be and without further authority from or reference to them.

## **22.2 Cancellation for Non Payment**

The vendor may cancel this agreement for non-payment of the deposit or any part of it where the vendor has first given to the purchaser three working days' notice in writing of the vendor's intention to cancel and the purchaser has failed within that time to make payment of the deposit or any part of it then due.

## **22.3 No Penalty Component**

The purchaser acknowledges that the entire deposit is in all respects to be regarded as a deposit in part payment of the purchase price and does not include any penalty component so that upon a cancellation entitling the vendor to retain the deposit, the entire deposit may be retained and if at the time of cancellation only part of the deposit has been paid, the vendor may, among other remedies, retain that part and sue the purchaser for the balance of the deposit.

## **22.4 Release of the Deposit**

On the date the vendor is notified by LINZ that the subdivision plan is deposited or if the vendor becomes entitled earlier, the deposit and the interest may be paid to the vendor. If the vendor becomes entitled to cancel this agreement, the stakeholder will be entitled to release the deposit and net interest earned from the deposit to the vendor and this clause is sufficient authority to the stakeholder to make the payments referred to in this clause.

## **22.5 Stakeholder**

Subject always to these provisions, the stakeholder will hold the deposit as stakeholder for the benefit of both parties. The stakeholder is irrevocably authorised to make payment of any withholding tax payable on the interest earned on the deposit to the Inland Revenue Department.

## **22.6 No Liability**

The stakeholder will not be liable to any party by reason of any delay in investing the deposit or any failure on the part of the bank with whom it is invested or any costs deducted by the bank for handling the deposit or any interest, provided however, that the stakeholder will use reasonable endeavours to place the deposit on interest bearing deposit in a timely manner.

## **22.7 Force Majeure**

In the event that war, civil disorder, monetary or economic developments, act of government, pandemic or other factors beyond the reasonable control of the vendor, whether similar or not (specified events) prevent the vendor from commencing, continuing or completing the subdivision of the land, or render it impractical for the vendor to commence, continue and complete the subdivision of the land, then the vendor may by notice in writing to the purchaser advise of the specified event and cancel this agreement and the deposit will be returned in full to the purchaser.

## **23.0 Subdivision**

**23.1** The vendor will at its cost and with all reasonable speed and diligence:

- (a) Undertake all work and do all things necessary to comply with the conditions of the resource consent to enable the survey plan to be deposited with LINZ.
- (b) Arrange for the survey plan to be deposited with LINZ and for a separate Record of Title for the property to be issued.

**23.2** The survey plan will be in general accordance with the scheme plan. However, all measurements and areas are subject to approval by LINZ and Council or as the vendor deems necessary or desirable for the purposes of developing Greenhill Park.

## **24.0 Easement Consent Notices and Land Covenants**

**24.1** The vendor reserves the right to:

- (a) Grant to any party or provide for any rights of way or other service easements required as a condition of the resource consent or which the vendor considers necessary or desirable for the purposes of developing Greenhill Park; and
- (b) Register any consent notice required by Council in relation to any ongoing condition of the resource consent.

**24.2** Prior to settlement land covenants will be notified on the record of title for the property. A copy of the proposed land covenants is attached to this agreement as Appendix 3. The vendor reserves the right to modify, add or remove any of those land covenants as the vendor considers necessary or desirable for the purposes of developing Greenhill Park. The purchaser will comply with the land covenants from the date of possession notwithstanding that they may not have yet been notified on the record of title for the property.

## **24.3 Land covenant by transferor to itself**

Notwithstanding the other provisions of this agreement, the vendor may at its sole discretion elect to utilise the provisions of sections 56 and 278 of the Property Law Act 2007 and 116 of the Land Transfer Act 2017 to create the covenants and to this end, may elect to register

an easement instrument to effect registration of the covenants. If the vendor elects to register an easement instrument, the purchaser will take title to the lot subject to the covenants without any claim or right of compensation.

## **25.0 Objections or Requisitions**

The purchaser shall raise no objection or requisition in respect of easements, consent notices, land covenants or other interests which are to be registered on the record of title for the property and shall accept them and the obligations and benefits which they create except to the extent that those easements, land covenants, consent notices or other interests are not already provided for in Further Term 24 and materially affect the value of the property or the ability to build a house on the property.

## **26.0 Caveat**

**26.1** The purchaser will not at any time lodge any caveat pursuant to the provisions of the Land Transfer Act against the record of title to the property or against the record of title to the land of which the property forms part.

**26.2** In the event of the purchaser doing so, the purchaser hereby irrevocably appoints the vendor or its nominee to be the purchaser's true and lawful attorney to make, execute and register in the name of the purchaser on the purchaser's behalf all consents, common notices, withdrawals, documents and papers and to do any other act or thing which the vendor deems necessary or expedient in order to have such caveat removed from the record of title.

**26.3** The purchaser will complete any documentation necessary to give effect to Further Term 26.2.

**26.4** The cost of removal of any caveat will be payable by the purchaser to the vendor immediately upon the vendor advising the purchaser of the amount of those costs.

## **27.0 Settlement**

The Settlement Date will be 10 working days after the Vendor's Solicitor has given to the Purchaser's Solicitor written notice that a separate record of title for the property has issued.

## **28.0 Early Access**

The vendor will allow the purchaser reasonable access to the property prior to the possession date for investigation purposes such as measurement and geotechnical provided that the purchaser will make good any damage caused to the property.

## **29.0 Separate Rates Assessment**

The purchaser acknowledges that the lot may not be separately rated by the Hamilton City Council and the Waikato Regional Council until the rating year commencing after the settlement date. The purchaser will pay an amount for rates to the vendor on settlement date for the period from settlement date until the end of the then current rating year on the basis that the rates for the lot in the rating year in which settlement occurs are agreed as being \$3,000.00 (plus GST) for the purposes of this provision.

### **30.0 Lowest Price**

The purchase price does not include any capitalised interest and the lowest price for the purposes of the Income Tax legislation is equal to the purchase price and the parties will file their tax returns on that basis.

### **31.0 Nomination**

**31.1** In the event that the purchaser nominates a third party as the purchaser under this agreement with the effect that the transaction will no longer be zero rated, they must seek consent under further term 38 to the nomination and once consent is granted, the purchaser will either:

- (a) Complete settlement within 10 days of the record of title for the property issuing or the purchaser notifying the vendor of the nomination whichever is the later; or
- (b) Pay a further deposit to the effect that the total deposit payable is 20% of the purchase price. Any further deposit is to be paid in accordance with further term 21(b) or upon the purchaser notifying the vendor of the nomination, whichever is the later.

### **32.0 Health and Safety**

**32.1** The vendor and the purchaser will comply with the Health and Safety at Work Act 2015 and any replacement legislation and regulations made under that Act.

**32.2** The purchaser acknowledges that the vendor has health and safety policies in place and warrants that it will on an ongoing basis:

- (a) Review the vendor's and/or its contractors health and safety policies; and
- (b) At all times comply with the vendor's and/or its contractors health and safety policies, directives or procedures.

**32.3** On access to the property being granted by the vendor to the purchaser, whether prior to the possession date or from the possession date, the purchaser warrants:

- (a) It will ensure that only authorised people (including but not limited to the purchaser's contractors, subcontractors, agents or employees) will access the property, that they will be made aware of all potential hazards or are provided with appropriate supervision and take all practicable steps to manage health and safety requirements;
- (b) It will on an ongoing basis be responsible for all health and safety obligations and any of its contractors, subcontractors, agents or employees;
- (c) It will provide to the vendor copies of the purchaser's health and safety manuals and procedures prior to accessing the property;
- (d) It will actively monitor and immediately notify the vendor of any non-compliance with health and safety requirements and of any hazards or potential hazards, near misses or accidents it becomes aware of.

**32.4** The vendor reserves the right to review and audit the purchaser to ensure monitoring is undertaken to ensure ongoing compliance with its health and safety requirements.

**32.5** The purchaser, to the extent permitted by law, indemnifies the vendor against all liability arising from any actions, proceedings and claims instituted or made under or in respect of the purchaser's access to and possession of the property.

### **33.0 Construction on Property**

#### **33.1** The purchaser will not construct anything on the lot unless:

- (a) The proposed construction has first been approved by the Greenhill Park Design Committee (Design Committee) as set out in the Greenhill Park Design & Building Guidelines prepared and available on the Greenhill Park website, <https://www.greenhillpark.co.nz/current-design-guidelines/> and
- (b) The proposed construction complies with requirements of the Hamilton City Council and the Waikato Regional Council.

#### **33.2** If the Vendor has formed the vehicle crossing into the lot, then the purchaser must use this permanent crossing. The purchaser is prohibited from forming another vehicle crossing within the lot's adjacent road boundary or access lots, unless approved by the Design Committee.

#### **33.3** The Purchaser shall be responsible for the vehicle crossing from possession and in the event of any damage during construction or otherwise, they must make good the vehicle crossing immediately.

#### **33.4** The purchaser must also ensure throughout the construction/building phase that no-one associated with the purchaser uses any adjacent or other sections, the grass berms or swales or the footpaths adjacent to the purchaser's property's boundaries for parking or storage of construction materials or the transportation of construction materials. The boundary must be demarcated with orange netting or its equivalent and waratahs to clearly define the section boundaries and the work space within before any building or drainage can commence. All swales must be demarcated throughout the construction process also.

#### **33.5** The purchaser must also ensure that there is no construction spoil or material spread or deposited on the roads (or crossings or swales) by vehicles or other construction activities during the construction/building phase.

#### **33.6** The vendor will notify the purchaser if there is a breach and the purchaser shall comply with the vendor's instructions to remedy the problem.

#### **33.7** If the purchaser fails to comply with any one or more of the requirements in Further Terms 33.2, 33.3, 33.4, 33.5 the vendor will impose a fine of \$5,000.00 inclusive of GST payable immediately upon demand and any damage which has occurred must be remedied by the purchaser. If the purchaser fails to remedy the damage within two working days of notification of the breach by the vendor, the vendor may repair the damage at the cost of the purchaser. Such costs must be paid by the purchaser to the vendor within seven days of receipt of demand for payment. Failure to pay the initial fine and/or the costs may result in a further fine of \$10,000.00 inclusive of GST.

#### **33.8** The purchaser must also ensure that the grass and planted berm and swale adjacent to their property boundary is maintained at all times. The grass berm is defined as the land between the property boundary and the sealed road of the adjacent pedestrian accessways.

### **34.0 The Greenhill Park Design Committee**

#### **34.1 Composition**

The Greenhill Park Design Committee will comprise the following persons:

- (a) Up to two representatives of the vendor; and
- (b) An architect or other similarly qualified person appointed from time to time by the vendor.

## **34.2 Principles**

The Greenhill Park Design Committee will publish from time to time any variations of the Greenhill Park Design and Building Guidelines as they consider in their sole discretion necessary, provided that any such amendment does not detract from the design principles contained in the Greenhill Park Design and Building Guidelines and maintains the integrity of the development. A copy of the Greenhill Park Design and Building Guidelines may be obtained via the Greenhill Park website <https://www.greenhillpark.co.nz/current-design-guidelines/>

## **34.3 Design approval**

Before commencing any building or development within Greenhill Park or obtaining any consent from any local authority to build or develop any lot, the purchaser must first submit the design of the proposed building or development to the Greenhill Park Design Committee for its written approval which will not be unreasonably withheld or delayed where the design complies with the relevant design principles.

## **34.4 Costs**

All costs of the design approval process including, without limitation, any disbursements or professional charges of a member of the Greenhill Park Design Committee will be met by the owner seeking the approval and will be paid upon application to the Design Committee.

## **34.5 Overriding right of Greenhill Park Design Committee**

This agreement shall always be read subject to this clause, 34.5, in relation to matters affecting the approval of any building or development within Greenhill Park, the Greenhill Park Design Committee will always have the right to pursue any enforcement action against the owner of any lot in Greenhill Park who the Greenhill Park Design Committee believes is in breach of the Greenhill Park Design and Building Guidelines.

## **34.6 Sale of lots generally**

The purchaser will not (and waives any rights to) object to methods employed by the vendor to sell other lots forming part of Greenhill Park including, without limitation, the use of signs, the placing of signs on the land, the maintenance of the sales office, provided that the vendor does not cause unreasonable interference with the comfort and convenience of the purchaser in its use and enjoyment of the lot.

## **35.0 Title Boundaries, etc.**

### **35.1 Fencing contiguous land**

The vendor will not be liable to pay for or contribute towards the expense or erection or maintenance of any fence between the lot and any contiguous land of the vendor but this proviso shall not endure for the benefit of any subsequent purchaser of the contiguous land and the vendor shall be entitled to require the inclusion of a fencing covenant to this affect in any transfer of the lot. Fencing restrictions and requirements may also be imposed in the Design and Building Guidelines.

### **35.2 Fencing generally**

All boundary fences must be completed and painted sufficiently on both sides prior to any adjoining building being used as a residence. For clarity, the costs associated with the construction, painting and maintenance of any boundary fence will be shared equally between the adjoining properties (subject to clause 35.1 above). When the property adjoins a reserve,

the owner of the Property will be solely responsible the costs of the construction, maintenance, and painting of that part of the boundary fence.

### **35.3 Authority to release contact information**

The purchaser authorises the vendor to provide the purchaser's contact information to the owners of any adjoining lots to facilitate the payment of the shared fencing and retaining costs.

### **35.4 No warranty**

The vendor makes no warranty as to:

- (a) When the subdivision plan will be deposited at LINZ; or
- (b) When the purchaser will be able to register a memorandum of transfer of the lot to the purchaser;
- (c) Whether the final appearance of Greenhill Park or the purchaser's lot will be similar to any representation or advertisement provided to or viewed by the purchaser,

to the effect the purchaser acknowledges it has relied entirely on its own investigations and has not relied on any statement, representation or warranty made by the vendor or the vendor's agents.

### **35.5 Certain titles to incorporate shares in access lots**

The purchaser acknowledges that certain lots will have attached to them (as a matter of title) shares in an access lot subject always to the right the vendor has (and which the purchaser acknowledges the vendor has) to alter or rearrange these share arrangements at any time prior to the issue of titles.

## **36.0 Powers of Attorney**

**36.1** In consideration of the vendor entering into this agreement, the purchaser irrevocably appoints the vendor (or any nominated officer of the vendor) to be the true and lawful attorney of the purchaser for the purposes of executing all documents and plans and to perform all acts, matters and things as may be necessary to:

- (a) Complete Greenhill Park;
- (b) Register any covenants against title to lots in accordance with this agreement;
- (c) Withdraw any caveat improperly lodged by the purchaser;
- (d) Register the easements and access easements against the Record of Title to any lot.

## **37.0 Costs**

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

## **38.0 General Provisions**

### **38.1 Assignment and/or Nomination by purchaser**

The purchaser shall not assign, nominate, transfer or otherwise dispose or alienate the benefit of this agreement without the prior written consent of the vendor. The consent of the vendor must not be unreasonably withheld provided the assignee has the financial resources to



complete the payment of the purchase price. Any consent given by the vendor may be subject to such terms and conditions as the vendor in its sole and absolute discretion thinks fit including, without limitation:

- (a) A requirement that the purchaser remains liable for the observance and performance of all obligations on the part of the purchaser hereunder;
- (b) The execution by the assignee of a deed of covenant in a form acceptable to the vendor; and
- (c) The purchaser paying the vendor's costs, including solicitor's costs.

### **38.2 On-Sale by purchaser on or before Settlement Date**

If the Purchaser wishes to enter into an agreement for sale and purchase to on-sell the lot on or before the Settlement Date, the Purchaser must (prior to entering into any agreement for sale and purchase) advise the Vendor in writing of its wish to on-sell the lot (the Purchaser's Notice). The Vendor will have 10 working days from receipt of the Purchaser's Notice to accept or decline:

- (a) If the Vendor accepts the Purchaser's Notice: The Purchaser must have the purchaser under the new agreement enter into a deed of covenant acceptable to the Vendor in accordance with clause 39.3 prior to settlement.
- (b) If the Vendor declines the Purchaser's Notice: The Purchaser must offer the lot back to the Vendor at the same purchase price as recorded in this Agreement.

In the event of any Purchaser breaching the covenants in this Clause 38.2 then the penalties for such breach as contained in Clause 13 of Appendix 3 shall apply.

### **38.3 Deed of covenant on assignment by purchaser**

If the vendor consents to the assignment, nomination, transfer, disposal or alienation of the benefit of this agreement by the purchaser, the vendor shall procure its solicitor to deliver to the purchaser a deed of covenant and the purchaser will at the cost of the purchaser (including the vendor's reasonable legal fees and disbursements) procure execution of the deed pursuant to which the assignee, nominee transferee or disposee covenants with the vendor that the assignee, nominee, transferee or disposee is bound by the provisions contained or implied in this agreement and on the part of the purchaser to be observed and performed.

### **38.4 Assignment by vendor**

The vendor may assign, transfer or otherwise dispose of or alienate the benefit of this agreement to a third party on such terms and conditions as it thinks fit. As from completion of such assignment, transfer or other alienation, the obligations of the vendor under this agreement or otherwise howsoever will be at an end and will not be continuing.

### **38.5 Representation**

The parties acknowledge that this agreement and the annexures to 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 it 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.

### **38.6 Non Deferment**

The settlement date is the earliest date on which the parties would in any circumstance have agreed that the balance of the purchase price will be payable and neither the period between the date of this agreement and the settlement date, nor any other provision in this agreement, evidences any deferment of the purchaser's obligation to pay the purchase price for the purposes of section 6 of the Credit Contracts and Consumer Finance Act 2003. It is accordingly determined that this agreement is not a consumer credit contract for the purposes of or within the meaning of that Act.

### **39.0 Purchasers Specific Obligations on Re-Sale**

#### **39.1**

**39.2** The Purchaser covenants that in the event they wish to sell the property as a section, they will first offer it back to the vendor at the same purchase price in this agreement.

**39.3** In the event the Vendor does not accept the offer within 7 working days of notification, the Purchaser shall be able to sell the section to a third party on terms acceptable to them.

**39.4** Notwithstanding any other provisions of this agreement this covenant shall not merge with the giving and taking of possession, settlement, the transfer of title to the property or registration of the transfer of title to the property.

**39.5** In the event of any Purchaser breaching the covenants in this clause 35 then the penalties for such breach as contained in Clause 13 of Appendix 3 shall apply

### **40.0 Vendors Further Development**

**40.1** Notwithstanding any other provision in this agreement the Purchaser acknowledges that further subdivision and development work is being undertaken in the vicinity of the property and the Purchaser acknowledges the Purchaser and its successors in title will not amongst other things:

- (a) Object to or hinder or in any way complain about any lawfully authorised subdivision activity or development work carried on within Greenhill Park or any residual record of title or records of title derived therefrom;
- (b) Without consent to any subdivision or development activity that may require written approvals under the Resource Management Act 1991 and will, if called upon by the Vendor, to execute all documents and or do all things necessary to provide such approval or consent as may be required by the Vendor for the purposes of the subdivision or development of Greenhill Park described above;
- (c) Object to or procure any third party to object to any future or proposed application by the Vendor or its successors in title of Greenhill Park described above for a resource consent or plan change required by Vendor for its future development of Greenhill Park described above.

**40.2** The Purchaser acknowledges the right of the Vendor to register against the property a covenant in gross to protect the Vendors rights in respect of the above provisions.

**40.3** The Purchaser shall execute all documents (with the inclusion of all terms considered necessary by the solicitors for the Vendor) and do such acts and things required to obtain the deposit of the land titles plan and the implementation of any such easements and restrictions or the encumbrance or covenant in gross referred to in clause 40.2.



**Appendix 1**  
**Scheme Plan No. 19-30410-21-RC1**

**Appendix 2**  
**Record of Title**

**Appendix 3**  
**Land Covenants**

## **Appendix 4**

### **Guarantor**

In consideration of the Vendor entering into this agreement the Guarantor:-

- (a) guarantees payment of the purchase price and performance of the Purchaser's obligations under this agreement;
- (b) indemnifies the Vendor against any loss the Vendor might suffer should the agreement be lawfully disclaimed or abandoned by the Purchaser, any liquidator, receiver or other person.

The Guarantor covenants with the Vendor that:-

- 1. No release, delay or other indulgence given by the Vendor to the Purchaser or the Purchaser's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
- 2. As between the Guarantor and Vendor the Guarantor may for all purposes be treated as the Purchaser and the Vendor shall be under no obligation to take proceedings against the Purchaser before taking proceedings against the Guarantor.
- 3. The guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the purchase price.
- 4. An assignment or nomination under the agreement for sale and purchase shall not release the Guarantor from liability.
- 5. Should there be more than one Guarantor their liability under this Guarantee shall be joint and several.

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Signature of Guarantor

Dated:

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Signature of Guarantor

Dated: