

**SPECIAL CONDITIONS OF SALE
LINDEN ESTATE DEVELOPMENTS LTD**

1. SPECIAL CONDITIONS DEFINITIONS AND INTERPRETATION

1.1 In this agreement including the Special Conditions:

“Council” means Queenstown Lakes District Council.

“Land” means an estate in fee simple in all that land which, as at the date of this agreement, is contained in Certificate of Title OT16C/821 (Otago Registry) and is in the ownership of the Vendor.

“Lot” means:

- (a) the Lot described as being that part of the Land that is the subject of this agreement; and
- (b) where the Lot is shown on the Plans as requiring the use of an access lot to obtain vehicular and pedestrian access to a legal road or to land noted as road to vest, the Lot shall be deemed to include an undivided share (in equal proportion to the number of lots requiring use of the access lot) in the ownership of such access lot or lots.

“Net Interest” means all interest accrued on the Deposit (as a result of the investing of the Deposit by the Stakeholder in accordance with special condition 3.3(a)), less the Vendor's withholding tax, bank and Stakeholder handling charges.

“Plans” means the Subdivisional Plan.

“Project” means the overall development being undertaken by the Vendor of the Land.

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

“Stakeholder” means Checketts McKay, Barristers & Solicitors.

“Subdivision” means the Vendor's proposed development and subdivision of the Land.

“Subdivisional Plan” means the draft scheme plan of proposed subdivision of the Land in Annexure 1 of this agreement and any variations thereto that are required by any Relevant Authority or the Vendor.

2. SUBDIVISION

2.1 The Vendor has submitted the Plans to the Council for approval and has been granted Resource Consent (see attached).

2.2 The Purchaser agrees and acknowledges that it is purchasing the Property subject to such restrictions as may be imposed or required by the Council, or required by the Vendor at its absolute discretion. The Property is sold subject to all existing encumbrances, restrictions,

easements and drainage rights attaching to the Land and to any further encumbrances, restrictions, easements or drainage rights which may be required by the Vendor in its absolute discretion or required in order to satisfy any requirements of the Council or any Relevant Authority. The Purchaser agrees to purchase the Property and to take title subject to all and any such encumbrances, restrictions, easements, structures and drainage rights.

2.3 The Vendor and/or its surveyors, engineers, contractors and workmen have the right to enter upon the Land prior to the Possession Date with all such plant, machinery, vehicles and equipment for the purpose of carrying out such work as may be considered by the Vendor to be necessary or desirable in connection with the Project and in carrying out such work are entitled to remove all existing trees and fencing materials from the Land sold under this agreement.

2.4 **No Fencing Obligation on Vendor:** The Vendor will not be required to assist the Purchaser with fencing of the property the subject of this contract and reserves the right to register such a fencing covenant on all subdivision titles in conjunction with the deposit of plan of survey.

3. DEPOSIT – PAYMENT AND INVESTMENT

3.1 **Payment of Deposit:** The Purchaser shall pay the Deposit to the Stakeholder by cheque made out to Checketts McKay within five working days of signing this agreement (time being of the essence).

3.2 **Return of the Deposit on cancellation:** If this agreement is cancelled by either party in accordance with the terms of this agreement then:

- a. all moneys paid under this agreement plus the Net Interest shall be paid in full to the Purchaser and this agreement shall be of no further force or effect; and
- b. the Purchaser shall have no claim against the Vendor for any costs, damages, or compensation of any nature whatsoever arising out of this agreement or its cancellation.

3.3 **Investment and accounting for Deposit:** The Stakeholder shall hold the Deposit and the Net Interest accrued thereon on trust for the Vendor and the Purchaser on the following terms and conditions:

- a. The Deposit shall be promptly invested by the Stakeholder in an interest bearing trust account ("stakeholder account") established in the name of the Stakeholder with sufficient reference to the names of the Vendor and the Purchaser for the stakeholder account to be clearly distinguished from other investments by the Stakeholder. The stakeholder account shall be with such bank and on such conditions as the Stakeholder determines, but in any event with a bank registered under the Reserve Bank of New Zealand Act 1989.
- b. On the Settlement Date or if the Vendor otherwise becomes entitled earlier, the Deposit and the Net Interest shall be paid to the Vendor.

3.4 **Stakeholder not liable:** The Vendor and the Purchaser agree (for the benefit of the Stakeholder) that the Stakeholder will not be liable to any person by reason of any delay in investing or accounting for the Deposit, or any failure on the part of any bank, or any costs deducted by any bank for handling the Deposit or any interest thereon.

3.5 **Withholding tax:** The Purchaser acknowledges that resident/non-resident (as the case may be) withholding tax will be deducted from the interest accrued on the Deposit at such a rate or rates determined or required by the Inland Revenue Department from time to time. During the period of the stakeholding, the Vendor shall be liable to pay all withholding tax payable in respect of the interest accrued on the Deposit. The Vendor and the Purchaser hereby irrevocably and unconditionally authorise the Stakeholder to pay such withholding tax on behalf of the Vendor by deduction from time to time of the interest accrued on the Deposit.

3.6 **Force majeure:** In the event that war, civil disorders, monetary or economic developments, acts of Government or other factors beyond the reasonable control of the Vendor whether similar or not ("specified events") shall prevent the Vendor from commencing, continuing, or completing the Subdivision or render it impracticable, in the Vendor's sole opinion, for the Vendor to commence, continue and complete the Subdivision, then the Vendor may by notice in writing advise the Purchaser of the specified event and cancel this agreement and the Deposit shall be returned in full to the Purchaser.

4. **RESOURCE CONSENT**

4.1 **Statutory Condition:** Notwithstanding any other provision to the contrary, this agreement is conditional upon fulfilment of the conditions in section 225(2) Resource Management Act 1991.

4.2 **Vendor to subdivide:** The Vendor shall commence, and complete the Subdivision in a proper and professional manner in accordance with all statutory and regulatory requirements of all Relevant Authorities. The Vendor shall not be responsible for any delays in obtaining any Consent for the Subdivision or any delay caused by weather conditions; strikes; lockouts; accidents; or any other matter or cause beyond the Vendor's reasonable control. Council's issue of s224c certificate will be evidence of the satisfactory completion of works by the vendor in relation to this agreement.

4.3 **No set-off or compensation:** The Purchaser shall not:

- a. withhold the balance of the Purchase Price (or any part of it) or claim a set-off on Settlement by reason of any defect or fault in the Lot, the services to the Lot or the Subdivision or any other development or lack of development of the Project or the Land; or
- b. make any objection, requisition or claim for compensation because of any alteration to the Plans which are made because of a requirement or direction of the Relevant Authority or because of the practical necessities of design or construction or to any alteration which, in the sole opinion of an independent registered valuer appointed by the Vendor, has no material adverse effect on the value of the Lot.

5. **TITLE, BOUNDARIES, ETC**

5.1 **Acknowledgement as to title:** The Purchaser acknowledges that:

- a. a separate certificate of title has not yet issued for the Lot; and
- b. the title to issue for the Lot shall be an estate in fee simple subject to such reservations, restrictions, encumbrances, liens, covenants and interests as the Vendor may determine and otherwise as provided for under this agreement and as may be noted on the certificate of title to issue for the Lot.

- c. they have inspected the property and purchase the property solely in reliance upon the Purchaser's own judgement and not upon any representation or warranty made by the Vendor or any agent of the Vendor.
- 5.2 **No target date for Settlement:** The Vendor gives no warranty to the Purchaser as to when the title to the Lot will issue or when the Plans will be deposited in the Otago Registry of the Land Titles Office, or as to when the Purchaser will be able to register a memorandum of transfer of the Lot from the Vendor. The Purchaser acknowledges that any anticipated or projected dates for Settlement given by the Vendor or its agents prior to or after signing this agreement are indicative and approximations only and are not binding on the Vendor or can not give rise to any claim for compensation by the Purchaser.
- 5.3 **Easements, encumbrances, rights and obligations etc:** The Vendor reserves the right to grant or receive the benefits, or take the burden, of any easements, building line restrictions, restrictions generally or other encumbrances, rights, obligations, or consent notices which may be required in order to satisfy any conditions of the Consent, or the requirements of any statute, regulation or Relevant Authority, or which in the sole and absolute discretion of the Vendor are deemed to be necessary or desirable in respect of the Land, the Lot, or the Project. The Purchaser shall take title to the Lot subject to or with the benefit of any such easements, building line restrictions, other restrictions, encumbrances, rights or obligations, and shall execute all documents (with the inclusion of all terms considered reasonably desirable by the solicitors for the Vendor) and do such things and take such steps as may be required by the Vendor to obtain the deposit of the Plans and the implementation of any such easements, building line restrictions, encumbrances or other rights or obligations whether in respect of the Land or the Lot.
- 5.4 **Variations to Plans:** The Vendor may at any time alter or vary the Plans, and any subsequent plan relating to the Subdivision (including the addition, alteration, variation or cancellation of any proposed easement shown on any such plan) in such manner as the Vendor in its sole and absolute discretion considers appropriate having regard to the circumstances. The Purchaser shall not be entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on such addition, alterations, variation or cancellation. Without limitation to the above, the Subdivision may be undertaken in stages or as to part only and not as to any other part or parts. The Purchaser acknowledges that the location of any other lot on the Plans is not an essential term and that the Vendor may in its sole and absolute discretion re-configure or relocate any such lots notwithstanding any specific description in this agreement or the Plans.
- 5.5 **Errors and misdescriptions:** No error or misdescription of the Land or the Lot shall annul the sale and the Purchaser's remedies, if not otherwise limited by this agreement, shall be limited to compensation if demanded in writing before Settlement (time of the essence) but not otherwise. Such compensation shall only extend to any real or actual loss in value of the Lot (considered in conjunction with all the Lots in the development as a whole) determined as at the Settlement Date by an independent registered valuer appointed by the Vendor whose decision shall be final and binding on the parties. Any alteration to the number, size, or location, of any lot in the development (including the Lot) or to the common property or facilities in the Plans shall not be an error or misdescription under this special condition or this agreement and shall not give rise to any right to or claim for compensation by the Purchaser.
- 5.6 **No caveat:** The Purchaser shall not lodge a caveat against the Vendor's title to the Land or the Lot, unless a separate certificate of title has issued for the Lot and the Vendor is in default of any of its obligations under this agreement. If the Purchaser breaches this obligation then, without limitation, the Purchaser shall pay all costs, expenses and disbursements (including the Vendor's legal costs on a client/solicitor basis) arising out of the same.

- 5.7 **Deed of covenant from subsequent purchaser:** In the event of the Purchaser selling, disposing of or transferring the Lot or assigning the benefit of this agreement at any time prior to Settlement, the Purchaser shall obtain from the transferee or assignee a deed of covenant whereby the transferee or assignee covenants with the Vendor on terms and conditions identical to those set out in this agreement. The deed of covenant shall be prepared by the solicitors for the Vendor and the Purchaser shall pay all costs in regard to the preparation and completion of the deed.
- 5.8 **Representations:** 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 media publication (whether print, television, radio or website media) or other representation. 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.
- 5.9 **Severability:** If any provision of this agreement or the application thereof to any person or circumstance is or becomes invalid or unenforceable, 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.
- 5.10 **Lowest price clause:** The Purchase Price for the Lot is the lowest price that the parties would have agreed upon for the Lot under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 1994 and on that basis no income or expenditure arises under those rules.
- 5.11 **Conditional on issue of title:** The parties agree that this agreement is subject to and conditional upon issue of a separate title for the Property and the Vendor advising the Purchaser in writing that a search copy of that title is available in accordance with clause 3.16(1)(c) of the general conditions of sale.

VENDOR NOT BOUND

6. **Vendor signing:** The Vendor is not bound by this agreement until it is signed by the Vendor.