

## **FURTHER TERMS OF SALE**

### **Prestons Park Stage M-2 Pre title issuing Non-Development Blocks**

#### **18. Subdivision**

- 18.1 Title for the Property has not yet issued. There are a range of documents available on the Prestons Park website ([www.prestonspark.co.nz](http://www.prestonspark.co.nz)) including a list which provides up to date information on when titles are expected to issue.
- 18.2 The Vendor has obtained the subdivision consents referred to in clause 28 (as varied or replaced from time to time), (the "**Subdivision Consent**"), which provide for a staged subdivision known as Prestons Park (the "**Subdivision**").
- 18.3 The Subdivision Consent includes consent for the subdivision of Stage M-2, M, N, O & P. The Property forms part of Stage M-2 (the "**Stage**"). The current head title reference for the Stage is CFR 692927, but this reference may change as a result of the completion of intervening stages of the Subdivision.
- 18.4 The Vendor will use its best endeavours to complete the subdivision of the Stage, generally in accordance with the Stage subdivision plan **attached** to this Agreement (the "**Stage Subdivision Plan**"), either as a single stage or as two or more substages, and in accordance with the Subdivision Consent, in order to provide a separate title for the Property. However, if a search copy for the separate title for the Property is not available within 12 months after the date of this Agreement, then either party may by notice in writing to the other avoid this Agreement, at any time prior to a search copy of a separate title for the Property becoming available. If the Agreement is avoided under this clause 18.4, the Purchaser will be entitled to a refund of any deposit paid, and any net interest earned thereon.
- 18.5 The Purchaser acknowledges and accepts that:
- (a) Easements, consent notices, covenants and other interests may be registered or noted against the title to the Property as part of the Subdivision, to the extent these are required by the Subdivision Consent, or are shown as required or proposed on the Stage Subdivision Plan, or are referred to in clause 19, or are shown on the head title;
  - (b) Any other interest required by the Vendor for the benefit of the Stage or the Subdivision may also be registered or noted against the title to the Property, and the Purchaser will raise no objection to such interests, except as stated in clause 18.6 below; and
  - (c) The Vendor may also make changes to the Stage Subdivision Plan if these are required or desirable for completion of the Stage or the Subdivision, and the Purchaser will raise no objection to such interests, except as stated in clause 18.6 below.
- 18.6 However, if an interest to be registered or noted under clause 18.5(b), or a change to the Stage Subdivision Plan under clause 18.5(c), would have a material adverse effect on the ability to use the Property for residential purposes, the Purchaser may avoid this Agreement by notice in writing within 5 Working Days after the date of being notified of the interest or change (time being of the essence). To avoid doubt, the following will not constitute a material adverse effect:
- (a) a reduction in land area of the Property of 3% or less;
  - (b) removal of an existing or proposed easement, consent notice, covenant or other interest which only burdens and does not benefit the Property;
  - (c) changes to the staging of the Subdivision;

- (d) registration of the consent notice contemplated by clause 24 of the subdivision consent for the Stage (regarding the requirement for foundation design by an engineer as part of the Purchaser's building consent application, and compliance with zoning requirements).
- 18.7 If this Agreement is avoided the Purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the Purchaser under this Agreement and neither party shall have any right or claim against the other arising from this Agreement or its termination.
- 18.8 If there is any disagreement between the Vendor and the Purchaser as to whether there has been a "material adverse effect" on the ability to use the Property for residential purposes under clause 18.6, then such disagreement may be referred by either party to an independent person nominated by the President of the New Zealand Law Society (the "**expert**") for determination. The expert shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the parties. The costs of the expert shall be borne equally by the parties. No notice of avoidance by the Purchaser pursuant to clause 18.6 will be effective until determination by the expert if the Vendor disputes the validity of the notice.
- 19. Land Covenants & Fencing**
- 19.1 Land covenants, providing for restrictions on the Property substantially in the form **attached** (the "**Land Covenants**"), will be noted against the titles for the sections in the Stage which are intended for residential use, except for those sections intended as development blocks, namely lots 708 - 712 (inclusive) on the attached Stage Subdivision Plan (the "**Development Blocks**").
- 19.2 Separate land covenants, substantially in the form **attached**, will be noted against the titles for the Development Blocks (the "**Development Block Land Covenants**").
- 19.3 The Purchaser will be bound by the Land Covenants, but not the Development Block Land Covenants.
- 19.4 Subject to the terms of the Land Covenants, the Purchaser (while it is a registered owner of the Property) will be able to enforce both the Land Covenants and the Development Block Land Covenants from the Settlement Date against the registered owners of other residential sections in the Stage, or (if there are substages) against the registered owners of other residential sections in the substage that the Property forms part of.
- 19.5 By way of explanation, development of the Development Blocks will be subject to the same approval of the Developer as outlined in clause 3(h) of the Land Covenants. It is the Vendor's intention to work with developers of the Development Blocks who have purchased from the Vendor to ensure that development of the Development Blocks is of a high standard of design and quality.
- 19.6 The Purchaser must comply with the Land Covenants from and including the Settlement Date or the date the Purchaser takes possession of the Property (if earlier).
- 19.7 If the Purchaser transfers, assigns or otherwise disposes of his interest under this Agreement prior to becoming the registered proprietor of the Property, then the Purchaser shall procure from the recipient of the Property a deed of covenant in favour of the Vendor under which the recipient of the Property undertakes to fulfil the Purchaser's obligations under clause 19.6.
- 19.8 The Land Covenants include provisions regarding fencing. These fencing covenants are additional to the fencing provisions in the Christchurch City Council district plan and the fencing provisions contained in the Subdivision Consent.
- 19.9 The Purchaser must not remove any fencing between the Property and any adjoining reserve, if the fence exists when the Purchaser takes possession of the Property, unless the written consent of the Christchurch City Council is first obtained.

## **20. Indemnity**

- 20.1 The Purchaser must indemnify (and keep indemnified) the Vendor against:
- (a) Any liability the Vendor suffers as a result of the Purchaser breaching this Agreement or the Land Covenants;
  - (b) Any damage caused by the Purchaser to any roads within the Subdivision (including berms, footpaths, curbs, trees/shrubs, and easement facilities within or above those roads) or any land of the Vendor or any fixture or chattel situated on the Vendor's land, and will upon demand pay the Vendor the cost of making good any damage so caused.
- 20.2 The Purchaser must indemnify (and keep indemnified) a registered proprietor of land purchased directly from the Vendor against any damage caused by the Purchaser to that land of the proprietor or to any fixture or chattel situated on that land of the proprietor, and will upon demand pay that proprietor the cost of making good any damage so caused.
- 20.3 For the purposes of clause 20.1, the actions and omissions of the Purchaser's contractor and suppliers will be deemed to be the acts and omissions of the Purchaser.

## **21. Rates and possession**

- 21.1 From the Settlement Date or the date the Purchaser takes possession of the Property (whichever is earlier) until the Property is separately rated the Purchaser will, on demand, refund to the Vendor rates on the basis of an estimate of \$600.00 plus GST per annum.
- 21.2 Requests for early possession may be granted if emailed to the Vendor ([admin@cdli.co.nz](mailto:admin@cdli.co.nz)) provided the request is not for a date earlier than the issue of the section 224(c) certificate for the Stage or (if there are substages) the substage that the Property forms part of.

## **22. Accruals**

- 22.1 The parties agree for the purposes of the Income Tax Act that the purchase price is the lowest price for which the Vendor would have sold the Property if the purchase price had been paid in full on the date of execution of this Agreement and that there is no element of interest contained in the purchase price.

## **23 No Warranties**

- 23.1 The Purchaser acknowledges reading this Agreement and the attachments to it, and purchases the Property solely in reliance upon his/her judgment and not upon any representation or warranty made by the Vendor or any employee or agent of the Vendor.

## **24 Negotiations**

- 24.1 Where the Purchaser wishes to negotiate matters such as minor contract variations, extensions of time, and related issues with the Vendor, the Purchaser shall correspond with the Vendor directly ([admin@cdli.co.nz](mailto:admin@cdli.co.nz)) unless requested otherwise by the Vendor.

## **25 Stockpiled Soil**

- 25.1 If at the date of this Agreement there is surplus stockpiled soil on the Property, the Vendor undertakes to remove the surplus stockpiled soil from the Property by the Settlement Date or as soon as weather conditions permit (whichever is the later).

## **26 No impediments to Vendor's completion of Subdivision**

- 26.1 The Purchaser must not lodge a caveat in relation to its interest in the Property under this Agreement.
- 26.2 The Purchaser must not object to methods employed by the Vendor in an endeavour to complete and sell other parts or the Subdivision.

- 26.3 The Purchaser must not at any time oppose, obstruct or object in any way, or provide support in any form to any person in opposition to, any planning proposal by the Vendor or its successors in title in respect of the Subdivision. In particular the Purchaser shall not (without limitation):
- (a) make, lodge, be party to or finance any request, complaint, submission, application, appeal or other proceeding which is designed, intended or likely to limit, prohibit or restrict the completion of the Subdivision;
  - (b) bring any proceedings in any Court or tribunal for damages, negligence, nuisance, trespass or interference or otherwise arising as a result of the completion of the Subdivision; or
  - (c) object to the development by the Vendor or any other party of the commercial lots contained in the Subdivision.
- 26.4 If required, the Purchaser shall on request by the Vendor or its successors in title, provide affected party approval to any planning application referred to in this clause in accordance with the provisions of section 95D(e) Resource Management Act 1991.
- 26.5 The Purchaser hereby irrevocably appoints the Vendor or any nominee of the Vendor to be the Purchaser's true and lawful attorney for the purposes of making all applications and executing all consents, approvals and other documents and plans and performing all acts, matters and things as may be necessary:
- (a) to complete the Subdivision; and
  - (b) to have any caveat lodged by the Purchaser in breach of clause 26.1 withdrawn.

## **27 Electronic signature**

- 27.1 In addition to clause 17, the parties consent to receiving this Agreement by email and to both parties signing this Agreement using an electronic signature, (as may be the case), as defined in the Electronic Transactions Act 2002. If such an electronic signature is used, such party warrants for the benefit of the other party that the means of creating their electronic signature was linked to and was under the control of the signatory or signatories only and to no other person.

## **28 Subdivision information**

- 28.1 The Purchaser acknowledges that the following documents are available at [www.prestonspark.co.nz](http://www.prestonspark.co.nz) or on request to the agent of the Vendor:
- (a) Subdivision Consent RMA92028454 (which applies to Stage M-2), and RMA92023244 as varied by RMA92027815 (which applies to Stages M, N, O & P);
  - (b) Stage Subdivision Plan;
  - (c) Indicative plan for entire Subdivision;
  - (d) Land Covenants and Development Block Land Covenants;
  - (e) Update on timing for the expected issue of titles;
  - (f) Christchurch City Council LIM Report; and
  - (g) Site/Lot specific geotechnical reports (upon request to the agent of the Vendor only).