

## FURTHER TERMS OF SALE

### Stonebrook Stages 14-19 and 24-26 (Marketing Stage 6)

#### 18. Subdivision

- 18.1 Title for the Property has not yet issued. There are a range of documents available on the Stonebrook website ([www.stonebrook.co.nz](http://www.stonebrook.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 30 (as varied or replaced from time to time, the "**Subdivision Consent**"), which provides for a staged subdivision known as Stonebrook (the "**Subdivision**").
- 18.3 The Subdivision Consent includes consent for the subdivision of Stages 14-19 and 24-26 (Marketing Stage 6) (together the "**Stage**"), of which the Property forms part. The current head title reference is CFR 671347, 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 clauses 19 and 20, 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.
- 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) relocation of an existing or proposed water race, in a way which does not increase the extent it passes through the Property (when compared to the proposed relocation shown in the diagram referred to in clause 20.1);
  - (d) changes to the staging of the Subdivision.

- 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**, will be noted against the titles for the sections in the Stage which are intended for residential use (the "**Land Covenants**").
- 19.2 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).
- 19.3 Subject to the terms of the Land Covenants, the Purchaser (while it is a registered owner of the Property) will be able to enforce the 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.
- 19.4 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 19.2.
- 19.5 The Land Covenants include provisions regarding fencing. Diagrams to help explain the intent of the fencing covenants are available in accordance with clause 30. These fencing covenants are additional to the fencing provisions in the Selwyn District Council district plan and the fencing provisions contained in the consent notices referred to in the Subdivision Consent.
- 19.6 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 Selwyn District Council is first obtained.

## **20. Water Races**

- 20.1 As part of the Subdivision, the Vendor will be relocating existing water races so that they are generally in the position shown in the diagram from Aurecon labelled "Water Race Alignment". The diagram is available in accordance with clause 30.
- 20.2 The Selwyn District Council Water Race Bylaw 2008 currently governs the water races, and (subject to regulatory change) will continue to apply to the relocated water races. Different provisions apply to the open water races and the piped sections of the water races. The Bylaw provides for setback requirements and maintenance responsibilities (amongst other things) for the water races, which can affect owners of land through which a water race passes or which adjoins a water race. More information is available at <http://www.selwyn.govt.nz/services/water-sewage/water-races>.
- 20.3 An easement in gross in favour of the Selwyn District Council may be required over the Property if any part of the Property contains part of a water race.
- 20.4 The Purchaser acknowledges and accepts the matters referred to in this clause 20.

## **21. Compliance with Subdivision Consent after Settlement Date**

- 21.1 The Purchaser must comply with the following conditions of the Subdivision Consent to the extent that they relate to activity on the Property after the Settlement Date:
- (a) *"[E]nsure on a continuing basis that dust created by the disturbance or transportation of materials is confined to within the boundaries of the [Property]."*
  - (b) *"[D]ust generating activities shall cease during times of high winds where dust suppression methods are insufficient to stop fugitive dust leaving the site."*
  - (c) *"[A vehicle crossing] shall be formed in accordance with Appendix 13 of the Partially Operative District Plan (Townships Volume) including Tables E13.5 and E13.8. Each vehicle crossing shall be sealed to match the existing road surface for the full width of the crossing and from the edge of the formed road to the [P]roperty boundary."*
  - (d) *"[E]ach vehicle accessway shall be formed to comply with the requirements of Appendix 13 of the Partially Operative District Plan (Townships Volume) and sealed if it serves three or more lots."*
  - (e) (if applicable to the Property): *"[If the Property] has frontage to an area specifically formed as a parking layby, no vehicle crossing shall be constructed across the parking layby without prior approval of Council's Roading Department."*
  - (f) *"[C]ontact the Transportation Department to coordinate an inspection of the vehicle crossing and accessway formations .... At least two days' notice shall be given before work commences."*
  - (g) (if applicable to the Property): *"That unless a resource consent has been granted otherwise, all development and other activities on medium density lots shall proceed in accordance with the rules for permitted activities in the Living Z zone, Medium Density Area. Any activity which does not comply with the rules for permitted activities will require a resource consent ...."*

## **22. Indemnity**

- 22.1 The Purchaser must indemnify (and keep indemnified) the Vendor against:
- (a) Any liability the Vendor suffers as a result of the Purchaser breaching clause 21.1;
  - (b) Any liability of the Vendor resulting from a breach of the Land Covenants by the Purchaser; and
  - (c) 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.
- 22.2 For the purposes of clause 22.1, the actions and omissions of the Purchaser's contractor and suppliers will be deemed to be the acts and omissions of the Purchaser.

## **23. Rates and possession**

- 23.1 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.
- 23.2 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.

## **24. Accruals**

- 24.1 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.

## **25. No Warranties**

- 25.1 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.

## **26. Negotiations**

- 26.1 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 unless requested otherwise by the Vendor.

## **27. Stockpiled Soil**

- 27.1 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).

## **28. No impediments to Vendor's completion of Subdivision**

- 28.1 The Purchaser must not lodge a caveat in relation to its interest in the Property under this Agreement.
- 28.2 The Purchaser must not object to methods employed by the Vendor in an endeavour to complete and sell other parts or the Subdivision.
- 28.3 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 Lot 515 (which is some distance to the south of the Stage).
- 28.4 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.
- 28.5 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 28.1 withdrawn.

## **29 Solicitor's Approval**

29.1 This Agreement is conditional on the Purchaser's solicitor's approval of the form and content (including commercial matters) of this Agreement, within \_\_\_\_ five working days after the date of this Agreement.

## **30 Subdivision information**

30.1 The Purchaser acknowledges that the following documents are available at [www.stonebrook.co.nz](http://www.stonebrook.co.nz) or on request to the agent of the Vendor:

- (a) Subdivision Consent 135261 (which applies to Stage 19) and Subdivision Consent 145543 (which applies to Stages 14-18 and 24-26) – obtainable at [www.stonebrook.co.nz](http://www.stonebrook.co.nz);
- (b) Stage Subdivision Plan;
- (c) Indicative plan for entire Subdivision;
- (d) Land Covenants;
- (e) Diagrams explaining intent of corner fencing provisions in the Land Covenants;
- (f) Aurecon plan: Relocation of Water Race;
- (g) Update on timing for the expected issue of titles;
- (h) Geotechnical report;
- (i) Selwyn District Council LIM Report; and
- (j) Selwyn District Council Design Guide for medium density housing.