Confidential Report

TO: Council
FROM: Manager City Property
MEETING DATE: 8 April 2013
SUBJECT: THE OCTAGON ATHENAEUM BUILDING - SALE PROPOSALS

SUMMARY

The Octagon Athenaeum has been marketed by Deadline Treaty in accordance with the Council decision on 10 December 2012. Four offers have been received, ranging from $500,000 to $900,000, and are presented to Council for consideration.

The highest offer from Mr Forbes of $900,000 also presents the Council with an opportunity to meet community needs, protect the heritage of the building and remove the on-going liability and risks associated with the ownership of the property.

It is estimated that if this offer is accepted the remaining debt will be $100,565. This will need to be repaid in the current financial year. This is an unbudgeted cost.

IMPLICATIONS FOR:

(i) Policy: No
(ii) Approved Annual Budget: Yes – The recommendation will result in a shortfall in cash of $100,565.
(iii) LTP/Funding Policy: The assumption included in the 2013/14 Draft Annual Plan budget was that this property would be sold.
(iv) Activity Management Plans: No
(v) Community Boards: No
(vi) Sustainability: Yes – The recommended proposal provides the restoration and recycling of an Historic Building.

RECOMMENDATIONS:

That the Council:

1. Notes the options for the disposal of the Athenaeum Building.
2. Accepts the unconditional offer of $900,000 plus GST (if any) from Lawrence John Forbes for the purchase of 23 The Octagon, the Athenaeum Building.
3. If an offer is accepted that Council:
   (a) authorises the Manager City Property to sign the agreement immediately and notify the successful purchaser.
   (b) authorises the release of a public statement relating to the purchase immediately following the meeting and the release of a redacted version of this report.

4. If an offer is not accepted, the Council authorises the Mayor to make a statement providing an update on the process.

INTRODUCTION

In October 2007 the Octagon Athenaeum was purchased for $1,130,000 with the possibility of using the building to facilitate the provision of a large theatre development. This theatre development has not proceeded and the decision was subsequently taken by Council to sell the property.

Council resolved on 10 December 2012 that

"That the Athenaeum be put on the market by deadline treaty noting that commercial considerations might not be the only attributes taken into account, and that the recommended options be brought back to the Council for consideration."

The marketing process has now been completed and the offers are presented in this report for Council to consider.

BACKGROUND

Colliers International were appointed as agents for the sale of the Athenaeum following the December 2012 Council meeting. A Deadline Treaty process commenced in January 2013, with the intention of reaching all active investors and/or developers New Zealand wide.

The Athenaeum was advertised in the Otago Daily Times and the NZ Herald as well as online via 'Trade Me' and the Collier's website. Personal contact via the agent’s affiliates provided a widespread campaign.

The Deadline Treaty process allows for conditional and unconditional offers to be received, and for negotiations with each party to ensure that the best offer are presented.

City Property has been active with each party, and all four have been asked to reconsider their offer and ensure that it is the best proposal for consideration by Council. This has resulted in one party changing to an unconditional offer and all parties have now provided their final offer on the property.

OFFERS

There are four options presented for consideration. A copy of each sale and purchase agreement is attached. The level of detail of each proposal varies due to the information included with the offer.

A summary of each offer is as follows:
1. **Lawrence John Forbes - $900,000 plus GST (if any) (Attachment 1)**

   - **Purchase price:** $900,000 plus GST (if any)
   - **Deposit:** 10%
   - **Settlement:** 1 May 2013

   The offer is unconditional with settlement in May.

   Mr Forbes has developed a number of historic buildings in Dunedin that lead to him being awarded the 2012 Dunedin City Council Supreme Award for Heritage Re-Use.

   Mr Forbes plans to earthquake strengthen the building using his company Zeal Steel, and develop a portion of the building for an arts and culture use with the support of two members of "Transforming Dunedin", an arts and cultural based group.

   Mr Forbes also plans to place a restrictive Covenant on the title to ensure that the heritage elements of the interior and exterior of the building are retained in the long term. There is a process in place for the document to be agreed upon between Mr Forbes and the Historic Places Trust. Please note, however, that if an agreement cannot be reached on the wording of a suitable covenant within 24 months, this condition lapses.

   Heritage Planning staff advise that this would be a positive outcome from a heritage perspective, noting that few owners would offer to covenant the protection of internal and external features.

   Events and Community Development staff agree with the Heritage Planning staff comment, and state that the proposed creative space is likely to enhance any vision of the yet to be developed Arts and Culture Strategy.

   **Advantages**
   - Highest offer as at the date of the tender;
   - Unconditional offer;
   - Provides for a restrictive covenant to be negotiated to protect heritage aspect of building;
   - Intends to develop arts/cultural space;
   - Remove holding costs and risk of ownership.

   **Disadvantages**
   - Offer not sufficient to fully repay the remaining debt on the property or to recover the original purchase price.

2. **$800,000 plus GST (if any) (Attachment 2)**

   - **Purchase price:** $800,000 plus GST (if any)
   - **Deposit:** 10%
   - **Settlement:** 8 April 2013

   The offer is unconditional with a short settlement date.

   No indication has been given as to the intended use of the property.

   **Advantages**
   - Unconditional offer;
   - Short settlement;
   - Remove holding costs and risk of ownership.
Disadvantages

- Not the highest offer;
- No heritage covenant;
- Offer not sufficient to fully repay the remaining debt on the property or to recover the original purchase price.

3. $555,000 plus GST (if any) (Attachment 3)

Purchase price: $555,000 plus GST (if any)
Deposit: 10%
Settlement: 3 May 2013

This offer is unconditional with settlement in May.

No indication has been given as to the intended use of the property.

Advantages

- Unconditional offer;
- Short settlement;
- Remove holding costs and risk of ownership.

Disadvantages

- Not the highest offer;
- No heritage covenant;
- Offer not sufficient to fully repay the remaining debt on the property or to recover the original purchase price.

4. $500,000 plus GST (if any) (Attachment 4)

Purchase price: $500,000 plus GST (if any)
Deposit: 10%
Settlement: 1 July 2013
Due Diligence: Until 30 April 2013

Conditional with a period of due diligence and settlement in July.

No indication has been given as to the intended use of the property.

Advantages

- Remove holding costs and risk of ownership

Disadvantages

- Offer conditional;
- Not the highest offer;
- No heritage covenant;
- Offer not sufficient to fully repay the remaining debt on the property or to recover the original purchase price.

SUMMARY OF OFFERS

The table below provides a summary of the financial elements of the four offers:

<table>
<thead>
<tr>
<th>OCTAGON ATHENAEUM - OPTION SUMMARY</th>
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<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Mr Forbes</td>
</tr>
<tr>
<td>Purchase Price</td>
</tr>
<tr>
<td>$900,000</td>
</tr>
<tr>
<td>Deposit</td>
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<tr>
<td>10%</td>
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<tr>
<td>Settlement</td>
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<td>1 May</td>
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<tr>
<td>Unconditional</td>
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<tr>
<td>Yes</td>
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<tr>
<td>Due Diligence until</td>
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<td>$800,000</td>
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<td>10%</td>
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<td>8 April</td>
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<td>Yes</td>
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<td>30 April</td>
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<td>$555,000</td>
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<td>10%</td>
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<td>3 May</td>
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<td>1 July</td>
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FINANCIAL POSITION

Attachment 5 provides a financial summary for the Athenaeum. The first two sections on the attachment provide an Income Statement and Cashflow for the 2007/08 year to the 2012/13 year. On average, the holding costs have been $74,000 per annum. This includes annual interest and loan repayments on the debt.

The next section of the attachment deals with the debt on the property. The Council borrowed $1.13 million to purchase the property in 2007 and has been making the annual repayments shown on line 61 of the attachment. The debt remaining as at 28 February 2013 was $993,566.

A scenario is provided in the table below to indicate what the remaining debt will be if the Council accepts the $900,000 offer.

<table>
<thead>
<tr>
<th>Sale Proposal</th>
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</thead>
<tbody>
<tr>
<td>Debt</td>
</tr>
<tr>
<td>Balance as at 28 February 2013</td>
</tr>
<tr>
<td>Less loan repayment 31 March 2013</td>
</tr>
<tr>
<td>Balance on settlement date 1 May 2013</td>
</tr>
<tr>
<td>Sale Proceeds</td>
</tr>
<tr>
<td>Mr Forbes Offer (settlement 1 May 2013)</td>
</tr>
<tr>
<td>Less cost of sale – estimated commission, legal fees and disbursements</td>
</tr>
<tr>
<td>Net Proceeds</td>
</tr>
<tr>
<td>Remaining debt on 1 May 2013</td>
</tr>
<tr>
<td>Cash Shortfall to repay debt:</td>
</tr>
<tr>
<td>Remaining debt on 1 May 2013</td>
</tr>
<tr>
<td>Less Budgeted loan repayment June 2013</td>
</tr>
<tr>
<td>Cash shortfall</td>
</tr>
</tbody>
</table>

If a sale proceeds at $900,000 on 1 May, the Council budget provision for a further loan repayment of $9,080 will leave a cash shortfall of $100,565 which will need to be repaid in the current financial year. This is currently an unbudgeted cost.

The property was independently valued for $1,290,000 in June 2012. This means that the property is recorded as an asset for that value. If Mr Forbes’ offer is accepted, a book loss on
sale will be recorded. This will be the difference between the book value ($1,290,000) and the net sale proceeds ($875,000), of around $415,000, as shown in the table below.

<table>
<thead>
<tr>
<th>Sale Transaction</th>
<th>$</th>
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<tbody>
<tr>
<td>Asset Book Value</td>
<td>1,290,000</td>
</tr>
<tr>
<td>Less Net Sale Proceeds</td>
<td>875,000</td>
</tr>
<tr>
<td><strong>Book Loss on Sale</strong></td>
<td><strong>415,000</strong></td>
</tr>
</tbody>
</table>

As the original purchase price was $1,130,000, the loss of $415,000 is made up of a cash loss of $255,000 and a nominal loss of $160,000 as shown in the table below. The nominal loss is due to the gain on valuation recorded in June 2012.

The total cost of ownership of the Athenaeum is being finalised and will be circulated as Attachment 6 once the information has been compiled.

**2013/14 Draft Annual Plan**

The assumption made in the 2013/14 draft Annual Plan was that the Athenaeum building would be sold in the 2012/13 financial year and that the debt would be repaid in full.

**RETAIL OWNERSHIP/DEVELOP**

The option still exists for Council to maintain ownership of the Octagon Athenaeum. The Council would have the ability to direct social outcomes such as a community and arts space although this would also involve significant financial costs.

**Risks of Continued Ownership**

The Council is currently exposed to a number of risks associated with the continued ownership of the building which need to be considered.

The holding costs for the property have averaged $74,000 per year and these have not been budgeted for from 1 July 2013 onwards.

Earthquake strengthening for the building would be required with a change of use (currently 24%), as is extensive maintenance and upgrade of the building to halt deterioration.

Any significant changes to the building will require the services of historic and archaeological consultants given the age of the building, which will add additional cost to any proposed use.

**RELEASE OF INFORMATION**

The sale of the Athenaeum and its future use have a high degree of public interest. If Council resolves to accept one of the offers presented it is recommended that the Manager City Property immediately give effect to that resolution by signing the offer on Council’s behalf and communicating acceptance of the offer to the purchaser. The unsuccessful purchasers will be advised at this point by Colliers. A statement should then be provided to the media outlining the successful offer. Marketing and Communications staff are ready to provide the necessary release if Council so resolves.

It is further recommended that a redacted version of this report is also made publically available. Information likely to identify the other bidders will be redacted. The sale and purchase agreements for the unsuccessful bids will not be provided. It should be noted that identifying details of the unsuccessful bidders should remain confidential.

If no offer is accepted, then Council needs to give consideration to what, if any, public statement it wishes to make.

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1. Note the depreciation impact is minor because the value of the building is only $40,000. The remaining value is in the land.
CONCLUSION

A Deadline Treaty process for marketing the property has resulted in four offers for consideration.

Mr Forbes’ offer appears to satisfy the Council objectives in this sale. Financially the price he has offered is the highest at $900,000, and socially he plans to meet community needs by protecting the heritage of the building with a covenant and work closely with the arts and cultural sector.

This proposal presents the Council with an opportunity to meet community needs and removes from Council both the on-going liabilities and risks associated with ownership of the property.

It is therefore recommended that the offer from Mr Forbes be accepted.

Prepared by: Approved for submission by:

Tim Buchanan
PROPERTY MANAGEMENT/PROJECTS COORDINATOR

Robert Clark
MANAGER CITY PROPERTY

Approved for submission by:

Kat McNamara
FINANCIAL ANALYST

Sandy Graham
MANAGER GOVERNANCE

Approved for submission by:

Sue Bidrose
ACTING CHIEF EXECUTIVE

Date report prepared: 22 March 2013

Attachments

1. Offer from Lawrence John Forbes
2. Offer from
3. Offer from
4. Offer from
5. Financial Summary
6. Total cost of ownership of the Athenaeum - to follow
AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.

DATE:
VENDOR: Dunedin City Council

PURCHASER: Lawrence John Forbes and/or nominee

Authorised for release under LGOIMA

PROPERTY
Address: The Athenaeum Building, 23 The Octagon, Dunedin

Estate: FEE SIMPLE LEASEHOLD STRATUM IN FREEHOLD STRATUM IN LEASEHOLD
GROSS LEASE (FEE-SIMPLE) GROSS LEASE (LEASEHOLD)

Legal Description: Area (more or less): Lot/Flat/Unit: DP: Unique Identifier or CT:
1022m² Section 33 Block XV Town of Dunedin OT253/67

PAYMENT OF PURCHASE PRICE
Purchase price: $900,000.00
Deposit (clause 2.0): $90,000.00
Balance of purchase price to be paid or satisfied as follows:
(1) By payment in cleared funds on the settlement date which is OR
(2) In the manner described in the Further Terms of Sale.

CONDITIONS (clause 9.0)
Finance condition LIM required: Yes/No
Lender: Building report required: Yes/No
Amount required: OIA Consent required: Yes/No
Finance date: Land Act/OIA date:

TENANCIES (if any)
Name of tenant: See appended tenancy schedule
Bond: Rent: Term: Right of renewal:

SALE BY: Mac Property Services Limited t/a Colliers International REAA

Licensed Real Estate Agent

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 1, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.
GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices and interpretation

1.1 Definitions

(1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.

(2) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale and any schedules and attachments.

(3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.

(4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.

(5) "Cleaned funds" means:

(a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or

(b) 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.

(6) "Default GST" means any additional GST, penalty (civil or criminal), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.

(7) "Electronic Instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgments) Amendment Act 2008.


(9) "Inland Worksafe" means an electronic worksafe facility approved by the Register-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgments) Amendment Act 2002.

(10) "IM" means the land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.

(11) "LIM" means Land Information New Zealand.

(12) "Local authority" means a territorial authority or a regional council.

(13) "QOA Consent" means consent to purchase the property under the Overseas Investment Act 2005.

(14) "PLS Guidelines" means 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.

(15) "Property" means the property described in this agreement.

(16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.

(17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.

(18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the monies due and payable on the settlement date directly into the trust account of the vendor's lawyer. It is considered that the vendor's lawyer agreeing to meet the vendor's obligations under subclause 3.3(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.

(19) "Secure web document exchange" means an electronic method of communicating messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.

(20) "Settlement date" means the date specified as such in the agreement.

(21) "Settlement statement" means a statement showing the purchase price, any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the vendor, together with any reimbursements of all incoming and outgoings apportioned at the settlement date.

(22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.

(23) "Unit title" means a unit title under the Unit Titles Act 2010.

(24) The terms "principal unit", "accessory unit", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.

(25) The term "rules" includes both body corporate rules under the body corporate operational rules under the Unit Titles Act 2010.

(26) The terms "building", "building consent", "body corporate" and "body corporate operational rules" have the meanings ascribed to those terms in the Building Act.

(27) The term "title" includes where appropriate a computer registration number of the Land Transfer (Computer Registers and Electronic Lodgments) Amendment Act 2002.

(28) The terms "giving consent", "goods", "principal place of residence", "recipient", "registering body", "registration number", "supply" and "taxable activity" have the meanings ascribed to those terms in the GST Act.

(29) "Working day" means any day of the week other than:

(a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Sovereign's Birthday, and Labour Day;

(b) a day in the period commencing on the 24th day of December of any year and ending on the 5th day of January in the following year, both inclusive; and

(c) the day observed as the anniversary of any province in which the property is situated.

A working day shall be deemed to commence at 9:00 am and to terminate at 5:00 pm.

(30) Unless a contrary intention appears on the front page or elsewhere in this agreement:

(a) the interest rate for late settlement is 2.4% per annum as defined 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 cent per annum;

(b) it is to be given in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.2 Time for Performance

(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 that condition shall be the last working day before the day so nominated.

(2) Any act done pursuant to this agreement by a party, including service of notices, after 5:00pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00am on the next succeeding working day.

Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have been taken effect for subsection 1.2(2).

1.3 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorized by this agreement or by the general law:

(1) All notices must be served in writing.

(2) Any notice under section 29 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.

(3) All other notices, unless otherwise required by the Property Law Act 2007, must be served in accordance with the following means:

(a) on the party as authorized by sections 354 to 361 of the Property Law Act 2007, or

(b) on the party or on the party's lawyer:

(i) by personal delivery; or

(ii) by posting by ordinary mail; or

(iii) by facsimile, by email; or

(iv) in the case of the party's lawyer, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.

(4) In respect of the means of service specified in subsection 1.3(3)(b), a notice is deemed to have been served:

(a) in the case of personal delivery, when received by the party or at the lawyer's office;

(b) in the case of posting by ordinary mail, on the second 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 lawyer of the party's lawyer;

(c) 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 lawyer's office;

(d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

(e) 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 lawyer's office.

9156861.974 (a)
2.0 Deposit

2.1 The purchaser shall pay the deposit to the vendor or the vendor’s agent immediately upon execution of this agreement by both parties and at such other time as is specified in this agreement.

2.2 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, time being of the essence, 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.

2.3 The deposit shall be in part payment of the purchase price.

2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:

(1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and
(2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
(3) where the property is a unit title:
(a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and
(b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2)) have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 142(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
(4) where the agreement is in accordance pursuant to subclause 5.2(3)(c) or avoided pursuant to subclause 8.5(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 15(1)(a) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor or by completing settlement of the purchase.

3.0 Possession and Settlement

3.1 Unless particulars of a tenancy are included in this agreement the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.

3.2 If the property is sold with vacant possession, then subject to the rights of any occupier of the property, the vendor shall permit the purchaser or any person authorised by the vendor in writing, upon reasonable notice:

(1) to enter the property on one occasion prior to the settlement date for purposes of checking the property, chattels and fixtures which are included in the sale; and
(2) after the settlement date to enter the property on or before the settlement date to complete settlement by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and fixtures.

3.3 Possession shall be given and taken on the settlement date. Outgoings and workings in respect of the settlement date are the responsibility of and belong to the vendor.

3.4 On the settlement date the vendor shall make available to the purchaser all necessary written documents including deeds, electronic conveyancing records, electronic keys or any keys or security codes to any alarms which may be attached to the property. The vendor shall also provide the purchaser with any other keys, electronic door openers and security codes where the property is tenantied and these are held by the tenant.

Settlement

3.5 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 lawyer a reasonable time prior to the settlement date.

3.6 The purchaser’s lawyer shall:

(1) within a reasonable time prior to the settlement date notify the vendor’s lawyer of the dealing number allocated by UNZ and prepare in that workspace a transfer form in respect of the property; and
(2) prior to settlement certify and sign the transfer instrument.

3.7 The vendor’s lawyer shall:

(1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in accordance with the vendor’s obligations under this agreement; and
(2) prior to settlement have those instruments and the transfer instrument certified, signed and pre-validated.

3.8 On the settlement date:

(1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the vendor in cleared funds or otherwise satisfied as provided in this agreement (excluding for any amount payable by the vendor under subclause 5.12 or 5.13);
(2) the vendor’s lawyer shall immediately thereafter:
(a) execute and procure the release of the transfer instrument and the other instruments mentioned in subclause 3.1(1) so that the purchaser’s lawyer can then submit them as soon as possible for registration; and
(b) pay to the purchaser’s lawyer the UNZ registration fees on all of the instruments mentioned in subclause 3.1(1), unless these fees will be invoiced to the purchaser at the time of settlement by UNZ directly; and
(c) deliver to the purchaser’s lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.

3.9 All obligations under subclause 3.8 are interdependent.

3.10 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 of the vendor’s lawyer to those Guidelines.

Last Minute Settlement

3.11 If due to the delay of the purchaser, settlement takes place between 4:00 pm and 5:00 pm on the settlement date (“last minute settlement”), the purchaser shall pay the vendor:

(1) one day’s interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
(2) 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.

Purchaser Default: Late Settlement

3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor’s ability to perform any obligation the vendor is obligated to perform on that date in consideration for such payment:

(1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment (the “default period”); but nevertheless this stipulation shall not give the vendor the right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly.

(2) the vendor is not obligated to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenantated property, in which case the vendor must elect either to:

(a) account to the purchaser on settlement for any income in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for expenses relating to the property during the default period; or
(b) retain such income in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).
Vendor Default: Late Settlement or Failure to give Possession

3.13 (1) For the purposes of this subclause 3.13:
(a) the default period means:
(i) in subclause 3.13(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
(ii) in sub clause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
(b) the vendor shall be deemed to be unwilling to give possession if the purchaser does not offer to give possession.

(2) if this agreement provides for vacant possession then the vendor is able and willing to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the vendor's ability to perform the vendor's obligations under this agreement:
(a) the purchaser may elect to purchase the property at the vendor's election, either:
(i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
(ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
(b) the vendor shall pay the vendor an amount equivalent to the interest on which would be earned on overnight deposits lodged in the vendor's trust bank account on each portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
(i) any withholding tax; and
(ii) any bank or legal administration fees and commission charges; and
(iii) any interest payable by the purchaser to the vendor's lender during the default period in respect of any mortgage or loan taken out by the vendor in relation to the purchase of the property.

(3) if this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the vendor provides reasonable evidence of the vendor's ability to perform the vendor's obligations under this agreement, the purchaser may elect to take possession of the property on the vendor's election, either:
(a) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; or
(b) any amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
(c) any interest earned on the amount invested net of any bank or legal administration fees and commission charges shall follow the vendor.

(4) the interest amount payable shall not exceed the interest amount.

(5) if the parties agree on a statement of the interest amount that is acceptable to the vendor and are willing to settle on the date of the agreement, the default period shall cease and the vendor shall pay the vendor an amount equal to the interest amount as specified in subclauses 3.13(2) and/or (3) during the default period.

(6) the vendor shall pay the vendor an amount equal to the interest on which would be earned on overnight deposits lodged in the vendor's trust bank account on each portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
(i) any withholding tax; and
(ii) any bank or legal administration fees and commission charges; and
(iii) any interest payable by the purchaser to the vendor's lender during the default period in respect of any mortgage or loan taken out by the vendor in relation to the purchase of the property.

3.14 If:
(1) the purchase is a unit title;
(2) the settlement date is deferred pursuant to either subclause 3.15(2) or (3); and
(3) the vendor incorporates on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty in the vendor in sub clause 3.2(2) to take possession of the property in sub clause 3.2(2) then the vendor may extend the settlement date

3.15 In every case, if neither party is ready, willing and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing and able to settle.

(1) the property is a unit title; and
(2) the settlement date is deferred pursuant to either subclause 3.15(2) or (3); and
(3) the vendor incorporates on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty in the vendor in sub clause 3.2(2) then the vendor may extend the settlement date

4.0 Risk and insurance

4.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
4.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

5.0 Title, boundaries and reservations

5.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcel and the vendor shall ensure that all boundary markers required by the Cadastre Survey Act 1982 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.

5.2 (1) The vendor is deemed to have accepted the vendor's title except as to objections or reservations which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
   (a) the tenth working day after the date of this agreement; or
   (b) the settlement date.

   (2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or reservations which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the vendor notice that the title has been issued and a search copy of it as defined in section 172A of the Land Transfer Act 1962 is obtainable.

5.3 (1) If the vendor is unable or unwilling to remove or comply with any objection or reservation as to title, notice of which has been served on the vendor by the purchaser, then the following provisions shall apply.
   (a) The vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the vendor's notice.
   (b) If the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or reservation and it shall be a requirement of settlement that such objection or reservation shall be complied with before settlement.

5.4 In the event of cancellation under subsection 5.2(3), the vendor shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and the vendor shall have no right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expenses of investigating the title or to any compensation whatsoever.

6.0 Vendor's warranties and undertakings

6.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
   (a) received any notice or demand or no knowledge of any reservations or outstanding requirement:
      (i) from any local or government authority or other statutory body or authority of any kind;
      (ii) from the Resource Management Act 1991; or
      (iii) from any tenant of the property; or
      (iv) from any other party;
   (b) received any consent or waiver in writing directly or indirectly affecting the property and which has not been disclosed in writing to the purchaser.

6.2 The vendor warrants and undertakes that at settlement:
   (1) The chattels are delivered to the purchaser in reasonable working order, where applicable, but in all other respects in their state of repair as at the date of the agreement (fair wear and tear excepted) but failure to deliver the chattels shall not create a right of compensation.
   (2) All electrical and other installations on the property are free from defect or matter.
   (3) There are no arrears of rates, water rates or charges outstanding on the property.
   (4) Where an allowance has been made by the vendor in the settlement statement for incoming receivables, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances relate.
   (5) Where the vendor has done or caused to be done on the property any works:
      (a) any permit, resources consent or building consent required by law was obtained and the work was completed in compliance with those permits or consents; and
      (b) where appropriate, a correct compliance certificate was issued for those works.
   (6) The building Act, any building on the property sold requires a compliance schedule:
      (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building; and
      (b) the vendor is aware of any reason, the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is issued.

6.3 Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.

6.4 Any notice or demand received by the vendor, which directly or indirectly affects the property, at the date of this agreement:
   (a) from any local or government authority or other statutory body or authority of any kind;
   (b) under the Resource Management Act 1991; or
   (c) from any tenant of the property; or
   (d) from any other party.

6.5 Any chattels included in the sale are the unencumbered property of the vendor.

6.6 If the property is or includes part only of a building, the warranty and undertaking in subsection 6.5(b) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
   (1) To the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
   (2) The building has a current building warrant of fitness; and
   (3) The vendor is aware of any reason, the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is issued.

6.7 The vendor warrants and undertakes that on or immediately after settlement:
   (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter metered and will pay the amount of the charge payable pursuant to those readings but if the water supplier will not measure regular metering the water and wastewater charges shall be apportioned.
   (2) Any outstanding or included in the settlor statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or shall be paid immediately after settlement.
   (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
7.0 Claims for Compensation

7.1 If the purchaser claims a right to compensation either under subclause 5.4 or for an equitable set-off:

(1) The purchaser must serve notice of the claim on the vendor before settlement; and

(2) The notice must:

(a) in the case of a claim for compensation under subclause 5.4, state the particular error, omission or misrepresentation of the property or title in respect of which compensation is claimed;

(b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;

(c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and

(d) be particularised and quantified to the extent reasonably possible at the date of the notice.

7.2 For the purposes of subclause 7.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date. In which case notice may be given by the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 10.1.

7.3 If the amount of compensation is agreed, it shall be deducted on settlement.

7.4 If the amount of compensation is disputed:

(1) An interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined.

(2) If the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party to the Auckland District Law Society. If the application is made, the appointee will be appointed by the Auckland District Law Society.

(3) The stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser.

(4) Any amount in the interim amount minus any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount.

(5) The amount of compensation determined to be payable shall not be limited by the interim amount.

(6) If the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

7.5 The procedures prescribed in subclauses 7.1 to 7.4 shall not prevent either party taking proceedings for the specific performance of the contract.

8.0 Unit title and cross lease provisions

Unit Titles

8.1 If the property is a unit title, sections 144 to 153 of the Unit Title Act 2010 ("the Act") require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.

8.2 If the property is a unit title, the vendor warrants and undertakes as follows:

(1) Not less than five working days before the settlement date the vendor will provide:

(a) a certificate of insurance for all insurances carried by the body corporate under the provisions of section 135 of the Act; and

(b) a pre-settlement disclosure statement from the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apporportioned. There shall be no apporportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund;

(c) There are no other amounts owing by the owner or lessee of any unit to the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.

(2) The vendor will not have any knowledge or notice of any defect which might give rise to a claim against the body corporate, the owner or the purchaser, including (a) any defect or fault in the building; or (b) any defect or fault in the building arising from the use or intended use of the building.

(3) The vendor is not aware of proposals to pass any body corporate resolution relating to matters nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.

(4) No lease, licence, easement or privilege has been granted by the body corporate or on behalf of the owner in respect of any part of the common property which has not been disclosed in writing to the purchaser.

(5) No resolution has been passed and no application has been made by the body corporate nor does the vendor have any knowledge of any proposal for:

(a) the transfer of the whole or any part of the common property;

(b) the addition of any land to the common property;

(c) the cancellation of the unit plans;

(d) the deposit of an amendment to the unit plan, a redevelopment plan or a new unit plan in substitution for the existing unit plan which has not been disclosed in writing to the purchaser.

(6) As at settlement, all contributions and other monies payable by the vendor to the body corporate have been paid in full.

8.3 If the property is a unit title, in addition to the rights under sections 148 and 150 of the Act, the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 8.2(2), the purchaser may:

(1) Postpone the settlement date by the number of working days following the date on which information is provided to the purchaser; or

(2) Conclude that settlement shall still take place on the settlement date.

8.4 If the property is a unit title, each party specifies that:

(1) The facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 206(1)(a) of the Act, and

(2) If that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 206(2) of the Act.

8.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(8) of the Act for providing an additional disclosure statement shall be included in the monies payable by the purchaser on settlement pursuant to clauses 3.6(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

Unauthorised structures - Cross leases and unit titles

8.6(1) Where structures (not related to clause 6.0 to be reconstructable) have been erected on the property without:

(a) in the case of a cross lease title any required lessors' consent; or

(b) in the case of a unit title any required body corporate consent - the purchaser may demand within the period expiring on the earlier of:

(i) the tenth working day after the date of this agreement; or

(ii) the settlement date - that the vendor obtains the written consent of the lessors or body corporate (as the case may be) to such improvements ("an existing consent") and provide the purchaser with a copy of such consent so or before the settlement date.

(2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 5.2(3) and 5.2(4) shall apply with the purchaser's demand under subclause 5.2(1) being deemed to be an objection and requisition.

9.0 Conditions and mortgage terms

Particular conditions

9.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.

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9.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
   (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
   (b) if the purchaser is to request the vendor to obtain the LIM on or before the fifth working day after the date of this agreement; and
   (c) this agreement is conditional upon the purchaser obtaining the LIM.

(2) If, on reasonable grounds, the purchaser does not provide the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement alleging that the particular matter in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have obtained the LIM. If through no fault of the purchaser the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 9.6(b) shall apply.

(3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether the vendor is willing and able to comply with the terms of the agreement.

(4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the terms of the agreement, and the vendor does not, on or before the tenth working day after the date on which the vendor's notice is given, give notice to the vendor that the vendor is willing and able to comply with the terms of the agreement, this condition shall not have been fulfilled and the provisions of subclause 9.6(b) shall apply.

(5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled and it shall be a requirement of sale that the purchaser's notice shall be complied with, and, also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before and after settlement.

9.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost or on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 9.3(b), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.

9.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required but not the purchaser warrants that the purchaser does not require OIA Consent. If the purchaser shall have indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained before the Land Act/OIA Act date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.

9.5 If this agreement relates to a transaction in which the Land Act 1994 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA Act date shown on the front page of this agreement.

9.6 If the Land Act/OIA Act date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.

9.7 If this agreement relates to a transaction in which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate conditions imposed by that section.

Operation of conditions

9.8 (1) If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
   (i) The condition shall be a condition subsequent.
   (ii) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfillment.
   (iii) If the condition is not fulfilled by the date for fulfillment, then any extension of time for fulfillment shall be made at the time of the above condition.
   (iv) The condition shall be the date for fulfillment of any other condition and any extension of time for fulfillment of the above condition.

9.9 (1) If this agreement is not subject to any condition for settlement, then the agreement is subject to the mortgage terms and conditions below.

Mortgage terms

9.10 Any mortgage to be arranged pursuant to a financial institution subject to the terms and conditions currently being required by the lender in the above mortgage terms and conditions.

10.0 Notice to complete and remedies on default

10.1 (1) If the sale is not settled on the settlement date either party may give written notice to the other party a settlement notice:
   (i) specifying the date after the date of the notice when the settlement is to take place;
   (ii) upon the failure to comply with this notice, then any other condition for settlement; and
   (iii) specify in the notice the other party's failure to comply with the other condition.

10.2 Subject to subclause 10.1(3), upon service of the settlement notice the other party shall:
   (1) on or before the working day after the date of the notice, or
   (2) on the first working day after the 14th day of January if the period of ten working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, deliver to the vendor a notice under this subclause.

10.3 (1) If the other party does not comply with the terms of the settlement notice served by the vendor, then subject to subclause 10.1(3):
   (a) the vendor may give notice to the vendor to rescind the agreement by notice to the other party;
   (b) the vendor may give notice to the vendor to rescind the agreement by notice to the vendor to sell at auction; or
   (c) the vendor may give notice to the vendor to rescind the agreement by notice to the vendor to sell at auction.

10.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor, then subject to subclause 10.1(3):
   (a) the vendor may give notice to the vendor to rescind the agreement by notice to the vendor to sell at auction; or
   (b) the vendor may give notice to the vendor to rescind the agreement by notice to the vendor to sell at auction.

10.5 (1) If the vendor does not comply with the terms of the settlement notice served by the purchaser then without prejudice to any other rights or remedies available to the vendor, the vendor may:
   (a) sue for specific performance; or
   (b) cancel this agreement by notice and pursue either or both of the following remedies named:
      (i) forthwith and the vendor be given the benefit of the previous purchase price by the vendor, but not exceeding in all 10% of the previous purchase price; and
      (ii) sue the vendor for damages.

20.4 Where the vendor is entitled to cancel the agreement (the event by the vendor into a conditional or unconditional agreement for the sale of the property or any part thereof shall take affect as a condition of this agreement by the vendor if this agreement has not previously been cancelled and such sale shall be deemed to have occurred after cancellation.

20.5 (1) The damages claimable by the vendor under subclause 10.4(1)(b)(v) shall include all damages claimable at common law in or equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide re-sale contracted within one year from the date by which the purchaser should have been in compliance with the settlement notice. The amount of that loss may include:

(a) interests on the unpaid portion of the purchase price at the interest rate for sale from the settlement date to the settlement date of such sale; and
(b) all costs and expenses reasonably incurred in any interest for the resale of the property;
and
(c) all outgoings (other than interest) on maintenance expenses in respect of the property from the settlement date to the settlement date of such sale.

20.6 (1) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.

20.5 (1) If the vendor does not comply with the terms of the settlement notice served by the vendor then without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
   (a) sue for specific performance; or
   (b) cancel the agreement by notice and require the vendor to forthwith to repay to the vendor any deposit and any other money paid or accounted for on account of the purchase price and interest on such sum(s) at the interest rate for sale from the date or date of payment by the purchaser until repayment.
10.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereafter 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 periods 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.

10.7 Nothing in this clause shall prejudice a party from suing for specific performance without giving a settlement notice.

10.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

11.0 Non-merger

11.1 The obligations and warranties of the parties in this agreement shall not merge with:

(1) the giving and taking of possession;
(2) settlement;
(3) the transfer of title to the property;
(4) delivery of the chattels (if any); or
(5) registration of the transfer of title to the property.

12.0 Agent

12.1 The name of a licensed real estate agent is recorded on this agreement it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.

13.0 Goods and Services Tax

13.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:

(1) The purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date.
(2) Where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date.
(3) Where any GST is not so paid to the vendor the purchaser shall pay to the vendor:
   (a) at the Interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
   (b) any default GST.
(4) It shall not be a defence to a claim for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's loss by paying an amount of GST when it fell due under the GST Act.
(5) Any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to clause 3(1).

13.2 If the supply under this agreement is a taxable supply the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the vendor determines to be the date of delivery of an invoice under the GST Act.

13.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 8(19) of the GST Act applies.

13.4 (1) Without prejudice to the vendor's rights and remedies under subclause 13.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling upon the purchaser to pay the GST which shall be charged on the price of the notice falling immediately payable.

(2) The date of service of the notice under this subclause shall be the date of settlement date for the purposes of subclause 10.1.

(3) The vendor may give a settlement notice under subclause 10.1 with a notice under subclause 13.2.

14.0 Zero-rating

14.1 The parties warrant that the particulars stated in Schedule 2 are correct statements of this agreement.

14.2 Where the particulars stated in Schedule 2 indicate that the property is:

(1) The vendor is a registered person or will be a registered person;
(2) The recipient is a registered person or will be a registered person;
(3) The recipient intends to use the goods supplied under the agreement for purposes associated with an exempt supply; or
(4) The recipient does not intend to use the property for purposes associated with an exempt supply or a person associated with the recipient under section 2A(1)(c) of the GST Act.

GST shall be chargeable on the supply under this agreement at zero rate as prescribed to section 11(1)(b) of the GST Act.

14.3 If GST is chargeable on the supply under this agreement at zero rate as prescribed to section 11(1)(b) 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 Schedule 2 or if, they have altered.

14.4 If any of the particulars stated by the purchaser in Schedule 2 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered particulars will be correct as at the date of the purchaser’s confirmation that the GST treatment of the supply under this agreement should be altered as a result of the altered 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.

15.0 Supply of a Going Concern

15.1 If there is a supply under this agreement to which section 11(1)(b) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated herein:

(1) Each party warrants that it is a registered person or will be so by the date of the supply;
(2) Each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
(3) The parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
(4) The parties agree that the supply made pursuant to this agreement is the supply of a going concern which GST is chargeable at zero per cent.

16.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provide for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 13.0 of this agreement shall apply.

16.0 Limitation of Liability

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

(1) That person warrants that:
   (a) that person has power to enter into this agreement under the terms of the trust;
   (b) that person has properly signed this agreement in accordance with the terms of the trust;
   (c) 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
   (d) none of the persons who are trustees of the trust have approved entry into this agreement.
(2) If that person has no right to control in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount") if the 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.

17.0 Counterparts

17.1 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.
FURTHER TERMS OF SALE – THE ATHENAEUM

18. The Purchaser acknowledges that the Purchaser has inspected the property and purchases the same solely in reliance on the Purchaser’s own investigations and judgement and not upon any representation or warranty made by the Vendor or any agent of the Vendor other than as is expressly stated in this Agreement. This Agreement records the entire agreement and understanding between the parties in relation to the sale of the property.

19. The Purchaser acknowledges the property is entered in the Historic Places Trust Register, Register Number 7781, Category 1 Historic Place.

20. The Dunedin City Council as Vendor does not enter into this Agreement in its capacity as territorial or regulatory authority and nothing in this Agreement shall bind the Council as Vendor in such capacity in any way whatsoever.

21. The Purchaser acknowledges that it has received copies of the following documents from the Vendor or Vendor’s agent prior to entering into this Agreement:
   (a) the lease documents for the tenancies detailed in the attached Tenancy Schedule;
   (b) the Dunedin City Council Land Information Memorandum dated 13 February 2013;
   (c) the Disclosure Document supplemental to Information Memorandum

This constitutes disclosure in writing to the Purchaser for the purposes of this Agreement.

Clause 22.

The Purchaser has a history of purchasing old buildings and both earthquake strengthening them and restoring them to achieve safe, modern usage of Victorian buildings. The Purchaser wishes to provide additional protection to the Vendor in the form of a Heritage Covenant under the Historic Places Act 1993.

A Covenant of this nature takes time to develop. The Parties will negotiate in good faith to reach agreement on the terms of a Heritage Covenant under the Historic Places Act 1993. If agreement cannot be reached the Parties agree to be guided by the expert advice of the Historic Places Trust. The Parties have twenty-four months from the date of this Agreement to achieve this to each other’s agreement. If agreement cannot be reached then no covenant will be entered into; and this clause comes to an end with no further consideration required.
FURTHER TERMS OF SALE

See attached

SCHEDULE 1
List all chattels included in the sale
(strike out or add as applicable)

Stove    Fixed-floor-coverings    Blinds    Curtains    Drapes    Light-fittings

Shelving in the Athenaeum Library
TENANCY SCHEDULE

3. Deed of Lease to Olivier Georges Roger Lequeux dated 5 November 2012.
4. Letter to Oliver Lequeux dated 20 September 2011.
5. Deed of Assignment of Lease (including letter) from Olivier Georges Roger Lequeux to New Level Developments Limited
# SCHEDULE 2
(GST Information – see clause 14.0)

## Section 1

1. The vendor is registered under the GST Act or will be so registered at settlement.  
   Yes/No

2. The vendor's registration number (if already registered): 51997891

3. The purchaser is registered under the GST Act or will be so registered at settlement.  
   Yes/No

4. The purchaser's details are as follows:
   (a) Full name:
   (b) Address:
   (c) Registration number (if already registered):

5. The purchaser intends at settlement to use the goods supplied under this agreement for making taxable supplies.  
   Yes/No

6. The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act  
   Yes/No

7. The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee")  
   Yes/No

If the answer to question 7 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

## Section 2

6. The nominee is registered under the GST Act or is expected by the purchaser to be so registered at settlement.  
   Yes/No

9. The nominee's details (if known to the purchaser) are as follows:
   (a) Full name:
   (b) Address:
   (c) Registration number (if already registered):

10. The purchaser expects the nominee to intend at settlement to use the goods supplied under this agreement for making taxable supplies.  
    Yes/No

11. The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or a person associated with the nominee under section 2A(1)(c) of the GST Act  
    Yes/No

---

**WARNING** (This warning does not form part of this agreement)

This is a binding contract. Read the information set out on the back page before signing.

**Acknowledgements**

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Agents Authority.

**Signature of vendor(s)**

**Signature of purchaser(s)**

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915881.974 (a)
BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
  - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
  - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
  - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
  - there is any doubt as to the position of the boundaries.
  - the purchaser wishes to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- The purchaser should investigate the status of the property under the Council’s District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before the purchaser enters into the agreement:
  - the vendor must provide to the purchaser a pre-contract disclosure statement under section 145 of the Unit Title Act 2010;
  - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate’s long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and understand clauses 6.0 and 8.0:
  - are able to be complied with; and if not
  - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 1 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.
## Dunedin City Council
### The Athenaeum
#### Financial Summary

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<td>(25,985)</td>
<td>(48,288)</td>
<td>(72,617)</td>
<td>(57,060)</td>
<td>(63,027)</td>
<td>(44,619)</td>
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<td>Net Surplus/(Deficit)</td>
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<td>(48,288)</td>
<td>(72,617)</td>
<td>(57,060)</td>
<td>(63,027)</td>
<td>(44,619)</td>
<td>(68,500)</td>
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<td>Add-back Non-Cash Items</td>
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<td>21,000</td>
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<td><strong>Less Loan Repayment</strong></td>
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<td>(43,983)</td>
<td>(52,617)</td>
<td>(37,060)</td>
<td>(43,027)</td>
<td>(44,086)</td>
<td>(47,500)</td>
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<td><strong>Net Increase/(Decrease) in Cash</strong></td>
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<td>(70,682)</td>
<td>(81,263)</td>
<td>(67,795)</td>
<td>(76,003)</td>
<td>(61,465)</td>
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<td><strong>Total 2007/08 to 2012/13 (2012/13 based on budget)</strong></td>
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<td>(401,737)</td>
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<td>1,130,000</td>
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<td>1,010,945</td>
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<td>1,010,945</td>
<td>993,566</td>
<td>975,566</td>
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The 2012/13 revised budget assumption provides for the sale of the Athenaeum and repayment of the debt in full.

[Attachment 5]

Authorised for release under LGOIMA
<table>
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<th>Description</th>
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<td>Plus Holding Costs (including Loan Repayments)</td>
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<td>656,737</td>
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<tr>
<td>Less Loan Repayments</td>
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<tr>
<td>Total Cost of Ownership (2007 - 2013)</td>
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