



**CASH SETTLEMENT AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE
STAGE 15(C)**

DATE OF AGREEMENT:

VENDOR: Carrus Limited (a duly incorporated Company having its registered office in Tauranga)

PURCHASER:

Full legal name(s) of Purchaser(s). If a trust/partnership then all trustees/partners must be named and sign below.

ADDRESS OF PURCHASER:

ADDRESS OF PROPERTY: , off Queen Charlotte Drive, Aotea, Porirua

LEGAL DESCRIPTION: Freehold Estate – Lot , m² (approx) being a subdivision of Lot 101 DP 540151 (RT 906731), Wellington Registry

PURCHASE PRICE: \$ Choose one

DEPOSIT: \$ payable to Harris Tate Trust Account on both parties signing this Agreement for Sale and Purchase.

BALANCE OF PURCHASE PRICE: The balance in one sum by cleared funds on the Settlement Date.

POSSESSION DATE: The Purchaser will take physical possession of the property on the day ten (10) working days after the Vendor or their solicitor notifies the Purchaser or his Solicitor in writing of issue of the Title.

APPORTIONMENTS: The Purchaser shall be liable for all rates and other outgoings which shall be apportioned from the Possession Date.

GST DATE: The latter of the date this Agreement becomes unconditional and the balance deposit paid.

It is agreed that the Vendor sell and the Purchaser purchase the above described property on the terms set out above and on the General Conditions of Sale and on any Special Conditions attached.

Signed by **Carrus Limited**

Signed by the **Purchaser**

.....
Signature of Director

.....
Signature(s) of Purchaser(s)

.....
Signature(s) of Purchaser(s)

in the presence of:

.....
Signature of Director/Authorised Signatory

.....
Witness Signature

.....
Witness Occupation

.....
Witness Full Name

.....
Witness Address

GENERAL CONDITIONS OF SALE

1. DEFINITIONS

1.1. In this Agreement the following words or expressions shall mean:

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|-----|--------------------------------------|---|
| (a) | Possession Date and Settlement Date: | Ten (10) working days after the Vendor's solicitor notifies the Purchaser or the Purchaser's Solicitor of the issue of Title. |
| (b) | Cleared Funds: | <ul style="list-style-type: none"> (i) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or (ii) A bank cheque but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines |
| (c) | PLS Guidelines: | The most recent edition, as at the date of this agreement of the Property Transactions and E-dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society. |
| (d) | Subdivisional Plan: | That plan produced by or on behalf of the Vendor to subdivide the property of which the lot passing pursuant to this Agreement forms part. |
| (e) | Working Day: | <p>Shall mean any day of the week other than:</p> <ul style="list-style-type: none"> (i) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and the Anniversary of any Province in which the property is situated; and (ii) A day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year, both days inclusive. (iii) A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm. |
| (f) | Default: | Any breach of the terms of this Agreement or failure to comply with any of the Conditions including the non-payment of any portion of the purchase price or interest. |
| (g) | Penalty Date: | That date on which the Purchaser makes any default. |
| (h) | Lot: | The piece of land intended to pass by virtue of this Agreement shall mean and include "lot", "property passing hereby", "section", and "allotment", "land". |
| (i) | Instalment: | Any monies payable by the Purchaser as interest or in payment or part payment of the purchase price including but not limited to a deposit. |
| (j) | Penalty Interest Rate: | Is the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable plus 5% per annum, calculated on a daily basis. |
| (k) | Subdivisional Plan Date: | 31 December 2021 |
| (l) | Tax Information and Tax Statement: | Have the meanings ascribed to those terms in the Land Transfer Act 2017. |

2. CASH SETTLEMENT TERMS SALE:

- 2.1. The Vendor shall prepare at the Vendor's own expense a Settlement Statement. The Vendor shall tender the Settlement Statement to the Purchaser or the Purchaser's Solicitor in a reasonable time prior to the Settlement Date.
- 2.2. The Purchaser's Solicitor shall:
- (a) within a reasonable time prior to the Settlement Date create a Landonline Workspace for the transaction, notify the Vendor's Solicitor of the Dealing Number allocated by LINZ and prepare in that workspace a Transfer Instrument in respect of the property; and
 - (b) Lodge in that workspace the tax information contained in the transferee's tax statement;; and
 - (c) prior to settlement, certify and sign the Transfer Instrument.
- 2.3. The Vendor's Solicitor shall:
- (a) within a reasonable time prior to the Settlement Date prepare in that workspace all other electronic instruments require to confer title on the Purchaser in terms of the Vendor's obligations under this Agreement; and
 - (b) Lodge in that workspace the tax information contained in the transferee's tax statement;; and
 - (c) prior to settlement have those Instruments and the Transfer Instrument certified, signed and pre-validated.
- 2.4. On the Settlement Date:
- (a) The balance of the Purchase Price, interest and other monies, if any, shall be paid by the Purchaser in cleared funds or otherwise satisfied as provided in this Agreement,
 - (b) The Vendor's Solicitor shall immediately thereafter:
 - (i) Release or procure the release of the Transfer Instrument and the other Instruments mentioned in clause 2.3(a) so that the Purchaser's Solicitor can then submit them as soon as possible for registration.
 - (ii) Pay to the Purchaser's Solicitor the LINZ registration fees on all of the Instruments mentioned in clause 2.3(a), unless these fees will be invoiced to the Vendor's Solicitor by LINZ directly; and
 - (iii) Deliver to the Purchaser's Solicitor any other documents that the Vendor must provide to the Purchaser on settlement in terms of this Agreement.
- 2.5. All obligations under clause 2.4 are interdependent.
- 2.6. The parties hereby agree that where in relation to this agreement it is or becomes necessary to determine a "core acquisition price" for the purpose of the Income Tax Act 2007, the purchase price is the "lowest price" the parties would have agreed upon (at the date of this agreement) for the sale and purchase of the property in terms of the Income Tax Legislation Act applicable at the time and the purchase price does not include any capitalized interest.
- 2.7. The following provisions shall apply on the payment of the deposits:
- (a) The Purchaser will pay the deposit immediately upon full execution of this agreement, time being of the essence. The deposit is to be paid to the Vendor's Solicitor's Trust Account to be held there as stakeholder. If the deposit is not paid on the due date for payment, the Vendor may at any time thereafter serve on the Purchaser notice requiring payment. If the Purchaser fails to pay the deposit on or before the third working day after service of the notice, the Vendor may cancel this agreement by serving notice of cancellation on the Purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
 - (b) The deposit shall be in part payment of the purchase price.
 - (c) The stakeholder shall hold both deposits until this agreement becomes unconditional. All interest accrued shall be to the account of the Vendor.
- 2.8. From and after the Possession Date, the Purchaser will pay the Local Authority rates and any other outgoings in respect of the section on or before the due date for payment. In the event that the section is not yet separately rated, at the discretion of the Vendor, on the Possession Date the Purchaser will pay rates either:
- (a) based on the total rates payable for that subdivision area, apportioned per the area of land of the new section; or
 - (b) based on the total rates payable for the subdivision area divided by the number of lots in the subdivision until separate demands are issued by the local authority; or
 - (c) calculated at \$500 per annum for the property.

The Purchaser will ensure that a Notice of Sale is provided to the Vendor's solicitor on the Settlement Date to be filed with the Local Authority so that all future rates demands are forwarded directly to the Purchaser for payment.

- 2.9. Where the Purchaser signatory to this agreement signs this agreement with the provision for a nominee; or as agent for a principal whether disclosed or undisclosed; or on behalf of a company to be formed; or on behalf of a trust; that Purchaser signatory shall at all times remain liable for all obligations on the part of the Purchaser pursuant to this agreement.
- 2.10. Pending settlement of the sale, the Purchasers agree and acknowledge that they will not assign, transfer, nominate, dispose, change or sell their interest in this agreement prior to the Settlement Date without the prior written approval of the Vendor. Any costs incurred in obtaining the approval of the Vendor and associated Deeds or Agreements shall be payable by the Purchaser.
- 2.11. The Purchaser acknowledges that this Agreement is not binding on the Vendor until the Purchaser or Purchaser's solicitor has been advised that the Agreement has been executed by the Vendor. Execution may be effected by signing an original copy or by exchange of signed facsimile or emailed scanned copies of the Agreement. The parties acknowledge that the signature of a

facsimile or emailed scanned copy of this Agreement and the transmission thereof by facsimile or email, each to the other or their respective agents or solicitors, shall be sufficient to constitute offer and acceptance and to comply with the requirements of Section 24 of the Property Law Act 2007.

- 2.12. The Purchaser acknowledges that they have purchased the section solely in reliance upon the Purchaser's own judgement and not upon any representation or warranty made by the Vendor, its officers and employees or the Vendor's agents.
- 2.13. The Vendor is a subdivider of land. In the process of subdividing, or managing the subdivision, the Vendor may be requested to disclose the sale evidenced by this agreement to third parties. The Purchaser acknowledges and agrees that the Vendor may do so on the basis that any disclosure is solely for the purpose of managing the sale of sections in the subdivision or the use to which individual sections may be put. In all other respects the Vendor will comply with the provisions of the Privacy Act 1993 in relation to any personal information provided to or acquired by the Vendor.
- 2.14. The Purchaser agrees not to exercise and hereby waives any cancellation rights granted or conferred on the Purchaser under Section 225 of the Resource Management Act 1991.
- 2.15. The Purchaser acknowledges that the marketing information (including plans) provided to the Purchaser relating to the future development of the subdivision could be subject to change. The Purchaser will not be entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on any such change.
- 2.16. The Purchaser warrants that they do not require consent to purchase the property under the Overseas Investment Act 2005 and have completed and signed the Overseas Investment Office Residential Land Statement pursuant to section 51A of the Overseas Investment Act 2005.

3. GST & ZERO-RATING

- 3.1. The parties warrant that any particulars stated in GST Information are correct at the date of this agreement.
- 3.2. Where the particulars stated in GST Information indicate that at settlement:
- The Vendor is and/or will be at settlement a registered person of the supply under this agreement;
 - The recipient is and/or will be at settlement a registered person;
 - The recipient intends at settlement to use the property for making taxable supplies; and
 - The recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under Section 2A(1)(c) of the Goods and Services Act 1985 (GST Act);
- GST will be chargeable on the supply under this agreement at zero percent pursuant to Section 11(1)(MB) of the GST Act
- 3.3. If GST is chargeable on the supply under this agreement at zero percent pursuant to Section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address and registration number if any of those details are not included in GST Information or they have altered.
- 3.4. If any of the particulars stated by the Purchaser in GST Information should alter between the date of this agreement and settlement, the Purchaser shall notify the Vendor of the altered particulars and of any other relevant particulars in GST Information which may not have been completed by the Purchaser as soon as practicable, and in any event no later than two working days before settlement. The Purchaser warrants that any altered or added particulars will be correct as at the date of the Purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the Vendor shall prepare and deliver to the Purchaser or the Purchaser's lawyer an amended settlement statement if the Vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the Vendor has already issued a tax invoice.
- 3.5. If the particulars stated in GST Information indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under Section 2A(1)(c) of the GST Act, the reference in clauses 3.2 and 3.3 to "the supply under this agreement" shall be deemed to mean the supply under this agreement of the remainder of the property excluding that part. The supply of that part of the property intended to be used as a principal place of residence will comprise a separate supply in accordance with Section 5(15)(a) of the GST Act.
- 3.6. The Purchaser acknowledges that the intended supply made pursuant to this agreement is a supply pursuant to Section 11(1)(mb) of the GST Act in which GST is chargeable at the rate of zero percent provided that if (whether before or after the date for possession) it transpires that any GST is payable in respect of the supply then:
- The Purchaser shall pay to the Vendor the GST which is so payable in one sum immediately upon demand together with any interest or penalties incurred by reason of late payment;
 - Where any GST is not so paid to the Vendor, the Purchaser shall pay to the Vendor:
 - Interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - All default GST.
 - Any costs incurred by the Vendor arising from the default.
 - It shall not be a defence to a claim against the Purchaser for payment to the Vendor of any default GST, interest or penalties that the Vendor has failed to mitigate the Vendor's damage by paying an amount of GST when it falls due under the GST Act.
 - Any sum referred to in this clause will be added to and included in the purchase price, and interest and other monies due to the Vendor pursuant to this provision will be paid at settlement date, or if settlement has occurred, will comprise a debt due to the Vendor.
- 3.7. The Vendor shall not be required to issue a GST Invoice until:

- (a) Requested by the Purchaser; and
- (b) The agreement is unconditional; and
- (c) All deposits and/or the balance of purchase price has been paid.

4. SUBDIVISIONAL PLAN:

- 4.1 The Vendor will cause to be completed a Subdivisional Plan drawn substantially in accordance with the plan annexed hereto (herein referred to as "the annexed plan") and will use its best endeavours to cause the Subdivisional Plan to be deposited in the Land Transfer Office prior to the Subdivisional Plan Date.
- 4.2 The parties agree that this agreement is conditional upon the deposit of the Subdivisional Plan. In the event that the Subdivisional Plan is not deposited on or before the Subdivisional Plan Date then either party shall have the right to cancel this Agreement by notice in writing to the other and if such notice is given the Purchaser shall be entitled to a refund of all moneys paid to the Vendor (without interest) and neither party shall have any further claim upon the other.
- 4.3 The Purchaser acknowledges that the subdivision is the subject of an approval from the local authority, and that as part of that approval process the local authority requires the subdivision to be the subject of a geotechnical and/or engineering report. The Purchaser further acknowledges that the property passing pursuant to this agreement may be subject to building restrictions or land use endorsements or easements arising from those reports and to satisfy any conditions of the Subdivision Consent. It is the agreement of the parties that it is the Purchaser's responsibility to inquire as to, and understand the terms and conditions of such reports. The Purchaser accepts the property subject to any conditions or restrictions imposed on it by such conditions, report, or the Local Authority and will take title to the lot subject to all encumbrances or registrations arising from the subdivisional process, or the terms of this agreement. The Vendor warrants that there will be a building site on each lot in the subdivision, although that lot may be subject to conditions, easements or restrictions so imposed.
- 4.4 The Vendor reserves the right to grant, create and receive the benefit of any easements, consent notices, land covenants, fencing covenant, building line restriction or other encumbrance/right/obligation over any lot in the subdivision which: the Vendor may require for the development and use of the land in the subdivision; and/or may be required in order to satisfy any consent conditions or other council/authority requirements. The Purchaser shall take title to the lot subject to: all existing interests registered against the titles to the Vendor's land as at the date of this agreement (excluding any mortgage); to any easements or other interests registered pursuant to the provisions of clauses 4 or 5; to any restriction required by the local authority; and to the land covenants.
- 4.5 The Purchaser hereby covenants not to directly or indirectly do any act, matter or thing as a consequence of which will or could interfere or delay the Vendor's development of other land.
- 4.6 The Purchaser acknowledges that the provision of services, and enhancements, to the subdivision or the lot may encroach upon the lot passing herein. As the provision of services and/or enhancements is necessary and unavoidable the Purchaser shall have no right of objection to the location of the services and/or enhancements or the terms of easements and encumbrances to be created to comply with the Subdivisional Consent requirements.
- 4.7 THE Purchaser acknowledges that they are aware that the Vendors will be developing the balance of the land owned or to be acquired by them and being land adjacent to the subdivision of which its lot forms part. The Purchasers hereby acknowledge that they will not object to the future development as proposed by the Vendors.
- 4.8 The Purchaser acknowledges that the lot described herein is subject to Consent Notices which will be registered on the said title.

5. VENDOR'S SUBDIVISIONAL RIGHTS:

- 5.1 The Vendor retains the following rights in respect of the land shown on the annexed plan and/or the Subdivisional Plan up until the Possession Date:
- (a) To grant to the Local Authority, Government Department and/or any State Owned Enterprise and/or any other person or organisation public or private, such rights as they may properly require in connection with the lot including in particular but not by way of limitation the right to lay telecommunications and power cables, gas lines, street lights, services, sewerage, water pipes and other connections above and underground and to construct any transformer or supply box, or other reticulation or distribution mechanism.
 - (b) To provide for any rights in respect of water, stormwater, wastewater, gas, telephone, drainage and electricity and any right-of-ways and other requirements by way of easement or otherwise howsoever.
 - (c) To store soil in the course of development works.
 - (d) To cut away and remove the soil and sub-strata of the lot, and to kerb and berms, and fill adjacent to roads accessways and right-of-ways.
 - (e) To excavate, lower, contour, re-contour, fill, landscape, enhance, and plant any part of the lot, or adjacent land.
 - (f) To enter upon any lot themselves or by their servants, consultants, contractors, agents or workmen and do such work as shall in the opinion of the Vendor be necessary or desirable for the formation, construction or laying of any road, accessway, footpath, drain, stormwater, sewerage, water, pipe, gas line, cable, electricity, or telecommunication line and other connection and any transformer or supply box or reticulation or distribution mechanism or as may otherwise be in the opinion of the Vendor necessary or desirable to complete the subdivision of all or any part of the lot, or adjacent land.
 - (g) To register against the Title such consent notices as the Local Authority, Government Department and/or State Owned Enterprise may require.
 - (h) To incorporate in the Subdivisional Plan any variations from the annexed plan as are required for the purposes of survey or requirements of the Local Authority, or may otherwise be considered necessary or desirable by the Vendor (in the Vendor's sole discretion) for the purposes of the subdivision.

- 5.2 All measurements and areas shown on the annexed plan are approximate only and subject to final survey. No reduction in the area of the lot that is less than 5% of the area shown on the attached plan shall entitle the Purchaser to damages or compensation nor shall it annul the sale or entitle the Purchaser to make any objection or requisition pursuant to clause 9.1.
- 5.3 If any such variations referred to above in clause 5.1 and 5.2 shall, in the opinion of the Purchaser, substantially reduce the value of the lot as a residential building site, then the following shall apply:
- (a) The Purchaser shall give a notice in writing within five (5) working days of the Purchaser becoming aware of the variation to the Vendor, specifying the Purchaser's calculation of the reduced value of the lot and supported by registered valuation evidence of that reduced value, and
 - (b) If the Vendor accepts that valuation, the Vendor may by notice in writing given within five (5) working days of receipt of the Purchaser's notice cancel this agreement; or
 - (c) If the Vendor does not accept that valuation, the question of whether the value of the lot has been substantially reduced as a result of the variation shall be referred to dispute resolution as provided for in clause 15 in this Agreement; and
 - (d) If the result of that dispute resolution process is that the lot has been substantially reduced in value as a residential building site, then
 - (e) The Purchaser shall be entitled to cancel this Agreement by notice in writing given to the Vendor within five (5) working days of the receipt by the parties of the dispute resolution decision.
- 5.4 In the event of the Agreement being cancelled by either party pursuant to the above, all monies paid (excluding any interest) by the Purchaser in accordance with the terms of this Agreement shall be refunded in full and neither party shall have any further claim upon the other.
6. CAVEATS:
- 6.1 The Purchaser hereby covenants not at any time prior to the Possession Date to lodge any matrimonial property notice, charging order or any other encumbrance or caveat pursuant to the provisions of the Land Transfer Act 1952 against any lot or against the Title to the lot shown on the annexed plan in respect of any interest of the Purchaser whatsoever and in the event of the Purchaser so doing the Purchaser HEREBY IRREVOCABLY APPOINTS the Vendor or his nominee to be the Purchaser's true and lawful attorney to make execute and have registered in the name of the Purchaser and on the Purchaser's behalf all such consents, notices, withdrawals, documents, papers and any other act or thing which the Vendor shall deem necessary or expedient to have such caveat removed or effect any registration notwithstanding the existence of any such caveat AND the Purchaser HEREBY AGREES that the production of this Agreement to the District Land Registrar shall be sufficient evidence of the appointment of the Vendor or it's nominee as the attorney of the Purchaser for any such purpose.
- 6.2 The total costs of removal of any such caveat shall be payable by the Purchaser to the Vendor forthwith upon the Vendor advising the Purchaser of the amount thereof.
7. PLACE FOR PAYMENTS:
- 7.1 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the Vendor's Lawyer's office, so long as it is accompanied by the undertaking from the Purchaser's Lawyer required by those Guidelines.
- 7.2 If due to delay of the Purchaser, settlement takes place between 4.00 pm and 5.00 pm on the Settlement Date (i.e. last minute settlement), the Purchaser shall pay the Vendor:
- (a) One day's interest at the penalty interest rate on the portion of the purchase price paid in the last minute settlement; and
 - (b) If the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.
8. RISK:
- 8.1 Each lot shall be at the sole risk of the Vendor until the Possession Date, and thereafter shall be at the sole risk of the Purchaser.
9. OBJECTIONS TO TITLE:
- 9.1 Any objections to or requisitions on the title to the lots which the Purchaser shall be entitled to make, must be stated in writing to the Vendor's solicitors within five (5) working days from the date the Vendor or it's solicitor notifies the Purchaser or their solicitor of the issue of the title to the lot (time being essential) and in default thereof the same shall be held to be waived and the title to have been absolutely accepted by the Purchaser. In the event of the Vendor being unable or unwilling to remove or comply with any objections or requisitions properly made the Vendor shall be at liberty notwithstanding any intermediate negotiations by notice in writing to the Purchaser to cancel the Agreement in which case the Purchaser shall receive back all moneys paid to the Vendor in accordance with the terms hereof (excluding any interest) but shall have no other claim whatsoever on the Vendor for the expense of investigating the title or for compensation or for any other payment whatsoever.
- 9.2 If any pegs for the property are missing or if there is any damage to any Local Authority structure, road or footpath on, near or adjacent to the property the Vendor will have no responsibility unless notified in writing prior to the Possession Date. In the event that the Purchaser has not notified the Vendor by that date, then the Purchaser shall be deemed to have accepted the lot and its surrounding Local Authority structures, roads or footpaths in the condition then evident on the date for possession.
10. FENCING AND RESTRICTIVE COVENANTS:
- 10.1 The Purchaser acknowledges and agrees that the title to the lot will be subject to the fencing and restrictive covenants attached to this Agreement as Schedule 3.

11. VENDOR'S WARRANTIES AND UNDERTAKINGS:

- 11.1 The Vendor warrants and undertakes to the Purchaser that:
- (a) At the giving and taking of possession there will be no arrears of general or water rates or charges outstanding on the lot.
 - (b) Any adjustments are paid to the dates shown in the Vendor's statement of apportionments to be supplied to the Purchaser before the Possession Date or will be so paid after the Possession Date on the date payment is due to the Local Authority.
 - (c) If the Vendor receives any notice or demand from the Crown or any Local Authority after the date of this Agreement they will if not paying or complying with such notice or demand themselves forthwith deliver it to the Purchaser or the Purchaser's solicitors and should the Purchaser not remedy, then the Vendor shall not be liable for any penalty incurred.
 - (d) Immediately after the Possession Date they will give Notices of Sale to the Local Authority having jurisdiction, such Notices of Sale to be provided by the Purchaser or Purchaser's solicitor prior to settlement.
 - (e) To impose covenants of a similar nature on the other lots in the same stage of the subdivision.

12. PENALTY INTEREST:

- 12.1 If the Purchaser fails to comply with the payment of any instalment or of any of the Conditions of Sale, those being the provisions requiring the payment of any moneys on account of the purchase price and interest thereon, then the Purchaser shall:
- (a) Pay the Penalty Rate of interest from the date on which compliance was due and terminating on the date on which the default has been remedied, and
 - (b) Pay all expenses and legal costs incurred by the Vendor in or towards obtaining remedy of such failure to comply.
- 12.2 The Purchaser will (if required by the Vendor) pay to the Vendor interest calculated at the Penalty Interest Rate on any judgement sum awarded in respect of any judgement sum in respect of this agreement, or on any payments to be made in accordance with the provisions of this Agreement which shall for the time being remain unpaid after the due date for payment such interest to be computed from the due date for payment until the date the amount remains unpaid and the relevant amount is fully paid to the Vendor PROVIDED THAT the Vendor shall not be entitled to require payment of interest in accordance with the provisions of this Condition in respect of any instalment to be paid hereunder if the Penalty Interest Rate already applies as a result of the default of the Purchaser in making such payment.
- 12.3 If the Purchaser has elected to pay the purchase price on a deferred payment basis and the Purchaser fails duly and punctually to pay on the date on which it fell due for payment then, whether or not the Purchaser is in possession, the Vendor may immediately give notice to the Purchaser calling up the unpaid balance of the Purchase Price, which shall upon service of the notice fall immediately due and payable as though the sale were a cash sale and the date of service of the notice under this condition shall be deemed the settlement date as hereinbefore defined. The Vendor may give a settlement notice with a notice under this clause.

13. NOTICE TO COMPLETE AND REMEDIES ON DEFAULT:

- 13.1 If the sale is not settled on the Settlement Date either party may at any time thereafter serve on the other party notice ("a Settlement Notice") to settle in accordance with this clause, but the Settlement Notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able and willing to proceed to settle in accordance with the notice or is not so ready, able and willing to settle only by reason of the default or omission of the other party.
- 13.2 If the Purchaser is in possession a Settlement Notice may incorporate or be given with a notice under Section 28 and complying with Section 29 of the Property Law Act 2007 and must be served in accordance with Section 353 of that Act.
- 13.3 Upon service of a Settlement Notice the party on whom the notice is served shall settle:
- (a) On or before the twelfth working day after the date of service of the notice; or
 - (b) On the first working day after the 13th day of January, if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January both days inclusive
- time being of the essence, both without prejudice to any intermediate right of cancellation by either party.
- 13.4 If this agreement provides for the payment of the purchase price by instalments and the Purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the Purchaser is in possession, the Vendor may:
- (a) Immediately give notice to the Purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable;
 - (b) The date of service of the notice under this sub-clause shall be deemed the settlement date for the purposes of sub-clause 13.1;
 - (c) The Vendor may give a settlement notice with a notice under this sub-clause;
- 13.5 If the Purchaser does not comply with the terms of a Settlement Notice served by the Vendor and/or a notice served pursuant to clause 13.2 then:
- (a) Without prejudice to any other rights or remedies available to the Vendor at law or in equity the Vendor may:
 - (i) Sue the Purchaser for specific performance; or
 - (ii) Cancel this Agreement by notice and pursue either or both of the following remedies namely:

- A. Forfeit and retain for the Vendor's own benefit the deposit paid by the Purchaser, but not exceeding in all twenty percent (20%) of the purchase price and/or;
- B. Sue the Purchaser and/or guarantor(s) for damages.
- (b) Where the Vendor is entitled to cancel this Agreement the entry by the Vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this Agreement by the Vendor if this Agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
- (c) The damages claimable by the Vendor under sub-clause 13.5(a)(ii)(a)(ii)A. shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the Vendor on any bona fide resale contracted within one year from the date by which the Purchaser should have settled in compliance with the Settlement Notice. The amount of that loss may include:
- (i) Interest on the unpaid portion of the purchase price at the Penalty Interest Rate from the Settlement Date to the settlement of such resale; and
- (ii) All costs and expenses reasonably incurred in any resale or attempted resale; and
- (iii) All outgoings (other than interest) on or maintenance expenses in respect of the lot from the Settlement Date to the settlement of such resale.
- (d) Any surplus money arising from a resale as aforesaid shall be retained by the Vendor.
- 13.6 If the Vendor does not comply with the terms of a Settlement Notice served by the Purchaser then without prejudice to any other rights or remedies available to the Purchaser at law or in equity the Purchaser may:
- (a) Sue the Vendor for specific performance; or
- (b) Cancel this Agreement by notice and require the Vendor forthwith to repay to the Purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the Purchaser until repayment.
- 13.7 The party serving a Settlement Notice and/or another Settlement Notice pursuant to clause 13.4 may extend the term of the notice for one (1) or more specifically stated periods of time and thereupon the term of the Settlement Notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 13.8 Should the Purchaser fail to pay any instalments, then the Vendor may:
- (a) Pursue the Purchaser for the payment of the instalment in default and the unpaid balance of the purchase price, in which case the following shall apply:
- (i) The Purchaser will pay all of the Vendor's legal costs and disbursements relating to the recovery of such instalments; and
- (ii) The Purchaser will pay the Vendor such additional amount as may be reasonably incurred by the Vendor as a result of such default, including but not by way of limitation, penalty interest and administrative and other costs.
- (b) Sue the Purchaser;
- (c) Cancel this Agreement.
- 13.9 In the event that the Purchaser does default in the payment of any instalment, it is agreed that the Purchaser shall on demand being made by the Vendor pay to the Vendor such amount as the Vendor may set not exceeding \$2,000 by way of liquidated damages for that default.
- 13.10 Should the Purchaser default on settlement and the agreement subsequently be validly cancelled by the Vendor, then (without prejudice to the Vendor's other rights, power and remedies), the ownership of all improvements effected on the property by the Purchaser will vest in the Vendor (and remain under the ownership of the Vendor). No compensation will be payable to the Purchaser for such improvements under this agreement.
- 13.11 In any event where the Vendor is unable to provide documents to the Purchaser on settlement, that inability being caused by or contributed to by the Purchaser either by delay or failing to observe the terms of this Agreement, then the following shall apply:
- (a) The Purchaser will pay the amount to settle to the Vendor in full and, (subject to the Vendor providing an undertaking to provide the settlement documents in usual form in due course) those settlement funds can be released to the Vendor, or, at the Vendor's discretion;
- (b) The Purchaser will pay interest at the default rate on the amount required to settle from the date for settlement until the date settlement occurs notwithstanding that the settlement documents were not available on the date for settlement; and/or
- (c) The Purchaser will pay liquidated damages of \$250.00 per day for each day from and including the date for settlement until the date settlement is achieved.
- 13.12 Nothing in this clause shall preclude a party from suing for specific performance without giving a Settlement Notice.
- 13.13 A party who serves a Settlement Notice under this clause shall not be in breach of any essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.
14. NON-MERGER:
- 14.1 The Agreements obligations and warranties of the parties in this Agreement shall not merge with;

- (a) The giving and taking of possession;
- (b) Settlement;
- (c) Transfer of title to the property; or
- (d) Registration of the transfer of the title to the property.

15. DISPUTE RESOLUTION:

- 15.1 Any dispute arising out of or relating to this agreement may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties.
- 15.2 Mediation may be initiated by either party writing to the other party identifying the dispute, which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances.
- 15.3 The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators and Mediators' Institute of New Zealand Inc.
- 15.4 The mediation shall be terminated by:
- (a) The signing of a settlement agreement by the parties; or
 - (b) Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
 - (c) Notice by one or more of the parties to the mediator to the effect that further efforts at mediation are no longer justified; or
 - (d) The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

16. GOVERNING LAW AND CURRENCY:

- 16.1 This agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of New Zealand Courts in respect of any dispute or proceeding arising out of this agreement.
- 16.2 All sums referred to herein are in New Zealand currency.

17. NOTICES:

- 17.1 The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:
- (a) All notices must be served in writing;
 - (b) Any notice under Section 28 of the Property Law Act 2007, where the Purchaser is in possession of the property, must be served in accordance with Section 353 of that Act;
 - (c) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (i) On the party as authorised by Sections 354 to 361 of the Property Law Act 2007, or
 - (ii) On the party or on the party's solicitor:
 - A. by facsimile, or by email; or
 - B. in the case of the party's solicitor only, by sending by document exchange or if both parties' solicitors have agreed to subscribe to the same secure web document exchange for this Agreement, by secure web document exchange.
 - C. by personal delivery; or
 - D. by posting by ordinary mail.
 - (d) In respect of the means of service specified in sub-clause 17.1(a), 17.1(b) and 17.1(c) a notice is deemed to have been served:
 - (i) In the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the solicitor's office;
 - (ii) In the case of email, when sent to the email address provided for the party or the party's solicitor on the back page or any other email address notified subsequently in writing by the party or the party's solicitor;
 - (iii) In the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the solicitor's office.
 - (iv) In the case of personal delivery, when received by the party or at the solicitor's office;
 - (v) In the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the solicitor's office;
 - (vi) In the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange;

- (e) Notice served by a party after 5.00 pm on a working day, or on a day which is not a working day, shall be deemed to have been served by the party at 9.00 am on the next succeeding working day.
- (f) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for sub-clause 17.1(e).
- (g) Any period of notice required to be given under this agreement shall be computed by excluding the date of service.
- (h) In accordance with Section 224 Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

17.2 Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings as in Section 4 of the Property Law Act 2007.

18. TIME FOR PERFORMANCE:

- 18.1 Where the day nominated for Settlement or the fulfilment of a condition is not a working day, then the Settlement Date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- 18.2 Any act done pursuant to this Agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- 18.3 Where two or more acts done pursuant to this Agreement, including service of notes are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for clause 18.2.

19. LIMITATION OF LIABILITY:

19.1 If any person enters into this agreement as trustee of a trust, then:

- (a) That person warrants that person has power to enter into this agreement under the terms of the trust;
 - (i) That person has properly signed this agreement in accordance with the terms of the trust;
 - (ii) That person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (iii) All of the persons who are trustees of the trust have approved entry into this agreement.
- (b) If that person has no right to or interest in any of the assets of the trust except in that person's capacity as trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to an amount recoverable from the assets of the trust from time to time ("the limited amount"). If that right of that person to be indemnified from the Trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

20. COUNTERPARTS:

20.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

21. INTERPRETATION:

- 21.1 If there is more than one Vendor or Purchaser, the liability of the Vendors or Purchasers, as the case maybe, is joint and several.
- 21.2 Where the Purchaser executes this Agreement with provision of a Nominee, or as agent for an undisclosed or disclosed but unidentified principal or on behalf of a company to be formed, the Purchaser shall at all times remain liable for all obligations on the part of the Purchaser.
- 21.3 If any inserted term (including any Special Conditions of Sale) conflicts with the General Terms of Sale, then inserted terms shall prevail.
- 21.4 Headings are for information only and do not form part of this Agreement.
- 21.5 Reference to statutory provisions shall be construed as reference to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- 21.6 Unless the context requires a different interpretation the singular shall be deemed to include the plural and vice versa the masculine gender shall be deemed to include the feminine gender and reference to persons shall be deemed to include companies and corporations and vice versa.
- 21.7 Any schedules and attachments form part of this Agreement and a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

SPECIAL CONDITIONS OF SALE

NOTWITHSTANDING anything else to the contrary herein contained these Special Conditions of Sale represent a further Agreement between the Vendor and the Purchaser and in the event of any conflict between the Special Conditions of Sale and any other provisions of this Agreement these Special Conditions of Sale shall take precedence.

22. HEALTH & SAFETY:

- 22.1 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.
- 22.2 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 health and safety policies copies of which are available on request and at www.aoteaporirua.co.nz; and
 - (b) at all times comply with the Vendor's health and safety policies, directives or procedures that are, or may become, applicable to it.
- 22.3 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:
- (a) warrants it will ensure that only authorised people (including but not limited to the Purchaser's contractors, sub-contractors, agents or employees) will access the property, that they are made aware of all potential hazards or are provided with appropriate supervision, and take all practicable steps to manage health and safety requirements;
 - (b) acknowledges that the Vendor will not have any obligation to liaise with any of the purchaser's contractors, sub-contractors, agents or employees in relation to the lot;
 - (c) warrants it will provide to the Vendor copies of the Purchaser's health and safety manuals and procedures prior to accessing the property, should the Vendor so require
 - (d) warrants 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.
- 22.4 The Vendor reserves the right to review and audit the Purchaser to ensure monitoring is undertaken to ensure ongoing compliance with it's health and safety requirements.
- 22.5 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.

23. LAND COVENANTS

- 23.1 The Purchaser acknowledges that the Land Covenants attached to this agreement are in draft form only and the Vendor reserves the right to make changes in accordance with Clause 4.4 to the Land Covenants prior to registration on the subdivided titles.

SCHEDULE 3 – COVENANTS

DEFINITIONS

1. Definitions: In these Covenants:
 - 1.1 **“Building”** or **“Buildings”** means any residential dwelling-house or primary building on the Lot.
 - 1.2 **“Ancillary Building”** or **“Ancillary Buildings”** means any building or structure associated with the Buildings on the Lot which requires Local Authority Consent.
 - 1.3 **“Garage”** means any garage or carport on the Lot.
 - 1.4 **“Aotea”** means Carrus Limited or any other person or persons nominated by Carrus Limited. If Aotea has been dissolved or wound up or otherwise gone out of existence, “approval by Aotea” will mean approval by any party appointed and/or nominated by Aotea for this purpose.
 - 1.5 **“Aotea Development”** means the land being developed and/or subdivided by Carrus Limited known as “Aotea” in Porirua, Wellington.
 - 1.6 **“Benefited Land”** means all the land contained in part Lot 101 DP 540151 (RT906731), Wellington Registry (“head title”).
 - 1.7 **“Burdened Land”** means all the land contained in part Lot 101 DP 540151 (RT906731), Wellington Registry (“head title”).
 - 1.8 **“Local Authority”** means Porirua City Council.
 - 1.9 **“Local Authority Owned Land”** means any road or reserve owned or controlled by the Local Authority in the Aotea Development.
 - 1.10 **“Lot”** means the relevant lot contained within the Burdened Land or any part of it. For avoidance of doubt, any reference to “Lot” in these covenants includes a reference to a Lot created from further subdivision should it be permitted.
 - 1.11 **“Plans and Specifications”** means plans, drawings, specifications and other documents from which the Buildings, Ancillary Buildings and Garages are to be constructed (including details of materials, colours, location and design).
 - 1.12 **“Covenantee”** shall mean the registered proprietor of the Benefited Land and vice versa.
 - 1.13 **“Covenantor”** shall mean the registered proprietor of the Burdened Land and vice versa.
 - 1.14 **“Purchaser”** means the registered proprietor of the Lot in Stage 15(c) and includes the Purchaser’s agents, employees, contractors, subcontractors, tenants, licensees, and other invitees.
 - 1.15 **“Stage 15c”** means all the land contained in part Lot 1 DP 50151 (RT 906731) Wellington Registry (“head title”).
2. Interpretation: In these Covenants headings are for reference purposes only.

FENCING COVENANTS

1. Aotea shall not be liable to pay for or contribute towards the cost of erection or maintenance of any fence between any Lot in Stage 15(c) of the Aotea Development and any adjoining land owned by Aotea but this condition shall not enure for the benefit of any subsequent Purchaser of such adjoining land or any part of that adjoining land.
2. The Purchaser agrees to meet the total cost of construction of any fence to be constructed on the boundary of adjoining land if that land is owned by the Local Authority and the Purchaser will not seek contribution from Aotea or the Local Authority.

LAND & BUILDING COVENANTS

1. The Purchaser acknowledges that the Lot is part of the Aotea Development which is intended to be established as a modern and well-designed subdivision. In accordance with this intention, Aotea will exercise supervision and control in relation to the nature and type of construction permitted in the Aotea development and the standard of surroundings being maintained.
2. The Purchaser will be bound by these Covenants, although Aotea may, in writing, at the sole and unfettered discretion of Aotea, waive part, any or all of these Covenants, on such terms and conditions as Aotea may require.
3. In any circumstances where Aotea’s approval is required in respect of any covenant, then any approval shall be at Aotea’s sole discretion and in no circumstance shall Aotea be required to give any reason for it’s decision.
4. The Purchaser covenants:

Building Requirements

- 4.1. To construct only one new Building and if required, one associated Ancillary Building on the Lot.
- 4.2. To construct a Building with a floor area of not less than 130 square metres (with the floor area measurement to be exclusive of any Garage, decking, breezeways, entry porches, verandas or roof overhang).
- 4.3. To construct a minimum of one Garage on the Lot which is to be attached to the Building. The Garage must be constructed in the same architectural style with the same cladding materials as the Building.
- 4.4. To construct any Ancillary Building so that:
 - (a) it does not extend beyond the front building alignment of the Building;
 - (b) it is constructed in the same architectural style with the same cladding materials as the Building;
- 4.5. To locate:
 - (a) all garden sheds, and
 - (b) any attachments (including but not limited to television antenna,) around or on the Building, Ancillary Building and Garages; and
 - (c) all washing lines, rubbish and garden bins, gas systems/bottles and airconditioning units
 so they are not highly visible from any road and/or neighbouring properties.
- 4.6. All solar panels must be approved in writing by Aotea prior to installation.
- 4.7. To construct in a proper and tradesmanlike manner a driveway, or vehicle access in a permanent continuous surfacing of concrete, concrete block, brick paving or sealing.

Plans and Specifications

- 4.8. To have all Plans and Specifications for Buildings, Ancillary Buildings and Garages approved in writing by Aotea prior to the Purchaser applying for a Building Consent or commencing any works on the Lot (including preparatory work). In determining whether or not to approve the Plans and Specifications, Aotea will take into account the appearance of the proposed Buildings, Ancillary Buildings and Garages and the appearance of other buildings in Aotea Development. The intention is that there should be a range of styles, designs and appearance of buildings within Aotea Development.
- 4.9. To construct any Buildings, Ancillary Buildings and Garages in accordance with the Plans and Specifications approved in writing by Aotea. Any modification or variation to the approved Plans and Specifications will require further written approval by Aotea prior to such work commencing.
- 4.10. Written approval provided by Aotea is for subdivision design standard control purposes only and implies no warranty as to the product, design, quality or suitability of the Buildings, Ancillary Buildings and/or Garages on the Lot in any manner whatsoever.

Construction Materials, Cladding and Finishing

- 4.11. To construct any Buildings, Ancillary Buildings and Garages so that:
 - (a) a minimum of 60% of the non-glazed exterior cladding of any Building consists of any of the following materials: kiln fired or concrete brick, plaster or cement texture finish, stone, linea or timber weatherboard (with a maximum erected width not exceeding 150mm), or any other exterior cladding material for which the Purchaser has first obtained Aotea's consent in writing;
 - (b) all exterior surfaces (which are not pre-colour coated or finished) are painted, or stained prior to the Building being occupied. Where a Building has a basement, exposed subfloors, framing and/or decks, the exposed areas shall be clad in permanent materials in conformity with the main parts of the residence;
 - (c) any wall predominantly facing the road frontage must include at least one window or feature;
 - (d) the finished permanent colour(s) of exterior cladding are subdued and non-vibrant colours;
 - (e) there are no reflective surfaces on any exterior cladding or roofing on the Buildings and any other ancillary buildings. In order not to create a glare offensive to adjoining property owners, not to use any metal clad roofing that has not been factory pre-painted or use any roofing material which exceeds 20% reflectivity as measured on the British Standard Specification Colour Range BS5252 or equivalent;
 - (f) all colours of the Ancillary Buildings and Garages are in keeping with the main Buildings.

Construction

- 4.12. To ensure all agents, employees, contractors, sub-contractors, tenants, licensees and other occupiers of the Lot are made aware of the restrictions created by these Covenants and are required to comply with these Covenants.

- 4.13 Before commencement of construction, the Purchaser will erect either a temporary or permanent fence around the perimeter of the Lot to define the construction zone. Any temporary fencing erected for the construction phase of the Buildings shall be removed within 8 weeks of construction being completed.
- 4.14 Before the commencement of construction of any Buildings, Ancillary Buildings and Garages the stockpiling and storage of materials on the Lot is strictly prohibited.
- 4.15 Before, during and after construction, the use of adjacent or abutting land and footpaths for access, is strictly prohibited, provided however, that the Purchaser can only have access across any other site upon obtaining prior written approval from the owner.

Stockpiling and dumping of rubbish is strictly prohibited.

Once construction has commenced, the Purchaser shall ensure container bins are kept on the Lot for the accumulation, containment and disposal of all rubbish. When necessary all rubbish must be removed.

- 4.16 The Purchaser will ensure that all landscaping, berms, roading, footpaths and kerbs are kept clean and free from debris prior, during and after construction. The Purchaser shall re-instate, replace and be responsible for all costs arising from damage to the landscaping, berms, roading, footpaths, kerbs, streetlights, street signs, concrete or any other structures in the subdivision arising from the Purchaser's use of the land directly or indirectly through the Purchaser's actions.
- 4.17 Notwithstanding Clause 4.36 of these Covenants, during the construction period, a temporary building/container and other building equipment is allowed on the Lot to be used in conjunction with the construction of the Buildings, Ancillary Buildings and Garages but must be removed within 8 weeks of practical completion of the Buildings.

Completion of Works

- 4.18 To complete any construction of the Buildings, Ancillary Buildings, Garages (including the exterior painting and decorating of Buildings, Ancillary Buildings, Garages) and the driveway/vehicle access within 9 months of commencement of excavation of the building site. During this 9 month period, not to allow construction of the Building to be delayed so that substantial progress is not made for any period exceeding 3 months.
- 4.19 Within 9 months of the completion of the Buildings, Ancillary Buildings and Garages:
- (a) submit to Aotea for written approval full landscaping plans for the said lot, and further within that 9 months, undertake all landscaping as detailed in those approved plans, together with reinstating the Local Authority owned land surrounding the lot. Such plans must encompass fences, paths, driveways, retaining walls, grassed lawns, letterbox and sufficient plants, trees and shrubs to enhance the street appeal of the said Buildings, Ancillary Buildings and Garages. In determining whether or not to approve the plans, Aotea will take into account the appearance of the proposed Building, Ancillary Buildings and Garages and surrounding Buildings and streetscape; and
 - (b) permanent interior window furnishings must be hung.
- 4.20 That except for driveways, not to carry out landscaping on the road frontage of the Local Authority Owned Land except in accordance with the general overall landscaping plan prepared by Aotea and approved by the Local Authority.

Fencing and retaining

- 4.21 Except during the time of construction, not to erect any fence constructed of shade cloth, netting, plastic, steel of any profile, long-run or corrugated iron, un-textured wood-fibre cement panels, plywood, fibrolite or post and wire.
- 4.22 Not to alter, interfere with, paint, add to, or otherwise change the entrance walls or subdivision features, or their fittings or attachments including any hedges, apart from the maintenance thereof without the prior written approval of Aotea.
- 4.23 To construct all fences in compliance with the Local Authority requirements and any approved plan by Aotea, and:
- (a) for fences within 3 metres of the boundary of the Lot (where that boundary borders any Local Authority Owned Land, access lot or right-of-way) those fences must be approved in writing by Aotea prior to construction of the fence. Within this 3 metre area no fence can exceed 1.2 metres in height from Aotea's finished ground level of the Lot (taken from where the fence is to be built). In determining whether or not to approve the construction of the proposed fence Aotea will take into account:
 - (i) the appearance of the proposed fence in regards to the Aotea Development. The intention is that there should be a range of styles, designs and appearance of fences within the Aotea Development that compliment both the surrounding houses and landscaping features;
 - (ii) the use of permeable materials and soft landscaping; and
 - (iii) whether screening is required for the privacy of the Lot.
 - (b) For all other fences (being those outside the 3 metres area) no fence can exceed 1.8 metres in height from Aotea's finished ground level of the Lot where the fence is to be built.
- 4.24 To construct all retaining structures in compliance with the Local Authority requirements and any approved plan by Aotea, and
- (a) for all retaining structures to be erected within 3 metres of the boundary of the Lot (where that boundary borders any Local Authority Owned Land, access lot or any right-of-way), those retaining walls must be approved in

writing by Aotea prior to construction.

In determining whether or not to approve the proposed retaining structure, Aotea will take into account the appearance in regards to the Aotea development. It is Aotea's intention that where all structures measure over 1.5m, they shall be stepped and softened with planting.

- (b) for all retaining structures to be erected elsewhere on the lot measuring over 2 metres, these must be approved in writing by Aotea prior to construction.
- 4.25 Notwithstanding Clauses 4.23 and 4.24, where a fence and retaining structure is to be built as one, the measurements shall not exceed 2.5 metres above Aotea's finished ground level from where the structure is to be built.
- 4.26 Any modification or variation to the approved fence or retaining structure will require further written approval by Aotea prior to such work commencing on the proposed modifications or variations.
- 4.27 That written approval provided by Aotea is for subdivision standard control purposes only and implies no warranty as to the product, design, quality or suitability of the fences on the Lot in any manner whatsoever.

Land Use

- 4.28 Except for Lots 1248, 1261 and 1279, not to subdivide the Lot.
- 4.29 Not to permit:
- (a) the Lot to be occupied or used as a residence unless the Buildings have been completed in accordance with the Covenants and the Local Authority Code of Compliance Certificates have been issued for the Buildings;
 - (b) Ancillary Buildings or Garages on the Lot to be lived in or otherwise used as dwellings.
 - (c) the Lot, Buildings, Ancillary Buildings and Garages to be used
 - (i) on a commercial basis; and/or
 - (ii) for any holiday accommodation where a fee is charged
 unless the prior written approval of Aotea has been obtained and all Local Authority requirements have been met.
- 4.30 Following construction of the Buildings not to display more than one advertisement, sign or hoarding of a commercial nature on the Lot. Any advertisement, sign or hoarding:
- (a) must not measure in excess of 1000mm x 1000mm; and
 - (b) must be kept in good condition at all times.
- 4.31 Not to allow any buildings, structures, driveways, landscaping, signs or fencing on the Lot to fall into disrepair.
- 4.32 Not to allow any graffiti (or similar disfiguring) on the Buildings, Ancillary Buildings, Garages, fences, retaining structures or any other structure on the Lot to remain in place for more than 5 working days from the date the Purchaser became aware of the graffiti or disfiguring.
- 4.33 Except for lots 1248, 1261 and 1279 (where they have been subdivided), not to construct any road on any part of the Lot to provide access to any adjoining Lot.
- 4.34 To, at all times, keep mown and maintained in a neat and tidy condition (and prevent from becoming unsightly) the Lot and adjoining Local Authority Owned Land.
- 4.35 Not to bring on to the Lot any more than 3 animals limited to fish, reptiles, birds, dogs, cats, guinea pigs and/or rabbits. Livestock and Roosters are not permitted. Where possible, all animals on the Lot must be controlled:
- (a) so as not to become a nuisance to others within Aotea Development; and
 - (b) to prevent them from roaming Aotea Development at will.
- 4.36 Not to bring on to, or to allow to remain on the Lot or Local Authority Owned Land, anything set out in the applicable categories in this clause, unless they are garaged or adequately screened from the road and surrounding properties (so as to protect the aesthetic qualities of Aotea Development and prevent noise likely to cause offence to residents). The applicable categories are:
- (a) vehicles with a gross laden weight exceeding 3,500kgs (including recreational and trade vehicles);
 - (b) more than one sign written vehicle;
 - (c) temporary buildings (including sheds and containers);
 - (d) buses, caravans, motorhomes, or pleasure-craft/boats;

- (e) trailers or any other equipment, materials or machinery
- (f) trampolines or large play equipment.

- 4.37 If the Purchaser proposes to locate anything set out in the applicable categories in Clauses 4.36(a) to 4.36(f) beyond the front building alignment of the Building, then the required screening must be approved in writing by Aotea and the approved screening must be in place prior to that object being brought on to the Lot.
- 4.38 Not to allow anything set out in the applicable categories of Clauses 4.36(a) to 4.36(f) to be maintained, repaired or have other work carried out on Local Authority Owned Land.
- 4.39 Not to bring on to, or to allow to remain on the Lot any vehicle, caravan, bus or motorhome which is used for residential use other than for the short term occupation by visitors which must not exceed 2 weeks in any 6 month period.
- 4.40 To ensure due allowance is made for adequate current and future drainage of all stormwater from the Lot, such stormwater drainage not to be detrimental to the water quality of the stormwater network. The Purchaser will also ensure that no discharge from the Lot whether of a soluble or insoluble nature shall occur. The Purchaser is responsible for all costs, claims or demands for any remedial action undertaken for any breach thereof.
- 4.41 That it will at all times save harmless and keep indemnified Aotea from all proceedings, costs, claims and demands in respect of breaches by the Purchaser of these Covenants.

5. Breach of Covenants & Enforcement

- 5.1 If there is a breach of any of these covenants (and without prejudice to any other liability which the Purchaser may have to any person having the benefit of this covenant) and the Purchaser does not rectify the breach within 10 working days of written notice being made by Aotea or any of the registered proprietors of the Lots, then the Purchaser will pay to Aotea or the person making such demands:
- (a) liquidated damages of the sum of \$300.00 per day for every day that the breach or breaches continue after the date of written demand until the breach or breaches are remedied; and
 - (b) any costs and expenses (including legal costs) incurred by Aotea or any registered proprietor to remedy the breach.
- 5.2 The rights of Aotea to enforce the terms of the rights and benefits conferred by these Covenants will remain in place until the earlier of 31 December 2040 or
- (a) 60 calendar months from the date on which Aotea ceases to be a registered proprietor of any Lot forming part of the Aotea Development; or
 - (b) Aotea relinquishing these rights in writing and nominating a replacement entity; or
 - (c) Aotea relinquishing these rights in writing and confirming the right to enforce the rights and benefits conferred in these Covenants will, in accordance with normal legal principles, vest in the registered proprietors of any lot forming part of the Benefited Lot.
- 5.3 In the event that one or more provisions of these Covenants are at any time found to be invalid or otherwise rendered unenforceable, such provision or provisions will be severable from these Covenants, so that the validity or enforceability of the remaining provisions of these Covenants are not affected.
- 5.4 The burden of these Covenants shall not apply to any land vested or to be vested in the Porirua City Council as open space, reserve (within the meaning of the Reserves Act 1977) or road (within the meaning of Section 315 of the Local Government Act 1974, as contained by the Local Government Act 2002) so long as it remains open space, reserve or road, and
- (a) Aotea reserves the right to waive or consent to the vesting of such land in Porirua City Council as open space, reserve or road, free of any such covenants;
 - (b) the Purchaser, for itself and any person claiming an interest in the land through or under the Purchaser appoints Aotea as it's attorney to exercise the powers set out in 5.4 (a);
 - (c) the production of an agreement signed by the Purchaser containing or annexing these Covenants shall be sufficient authority for the exercise of the powers set out in 5.4 (a);
- 5.5 Notwithstanding Clause 5.4 the benefits of these covenants so far as they are applicable to any land within a distance of 0.5 kilometres from any open space, reserve or road vested in the Council, shall extend to the Council; and the Purchaser agrees that these covenants confer a benefit on the Porirua City Council for the purposes of the Contracts (Privity) Act 1982. The rights conferred by this clause are in addition to, and do not exclude, any rights which the Porirua City Council may have at law.

6. Expiry of Covenants

- 6.1 These Covenants will continue in force for the benefit of the registered proprietors of any lot forming part of the Benefited Land until 31 December 2040 at which time they will expire.

7. Dispute Resolution

7.1 If a dispute in relation to any covenant arises between the parties who have a registered interest under these covenants:

- (a) the party/parties initiating the dispute must provide full written particulars of the dispute to the other party/parties;
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) If the dispute is not resolved within 20 working days of the written particulars being given (or any longer period agreed by the parties):
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single Arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

8. No Objection

8.1 The Purchaser consents that they will not directly, nor indirectly (nor procure any person to do so):

- (a) object or hinder, or otherwise obstruct, grant confirmation or alteration pursuant to the Resource Management Act 1991 ("RMA") of any authorisations under the RMA which in any way hinders Aotea's further subdivision of this land or surrounding land owned directly or indirectly by Aotea and will sign all and any authorisations and approvals required by Aotea including any variations to these Consents;
- (b) fund, encourage or otherwise be involved in any act, matter or thing that, if carried out by the Purchaser, would restrict Aotea's further subdivision of any surrounding land owned directly or indirectly by Aotea.

9. Vesting

9.1 Notwithstanding any provision herein contained, the within Covenants shall cease to have effect (and shall automatically surrender) as to any Lot which shall vest or be dedicated as road or reserve at any time (including, by way of example but not limitation, where a Lot vests as road or is dedicated as road in respect of any subsequent stages of the subdivision). Such date of cessation and surrender shall be the date of approval of the Subdivision Plan for the relevant stage by the territorial authority.

DATED

Vendor: Carrus Limited
(a duly incorporated company having its registered
office in Tauranga)
P.O. Box 345
Tauranga

Purchaser:

AGREEMENT FOR SALE AND PURCHASE

Purchasers Solicitor:

Attention:

Vendor's Solicitor:

Harris Tate
29 Brown Street
Tauranga

Attention: Mrs B. Conquer

DRAFT