

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:

Clearwater Quays Apartments Limited (NZBN: 9429033954059)

PURCHASER:

and/or nominee

The vendor is registered under the GST Act in respect of the transaction and/or will be so registered at settlement: **Yes/No**

If "Yes", Schedule 1 must be completed by the parties.

Purchase price allocation (PPA) is relevant to the parties for income tax and/or GST purposes: **Vendor Yes/No**

If both parties answer "Yes", use of the PPA addendum for this agreement is recommended. **Purchaser/Purchaser's Nominee Yes/No**

PROPERTY

Address: Apartment, _____, Clearwater Quays, Clearwater, 54 Rotoiti Lane, Northwood, Christchurch City

Estate: **FREEHOLD** **LEASEHOLD** **STRATUM IN FREEHOLD**
STRATUM IN LEASEHOLD **CROSS-LEASE (FREEHOLD)** **CROSS-LEASE (LEASEHOLD)**

If none of the above are deleted, the estate being sold is the first option of freehold.

Legal Description:

Area (more or less): **Lot/Flat/Unit:** **DP:** **Record of Title (unique identifier):**

Principal Unit # _____, Deposited Plan 569303, & Accessory Unit # _____, Deposited Plan 569303.

PAYMENT OF PURCHASE PRICE

Purchase price: \$ Land and Buildings: \$ _____ **Plus GST (if any) OR Inclusive of GST (if any)**
If neither is deleted, the purchase price includes GST (if any).

Chattels Sum: \$ _____ **GST date (refer clause 13.0):**

Total Purchase Price: \$ _____

Deposit (refer clause 2.0): \$ 10% of Total purchase price payable to Public Trust o/a NZ Real Estate Trust Account, upon this agreement becoming unconditional in all respects.

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.

Interest rate for late settlement:

15% p.a.

CONDITIONS (refer clause 9.0)

Finance required (clause 9.1):	Yes/No	Finance date: Refer to Further Terms Of Sale
LIM required (clause 9.3):	Yes/No	LIM date: Refer to Further Terms Of Sale
Building report required (clause 9.4):	Yes/No	Building report date: Refer to Further Terms Of Sale
Toxicology report required (clause 9.5):	Yes/No	Toxicology report date: Refer to Further Terms Of Sale
OIA consent required (clause 9.6):	Yes/No	OIA date (clause 9.8):
Land Act consent required (clause 9.7):	Yes/No	Land Act date (clause 9.8):

TENANCIES - Refer to Deed of Lease at Schedule 6

Yes/No

Particulars of any tenancies are set out in Schedule 3 or another schedule attached to this agreement by the parties.

It is agreed that the vendor sells and the purchaser purchases the property, and any chattels listed, on the terms and conditions of this agreement.

Release date: 9 May 2023

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) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.
- (3) ~~"Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.~~
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (7) "Building report date" means the building report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (8) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (9) "Cleared funds" means an electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines.
- (10) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (11) "Default GST" means any additional GST, penalty (civil or otherwise), 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.
- (12) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (13) "Finance date" means the finance date stated on the front page of this agreement, or if no date is stated, means the tenth working day after the date of this agreement.
- (14) "Going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (15) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (16) "Land Act date" means the Land Act date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (17) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (18) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.
- (19) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (20) "LIM date" means the LIM date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement, taking into account clause 1.1(45)(c).
- (21) "LINZ" means Land Information New Zealand.
- (22) "Local authority" means a territorial authority or a regional council.
- (23) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (24) "OIA date" means the OIA date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (25) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the New Zealand Law Society Property Law Section Guidelines, issued by the New Zealand Law Society.
- (26) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (27) "Property" means the property described in this agreement.
- (28) "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.
- (29) "Purchase price allocation" means an allocation of the purchase price, and (if applicable) any other consideration for the property and the chattels included in the sale, to the property, chattels or any part thereof that affects a person's tax position under the Income Tax Act 2007 and/or the GST Act.
- (30) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (31) "REINZ" means the Real Estate Institute of New Zealand Incorporated.
- (32) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under clause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (33) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (34) "Rules" means body corporate operational rules under the Unit Titles Act.

- (35) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (36) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under clause 3.8.
- (37) "Settlement date" means the date specified as such in this agreement.
- (38) "Settlement statement" means a statement showing the purchase price, plus 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 purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (39) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (40) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (41) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (42) "Toxicology report date" means the toxicology report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (43) "Unit title" means a unit title under the Unit Titles Act.
- (44) "Unit Titles Act" means the Unit Titles Act 2010.
- (45) "Working day" means any day of the week other than:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
 - if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of the LIM date, ending on the 15th day of January) in the following year, both days inclusive;
 - the day observed as the anniversary of any province in which the property is situated;
 - the day on which a public holiday is observed to acknowledge Matariki, pursuant to the Te Kāhui o Matariki Public Holiday Act 2022; and
 - any other day that the Government of New Zealand declares to be a public holiday.

A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

1.2 Unless a contrary intention appears on the front page or elsewhere in this agreement:

- the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
- a party is 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.

1.3 Time for Performance

- Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- 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 taken effect but for clause 1.3(2).

1.4 Notices

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

- All notices must be served in writing.
- Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - on the party or on the party's lawyer:
 - by personal delivery; or
 - by posting by ordinary mail; or
 - by email; or
 - in the case of the party's lawyer only, 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.
- In respect of the means of service specified in clause 1.4(3)(b), a notice is deemed to have been served:
 - in the case of personal delivery, when received by the party or at the lawyer's office;
 - in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - in the case of email:
 - when sent to the email address provided for the party or the party's lawyer on the back page; or
 - any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
 - if no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website;
 - 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;
 - in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
- Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

- 1.5 Interpretation and Execution
- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
 - (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
 - (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
 - (4) Headings are for information only and do not form part of this agreement.
 - (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
 - (6) Reference to a party's lawyer includes reference to a conveyancing practitioner (as defined in the Lawyers and Conveyancers Act 2006), engaged by that party, provided that all actions of that conveyancing practitioner (including without limitation any actions in respect of any undertaking or in respect of settlement) must strictly accord with the PLS Guidelines.

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 or 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 the latest of those of the following matters which are applicable to this agreement:
- (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and/or
 - (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/or
 - (3) where the property is a unit title:
 - (a) a pre-contract disclosure statement that complies with section 146 of the Unit Titles Act, and a pre-settlement disclosure statement that complies with section 147 of the Unit Titles Act, have been provided to the purchaser by the vendor within the times prescribed in those sections; and/or
 - (b) all rights of delay or cancellation under sections 149, 149A, 151, or 151A of the Unit Titles Act that have arisen have been waived or have expired without being exercised; and/or
 - (c) this agreement is cancelled pursuant to sections 149A or 151A of the Unit Titles Act; and/or
 - (4) this agreement is:
 - (a) cancelled pursuant to clause 6.2(3)(c); and/or
 - (b) avoided pursuant to clause 9.10(5).
- 2.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to clause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008, but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing.

3.0 Possession and Settlement

Possession

- 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 tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:~~
- ~~(1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and~~
 - ~~(2) to re-enter the property no later than the day prior to the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property, the chattels and the fixtures.~~
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings 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 keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted 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. If the property is a unit title, the vendor's settlement statement must show any periodic contributions to the operating account that have been struck prior to the settlement date (whether or not they are payable before or after the settlement date) and these periodic contributions to the operating account shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.

- 3.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
 - (b) 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 terms of the vendor's obligations under this agreement; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
 - (b) have those instruments and the transfer instrument certified, signed and, where possible, 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 purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under clause 3.12 or 3.13, or for any deduction allowed to the purchaser under clause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to clause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to clause 10.8);
 - (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in clause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in clause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ 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, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.
- 3.9 All obligations under clause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement in accordance with the PLS Guidelines. Where the purchaser considers it is necessary or desirable to tender settlement, this may be effected (in addition to any other valid form of tender) by the purchaser's lawyer providing to the vendor's lawyer a written undertaking that:
- (1) the purchaser is ready, willing, and able to settle;
 - (2) the purchaser's lawyer has certified and signed the transfer instrument and any other instruments in the Landonline Workspace for the transaction that must be signed on behalf of the purchaser; and
 - (3) the purchaser's lawyer holds in their trust account in cleared funds the amount that the purchaser must pay on settlement.

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 obliged 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 is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this clause, 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; and
 - (2) the vendor is not obliged 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 tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to clause 3.12(1).
 - (3) If the parties are unable to agree upon any amount payable under this clause 3.12, either party may make a claim under clause 10.0.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.13 (1) For the purposes of this clause 3.13:
- (a) the default period means:
 - (i) in clause 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 clause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
- (iii) in clause 3.13(5), the period from the settlement date until the date when settlement occurs; and
- (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
 - (a) the vendor shall pay the purchaser, at the purchaser'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 purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such 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 purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser 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 purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 3.13(2)(b) during the default period. A purchaser in possession under this clause 3.13(3) is a licensee only.~~
- (4) Notwithstanding the provisions of clause 3.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of clause 3.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 3.13(2)(b) during the default period.
- (6) The provisions of this clause 3.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) If the parties are unable to agree upon any amount payable under this clause 3.13, either party may make a claim under clause 10.0.

Deferment of Settlement and Possession

- 3.14 If:
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 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.
- 3.16 If:
- (1) the property is a unit title; and
 - (2) the settlement date is deferred pursuant to either clause 3.14 or clause 3.15; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with clause 8.3,
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to clause 3.14, to the tenth working day after the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (b) where there is a deferment of the settlement date pursuant to clause 3.15, to the tenth working day after the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision

- 3.17 (1) Where:
- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,
- then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day after the later of the date on which:

- (i) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (ii) the requisitions procedure under clause 6.0 is complete.
- (2) Clause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.

4.0 Residential Land Withholding Tax

- 4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:
- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
 - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
 - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
 - (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
 - (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
 - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
 - (b) any costs payable by the vendor under clause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under clause 4.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
 - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this clause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 4.3 If pursuant to clause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
 - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to clause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under clause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
 - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

5.0 Risk and insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
 - (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
 - (3) if the property is zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
 - (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in clause 10.8 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

- 6.1 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 parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) ~~The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions 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 requisitions 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 purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.~~
- (3) ~~If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will 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 purchaser's notice;~~
 - ~~(b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;~~
 - ~~(c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.~~
- 6.3 In the event of cancellation under clause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any 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 expense of investigating the title or to any compensation whatsoever.
- 6.4 (1) If the title to the property being sold is a cross lease title or a unit title and there are:
- (a) in the case of a cross lease title:
 - (i) alterations to the external dimensions of any leased structure; or
 - (ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted use covenant;
 - (b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be);
- then the purchaser may requisition the title under clause 6.2 requiring the vendor:
- (c) in the case of a cross lease title, to deposit a new plan depicting the buildings or structures and register a new cross lease or cross leases (as the case may be) and any other ancillary dealings in order to convey good title; or
 - (d) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.
- (2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

7.0 Vendor's warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) ~~received any notice or demand and has no knowledge of any requisition or outstanding requirement:~~
 - ~~(a) from any local or government authority or other statutory body; or~~
 - ~~(b) under the Resource Management Act 1991; or~~
 - ~~(c) from any tenant of the property; or~~
 - ~~(d) from any other party; or~~
 - (2) ~~given any consent or waiver,~~
- ~~which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.~~
- 7.2 The vendor warrants and undertakes that at the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.
- 7.3 The vendor warrants and undertakes that at settlement:
- (1) The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted).
 - (2) All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.
 - (3) There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.

- (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
- (5) Where the vendor has done or caused or permitted to be done on the property any works:
 - (a) any permit, resource consent, or building consent required by law was obtained; and
 - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
 - (c) where appropriate, a code compliance certificate was issued for those works.
- (6) Where under 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;
 - (b) the building has a current building warrant of fitness; and
 - (c) the vendor is not aware of any reason, that 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 next due.
- ~~(7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.~~
- ~~(8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
 - ~~(a) from any local or government authority or other statutory body; or~~
 - ~~(b) under the Resource Management Act 1991; or~~
 - ~~(c) from any tenant of the property; or~~
 - ~~(d) from any other party,~~has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.~~

7.4 If the property is or includes part only of a building, the warranty and undertaking in clause 7.3(6) 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 not aware of any reason, that 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 next due.

7.5 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 read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
- (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so 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.
- (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.

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 Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement and a pre-settlement disclosure statement in accordance with the Unit Titles Act. The requirements of this clause 8 are in addition to, and do not derogate from, the requirements of that Act.
- 8.2 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as follows as at the date of this agreement:
 - (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct to the extent required by the Unit Titles Act.
 - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate.
 - (3) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (4) No order or declaration has been made by any Court or Tribunal against the body corporate or the vendor under any provision of the Unit Titles Act.
 - (5) The vendor has no knowledge or notice of any fact which might result in:
 - (a) the vendor or the purchaser incurring any other liability under any provision of the Unit Titles Act; or
 - (b) any proceedings being instituted by or against the body corporate; or
 - (c) any order or declaration being sought against the body corporate or the vendor under any provision of the Unit Titles Act.
 - (6) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules.
 - (7) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property.

- (8) No resolution has been passed and no application has been made and the vendor has no 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 plan;
 - (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; or
 - (e) any change to utility interest or ownership interest for any unit on the unit plan.
- 8.3 If the property is a unit title, not less than five working days before the settlement date, the vendor will provide:
- (1) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act; and
 - (2) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act.
- 8.4 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as at the settlement date:
- (1) Other than contributions to the operating account, long-term maintenance fund, contingency fund, or capital improvements fund that are shown in the pre-settlement disclosure statement, there are no other amounts owing by the vendor under any provision of the Unit Titles Act.
 - (2) All contributions and other moneys payable by the vendor to the body corporate have been paid in full.
 - (3) The warranties at clause 8.2(2), (3), (4), (5), (6), (7), and (8) are repeated.
- 8.5 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of clause 8.3, then in addition to the purchaser's rights under sections 150, 151 and 151A of the Unit Titles Act, the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - (2) elect that settlement shall still take place on the settlement date, such election to be a waiver of any other rights to delay or cancel settlement under the Unit Titles Act or otherwise.
- 8.6 If the property is a unit title, each party specifies that:
- (1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles 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 205(2) of the Unit Titles Act.
- 8.7 ~~Unauthorised Structures—Cross Leases and Unit Titles~~
- (1) ~~Where structures (not stated in clause 6.0 to be requisitionable) 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 obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.~~
 - (2) ~~Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in clauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under clause 8.6(1) being deemed to be an objection and requisition.~~

9.0 Conditions and mortgage terms

- 9.1 ~~Finance condition~~
- (1) ~~If the purchaser has indicated that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date.~~
 - (2) ~~If the purchaser avoids this agreement for failing to arrange finance in terms of clause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.~~
- 9.2 ~~Mortgage terms~~
- (1) ~~Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.~~
- 9.3 ~~LIM condition~~
- (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; and~~
 - (b) ~~this agreement is conditional upon the purchaser approving that LIM by the LIM date, provided that such approval must not be unreasonably or arbitrarily withheld.~~
 - (2) ~~If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the LIM date stating the particular matters 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 approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the LIM date and the vendor does not give an extension when requested, then unless the purchaser waives this condition, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.~~

- (3) The vendor shall give notice to the purchaser (“the vendor’s notice”) on or before the third working day after receipt of the purchaser’s notice advising whether or not the vendor is able and willing to comply with the purchaser’s notice by the settlement date.
- (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 purchaser’s notice, and if the purchaser does not, on or before the fifth working day after the date on which the purchaser’s notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of clause 9.10(5) 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 settlement 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 settlement.

9.4 Building report condition

- (1) 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 on or before the building report date 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.
- (2) The report must be prepared in good faith by a suitably qualified building inspector in accordance with accepted principles and methods and it must be in writing.
- (3) Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report.
- (4) The building inspector may not carry out any invasive testing in the course of inspection without the vendor’s prior written consent.
- (5) If the purchaser avoids this agreement for non fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector’s report.

9.5 Toxicology report condition

- (1) If the purchaser has indicated on the front page of this agreement that a toxicology report is required, this agreement is conditional upon the purchaser obtaining at the purchaser’s cost on or before the toxicology report date, a toxicology report on the property that is satisfactory to the purchaser, on the basis of an objective assessment.
- (2) The purpose of the toxicology report shall be to detect whether the property has been contaminated by the preparation, manufacture or use of drugs including, but not limited to, methamphetamine.
- (3) The report must be prepared in good faith by a suitably qualified inspector in accordance with accepted principles and methods and it must be in writing.
- (4) Subject to the rights of any tenants of the property, the vendor shall allow the inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of carrying out the testing and preparation of the report.
- (5) The inspector may not carry out any invasive testing in the course of the inspection without the vendor’s prior written consent.
- (6) If the purchaser avoids this agreement for non fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the inspector’s report.

9.6 OIA consent condition

- (1) If the purchaser has indicated on the front page of this agreement that OIA consent is required, this agreement is conditional upon OIA consent being obtained on or before the OIA date on terms and conditions that are satisfactory to the purchaser, acting reasonably, the purchaser being responsible for payment of the application fee. This condition is inserted for the benefit of both parties, but (subject to clause 9.6(2)) may not be waived by either party, and the vendor is not required to do anything to enable this condition to be fulfilled.
- (2) If the purchaser has indicated on the front page of this agreement that OIA consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA consent.

9.7 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date.

9.8 If the Land Act date or OIA date is not shown on the front page of this agreement that date shall be the settlement date or that date 65 working days after the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or that date 20 working days after the date of this agreement, whichever is the sooner.

9.9 Resource Management Act condition

If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

9.10 Operation of conditions

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:

- (1) The condition shall be a condition subsequent.
- (2) 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 fulfilment.
- (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
- (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
- (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, 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.

- (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

10.0 Claims for compensation

- 10.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 10.0.
- 10.2 The provisions of this clause apply if:
- (1) the purchaser claims a right to compensation (and in making such a claim, the purchaser must act reasonably, but the vendor taking the view that the purchaser has not acted reasonably does not affect the purchaser's ability or right to make such a claim) for:
 - (a) a breach of any term of this agreement;
 - (b) a misrepresentation;
 - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986;
 - (d) an equitable set off, or
 - (2) there is a dispute between the parties regarding any amounts payable:
 - (a) under clause 3.12 or clause 3.13; or
 - (b) under clause 5.2.
- 10.3 To make a claim under this clause 10.0:
- (1) the claimant must serve notice of the claim on the other party on or before the last working day prior to the settlement date, time being of the essence (except for claims made after the settlement date for amounts payable under clause 3.12 or clause 3.13, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
 - (2) the notice must:
 - (a) state the particular breach of the terms of this agreement, or the claim under clause 3.12, clause 3.13 or clause 5.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set off; and
 - (b) state a genuine pre-estimate of the loss suffered by the claimant; and
 - (c) be particularised and quantified to the extent reasonably possible as at the date of the notice; and
 - (3) the claimant must not have made a prior claim under this clause 10.0 (to the intent that a claimant may make a claim under this clause 10.0 on only one occasion, though such claim may address one or more of the elements in clause 10.2).
- 10.4 If the claimant is unable to give notice under clause 10.3 in respect of claims under clause 10.2(1) or clause 10.2(2)(b) on or before the date that notice is due under clause 10.3(1) by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under clause 11.1, time being of the essence.
- 10.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the purchaser on settlement.
- 10.6 If the purchaser makes a claim for compensation under clause 10.2(1) but the vendor disputes that the purchaser has a valid or reasonably arguable claim, then:
- (1) the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under clause 10.3, time being of the essence; and
 - (2) the purchaser's right to make the claim (on the basis that such claim is valid or reasonably arguable) shall be determined by an experienced property lawyer or an experienced litigator appointed by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the Auckland District Law Society. The appointee's costs shall be met by the party against whom the determination is made or otherwise as determined by the appointee.
- 10.7 If the purchaser makes a claim for compensation under clause 10.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 10.6, the vendor is deemed to have accepted that the purchaser has a valid or reasonably arguable claim.
- 10.8 If it is accepted, or determined under clause 10.6, that the purchaser has a right to claim compensation under clause 10.2(1) but the amount of compensation claimed is disputed, or if the claim is made under clause 10.2(2) and the amount of compensation claimed is disputed, then:
- (1) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - (2) 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 Auckland District Law Society;
 - (3) the interim amount must be a reasonable sum having regard to the circumstances, except that:
 - (a) where the claim is under clause 3.13 the interim amount shall be the lower of the amount claimed, or an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date;
 - (b) neither party shall be entitled or required to undertake any discovery process, except to the extent this is deemed necessary by the appointee under clause 10.8(4) for the purposes of determining that the requirements of clauses 10.3(2)(b)-(c) have been met.
 - (4) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under clause 5.2, an experienced registered valuer or quantity surveyor appointed by the parties. The appointee's costs shall be met equally by the parties, or otherwise as determined by the appointee. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the Auckland District Law Society;
 - (5) the amount of the claim determined to be payable shall not be limited by the interim amount;

- (6) the stakeholder shall lodge the interim amount on an 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;
- (7) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount; and
- (8) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.
- ~~10.9 Where a determination has to be made under clause 10.6(2) or clause 10.8(4) and the settlement date will have passed before the determination is made, the settlement date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these clauses, the settlement date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations. However, the settlement date will only be deferred under this clause 10.9 if, prior to such deferral, the purchaser's lawyer provides written confirmation to the vendor's lawyer that but for the resolution of the claim for compensation, the purchaser is ready, willing and able to complete settlement.~~
- ~~10.10 The procedures prescribed in clauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of this agreement.~~
- ~~10.11 A determination under clause 10.6 that the purchaser does not have a valid or reasonably arguable claim for compensation under clause 10.2(1) shall not prevent the purchaser from pursuing that claim following settlement.~~
- ~~10.12 Where a determination is made by an appointee under either clause 10.6 or clause 10.8, that appointee:~~
- ~~(1) shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination; and~~
 - ~~(2) may make an order that one party must meet all or some the reasonable legal costs of the other party, and in making such an order the appointee may without limitation take into account the appointee's view of the reasonableness of the conduct of the parties under this clause.~~

11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
- (2) The settlement notice shall be effective only if the party serving it is at the time of service in all material respects ready, willing, and able to proceed to settle in accordance with this agreement, or is not so ready, willing, and able to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to clause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
 - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive,
- time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 11.1.
 - (3) The vendor may give a settlement notice with a notice under this clause.
 - (4) For the purposes of this clause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to clause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
 - (a) sue the purchaser for specific performance; or
 - (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
 - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
 - (ii) sue the purchaser for damages.
 - (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
 - (3) The damages claimable by the vendor under clause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
 - (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale;
 - (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
 - (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
 - (4) Any surplus money arising from a resale shall be retained by the vendor.

- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
 - (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 11.8 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, willing, and able to settle upon the expiry of that notice.

12.0 Non-merger

- 12.1 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.

13.0 Goods and Services Tax and Purchase Price Allocation

- 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) interest 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 against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to clause 3.8(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 purchaser is entitled to delivery of an invoice under the GST Act.
- 13.3
- (1) Without prejudice to the vendor's rights and remedies under clause 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 up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
 - (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 11.1.
 - (3) The vendor may give a settlement notice under clause 11.1 with a notice under this clause.
- 13.4 Each party warrants that their response to the statement on the front page regarding purchase price allocation being relevant to the vendor or purchaser/purchaser's nominee for income tax and/or GST purposes is correct.

14.0 Zero-rating

- 14.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 1 are correct at the date of this agreement and will remain correct at settlement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 14.3 Where the particulars stated on the front page and in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 14.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 1 or they have altered.
- 14.5
- (1) If any of the particulars stated by the purchaser in Schedule 1:
 - (a) are incomplete; or
 - (b) alter between the date of this agreement and settlement,the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
 - (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.

- (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or 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.

14.6 If
(1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and

- (2) that part is still being so used at the time of the supply under this agreement, then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.

14.7 If
(1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
(2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement, then the references in clauses 14.3 and 14.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.

14.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of clause 14.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:

- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of this agreement; and
(2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with clause 14.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest rate for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

15.0 Supply of a Going Concern

15.1 If there is a supply under this agreement to which section 11(1)(mb) 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 in this agreement:

- (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 on which GST is chargeable at 0%.

15.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides 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 a person enters into this agreement as trustee of a trust and is not a beneficiary of the trust, then that person will be known as an "independent trustee" and clauses 16.2 and 16.3 will apply.

16.2 The liability of an independent trustee under this agreement is limited to the extent of the indemnity from the assets of the trust available to the independent trustee at the time of enforcement of that indemnity.

16.3 However, if the entitlement of the independent trustee to be indemnified from the trust assets has been lost or impaired (whether fully or in part) by reason of the independent trustee's act or omission (whether in breach of trust or otherwise), then the limitation of liability in clause 16.2 does not apply, and the independent trustee will be personally liable up to the amount that would have been indemnified from the assets of the trust had the indemnity not been lost.

17.0 Counterparts

17.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).

17.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.

17.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.

17.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

18.0 Agency

18.1 If 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 has appointed as the vendor's agent according to an executed agency agreement.

18.2 The scope of the authority of the agent under clause 18.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser's offer or counteroffer on the vendor's behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.

18.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

19.0 Collection of Sales Information

- 19.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to REINZ.
- 19.2 This information will be stored on a secure password protected network under REINZ's control and may include (amongst other things) the sale price and the address of the property, but will not include the parties' names or other personal information under the Privacy Act 2020.
- 19.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 19.4 Despite the above, if REINZ does come to hold any of the vendor's or purchaser's personal information, that party has a right to access and correct that personal information by contacting REINZ at info@reinz.co.nz or by post or telephone.

20.0 COVID-19 / Pandemic Provisions

- 20.1 The parties acknowledge that the Government of New Zealand or a Minister of that Government may, as a result of public health risks arising from a Pandemic, order restrictions on personal movement pursuant to the COVID-19 Public Health Response Act 2020 (or other legislation), and the effect of such restrictions may be that personal movement within or between particular regions is unlawful for the general population of those regions.
- 20.2 Where such a legal restriction on personal movement exists either nationally or in the region or district where the property is located:
- (1) The date for satisfaction of any condition that has not yet been satisfied or waived will be the later of:
 - (a) the date that is 10 working days after the restriction on personal movement in the region or district in which the property is located is removed; or
 - (b) the date for satisfaction of the condition as stated elsewhere in this agreement.
 - (2) The settlement date will be the later of:
 - (a) the date that is 10 working days after all conditions are satisfied or waived; or
 - (b) the date that is 10 working days after the date on which the restriction on personal movement in the region or district in which the property is located is removed; or
 - (c) the settlement date as stated elsewhere in this agreement.
 - (3) Nothing in the previous provisions of this clause is to have the effect of bringing forward a date specified in this agreement.
- 20.3 Clause 20.2 applies whether such legal restriction on personal movement exists at, or is imposed after, the date of this agreement, and on each occasion such restriction is imposed.
- 20.4 Neither party will have any claim against the other for a deferral of a condition date or the settlement date under this clause 20.0.
- 20.5 For the purposes of this clause 20.0, "Pandemic" means the COVID-19 pandemic, or such other pandemic or epidemic that gives rise to Government orders restricting personal movement.

FURTHER TERMS OF SALE

45. Deposit Payable

45.1. The Vendor and Purchaser agree that the deposit payable under this Agreement will be lodged with Public Trust, to be held on behalf of the Vendor and the Purchaser. NZ Real Estate Trust is an independent third party trust account service provided by Safekiwi (New Zealand) Limited. Safekiwi (New Zealand) Limited acts as a stakeholder in respect of the deposits paid into NZ Real Estate Trust. Interest earned on the deposit whilst it is held by Public Trust is payable to Safekiwi (New Zealand) Limited. Terms of Use can be viewed at www.realestatetrust.co.nz/termsfuse.

46. Vendor not Registered Proprietor

46.1. The Record of Title is currently owned by Red Stag Investments Limited. Clearwater Quays Apartments Limited warrants that it will own the property prior to settlement and will be able to comply with its settlement obligations under this Agreement as at the settlement date.

47. Purchasers Acknowledgement of Further Terms of Sale

47.1. The purchaser acknowledges the attached further terms of sale (an additional 188 pages) produced by Saunders Robinson Brown (vendors solicitor) which outlines property specifications, chattels, and further due diligence clauses, including but not limited to: Clause 44, 44.1-44.4 (44.1.2. [This Agreement is subject to and conditional upon] the Purchaser completing and being satisfied in all respects that the Property is suitable for the Purchaser after the Purchaser has carried out a due diligence investigation on all aspects of the Property which the purchaser considers necessary or relevant. The date for satisfaction of the conditions in Clause 44.1 is ten (10) working days from the date of this Agreement.



SCHEDULE 1

(GST Information – see clause 14.0)

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

Section 1 Vendor	
1(a) The vendor's registration number (if already registered):	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
Section 2 Purchaser	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)	
2(c) The purchaser's details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No

SCHEDULE 2**List all chattels included in the sale**

(Strike out or add as applicable. If necessary complete on a separate schedule or the further terms of sale)

Stove ()	Rangehood ()	Wall/under bench oven ()	Cooktop ()
Dishwasher ()	Kitchen waste disposal ()	Light fittings ()	Smoke detectors ()
Burglar alarm ()	Heated towel rail ()	Heat pump ()	Garage door remote control ()
Garden shed ()	Blinds	Curtains	Drapes
Fixed floor coverings	Bathroom extractor fan		

REFER TO SCHEDULE 2 OF THE FURTHER TERMS OF SALE.

Both parties should check that Schedule 2 (list of chattels) includes an accurate list of all items which are included with the sale and purchase (in addition to, or as part of any building).

SCHEDULE 3**Residential Tenancies****Name of Tenant(s):****Rent:****Term:****Bond:****Commercial/Industrial Tenancies**

(If necessary complete on a separate schedule)

1. Name of Tenant(s):**Rent:****Term:****Right of Renewal:****Other:****2. Name of Tenant(s):****Rent:****Term:****Right of Renewal:****Other:****3. Name of Tenant(s):****Rent:****Term:****Right of Renewal:****Other:**

WARNING AND DISCLAIMER

- This agreement is a standard form document. It is therefore likely that amendments and additions may need to be made in order to suit the circumstances of each of the vendor and the purchaser, and to suit the particular property involved. It is also important that you are certain that any amendments made correctly reflect your understanding of what has been agreed. **You should always get legal advice before you sign the agreement and throughout the buying and selling process.**
- ADLS and REINZ accept no liability whatsoever in respect of this document and any agreement which may arise from it.
- The vendor should check the correctness of all warranties made under clause 7, clause 8, and elsewhere in this agreement.
- 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 146 of the Unit Titles Act.
- The transaction may have tax implications for the parties and it is recommended that both parties seek their own professional advice regarding the tax implications of the transaction before signing, including:
 - the GST treatment of the transaction, which depends upon the GST information supplied by the parties and could change before settlement if that information changes; and
 - the income tax treatment of the transaction, including any income tax implications of purchase price allocation.

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

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 Authority and a copy of the agency’s in-house complaints and dispute resolution process.

The person or persons signing this agreement acknowledge that either:

- (a) they are signing in a personal capacity as the ‘vendor’ or ‘purchaser’ named on the front page, or
- (b) they have authority to bind the party named as ‘vendor’ or ‘purchaser’ on the front page.

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

Before signing, each party should read this entire contract and should obtain all relevant professional advice.

This is a binding contract. Once signed, you will be bound by the terms of it and there may be no, or only limited, rights to terminate it.

Signature of Purchaser(s):

Signature of Vendor(s):

Name:
Director / Trustee / Authorised Signatory / Agent / Attorney*
If no option is deleted, the signatory is signing in their personal capacity

Name: Director: Martin Verry
Director / Trustee / Authorised Signatory / Agent / Attorney*
If no option is deleted, the signatory is signing in their personal capacity

Name:
Director / Trustee / Authorised Signatory / Agent / Attorney*
If no option is deleted, the signatory is signing in their personal capacity

Name:
Director / Trustee / Authorised Signatory / Agent / Attorney*
If no option is deleted, the signatory is signing in their personal capacity

*If this agreement is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ).

Also insert the following wording for the Attorney’s Signature above:

Signed for [full name of the donor] by his or her Attorney [attorney’s signature].

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE**VENDOR:**

Clearwater Quays Apartments Limited (NZBN: 9429033954059)

Contact Details:

VENDOR'S LAWYERS:

Firm: Saunders Robinson Brown

Individual Acting: Janna Robinson

Email: janna.robinson@srblaw.co.nz

Contact Details:

Christchurch
Ph: 033774470

Email address for service of notices (clause 1.4):

PURCHASER:

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Email:

Contact Details:

Email address for service of notices (clause 1.4):

SALE BY LICENSED REAL ESTATE AGENT: Agent X (2021) Limited
Agent X

Manager: Mrs Katarina Campbell, Line-Manger: Michael Calder of Calder & Co.

Salesperson: Brian Langley Contact Details: brian@calderandco.nz (027 276 5995)

Licensed Real Estate Agent under Real Estate Agents Act 2008

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Further Terms Of Sale – Titles and CCC Issued

21. Definitions

In this Agreement, unless the context otherwise requires:

- 21.1 “Agreement” means these Further Terms of Sale together with the fifteen (15) Schedules attached and the General Terms of Sale.
- 21.2 “Airport” means the airport known as “Christchurch International Airport” and includes all activities undertaken, or proposed to be undertaken, at or in association with that airport.
- 21.3 “Airport Encumbrance” means an encumbrance in favour of the Airport attached to this Agreement in Schedule 9, which is to be registered, or has been registered on the record of title for the Property.
- 21.4 “Apartments” means the buildings, including the units known as “Clearwater Quays Apartments” within the Quays Development.
- 21.5 “Body Corporate” means the Body Corporate Number 569303.
- 21.6 “Body Corporate Rules” means the Body Corporate Rules registered on the record of title to the Property and attached to this Agreement in Schedule 12.
- 21.7 “Building Work” means the building work carried out to construct the Apartments and Property in accordance with the Plans and Specifications, Consents, and this Agreement.
- 21.8 “Chattels” means the chattels described in Schedule 2.
- 21.9 “Common Property” means the Common Property shown on the Unit Plan.
- 21.10 “Consents” means all Building Consents and all subdivision, resource and all other consents and authorities obtained to complete the construction of the Apartments including the issue of new records of titles .
- 21.11 “Constitution” means the constitution of the Society, which is its rules for the purposes of the Incorporated Societies Act 1908.
- 21.12 “Developer” means the following companies promoting and carrying out the Development (including maintenance):
- 21.12.1 Clearwater Land Holdings Limited;
- 21.12.2 Humboldt Limited;

- 21.12.3 The Isaac Lakes Limited;
- 21.12.4 Gilgamesh No.2 Limited;
- 21.12.5 Clearwater Golf Club Limited;
- 21.12.6 Clearwater Quays Apartments Limited;
- 21.12.7 Eros Clearwater Holdings Limited;
- 21.12.8 Clearwater Quays Limited;
- 21.12.9 Clearwater Rotoiti Lane Limited;
- 21.12.10 Red Stag Investments Limited;
- 21.12.11 Clearwater Springs Limited;
- 21.12.12 Related Companies of the Companies referred to in 21.12.6, 21.12.7, 21.12.8 and 21.12.9 above;
- 21.12.13 Successors in title or assigns of the Companies referred to in 21.12.6, 21.12.7, 21.12.8 and 21.12.9 in respect of bare land to which they succeeded or were assigned;

and including any Related Company of those companies that undertakes any part of the Development or maintenance of the Development.

- 21.13 "Developer's Encumbrance" means an encumbrance in favour of the Developer in the form, or substantially in the form attached to this Agreement in Schedule 10, which is to be registered, or has been registered, on the record of title for the Property.
- 21.14 "Development" means the residential and commercial development located off Johns Road, Christchurch known as Clearwater Resort including but not limited to the existing and future recreational facilities, hotel, dwellings, commercial development, roading, lakes, open spaces, walkways, car parking, golf course, club house and all other associated infrastructure, of which the Quays Development, Property and the Land forms part.
- 21.15 "Land" means all that land comprised, or formerly comprised, in those records of title listed in Schedule 4.
- 21.16 "Landlord" means with respect to the Lease:
 - 21.16.1 Prior to the date of settlement of this Agreement, the Vendor; and
 - 21.16.2 After the date of settlement of this Agreement, the Purchaser.

- 21.17 "Lease" means the lease for the Property attached to this Agreement in Schedule 6, subject to any variations and amendments made from time to time by the Vendor in accordance with the provisions of this Agreement.
- 21.18 "LINZ" means Land Information New Zealand.
- 21.19 "Maintenance Period" means twelve (12) months from the date of issue of the Certificate of Practical Completion.
- 21.20 "Master Development Plan" means the concept plan showing the Quays Development attached to this Agreement in Schedule 5 and/or any updated development plans prepared for and on behalf of the Vendor from time to time.
- 21.21 "Plans and Specifications" means the plans and specifications attached to this Agreement in Schedule 3 for the Property.
- 21.22 "Quays Development" means the subdivision and development of any land owned by the Vendor (including its Related Companies, successors or assigns) at Clearwater Resort, Christchurch undertaken in accordance with the Master Development Plan and includes the subdivision and development of the Land and adjoining or nearby land known as the Clearwater Quays Apartments.
- 21.23 "Related Companies" has the meaning given to it in the Companies Act 1993.
- 21.24 "Relevant Authority" means any Government, local, statutory or non-statutory authority or body having jurisdiction over the Land, the Apartment or over the Property.
- 21.25 "Society" means Clearwater Resort Owners Society Incorporated, Incorporated Society Number 1114507.
- 21.26 "Society's Encumbrance" means an encumbrance in favour of the Society attached to this Agreement in Schedule 11, which is to be registered, or has been registered, on the record of title for the Property.
- 21.27 "Tenant Company" means THC Group Limited and its Related Companies, successors or assigns.

22. Subdivision of Property and Issue of Title

- 22.1 The Vendor reserves the right to grant, create or receive and/or register any consent notices, easements, covenants or any other encumbrances, rights or obligations that:

22.1.1 Result from or are anticipated by the terms of this Agreement;

- 22.1.2 Are created in respect of services and/or utilities for the Property or for any part of the Development; or
 - 22.1.3 Are required by the Relevant Authority or LINZ; or
 - 22.1.4 In the sole and absolute discretion of the Vendor are deemed to be necessary or desirable in respect of the Property, Apartments and/or Development.
- 22.2 The Purchaser will take title subject to those interests referred to in this Agreement and will not be entitled to make any objection, or requisition or have any claim or right of compensation for such matters. The Vendor is not bound to point out the boundaries of the Property.
- 22.3 The Vendor, or any Developer, is entitled to develop any land adjoining or in close proximity to the Property as it deems necessary or desirable for the purposes of the Development including (without limitation) clearing, excavating, filling, landscaping, contouring, installing services, completing ancillary works, and removing trees or other improvements.
- 22.4 The Vendor and its surveyors, consultants, engineers, contractors, subcontractors, workers or any of them have the right to enter upon the Property and adjoining land at all times whether before or after settlement with all such plant, machinery, vehicles and equipment and to do all such work as will in the opinion of the Vendor, its surveyors, consultants, engineers, contractors, subcontractors, workers or any of them be necessary or desirable to complete the Development and, without limiting the generality of the foregoing, including the right:
- 22.4.1 To contour, landscape, excavate and/or fill any part of the Property and any part of the Development;
 - 22.4.2 To cut and/or remove any materials and/or vegetation including trees (if necessary) without in any case being liable for damage or to make any compensation whatsoever to the Purchaser or any person claiming through or under the Purchaser;
 - 22.4.3 To erect, install and construct electricity, sewer, stormwater, gas and telephone cables and pipes, and to install on the Property and on any part of the Development any transformer, junction box or other installation necessary or desirable for the reticulation of the services mentioned above; and
 - 22.4.4 To carry out any other act, matter, work or thing that may in the sole and absolute discretion of the Vendor be necessary or desirable to complete the Development of which the Property forms part, all of which work will be carried out in accordance with the requirements of the local authority having jurisdiction, and

The Vendor will reinstate the Property following such work but the Vendor will not be liable in any other way for any damage caused to the Property arising out of those works nor will any compensation, deduction or other allowance be made from the Purchase Price.

22.5 The Vendor (and any party related to the Vendor) may from time to time and at any time up until six months after the completion of the Development, and in respect of the Body Corporate Rules at any time 12 months after registration of the Body Corporate Rules, whichever is the earlier, in its sole and absolute discretion alter, vary or completely replace (without limitation):

22.5.1 The Unit Plan and any subsequent plan (including but without limitation the alteration, variation or cancellation of any proposed easement shown on any such plan); and

22.5.2 The Body Corporate Rules; and

22.5.3 The terms of any schemes created by the Vendor; and

22.5.4 Anything else whatsoever relating to the Property other than the Apartments, Accessory Unit/s, this Agreement or the Lease;

provided that the above and any such alterations, variations, replacements or cancellations do not reduce the value of the Property, or impose any unreasonable obligation, or burden on the Purchaser, or unreasonably limit the Purchaser's use and enjoyment of the Property, the Accessory Units for garaging or parking and the Common Property, or subject to the requirements of any Consents, substantially and materially alter the boundaries or shape of the Apartments, the Accessory Units for garaging or parking.

22.6 The Purchaser is not entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on any alteration, variation, replacement or cancellation in accordance with Clauses 22.1 and 22.5. The Purchaser agrees to co-operate with the Vendor in all such replacements, alterations, variations and cancellations and acknowledges that the power of attorney referred to in Clause 32 may (without limitation) be used by the attorney for such purposes.

22.7 The Purchaser will sign all documents and do all things necessary to implement the amendments referred to in Clauses 22.1 and 22.5.

23. **Building Work**

23.1 The Purchaser acknowledges that landscaping and the Quays Development (excluding the Apartment) may not be completed on the Settlement Date and no deduction or retention of any money due under this Agreement will be made or taken in respect of those matters.

- 23.2 The Vendor will rectify and make good at its cost during or within a reasonable time any defects, shrinkage or other faults in the Apartment due to faulty materials or workmanship notified by the Purchaser or his agent in writing to the Vendor within the Maintenance Period. The Vendor will not be liable for any defects not notified within the Maintenance Period but this proviso does not apply to any latent defects. In the case of a dispute the matter will be determined by a Registered Master Builders Federation of New Zealand appointee acting as an expert, whose decision will be final and binding on the parties.
- 23.3 The Vendor is not liable for any defect in the Building Work or breach of warranty to the extent that the defect or breach of warranty is caused by any of the following that occurs during or after completion of the Building Work:
- 23.3.1 A cause independent of human control;
 - 23.3.2 Any act or omission, including accidental damage, by a person who is not:
 - 23.3.2.1 The Vendor;
 - 23.3.2.2 A subcontractor of the Vendor; or
 - 23.3.2.3 The Developer.
 - 23.3.3 Fair wear and tear;
 - 23.3.4 Damage caused by the Purchaser;
 - 23.3.5 Defects resulting from the Purchaser's failure to follow the Vendor's reasonable instructions, failure to remediate or failure to advise the Vendor immediately after the defect becomes apparent;
 - 23.3.6 Failure by the Purchaser to carry out normal maintenance;
 - 23.3.7 Failure by the Purchaser to follow manufacturer's recommendations as to any material or system which forms part of the Property or the Unit;
 - 23.3.8 Any defect covered by a manufacturer's or supplier's warranty or guarantee, where the benefit of that warranty or guarantee may be enforced by the Purchaser; or
 - 23.3.9 Defects that are, in the reasonable opinion of the Vendor, within acceptable trade tolerances.
- 23.4 Without prejudice to the provisions of Clauses 23.1 and 23.2, the Purchaser will not:
- 23.4.1 Withhold the balance of the Purchase Price (or any part of it) or any other money due under this Agreement on the Settlement Date by reason of any defect,

shrinkage or fault in the Property, whether due to defective materials, workmanship or any other cause; and

23.4.2 Claim set-off, compensation, damages or indemnity for the obligations referred to in Clause 23.2, other than by way of damages (which will be limited to reasonable rectification costs) after a failure of the Vendor (if any) to comply with its obligations under Clause 23.2.

23.4.3 Make any objection, requisition or claim for compensation because of any alteration to the Concept Plans and Specifications or finishes which are made because of a requirement or direction of a Relevant Authority or because of the practical necessities of construction including (without limitation) requirements of good building practice, the availability of materials and the need to adhere to a budget; provided that this limitation does not apply to an alteration which has a material adverse effect on the use of the Apartment.

23.5 The Purchaser agrees that the Vendor's obligations relating to the carrying out of the Building Work will be no more and no less than:

23.5.1 The implied warranties in sections 362I to 362K of the Building Act 2004; and

23.5.2 Section 362Q of the Building Act 2004 to remedy defects notified to the Vendor within twelve (12) months from the date of issue of the Certificate of Practical Completion.

24. Purchasers Covenants and Obligations

24.1 In consideration of the Vendor entering into this Agreement the Purchaser covenants with the Vendor and Developer that the Purchaser will not, either personally or through any agent or employee, directly or indirectly do any of the following:

24.1.1 Lodge or support in any way any objection, complaint or submission (including, without limitation, taking part in any hearing, appeal or reference) against:

24.1.1.1 any application for resource consent to subdivide, develop or use any part of the Development; and

24.1.1.2 any application for a resource consent or building consent for any building or structure to be built as a part of the Development or Quay's Development including without limitation, any application to allow the establishment of a café, gym and health spa, their carparks, surrounds and access to, from, and through them and their ancillary activities, or adjacent land,

(together Clauses 24.1.1 to 24.1.2, the "Permitted Activities").

- 24.1.2 Object to, complain about, bring any proceedings in respect of, interfere with, prevent, hinder, obstruct or otherwise oppose in any way the Development, the Permitted Activities and operations of the Airport;
 - 24.1.3 Take any action which would be a breach of the encumbrancer's covenants and/or obligations under the Airport Encumbrance, the Developer's Encumbrance and/or the Society's Encumbrance;
 - 24.1.4 Aid, abet, counsel, or procure any other person or entity to exercise any of the actions restricted by virtue of Clauses 24.1.1.1 to 24.1.1.3 above.
- 24.2 Without limitation, this Clause 24 binds the successors in title to the Purchaser for the benefit of the successors in title to the Vendor and the Developer, and the covenants referred to in this Clause 24 are included in a restrictive covenant and/or memorandum of encumbrance registered on the record of title to the Property.
- 24.3 The Purchaser (and successors in title) hereby gives written approval for the purpose of the Resource Management Act 1991 and to all Permitted Activities and agrees that it will, promptly upon request by the Vendor, sign any document required to further evidence that approval and in the event of failing to do so those persons will be entitled to provide a copy of this Clause 24 to the relevant consent authority as evidence that such written approval is given.

25. Assessments

- 25.1 The Purchaser is liable for all outgoing in respect of the Apartment after the Settlement Date. Until separate assessments of outgoing including rates are issued or available in respect of the Apartment, the Purchaser will be liable for the same proportion of those outgoing levied or paid against the Land, the Property and other Apartments as the unit entitlement of the Property bears to the total unit entitlement of all Apartments.

26. Lease to Tenant Company

- 26.1 The Purchaser must complete the purchase of the Property subject to the Lease which will, subject to Clause 26.2, be prepared by the Vendor's solicitor in the form attached as Schedule 6 and made available to the Purchaser's Solicitor in its final form on settlement. Under the Lease:

- 26.1.1 The Landlord leases the Property and Chattels to the Tenant Company; and

26.1.2 The Landlord will be entitled to occupy the Property (including Additional Landlord Occupancy as that term is defined in the Lease) in accordance with the terms of the Lease; and

26.1.3 The Landlord will nominate the commencement date of the Lease which will be on a date no later than the last date which would allow a supply made under this Agreement to be zero rated as a going concern pursuant to the GST Act.

In the event of any conflict between Clauses 26.1.1 to 26.1.3 and the provisions of the Lease, the Lease will prevail.

26.2 The Vendor (and the Tenant) may from time to time and at any time up until the Settlement Date, in its sole and absolute discretion alter or vary (without limitation) the Lease provided that any such alterations or variations do not materially reduce the value of the Property or impose any unreasonable obligation or burden on the Purchaser or unreasonably limit the Purchaser's use and enjoyment of the Property.

26.3 Upon the balance of the Purchase Price, interest and all other monies due on the Settlement Date under this Agreement, being paid or satisfied as provided in this Agreement, the Purchaser's solicitor must concurrently serve a notice on the Tenant in the form attached in Schedule 7 Notice of Change of Landlord, and at that time may notify the Tenant that the Purchaser has exercised its option to use the Property for Additional Landlord Occupancy, as defined in the Lease.

26.4 If the Purchaser re-sells or agrees to re-sell or assign or otherwise dispose of the Purchaser's interest in the Property or this Agreement, then the Purchaser will:

26.4.1 Obtain from that sub-purchaser or assignee a Deed of Covenant to be prepared by the Vendor' solicitor at the cost of the Purchaser pursuant to which the sub-purchaser or assignee will covenant to observe perform and fulfil all obligations and restrictions contained in the Lease including this covenant to obtain a Deed of Covenant from any subsequent sub-purchaser or assignee; and

26.4.2 Require the sub-purchaser or assignee to serve a notice on the Tenant in a form similar to that attached as Schedule 7 and to obtain a like condition from any subsequent sub-purchaser or assignee.

27. Settlement

27.1 Further to Clause 3.8 of the General Terms, upon the balance of the Purchase Price, interest and all other monies due on the Settlement Date under this Agreement being paid or satisfied under this Agreement, the Vendor must concurrently provide to the Purchaser:

27.1.1 A copy of the Lease in registrable form;

27.1.2 A Code Compliance Certificate;

27.1.3 Provide the Purchaser with vacant possession of the Property, subject to the Lease;
and

27.1.4 Provide the Purchaser with possession of the Chattels, subject to the Lease.

27.2 All obligations under Clause 27.1 are interdependent.

28. Consumer Guarantees Act 1993

The guarantee provisions of the Consumer Guarantees Act 1993 do not apply to the Property which is sold subject to the Lease, despite the Additional Landlord Occupancy clause being exercised by the Purchaser.

29. Clearwater Resort Owners Society Incorporated

29.1 Entering into this Agreement constitutes subscription by the Purchaser for membership of the Society in accordance with the offer by the Society to become and remain a member of the Society on settlement attached to this Agreement as Schedule 8 and recorded in the Society's Encumbrance;

29.2 For the avoidance of doubt the parties acknowledge that:

29.2.1 Any money paid by the Purchaser under this Agreement (including, but not limited to, the Purchase Price) is not in consideration of the Purchaser becoming a member of the Society in accordance with the offer by the Society attached as Schedule 8 Society's offer of Membership and Disclosure Document; and

29.2.2 This Agreement in no way constitutes an offer by the Vendor on behalf of the Society of membership in the Society.

30. Lowest Price – Accruals

The parties acknowledge and agree:

30.1 that the Purchase Price is the lowest price at which the Property could be purchased for the purposes of section EW32(3) of the Income Tax Act 2007;

30.2 that the Purchase Price does not include any capitalised interest; and

30.3 they will file their tax return on that basis

31. Purchaser Not To Caveat

31.1 The Purchaser will not lodge a caveat against the Vendor's title to the Land.

31.2 The Purchaser will not lodge a caveat against the Vendor's title to the Property, unless the Vendor is in default of any of its obligations under this Agreement.

31.3 If the Purchaser lodges a caveat in breach of Clause 31.1 or 31.2 then the Vendor may take all necessary steps to secure the immediate removal of any such caveat. The Purchaser indemnifies the Vendor against all costs, loss and damage incurred directly or indirectly as a result of the Purchaser lodging a caveat in breach of Clause 31.1 and 31.2 and/or the Vendor securing the immediate removal of any such caveat.

32. Power of Attorney

32.1 In consideration of the Vendor entering into this Agreement, the Purchaser irrevocably nominates, constitutes and appoints the Vendor or any nominee of the Vendor to be the true and lawful attorney of the Purchaser for the purposes of executing all documents and plans and to perform all acts, matters and things as may be necessary (without limitation):

32.1.1 To ensure the Purchaser's obligations under this Agreement are met;

32.1.2 To complete the Development; and

32.1.3 To discharge any caveat registered against the Land or the Property by the Purchaser that is not in accordance with Clause 31.1 and 31.2;

32.2 The Purchaser will, if called upon to do so, before or after settlement, enter into and execute a deed of appointment of power of attorney in favour of the Vendor or any nominee of the Vendor on the terms and for the purposes set out in Clause 32.1.

32.3 Production of this power of attorney to the Purchaser's solicitor, agent or mortgagee from time to time will without further requirement or reference to the Purchaser comprise an irrevocable and unconditional authorisation and instruction to the person involved or the Purchaser's mortgagee to execute any consent sought by the Vendor and/or the Developer in relation to the Property and/or the Development and the deposit of any survey plan or title plan and the issue of record of title registers from those plans and to do all other things necessary to facilitate such registration.

33. Contract and Commercial Law Act 2017

33.1 In terms of section 12 of the Contract and Commercial Law Act 2017, this Agreement is also for the benefit:

33.1.1 Of the Developer and the obligations of the Purchaser under this Agreement may be enforced by the Developer as appropriate;

33.1.2 In respect of Clause 29 only of the Society and the obligations of the Purchaser under that Clause may be enforced by the Society as appropriate.

34. Purchaser's Acknowledgement

34.1 The Purchaser acknowledges that:

34.1.1 The Purchaser has inspected the Property and purchases the Property solely in reliance upon the Purchaser's own judgement and not upon any representation or warranty made by the Vendor and/or the Developer or any agent of the Vendor and/or the Developer other than as contained in this Agreement;

34.1.2 Any landscape plan of the Vendor and/or the Developer or the Vendor's agents or the Developer's agents in relation to proposed private roads, accessways and reserve areas or open spaces is indicative only. The extent, detail and timing of such landscaping will be at the Vendor's and/or the Developer's sole and absolute discretion in all respects. In particular, the Purchaser acknowledges that works may not be completed by settlement and the Purchaser will not be entitled to withhold any portion of the Purchase Price on settlement in such case; and

34.1.3 Neither the Vendor nor the Developer will be liable for the accuracy of any matter of fact in this Agreement, or in any document or statement made by the Vendor, the Developer, or any other person.

35. GST Date

35.1 The GST Date will be the earlier of:

35.1.1 Five working days after the Vendor notifies the Purchaser that the Vendor is required to account to the Inland Revenue Department for the GST component on this transaction within ten working days; and

35.1.2 Settlement Date.

36. Vendor's Right to Assign

36.1 The parties acknowledge and agree that the Vendor has the right to assign its interest in this Agreement to another party at any time prior to the Settlement Date provided that the Vendor obtains a covenant from the assignee that it will perform the obligations of the Vendor until such time as settlement has been completed.

36.2 The parties acknowledge and agree that the Tenant Company has the right to assign its interest in the Lease to another party at any time prior to the Settlement Date in accordance with the terms and conditions of the Lease.

37. Guarantee

37.1 In consideration of the Vendor entering into this Agreement at the request of the Guarantor, the Guarantor:

37.1.1 Guarantees to the Vendor the due and punctual payment of all monies and performance by the Purchaser of all the obligations to be performed by the Purchaser under this Agreement;

37.1.2 Indemnifies the Vendor against all losses the Vendor may incur or suffer should the Purchaser default in the payment of any monies or the performance of any of the Purchaser's obligations under this Agreement;

37.1.3 Agrees that no release, delay or other indulgence given by the Vendor to the Purchaser or other alteration or variation in terms of this Agreement, or any other thing whatsoever whereby the Guarantor would have been so released had the Guarantor been a surety only will release, prejudice or affect the Guarantor's liability as Guarantor or indemnifier;

37.1.4 Agrees that as between the Guarantor and the Vendor, the Guarantor may for all purposes be treated as Purchaser and the Vendor will be under no obligation to take proceedings against the Purchaser before taking proceedings against the Guarantor; and

37.1.5 Agrees that this guarantee:

37.1.5.1 Is a continuing guarantee;

37.1.5.2 Is given jointly and severally if given by more than one person; and

37.1.5.3 Will continue to be binding and at all times enforceable despite the liquidation, death or insolvency of the Purchaser, the Guarantor or any of them.

38. Conflict

38.1 If there is a conflict between the provisions of these Further Terms of Sale and the provisions of any of the General Terms of Sale of this Agreement or any schedules and appendices to this Agreement, the provisions of these Further Terms of Sale will prevail.

38.2 This Agreement may be executed on the basis of any exchange of facsimile or scanned email copies and execution of this Agreement by such means is to be a valid and sufficient execution.

39. Interpretation

- 39.1 This Agreement is governed by the laws of New Zealand, and the parties submit to the exclusive jurisdiction of New Zealand Courts in respect of any dispute or proceeding arising out of this Agreement.
- 39.2 All communications and documents relating to and in connection with this Agreement will be in English.
- 39.3 The Purchaser and the Vendor acknowledge that the Purchase Price, Deposit and any other sums referred to in this Agreement are expressed to be and are payable in New Zealand dollars.

40. Further Assurances

The Purchaser agrees to execute and deliver any documents, including without limitation, a deed of appointment of power of attorney and any document required under the Airport Encumbrance, the Developer's Encumbrance and/or the Society's Encumbrance and to do all things as may reasonably be required by the Vendor to obtain the full benefit of this Agreement according to its true intent.

41. Entire Agreement

This Agreement is the entire agreement between the parties and supersedes any prior correspondence, discussion or arrangement.

42. Fencing

Neither the Vendor nor its successors, assigns and Related Companies will be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the Apartments and any contiguous land of the Vendor.

43. Onsale

If the Purchaser re-sells or agrees to re-sell or assign or otherwise dispose of the Purchaser's Interest in the Property or this Agreement, then (unless the vendor waives compliance with this Clause) the Purchaser will obtain from that sub-purchaser or assignee a Deed of Covenant to be prepared by the Vendor's solicitor at the cost of the Purchaser pursuant to which the sub-purchaser or assignee will covenant to observe perform and fulfil all obligations and restrictions contained in this Agreement including this covenant to obtain a Deed of Covenant from any subsequent sub-purchaser or assignee.

44. Purchaser's Conditions Subsequent

44.1 This Agreement is subject to and conditional upon:

44.1.1 The Purchaser's solicitor's approval of:

44.1.1.1 The record of title to the Property; and

44.1.1.2 The form and content of this Agreement; and

44.1.2 The Purchaser completing and being satisfied in all respects that the Property is suitable for the Purchaser after the Purchaser has carried out a due diligence investigation on all aspects of the Property which the purchaser considers necessary or relevant.

44.2 The date for satisfaction of the conditions in Clause 44.1 is ten (10) working days from the date of this Agreement.

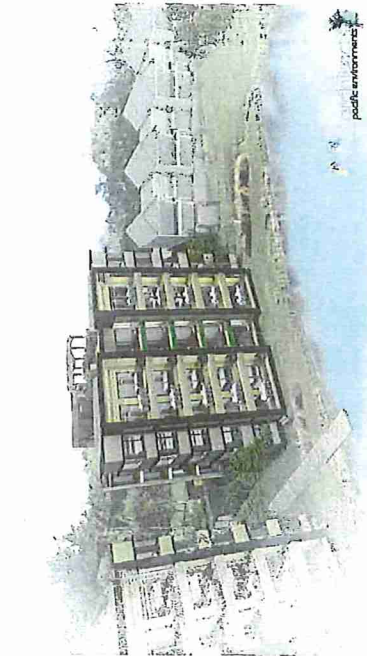
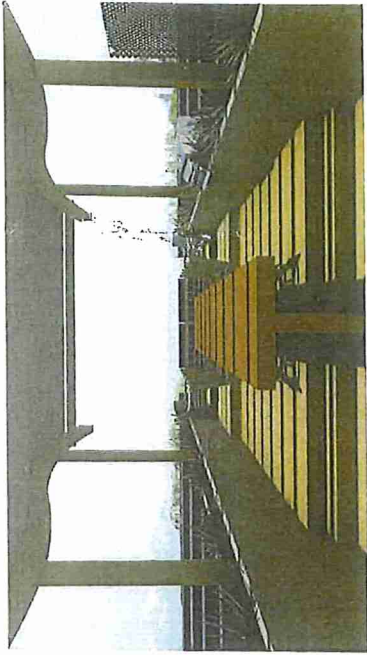
44.3 The parties acknowledge that the conditions in Clause 44.1 have been inserted for the sole benefit of the Purchaser.

44.4 It will be at the sole and absolute discretion of the Purchaser whether the conditions in Clause 44.1 have been satisfied or not and the Vendor will not require the Purchaser to give reasons if the Purchaser decides that the due diligence is not satisfactory.

SCHEDULE 2

CHATELS

SCHEDULE 3
PLANS AND SPECIFICATIONS



Clearwater Quays

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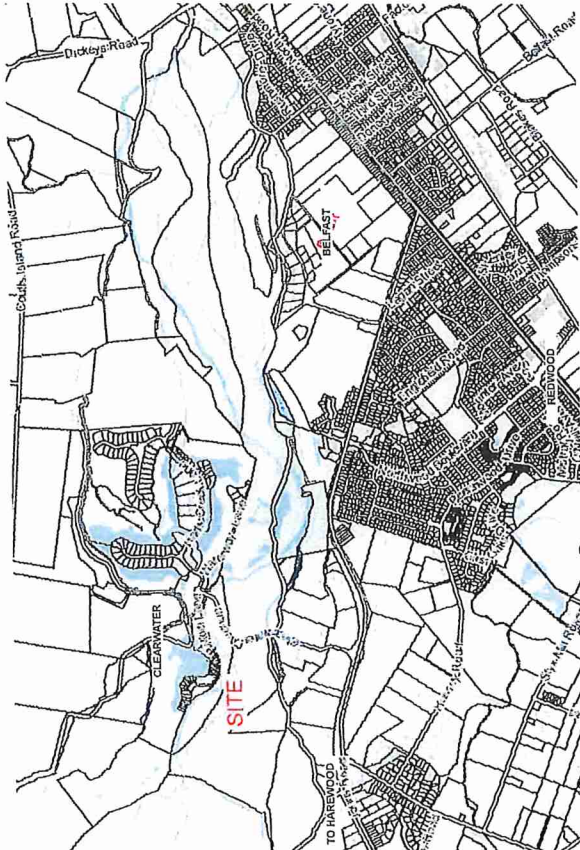
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Location Plan

Clearwater Quays
 49-54 Rotoiti Lane Northwood
 Christchurch 8051 New Zealand

Marketing Issue

ref no. 17054

date. 12/12/2017



Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE

Title
Exterior Perspectives
Date
12/12/2017

Scale
@A3

Client
Clearwater Quays
Apartments Ltd.



P.O. Box 8807 Symonds St, Auckland, NZ
Ph (09)308-0070 Email: info@penzi.co.nz

Ref. no.
17054
sheet no.
A601

revision
A



Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE

Title
Exterior Perspectives
Date
12/12/2017

Client
Clearwater Quays
Apartments Ltd.

ref no.
17054
sheet no.
A602

revision
A

architects
pacific environments nz ltd

P.O. Box 8807 Symonds St. Auckland, NZ
Ph: (09) 308-0070 Email: info@penz.co.nz



Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE

Title
Roof Terrace

Date
12/12/2017

Scale
@A3

Client
Clearwater Quays
Apartments Ltd.

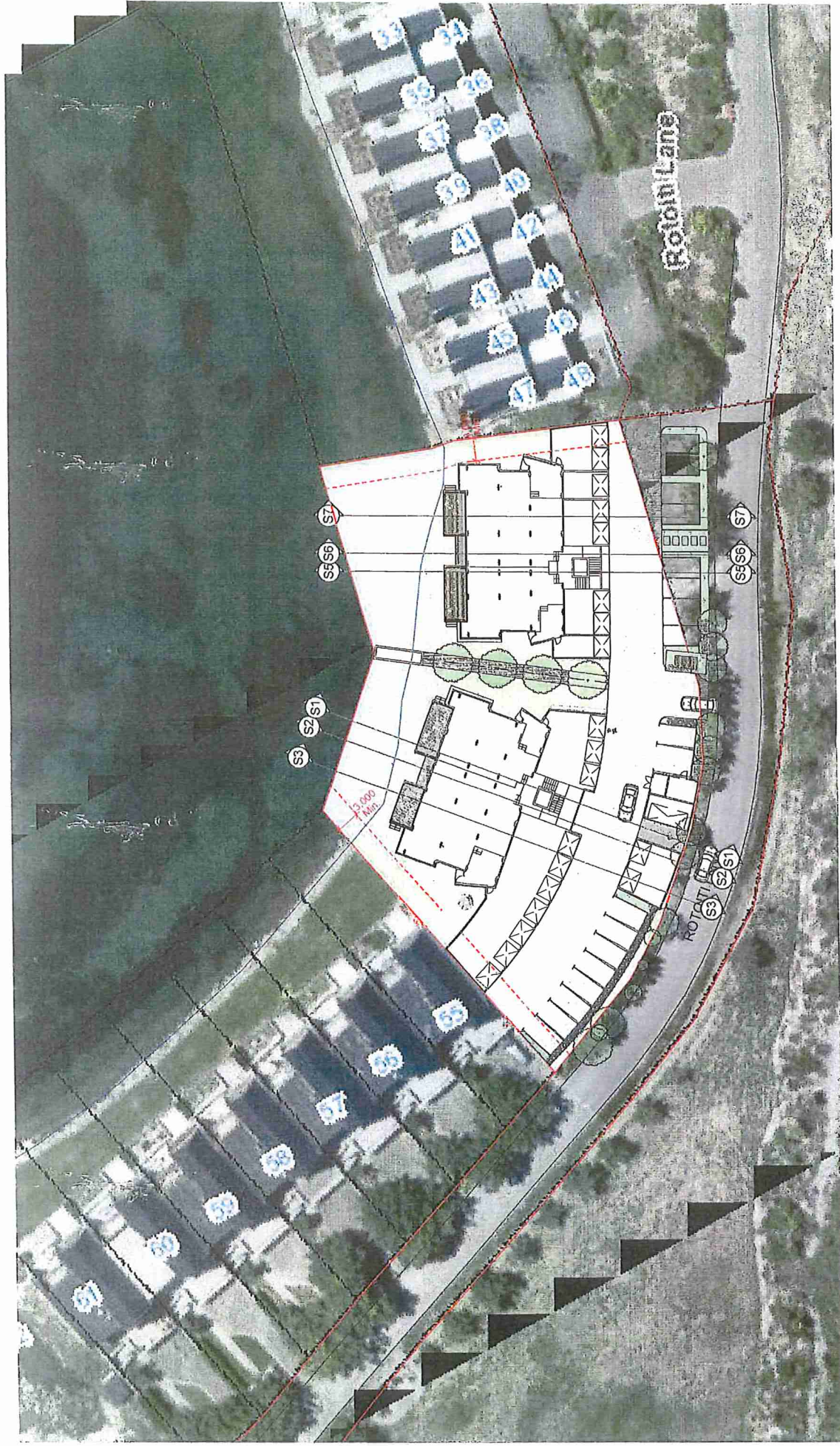
architects
pacific environments inc. Ltd

P.O. Box 8807 Symonds St, Auckland, NZ
Ph (09)398-0070 Email: info@penz.co.nz

ref no.
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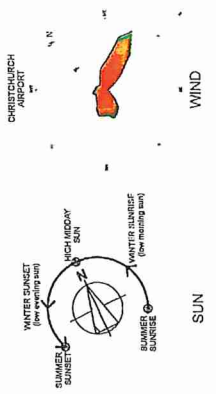
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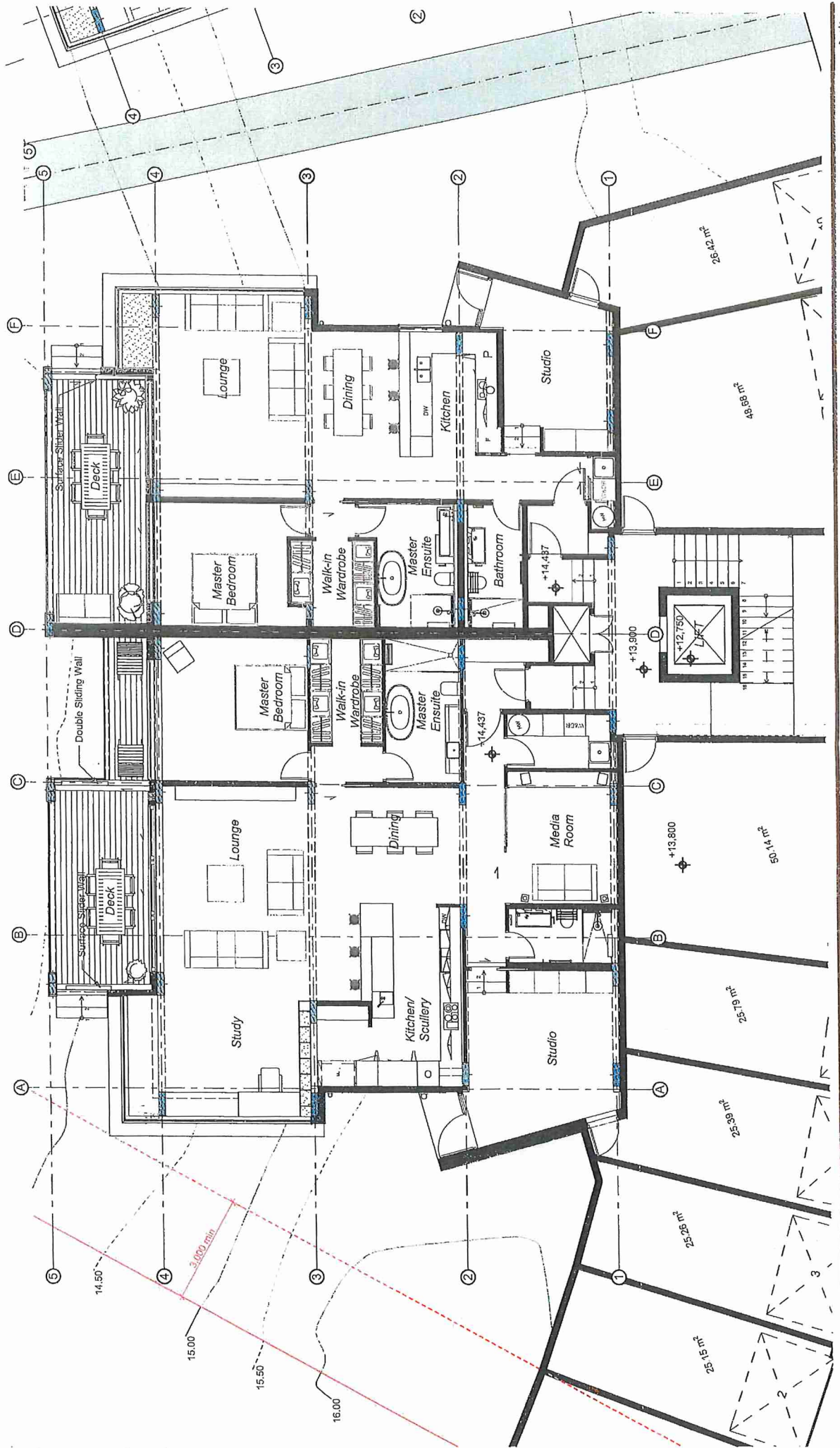
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Clearwater Quays
 49-54 Rotoiti Lane Northwood
 Christchurch 8051 New Zealand

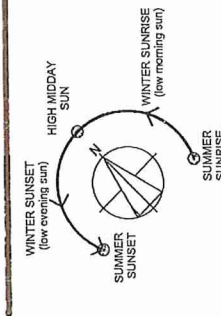
Marketing ISSUE
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 Date 12/12/2017
 Scale 1:500@A3
 Client Clearwater Quays
 Apartments Ltd.

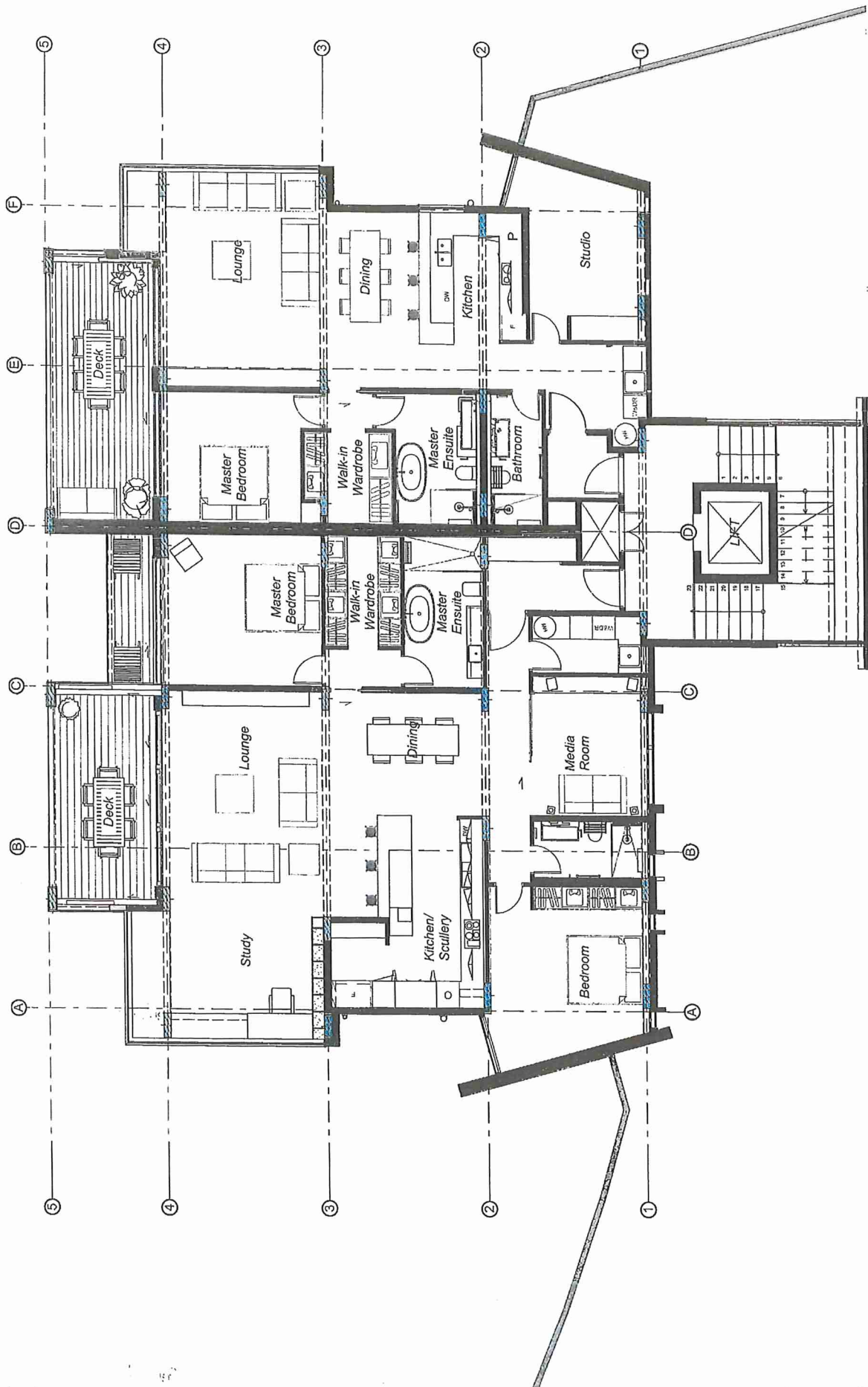




Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE
Title Ground Floor Plan 1:100
Date 12/12/2017
Scale 1:100@A3
Client Clearwater Quays
Apartments Ltd.



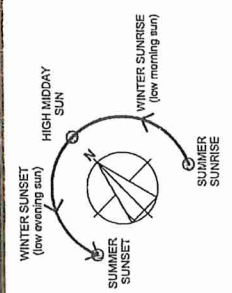


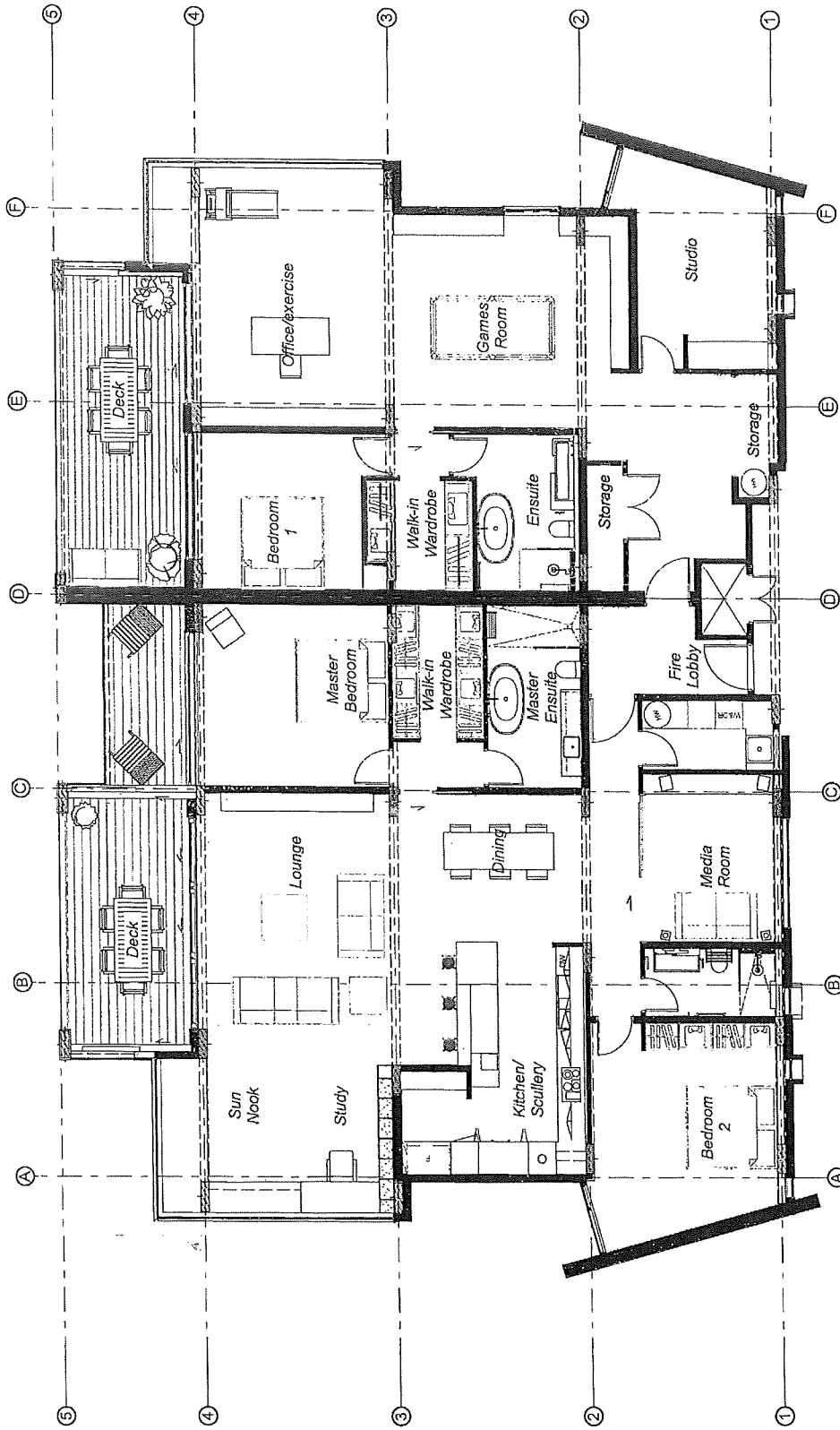
Clearwater Quays
 49-54 Rotoiti Lane Northwood
 Christchurch 8051 New Zealand

Marketing ISSUE

Title Level 2 and 3 Floor Plan 1:100
 Date 12/12/2017
 Scale 1:100@A3

Client Clearwater Quays
 Apartments Ltd.



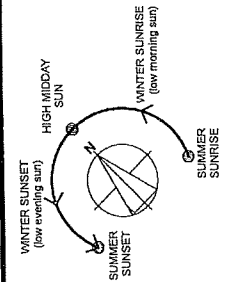


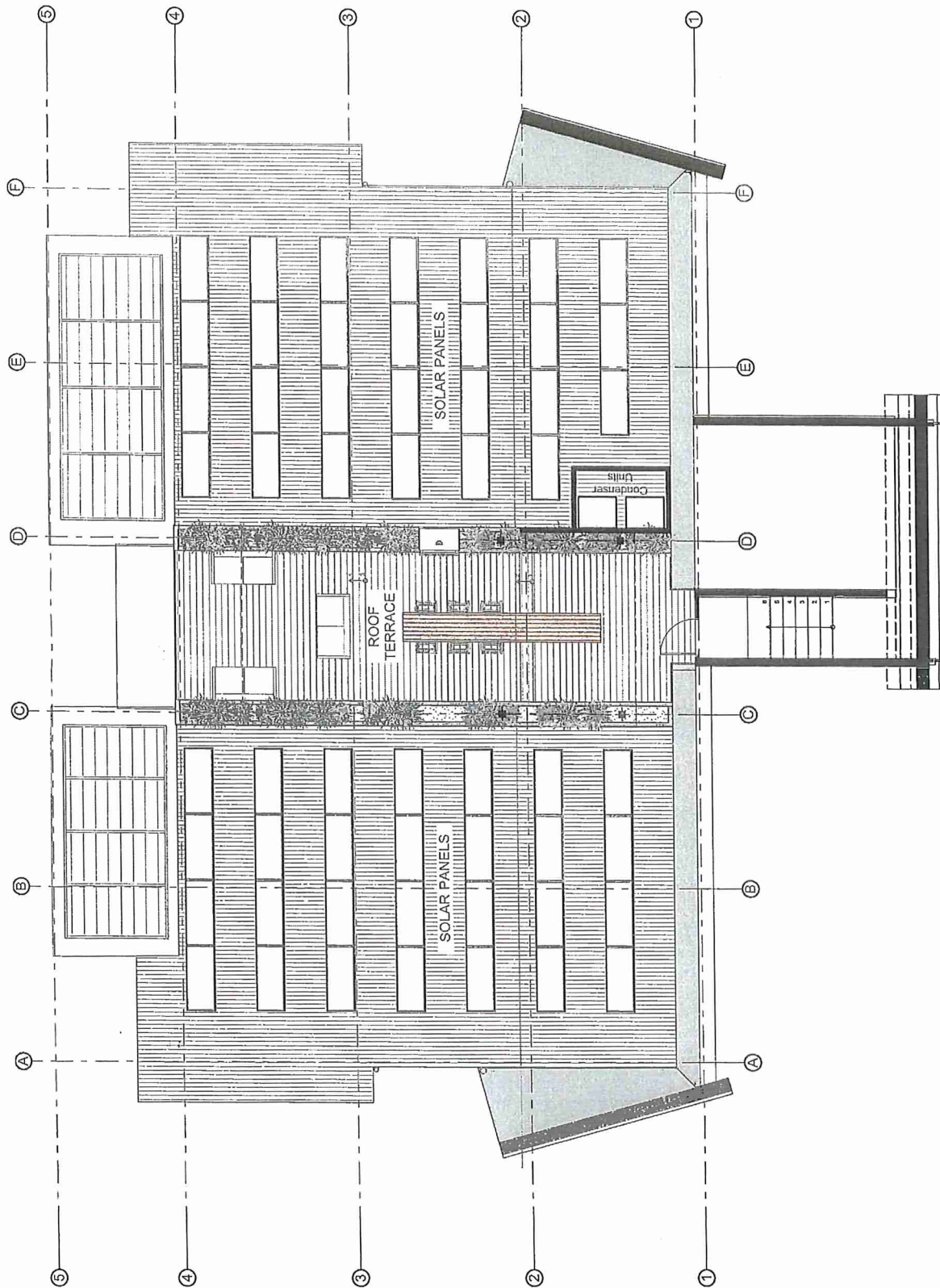
Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE

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Date 12/12/2017
Scale 1:100@A3

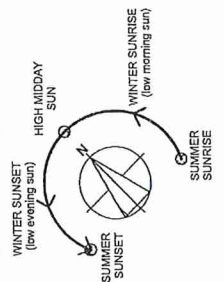
Client Clearwater Quays
Apartments Ltd.

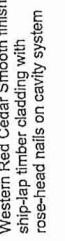
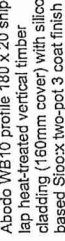
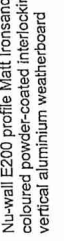
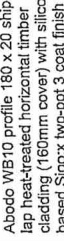
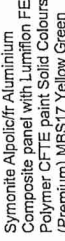
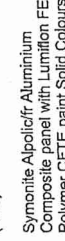


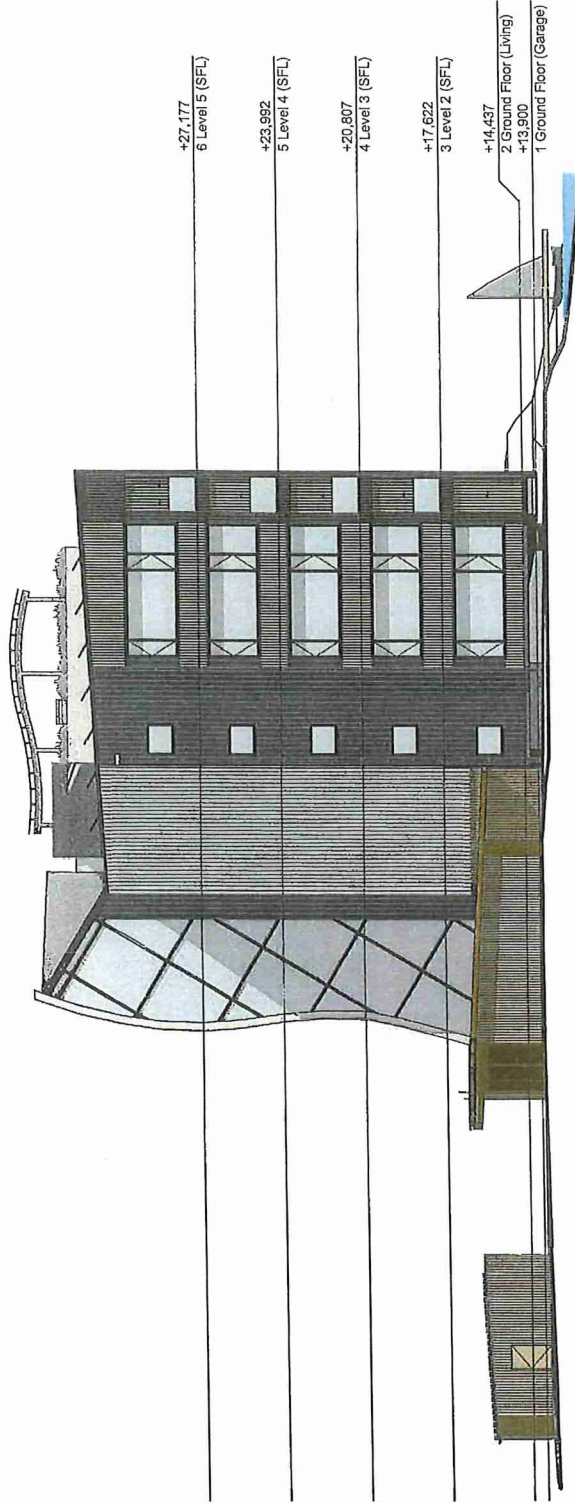


Clearwater Quays
 49-54 Rotoiti Lane Northwood
 Christchurch 8051 New Zealand

Client: Clearwater Quays Apartments Ltd.
 Title: Roof Terrace Floor Plan 1:100
 Date: 12/12/2017
 Scale: 1:100@A3
 Marketing ISSUE



Elevation Finishes - Indicative Only	
	Western Red Cedar: Smooth finish ship-lap timber cladding with rose-head nails on cavity system
	Abodo WB10 profile: 180 x 20 ship-lap heat-treated vertical timber cladding (160mm cover) with silicone-based Sioocx two-pot 3 coat finish
	Nu-wall E200 profile: Matt Ironsand coloured powder-coated interlocking vertical aluminium weatherboard
	Abodo WB10 profile: 180 x 20 ship-lap heat-treated horizontal timber cladding (160mm cover) with silicone-based Sioocx two-pot 3 coat finish
	Symonite Alpolis/Aluminium Composite panel with Lumiflon FEVE Polymer CFTE paint Solid Colours B (Premium) MBS17 Yellow Green (G30)
	Symonite Alpolis/Aluminium Composite panel with Lumiflon FEVE Polymer CFTE paint Charcoal (Standard) M7981 Charcoal (G30)



East Elevation - 1:200

Clearwater Quays
 49-54 Rotoiti Lane Northwood
 Christchurch 8051 New Zealand







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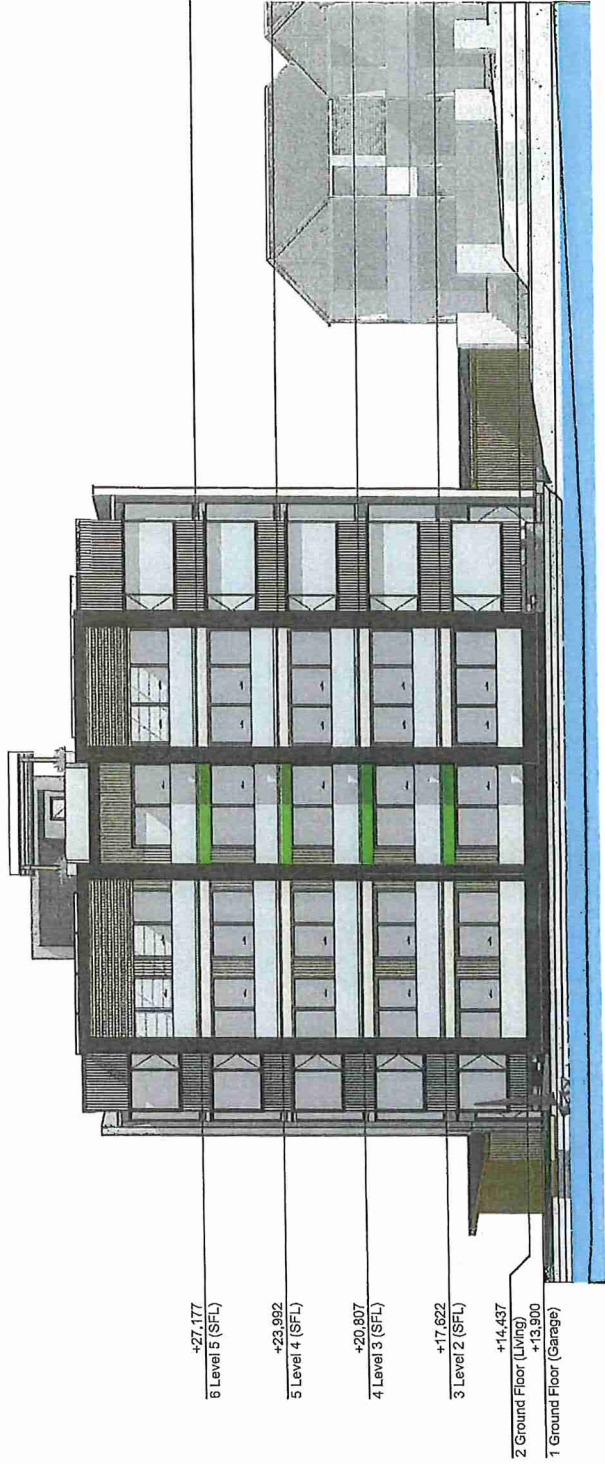
Title: East Elevation
 Date: 12/12/2017
 Client: Clearwater Quays Apartments Ltd.
 Scale: 1:200, 1:500@A3



P.O. Box 8607 Symonds St, Auckland, NZ
 Ph: (09) 308-0070 Email: info@penzi.co.nz

ref no: 17054
 sheet no: A201
 revision: A

Elevation Finishes - Indicative Only	
	Western Red Cedar Smooth finish ship-lap timber cladding with rose-head nails on cavity system
	Abodo WB10 profile 180 x 20 ship-lap heat-treated vertical timber cladding (160mm cover) with silicone-based Sicox two-pot 3 coat finish
	Nu-wall E200 profile Matt Ironsand coloured powder-coated interlocking vertical aluminium weatherboard
	Abodo WB10 profile 180 x 20 ship-lap heat-treated horizontal timber cladding (160mm cover) with silicone-based Sicox two-pot 3 coat finish
	Symonite Alpolicfr Aluminium Composite panel with Lumiflon FEVE Polymer CFTE paint Solid Colours B (Premium) MBS17 Yellow Green (G30)
	Symonite Alpolicfr Aluminium Composite panel with Lumiflon FEVE Polymer CFTE paint Solid Colours A (Standard) M7991 Charcoal (G30)



North Elevation - 1:200

Clearwater Quays
 49-54 Rotoiti Lane Northwood
 Christchurch 8051 New Zealand

Marketing ISSUE

Title North Elevation
 Date 12/12/2017
 Client Clearwater Quays Apartments Ltd.
 Scale 1:200@A3



P.O. Box 8807 Symonds St, Auckland, NZ
 Ph (09) 908-0070 Email info@penzi.co.nz

ref no. 17054
 sheet no. A203
 revision A



Living Room Perspective

Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE

Title
Living - Perspective

Date
12/12/2017

Scale
1:1@A3

Client
Clearwater Quays
Apartments Ltd.



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ref no.
17054

sheet no.
A508

revision
A



Kitchen Perspective

Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE

Title
Kitchen - Perspective
Date
12/12/2017
Scale
@A3

Client
Clearwater Quays
Apartments Ltd.

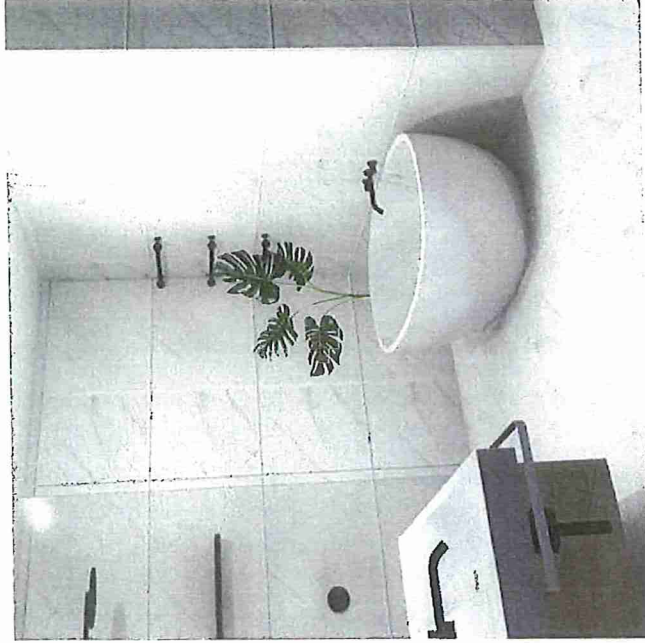
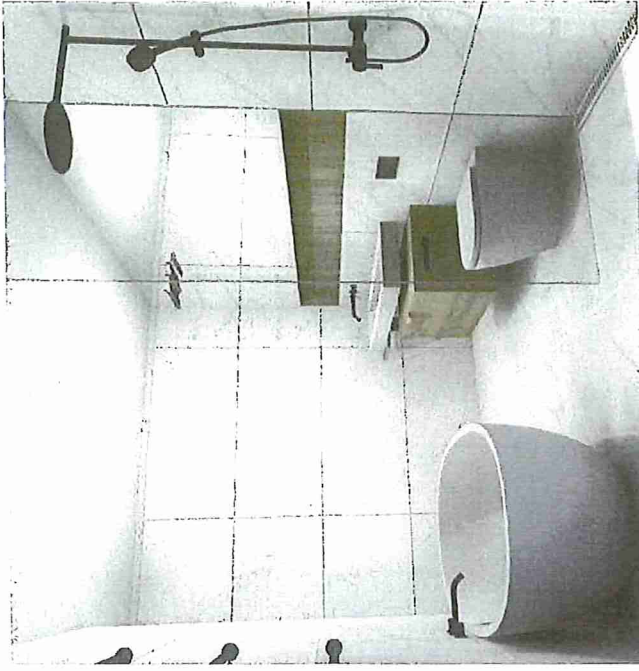
architects
pacific environments
architects

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ref no.
17054

sheet no.
A509

revision
A



Clearwater Quays
49-54 Rotoiti Lane Northwood
Christchurch 8051 New Zealand

Marketing ISSUE

Title
Ensuite B - Perspectives
Date
12/12/2017
Scale
1:1@A3

Client
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Apartments Ltd.

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ref. no.
17054
sheet no.
A507
revision
A

Clearwater Quays Apartments - Specifications Schedule

Project: 17054
 Client: Clearwater
 Date: 07.12.17
 Rev: 2

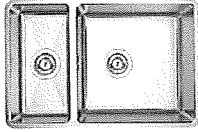
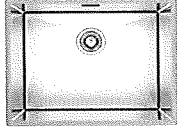
Sanitary Ware 1.1
 Appliances 1.2
 Lighting 1.3
 Finishes 1.4



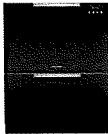



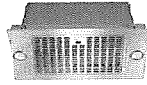

NB: Tapware & fittings can be either matt black or silver chrome

Key	Item	Location	Image	Details		Notes
1.1 Sanitary Ware						
B01	WC	Bathrooms (All)		Description	Sfera 52 Floor Mnt Toilet Package Incl - Toilet Pan & Soft Close Seat, Inwall Cistern & Matt Black Metal faceplate 350W x 520D	Incl. Flush plate (below)
				Brand / Supplier	Catalano / Plumblin	
				Product Code	VPC52.ST	
B02	Flush Plate	Bathrooms (All)		Description	Sfera 52 Floor Mnt Toilet Package incl - Toilet Pan & Soft Close Seat, Inwall Cistern, Matt Black Metal faceplate 350W x 520D	Incl. WC (above)
				Brand / Supplier	Catalano / Plumblin	
				Product Code	VPC52.ST	
B03	Bath	Ensuites Only		Description	Patinato Petite Clearstone Bath W 1524mm H 550mm D 800mm	
				Brand / Supplier	VCBC / Bath Co	
				Product Code	N3AC5	
B04	Vanity 1	Ensuite Only Apartment Type A (Larger apt)		Description	Grandangolo Box Package Wall Hung Cabinet 800, Timber Veneer. With Grandangolo Ceramic Basin 1500, with double tap and Towel Holder Natural Oak	
				Brand / Supplier	Michel César (Hatria) / Bath Co	
				Product Code		
B05	Vanity 1	Ensuite Only Apartment Type B (Smaller apt)		Description	Grandangolo Box Package Wall Hung Cabinet 800, Timber Veneer. With Grandangolo Ceramic Basin 1300 and Towel Holder Natural Oak	
				Brand / Supplier	Michel César (Hatria) / Bath Co	
				Product Code		
B06	Vanity 2	Guest Bathrooms Only		Description	Wall Hung Straight Top Vanity 750, 1 Drawer, Timber Veneer. With Grandangolo Ceramic Basin DX Natural Oak	
				Brand / Supplier	Michel César (Hatria) / Bath Co	
				Product Code	GD75DDXT	
B07	Basin Mixer	Bathrooms (All)		Description	Buddy Low Straight Spout Basin Mixer Matt Black Finish	
				Brand / Supplier	Progetto / Plumblin	
				Product Code	CB003S	
B08	Bath Wall Mixer	Ensuites Only		Description	Buddy Wall Mount Mixer Matt Black Finish Can be installed in 3 configurations with the spout to the left (standard), to the right, or underneath the mixer	
				Brand / Supplier	Progetto / Plumblin	
				Product Code	CB005	
B09	Slide Shower	Bathrooms (All)		Description	ADESSO URBAN BLACK Column Shower in Black	
				Brand / Supplier	Adesso / Mico Bathrooms	
				Product Code	707652	


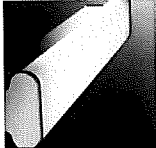

B10	Shower Mixer	Bathrooms (All)		Description	Buddy Round Shower Mixer Matt Black Finish 60mmØ flange
				Brand / Supplier	Progetto / Plumblinc
				Product Code	CB031
B11	Robe Hook	Bathrooms (All)		Description	CUBO MATT BLACK ROBE HOOK
				Brand / Supplier	Kalessi Bathroomware
				Product Code	6401
B12	Toilet Roll Holder	Bathrooms (All)		Description	MATT BLACK TOILET ROLL HOLDER 185mm
				Brand / Supplier	Kalessi Bathroomware
				Product Code	6404
B13	Heated Towel Rail	Bathrooms (All)		Description	HEATED TOWEL WARMER 632x110mm Black finish
				Brand / Supplier	Kalessi Bathroomware / Voss
				Product Code	YW-3F
B14	Hand Towel Rail	Guest Bathrooms Only		Description	CUBO Towel Ring 270 x 72 x 30 Black finish
				Brand / Supplier	Kalessi Bathroomware / Voss
				Product Code	6405
B15	Towel Rack	Bathrooms (All)		Description	MATT BLACK TOWEL RACK 6482 610mm x 207 x 30
				Brand / Supplier	Kalessi Bathroomware / Voss
				Product Code	6482
B16	Shower Shelf	Bathrooms (All)		Description	MATT BLACK GLASS SHELF 6406-600 600mm
				Brand / Supplier	Kalessi Bathroomware / Voss
				Product Code	6406-300 (6406-600)
B17	Shelf	Guest Bathrooms Only		Description	Wall Hung Floating Shelf 600. Timber Veneer Dark Oak 600 x 150 x 25
				Brand / Supplier	Michel César / Bath Co
				Product Code	S60T
B18	Mirror	Guest Bathrooms Only		Description	Wall Hung Cube Mirror Unit 500, 1 Door, 1 Shelf, Available in white or timber veneer finish Dimensions – W 500mm H 500mm D 120mm (Also available in 1000mm 496.65)
				Brand / Supplier	Michel César / Bath Co
				Product Code	M500 (white) / M500T (Timber veneer)
L01	Laundry Unit 1	Laundry Larger Apartment (Type A)		Description	Floor Standing Unit 1200, 2 Drawer, White. With Solid Acrylic Top 1800 (added surface overhang) and Ceramic Tub 1800 x 885 x 590
					incl. - end panel LEP Painted white - Laundry Tap
				Brand / Supplier	Michel César / Bath Co
L02	Laundry Unit 2	Laundry Smaller Apartment (Type B)		Description	Floor Standing Unit 600, 2 Drawer, White. With Solid Acrylic Top and Ceramic Tub 600 x 885 x 535
					incl. - end panel LEP Painted white - Laundry Tap
				Brand / Supplier	Michel César / Bath Co
K01	Kitchen Mixer	Kitchens (all)		Description	Buddy Kitchen Mixer Round Spout Matt Black Finish
				Brand / Supplier	Progetto / Plumblinc
				Product Code	CB040


K02	Sink (Dbl)	Kitchens (all)		Description	Burns & Ferrall Designer Sink 400 x 400 x 200mm & 225 x 400mm
				Brand / Supplier	Plumbing World
				Product Code	14BFD695R15LH/14BFD695R15RH
K03	Sink (Single)	Kitchen Island Larger Apartment (Type A)		Description	Burns & Ferrall Designer Sink 500 x 400 x 200mm
				Brand / Supplier	Plumbing World
				Product Code	14BFD540R15

1.2 Appliances

AP-01	Dishwasher	Kitchens (all)		Description	Double DishDrawer 14 Place Settings, Sanitize (Tall) 860H x 76340W x 560D
				Brand / Supplier	Fisher & Paykel
				Product Code	DD24DCTB9
AP-02	Oven	Kitchens (all)		Description	CLEANSTEEL OVEN
				Brand / Supplier	Miele
				Product Code	
AP-03	Steam Oven	Kitchens (all)		Description	CLEANSTEEL STEAM OVEN
				Brand / Supplier	Miele
				Product Code	
AP-04	Cooktop	Kitchens (all)		Description	INDUCTION COOKTOP
				Brand / Supplier	Miele
				Product Code	
AP-05	Rangehood	Kitchens (all)		Description	BUILT-IN RANGEHOOD
				Brand / Supplier	Miele
				Product Code	
AP-06	Fridge Freezer	Kitchens (all)		Description	INTEGRATED FRIDGE / FREEZER COMBINATION
				Brand / Supplier	Miele
				Product Code	

1.3 Lighting

E01	Downlights	Unless otherwise specified		Description	Recessed Adjustable Downlight Satin Finish
				Brand / Supplier	Lighthouse Lighting
				Product Code	
E01	Wall Light	Ensuites Only		Description	Skara Wall Light Aluminium frame. Frosted acrylic diffuser. Shorter length available. L880mm x H70mm x D70mm
				Brand / Supplier	LEDS-C4 / Lighthouse Lighting
				Product Code	#05-4358-21-M1
E02	Wall Light	Guest Bathrooms Only		Description	LED Bathroom Light 500 Wide 500 X 30 X 100 also available 800mm
				Brand / Supplier	VCBC / Bath Co
				Product Code	2995.514

E03	Pendant Light	Entrance Foyer		Description	Nodi 15 Light Pendant Dia 1050mm, drop 600/1400 Chrome metal, white blown frosted glass balls also available in a 9 light
				Brand / Supplier	IDEAL LUX / Lighthouse Lighting
				Product Code	#ID-082073

1.4 Finishes						
WF-B-01	Benchtop	Kitchens (all)		Description	White engineered stone benchtop Bianco Polare Satin	
				Colour	White	
				Brand / Supplier	Lapittec	
WF-P-01	Paint Finish	Unless otherwise specified	n/a	Description	Internal walls and ceilings – paint finished and plastered to F4 finish.	
				Colour	TBC	
				Brand / Supplier	Resene	
WF-C-01	Kitchen	Kitchens (all)		Description	Arclinea kitchen from Italy	
				Colour	Fume Oak lacquer (or White option)	
				Brand / Supplier	Arclinea	
FF-C-01	Carpet Flooring	Bedrooms	Option A		Description	Natural Cord 48oz 100% Undyed Wool Loop pile carpet Series: Southern Crossings
					Colour	Palomino
					Brand / Supplier	Artisan Flooring
			Option B		Description	100% solution dyed nylon carpet Range: Southern Lakes - Lake Pukaki
					Colour	Mount Cook
					Brand / Supplier	Artisan Flooring
FF-T-01	Timber Floor	Unless otherwise specified		Description	European Oak London 182x2200x14mm Top layer: approx. 3.2 mm	
				Colour	European Oak London	
				Brand / Supplier	Esta Parket / Vienna Woods	
				Product Code		
FF-TI-01	Tile Floor	Bathrooms (all)		Description	Calacatta Xtra 600x1200mm	
				Colour	n/a	
				Brand / Supplier	Tile Warehouse	
				Product Code	n/a	
WF-TI-01	Wall Tile	Bathrooms (all)		Description	Calacatta Xtra 600x1200mm	
				Colour	n/a	
				Brand / Supplier	Tile Warehouse	
				Product Code	n/a	
WF-T-01	Feature Wall Panelling	Kitchen / Living		Description	Tactile: Engineered plank Size: 240mm W x 15mm H x 2.2m L - 4mm Oak wear layer	
				Colour	Ebony	
				Brand / Supplier	Forte Flooring	
				Product Code	TRSOEB	

NB: All specifications above are subject to availability, and are subject to change for items of similar look, colour and quality

Building Services:

- Fibre Optic internet connection.
- Data cabling to TV locations in the living room and media room.
- Selected telecommunication jacks.
- Ducted air conditioning and heating - heated electric wall panels to rear rooms.
- Fire sprinklers and detectors
- Access card or keypad security
- 180L hot water cylinder, topped up by PV units on the room
- PV panels on roof power the daytime communal areas, then charge a battery for night power, then charge each apartment's hot water cylinder equally, and then export surplus to the grid to offset the body corporate energy account.

SCHEDULE 4

LAND

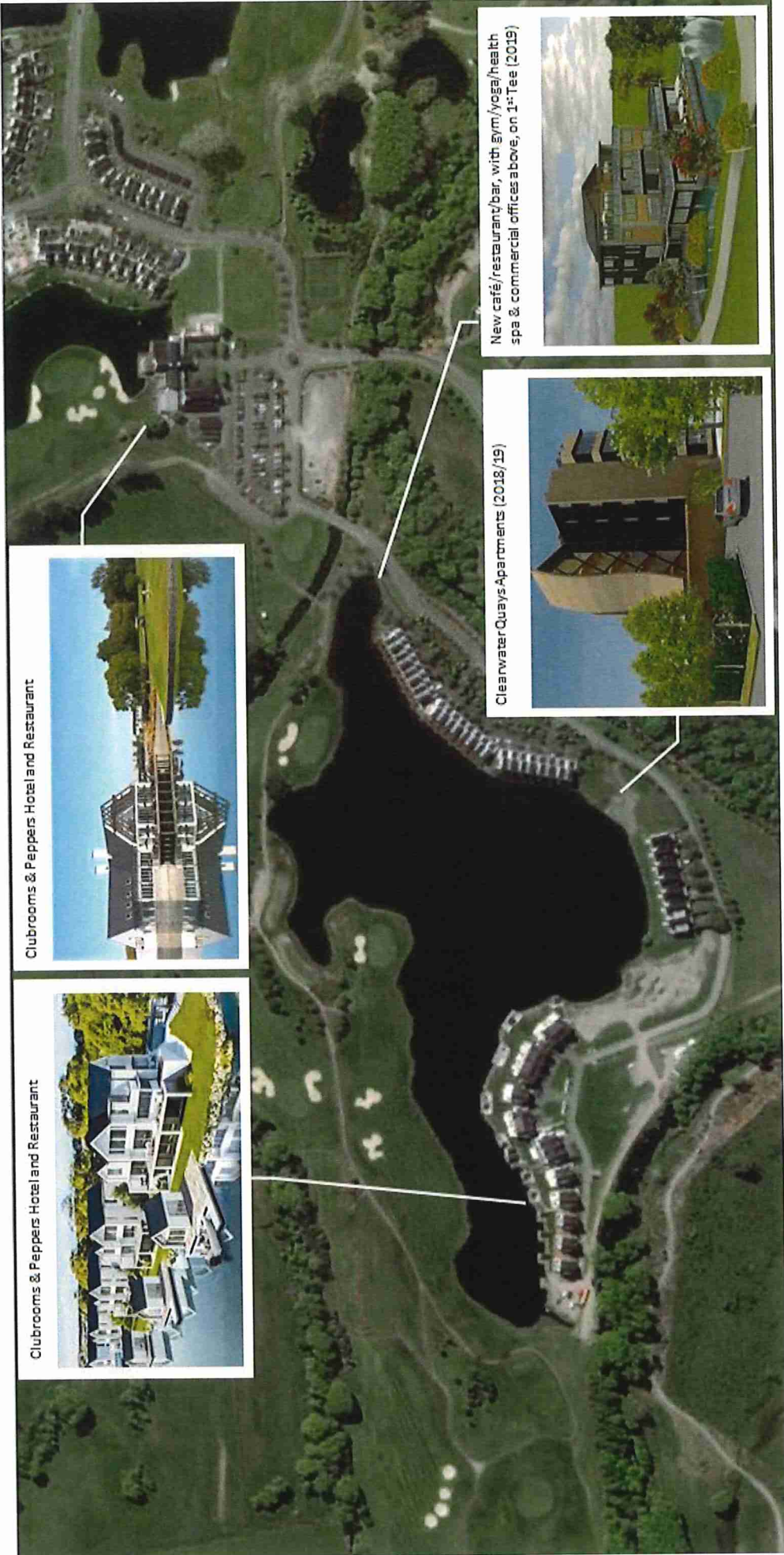
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	569303	1074194

SCHEDULE 5
MASTER DEVELOPMENT PLAN

CLEARWATER QUAYS MASTER-PLAN



THE QUAYS
AT CLEARWATER



Clubrooms & Peppers Hotel and Restaurant



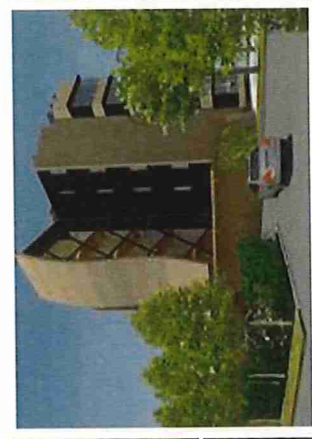
Clubrooms & Peppers Hotel and Restaurant



New café, restaurant/bar, with gym/yoga/health spa & commercial offices above, on 1st Tee (2019)



Clearwater Quays Apartments (2018/19)



SCHEDULE 6

DEED OF LEASE

LEASE INSTRUMENT
Section 91 Land Transfer Act 2017



Record of Title (unique identifier)	All/part	Area/Description of part
	All	Principal Unit Deposited Plan 569303 [and Accessory Unit Deposited Plan 569303]

Lessor

Red Stag Investments Limited

Lessee

THC Group Limited

Estate or Interest

Insert "fee simple", "leasehold in lease number ", etc.

Stratum in Freehold

Lease Memorandum Number (if applicable)

N/A

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

~~The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected record of title for the Term and at the Rental and on the Terms of Lease set out in the above Lease Memorandum or in the Annexure schedule(s) (if any)~~
See Annexure Schedule

2015/5049
APPROVED
Registrar-General of Land

Insert instrument type

[Empty box for instrument type]

Continue in additional Annexure Schedule, if required

Memorandum of Lease
(Apartment)

The Lessor: Red Stag Investments Limited ("Landlord")
The Lessee: THC Group Limited ("Tenant")

Schedule A

The Apartment:

An estate in stratum in freehold and all that parcel of land being Principal Unit Deposited Plan 569303 [and Accessory Unit Deposited Plan 569303] contained in Record of Title , Canterbury Registry, subject to such encumbrances, restrictions, covenants, liens and interest as are described on the Record of Title.

Term: As set out in the First Schedule
Term Commences on: As set out in the First Schedule
Rent: As set out in clause 1 of Schedule B

Operative Clause

1. The Lessor:
 - a. Is the registered proprietor of the Apartment described in Schedule A;
 - b. Leases the apartment to the Lessee for the Term at the Rent (all described in Schedule A) subject to the covenants, conditions, and restrictions set out in this Lease, including those contained in Schedule B, the First Schedule, the Second Schedule, the Third Schedule, the Fourth Schedule and the Fifth Schedule.
2. The Lessee accepts this Lease to be held by the Lessee as the lessee subject to the conditions, restrictions and covenants as set out in this Lease, including those contained in Schedule B, the First Schedule, the Second Schedule, the Third Schedule, the Fourth Schedule and the Fifth Schedule.

If this annexure schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

SCHEDULE B

1. RENT

1.1 Subject to the terms of this Lease, the Rent will be calculated and the Tenant must pay the Rent to the Landlord in the manner set out in the Second Schedule in respect of the period from the Commencement Date to the end or earlier termination of the Term, whichever is the earlier.

1.2 The Rent will be calculated monthly in arrears.

2. ANCILLARY SERVICES

2.1 Subject to the terms of this Lease, the Ancillary Services Rent will be calculated and the Tenant must pay the Ancillary Services Rent to the Landlord in the manner set out in the Third Schedule in respect of the period from the Commencement Date to the end or earlier termination of the Term, whichever is the earlier.

2.2 The Ancillary Services Rent payable to the Landlord in respect of any other Ancillary Services agreed pursuant to clause 44.1(b)(vi) will be agreed between the Landlord and the Tenant on a case by case basis and recorded as a variation of this Lease.

3. IMPREST ACCOUNT

3.1 An Imprest Account system will be operated by the Tenant pursuant to which:

a. all payments due by the Tenant to the Landlord under this Lease shall be deposited to the Imprest Account; and

b. subject to the provisions of clause 4.4 below, the Rent, Ancillary Services Rent and any surplus balance in the Imprest Account will be paid by the Tenant to the Landlord:

i. no later than on the twentieth (20th) day of the month following the end of the preceding month; or

ii. otherwise by agreement,

by direct payment to the Landlord (or as the Landlord directs) without deduction other than as set out in this Lease.

4. OUTGOINGS

4.1 The Landlord will be responsible for the payment of all Apartment Outgoings which are specified in the Fourth Schedule.

4.2 The Tenant will be responsible for the payment of all Hotel Outgoings which are specified in the Fifth Schedule.

4.3 The Outgoings shall be paid promptly as and when they fall due or are otherwise due for payment.

4.4 Notwithstanding the provisions of this clause 4:

- a. If, in the Tenant's reasonable opinion, the Landlord's failure to pay any of the Apartment Outgoings by the due date for payment is negatively affecting the Tenant's ability to carry on the Business Use, the Tenant may from time to time elect to manage the collection and payment of the Apartment Outgoings for the Apartment.
 - i. The Tenant will be entitled to deduct from the Imprest Account such amounts required to pay the Apartment Outgoings from time to time together with such fees and charges as are reasonable to recover its costs and expenses of and incidental to making such payments; and
 - ii. The Tenant will be entitled to levy from the Landlord any amounts by which the Apartment Outgoings from time to time exceed the Rent and the Landlord will pay such amounts to the Imprest Account within seven (7) days; and
 - iii. The Tenant will not be responsible for the payment of Apartment Outgoings other than those for which a deduction from the Imprest Account has been made or payment received from the Landlord in accordance with this clause; and
 - iv. The Tenant may elect at any time and from time to time to cease or recommence collection and payment of the Apartment Outgoings.
- b. If for any reason the Landlord fails to pay any of the Apartment Outgoings by the due date for payment during any period when the collection and payment of Apartment Outgoings is not otherwise managed by the Tenant, the Landlord irrevocably authorises the Tenant (in its discretion) to pay any Apartment Outgoings in the Fourth Schedule which have not been paid from the Imprest Account that would otherwise be due to the Landlord without being required to account to the Landlord in respect of those payments. Payments shall then be made by the Tenant to the person entitled or to whom payments should be made. In any such case, the Tenant shall also be entitled to deduct from the Imprest Account such fees or charges as shall be reasonable to recover its costs and expenses of and incidental to making such payments.

5. **GOODS AND SERVICES TAX**

- 5.1 The Rent and Ancillary Services Rent paid to the Landlord shall be plus Goods and Services Tax.
- 5.2 The Landlord shall pay to the Tenant, or as the Tenant shall direct, the Goods and Services Tax in respect of any payments or amounts due to the Tenant, such Goods and Services Tax to be paid in addition to the payment or amount due to the Tenant from time to time.
- 5.3 If the Landlord shall make default in making any payment to the Tenant and the Tenant becomes liable to pay additional Goods and Services Tax or any interest or penalties, then the Landlord shall upon demand pay to the Tenant all additional Goods and Services tax, interest or penalties.

6. **INTEREST OR UNPAID MONEY**

Subject to the provisions of this Lease, if the Tenant defaults in payment of the Rent and/or Ancillary Services Rent for twenty one (21) days after the due date for payment then the Tenant shall on demand pay interest at the Default Interest rate specified in the First Schedule on the moneys unpaid from the due date for payment down to the date of payment.

7. **COSTS**

Each party shall meet its own costs of and incidental to the preparation of this Lease, and any variation of this Lease.

8. **FURNITURE, FITTINGS AND OTHER PROPERTY**

8.1 To ensure that the Tenant can operate its business of managing and leasing the Apartment for the Business Use and that the Apartment is able to be marketed and leased by the Tenant as high quality serviced accommodation, the Landlord (at its cost in all matters) shall:

- a. ensure that at the commencement of this Lease the Apartment is fully furnished with furniture, furnishings and other chattels and property and that the Apartment has been completed and finished in the manner and to the standard that would normally be observed in a five (5) star or high quality serviced accommodation; and
- b. at any time other than during periods of Additional Landlord Occupancy, keep and maintain the furniture, furnishings, chattels and fittings of or in the Apartment to such a standard and with all the necessary furniture, furnishings and chattels as would normally be observed in a five (5) star or high quality serviced accommodation and replace such furniture, furnishings, chattels and fittings as may be required from time to time to maintain the required standard.

8.2 If the Tenant determines that the furniture, furnishings, chattels and fittings of or in the Apartment are not of a satisfactory standard in accordance with clause 8.1, the Tenant may decline to offer the Apartment for the Business Use until such time as the Landlord has complied with clause 8.1.

8.3 Without limiting the Landlord's obligations under this Lease, the Tenant may in its sole discretion and without notice to the Landlord apply the Furniture, Fitout and Equipment Levy described in clause 44.1(f) towards the cost of:

- a. meeting, on behalf of the Landlord, the obligations of the Landlord under this clause 8 and under clause 10; and/or
- b. meeting, on behalf of the landlords of other Apartments in the Hotel complex, the similar obligations of those landlords under their respective leases; and/or
- c. any other purpose consented to by the Landlord.

9. **RUBBISH REMOVAL**

The Tenant shall regularly cause all rubbish and garbage to be removed from the Apartment and will keep any rubbish bins or containers in a tidy condition other than at times when the Landlord is in occupation of the Apartment in accordance with clause 33.

10. **MAINTENANCE AND CARE OF APARTMENT**

10.1 The Landlord shall in a proper and workmanlike manner and at its cost in all matters:

a. **Maintain the Apartment**

During any period during which the Landlord has not exercised Additional Landlord Occupancy rights, and to the extent any Furniture, Fittings and Equipment Levy account collected pursuant to clause 1(i) of the Second Schedule is insufficient to cover such expenses, the Landlord shall keep and maintain the interior of the Apartment, including the landlord's fixtures, fittings and chattels in the same good order repair and condition as they were in at the commencement of the Lease.

b. **Repair minor breakages**

Repair all glass breakages and breakage or damage to all doors, windows, light fittings and power points of the Apartment and shall keep that portion of the electrical system of the Apartment from the switchboard of the Apartment to all power outlets in good operating condition.

c. **Painting**

Paint and decorate those parts of the interior of the Apartment which have previously been painted and decorated when the same reasonably require repainting and redecoration, in consultation with the Tenant as to what will make the Apartment more tenable.

d. **Floor Coverings**

Keep all floor coverings in the Apartment clean and replace all worn or damaged floor coverings with floor coverings of a similar quality, in consultation with the Tenant as to what will make the Apartment more tenable.

e. **Make good defects**

Make good any damage to the Apartment caused by improper careless or abnormal use.

10.2 The Landlord shall (at its cost in all matters) keep and maintain the exterior and roof of the Apartment, all building services (if any) and all yards, grounds, paths, driveways, gardens and sealed or paved areas in good order and repair but the Landlord shall not be liable for any:

- a. want of repair or defect in respect of building services (if any) so long as the Landlord is maintaining a service maintenance contract covering the work to be done;

- b. repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the Apartment; or
- c. loss suffered by the Tenant arising from any want of repair or defect unless the Landlord has received notice in writing thereof from the Tenant and has not within a reasonable time thereafter have taken appropriate steps to remedy the same.

10.3 The Landlord shall keep and maintain service maintenance contracts for lifts (if any), and, at the Landlord's option, any other building services.

10.4 The Tenant shall make reasonable efforts to ensure that all toilets, sinks and drains shall be used for their designed purpose only and no substance or matter shall be deposited in them which could damage or block them.

10.5 **Notification of Defects**

The Tenant shall give to the Landlord prompt notice of any accident to or defect in the Apartment of which the Tenant may be aware, and in particular in relation to any pipes or fittings used in connection with the water, electrical, gas or draining services.

10.6 **Repairs**

Other than during periods of Additional Landlord Occupancy, the Tenant shall be entitled to make repairs to the Apartment and on-charge such repairs to the Landlord **PROVIDED THAT** for any amount over five hundred dollars (\$500.00) the Tenant shall first obtain the Landlord's consent in writing before authorising such repairs. The aforementioned threshold amount of five hundred dollars (\$500.00) shall be adjusted by the annual adjustment in the Consumers Price Index published by Statistics New Zealand after the end of the December quarter of each year during the Term of this Lease.

11. **LANDLORD'S RIGHTS OF INSPECTION**

The Landlord and the Landlord's employees, contractors and invitees may at all reasonable times (but subject to any occupation rights of persons to whom the Apartment may be let at the time and after obtaining the consent of the Tenant) enter upon the Apartment to view their condition.

12. **ACCESS FOR REPAIRS**

12.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times to enter the Apartment to carry out repairs to the Apartment or adjacent premises and to install, inspect, repair, renew or replace any services where the same are not the responsibility of the Tenant. All such repairs, inspections and work are to be carried out;

- a. with the least possible inconvenience to the Tenant; and
- b. subject to any occupation rights of persons to whom the Apartment may be let at the time.

13. FURNITURE, FURNISHINGS AND CHATELS

13.1 Other than during periods of Additional Landlord Occupancy, in consideration of the sum of one dollar (\$1.00) paid by the Tenant to the Landlord, the Landlord acknowledges that during the Term the Tenant shall have the exclusive right;

- a. to use all the fittings, fixtures, furniture, furnishings, chattels and other property of the Landlord in or on the Apartment from time to time (other than personal items of the Landlord that the Landlord may bring onto the Apartment if it is occupying the Apartment on a temporary basis); and
- b. to allow guests and others occupying the Apartment as part of the Tenant's business or from time to time to have the use and enjoyment of such property during such time or times as they occupy the Apartment.

13.2 The Tenant acknowledges that at the Commencement Date all chattels and furniture in the Apartment are the property of the Landlord.

14. LANDLORD'S WARRANTIES AS TO TITLE

14.1 The Landlord warrants that it has the legal and beneficial ownership of the Apartment and all the chattels, furniture, fixtures and furnishings located therein from time to time and that the interest of the Tenant under this Lease shall not be subject or subordinate to:

- a. any ground or underlying leases, mortgages, deeds of trust, security agreement or other encumbrances affecting the Apartment or the furniture, furnishings or chattels therein; or
- b. any matters affecting title to the Apartment which may affect the operation of the Tenant's business.

USE OF APARTMENT

15. BUSINESS USE

15.1 The Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the Apartment to be used for any use other than the Business Use specified in the First Schedule. The Landlord's consent shall not be unreasonably or arbitrarily withheld in respect of any proposed use which:

- a. is reasonably suitable for the Apartment; and
- b. conforms with all town planning ordinances, provisions and consents.

If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the Apartment, the Landlord may, as a condition of granting consent, require the Tenant to pay the increased or extra premium.

15.2 If any change in use requires compliance with Sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with Section 46 of the Act and to pay all compliance costs.

15.3 The Tenant shall at its own expense maintain an office at a central location convenient to the Apartment and shall maintain a central telephone system linking each Apartment and the office. The Tenant shall at its own expense provide security.

16. **NEGLECT OF OTHERS**

16.1 The Landlord shall not be responsible to the Tenant for any act of default or neglect of any other tenant, owner or occupier of the Hotel.

16.2 The Tenant shall be responsible to the Landlord for any act of default or neglect or any damage caused to the Apartment or any property of the Landlord or to the Hotel by any person being a guest or invitee of the Tenant.

17. **SIGNAGE**

Other than during periods of Additional Landlord Occupancy, the Landlord authorises the Tenant to the fullest extent possible to affix, paint or exhibit any name, sign, name-plate, signboard or advertisement of any description relating to or describing the Tenant's business on or to the exterior of the Apartment or in or outside the Apartment.

18. **ADDITIONS AND ALTERATIONS**

The Tenant shall neither make nor allow to be made any alterations or additions to any part of the Apartment without the prior written consent of the Landlord. The Tenant, when undertaking any "building work" to the Apartment (as that term is defined in the Building Act 2004 for which the Tenant may be responsible), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act. Notwithstanding the foregoing or any other provision in this Lease, the Tenant shall neither make nor allow any alterations or additions to the Apartment at any time when the Landlord is in occupation of the Apartment in accordance with clause 33.

19. **COMPLIANCE WITH STATUTES AND REGULATIONS**

19.1 Subject to the provisions of this Lease, the Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the Business Use of the Apartment by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any Local or Regional Authority in respect of the Apartment or their use by the Tenant or other occupant **PROVIDED THAT:**

a. The Tenant shall not be required to make any structural repairs or alterations other than those required by reason of the particular nature of the business carried on by the Tenant or other occupant of the Apartment or the number or sex of persons employed on the Apartment.

b. The Tenant shall not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as an occupier of the Apartment.

19.2 If the Landlord is obliged by any such legislation to expend moneys on any improvement, addition or alteration to the Apartment then the Landlord shall be entitled to charge in addition to the rent an annual sum equal to the Improvements Rent Percentage as specified in the First Schedule of the amount so expended by the Landlord and the payments of rent

shall increase accordingly from the first day of the month in which such improvement, addition or alteration is completed. If the Landlord would be obliged to expend an unreasonable amount, then the Landlord may determine this Lease and any dispute as to whether or not the amount is unreasonable shall be determined by arbitration.

19.3 Except where they are inconsistent with this Lease, the Tenant shall comply with the Landlord's obligations under the Constitution (excluding any obligation of the Landlord to pay money under the Constitution) in so far as those obligations are reasonably able to be performed by the Tenant and shall require that all guests of the Apartment comply with such obligations. The parties acknowledge that this clause is inserted for the benefit of the Owners Society.

19.4 The Tenant acknowledges the Encumbrance that the Landlord has entered (as such term is defined in clause 4.2(a) of the Constitution) as noted on the Landlord's title to the Apartment.

20. **NO NOXIOUS USE**

The Tenant shall not:

- a. bring upon or store within the Apartment, nor allow to be brought upon or stored within the Apartment any machinery, goods or thing of an offensive, noxious, illegal or dangerous nature, or of such weight, size or shape as is likely to cause damage to the Apartment or any surfaced area;
- b. contaminate the Apartment and shall undertake all works necessary to remove any contamination of the Apartment other than contamination not caused by the Tenant or which took place prior to the commencement of the Lease. Contamination means any change to the physical, chemical or biological condition of the Apartment by a "contaminant" as that word is defined in the Resource Management Act 1991;
- c. use the Apartment or allow them to be used for any noxious illegal or offensive trade or business; or
- d. allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, others staying at the Hotel, or any other person, and generally the Tenant shall conduct the Tenant's business upon the Apartment in a clean, quiet and orderly manner free from damage, nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant of the Business Use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

21. **TENANT NOT TO VOID INSURANCES**

21.1 The Tenant shall not carry on or allow upon the Apartment any trade or occupation or allow to be done any act or thing which:

- a. shall make void or voidable any policy of insurance on the Apartment or Hotel; or
- b. may render any increased or extra premium payable for any policy of insurance except where, in circumstances in which any increased premium is payable, the Tenant shall have first obtained the consent of the insurer of the Apartment and the

Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable, but that the carrying on by the Tenant of the Business Use or of any use to which the Landlord has consented shall be deemed not be a breach of this clause.

- 21.2 In any case where, in breach of this clause, the Tenant has rendered any insurance less effective or void and the Landlord has suffered loss or damage as a result, the Tenant shall compensate the Landlord in full for such loss or damage.

DAMAGE TO OR DESTRUCTION OF APARTMENT

22. TOTAL DESTRUCTION

- 22.1 If the Apartment shall be destroyed or so damaged so as to render it impossible for the Tenant to conduct the Business Use from the Apartment, then the Term shall at once be immediately suspended until such time as the Apartment is fit for the Business Use of the Tenant.

- 22.2 Any suspension pursuant to this clause shall be without prejudice to the rights of either party against the other.

23. PARTIAL DESTRUCTION

- 23.1 If the Apartment shall be damaged but not so as to render the Apartment untenable; and

- a. the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
- b. all the necessary permits and consents are obtainable,

then the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the Apartment but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.

- 23.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the Apartment and complies with the provisions of this Lease.

- 23.3 Until the completion of the repairs or reinstatement, the Rent shall cease to be payable according to the nature and extent of the damage.

- 23.4 If:

- a. any necessary permit or consent is not obtainable; or
- b. the insurance moneys received by the Landlord are inadequate for the repair or reinstatement,

then the Term will immediately terminate, but without prejudice to the rights of either party against the other.

DEFAULT

24. CANCELLATION

24.1 Subject to the provisions of this Lease and subject to section 245(2) of the Property Law Act 2007, the Landlord may cancel this lease by re-entering the Apartment at the time or at any time thereafter:

- a. subject to the provisions of this Lease, if the Rent or any portion of the Rent that would have been due to the Landlord in accordance with the provisions of this Lease shall be in arrears ten (10) working days (or the minimum period as otherwise specified in the Property Law Act 2007 from time to time) after the date payment was due;
- b. subject to the provisions of this Lease, in case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this Lease after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007;
- c. if the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors;
- d. in the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant;
- e. if the Tenant shall suffer distress or execution to issue against the Tenant's property goods or effects under any judgement against the Tenant in any Court for a sum in excess of twenty thousand dollars (\$20,000);

and the Term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

25. LOSS ON CANCELLATION

Upon cancellation, the Tenant shall have twenty one (21) days to remove its chattels, and thereafter the Landlord may remove from the Apartment any chattels in the apparent possession of the Tenant and place them outside the Apartment and the Landlord shall not be answerable for any loss resulting from the exercise of the power of re-entry.

26. ESSENTIALITY OF PAYMENTS

26.1 Subject to the provisions of this Lease, failure to pay the Rent or other moneys payable hereunder on the due date shall be a breach going to the essence of the Tenant's obligations under the Lease.

26.2 The acceptance by the Landlord of arrears of the Rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay the Rent and other moneys.

27. REPUDIATION

The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the Lease or the Tenant's obligations under the Lease. Such entitlement shall subsist notwithstanding any determination of the Lease and shall be in addition to any other right or remedy which the Landlord may have.

28. REMOVAL OF TENANT'S FIXTURES

The Tenant not being in breach may at any time before, and will if required by the Landlord at the end or earlier termination of the Term, remove all the Tenant's fixtures and fittings and make good at the Tenant's own expense all resulting damage. If not removed within twenty eight (28) days of the Landlord's request, ownership of the Tenant's fixtures and fittings shall pass to the Landlord.

29. RENEWAL OF TERM

29.1 If both parties have not been in breach of this Lease and have each given to the other party written notice to renew the Lease at least three (3) calendar months before the end of the Term then the Landlord will at the cost of the Tenant renew this Lease for a further term of five (5) years from the Renewal Dates as follows:

- a. The Rent shall continue to be calculated, determined and paid in accordance with the Second and Third Schedules and subject to the provisions of this Lease.
- b. The renewed Lease shall otherwise be upon and subject to the covenants and agreements herein expressed and implied except that there shall be two further periods of renewal for a term of five (5) years (the Final Expiry Date of this Lease if all rights of renewal are exercised shall be 13 December 2027).

29.2 The second renewed Lease shall be upon and subject to the covenants and agreements herein expressed and implied except that there shall be one further period of renewal for a term of five (5) years (the Final Expiry Date of this Lease if all rights of renewal are exercised shall be 13 December 2027).

29.3 The third renewed Lease shall be upon and subject to the covenants and agreements herein expressed and implied except that there shall be no further right of renewal.

30. ASSIGNMENT, SUB-LETTING OR TRANSFER BY THE LANDLORD

30.1 Subject to this Lease, the Tenant shall not assign sub-let or otherwise part with the possession of the Apartment or any part thereof without first obtaining the written consent of the Landlord which the Landlord shall give if the following conditions are fulfilled:

- a. The Tenant proves to the satisfaction of the Landlord that the proposed assignee or sub-tenant is (or in the case of a company the shareholders of the proposed assignee or sub-tenant are) respectable, responsible and has the financial resources to meet the Tenant's commitments under this Lease.
- b. All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.

- c. In the case of an assignment a Deed of Covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord.
 - d. The Tenant pays the Landlord's proper costs and disbursements in respect of the approval or preparation and stamping of any Deed of Covenant and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made on behalf of the Landlord concerning any proposed assignee sub-tenant.
- 30.2 Where the Landlord consents to a sub-letting the consent shall extend only to the sub-letting and notwithstanding anything contained or implied in the sub-lease, the consent shall not permit any sub-tenant to deal with the sub-lease in any way in which the Tenant is restrained from dealing without consent.
- 30.3 Where the Tenant is an unlisted company, then any change in the legal or beneficial ownership of any of its shares or issue of new capital whereby in either case there is a change in the effective management or control of the company is deemed to be an assignment of this Lease **PROVIDED THAT** these provisions shall not apply to any change in the legal or beneficial ownership of any of the shares or issues of new capital to or which involves persons, entities or companies who at the Commencement Date were shareholders or directors of Clearwater Quays Apartments Limited or any related or associated company, person or entity or which involves the public float of any of those companies, entities or persons.
- 30.4 Upon any transfer of the Apartment by Red Stag Investments Limited to Clearwater Quays Apartments Limited, Red Stag Investments Limited shall be released and discharged absolutely from any further liability under this Lease but without prejudice to the rights and remedies of either party arising in respect of any matter or thing occurring prior to the date of transfer.

GENERAL

31. HOLDING OVER

If the Landlord permits the Tenant to remain in occupation of the Apartment after the expiration or sooner determination of the Term, such occupation shall be a monthly tenancy only terminable by at least twenty (20) working days written notice at the Rent then payable and otherwise on the same covenants and agreements (so far as applicable to a monthly tenancy) as herein expressed or implied.

32. LANDLORD WARRANTIES

- 32.1 The Landlord warrants and represents that it has notified the insurer of the Apartment of this Lease.
- 32.2 Notwithstanding anything express or implied in this Lease, the Landlord warrants and represents that the Tenant is not required to obtain any consent or approval from any person or entity with respect to this Lease or for this Lease to be valid and/or binding on the parties or any third party.

33. QUIET ENJOYMENT AND LANDLORD OCCUPANCY

Quiet Enjoyment

- 33.1 Subject to this clause and the Tenant paying the Rent and performing and observing all the covenants and agreements expressed and implied in this Lease, the Tenant shall quietly hold and enjoy the Apartment throughout the Term without any interruption by the Landlord or any person claiming under the Landlord.

Rotation

- 33.2 The Tenant shall use all reasonable endeavours to ensure that guests of the Hotel are allocated to respective Apartments on a fair and equitable basis and shall, to the fullest extent reasonably practical, adopt systems which facilitate compliance with its obligations under this clause.

Landlord Occupancy

- 33.3 Where the Landlord is:

- a. a person(s), then the Landlord and members of his/her immediate family (children spouses and grandchildren); or alternatively
- b. a company, then the Landlord's shareholders and members of the shareholders immediate family (children spouses and grandchildren); or alternatively
- c. a trust, then beneficiaries of the Trust and their immediate family (children, spouses and grandchildren);

then, subject to this clause 33, the Landlord shall be entitled, subject to the terms set out in this Lease, from time to time to occupy ("Landlord Occupancy") the Apartment:

- d. for the following periods ("Seasonal Landlord Occupancy"):
 - i. 1 uninterrupted week during the High Season; and
 - ii. for 2 uninterrupted weeks during the Shoulder Season; and
 - iii. for 1 uninterrupted week during the Low Season; and
 - e. at such other times as the Landlord requires ("Additional Landlord Occupancy").
- 33.4 There shall be no annual roll-over or accrual of Seasonal Landlord Occupancy from year to year.
- 33.5 The Landlord does not have any right or privilege to participate in or to administer business policies in respect of the conduct of the Business Use by the Tenant provided that the Tenant conducts the Business Use to a minimum standard of a five star high quality tourist resort.

33.6 For the purposes of this clause:

- a. "High Season" means those dates as are determined by the Tenant from time to time;
- b. "Shoulder Season" means those dates as are determined by the Tenant from time to time; and
- c. "Low Season" means those dates as are determined by the Tenant from time to time.

together referred to as "Season" or "Seasons".

Seasonal Landlord Occupancy

33.7 Not later than three (3) months before the start of each Season the Landlord will give the Tenant written notice of the Landlord's preferred dates for Seasonal Landlord Occupancy during the upcoming Season.

33.8 Subject to requirements for hotel use, the Tenant will use all reasonable endeavours to grant the Seasonal Landlord Occupancy of the Apartment on the dates specified by the Landlord in the Landlord's notice. If the dates specified by the Landlord are not available or the Landlord fails to give notice in accordance with clause 33.7, the Tenant may set the Seasonal Landlord Occupancy on such dates as the Tenant thinks fit provided that the Tenant will ensure that the Apartment is available for Seasonal Landlord Occupancy for at least the periods specified in clause 33.3.

33.9 The Tenant will give the Landlord written notice of the dates for Seasonal Landlord Occupancy for each Season at least two (2) months before the start of that Season.

33.10 During Seasonal Landlord Occupancy the Tenant will provide to the Landlord and the Landlord will pay the costs of the Hotel Services and Ancillary Services.

Additional Landlord Occupancy

33.11 If the Landlord wishes to have the benefit of Additional Landlord Occupancy at the Commencement Date, the Landlord must give the Tenant notice in writing prior to the Commencement Date. On each subsequent occasion that the Landlord wishes to have the benefit of Additional Landlord Occupancy, the Landlord must give the Tenant three (3) months' notice in writing.

33.12 In the event that the Landlord wishes to end the Additional Landlord Occupancy:

- a. the Landlord will give the Tenant one (1) months written notice of the date that the Landlord wishes to end the Additional Landlord Occupancy; and
- b. the Tenant will resume allocating guests of the Hotel to the Apartment in accordance with clause 33.2 from the date specified in the Landlord's notice.

33.13 Subject to clauses 33.16 and 33.17, during Additional Landlord Occupancy the Landlord may elect whether the Tenant provides at the Landlord's cost the Hotel Services and Ancillary Services.

Hotel Services and Ancillary Services during Landlord Occupancy

- 33.14 Subject to clause 33.17, at the Landlord's election in the case of Additional Landlord Occupancy and in all instances of Seasonal Landlord Occupancy, the Tenant will provide Hotel Services and/or Ancillary Services to the Landlord. Subject to clause 33.16, where Hotel Services/and or Ancillary Services are provided the Tenant shall advise the Landlord of the rates for such services at the time they are provided and such costs shall be deducted from the Imprest Account.
- 33.15 Where such payments are in excess of the Imprest Account, the Landlord shall pay such deficit to the Imprest Account at monthly intervals in arrears.
- 33.16 Notwithstanding anything else in this Lease, during the first year of the Term the Landlord will not be required to pay more than Fifty Dollars (\$50.00) per bedroom per day plus GST for the provision of housekeeping and laundry services.
- 33.17 During all periods of Additional Landlord Occupancy, the Tenant shall provide any three of the following Hotel Services:
- a. Cleaning.
 - b. Window washing.
 - c. Maintenance.
 - d. Gardening.
 - e. Food and hospitality services.
 - f. Telecommunication services. (Compulsory to use the building's fibre optic service, \$129/ month)

Assignment of Landlord Occupancy

- 33.18 Subject to the Constitution of the Clearwater Resort Residents Society Incorporated, the Landlord shall be entitled to assign the right to Landlord Occupancy.

Short Notice of Landlord Occupancy

- 33.19 Notwithstanding the provisions of this Lease, in respect of both Seasonal Landlord Occupancy and Additional Landlord Occupancy (other than at the Commencement Date of this Lease):
- a. The Landlord (or those exercising the right to Landlord Occupancy) shall be entitled to occupy the Apartment with less than three (3) months' written notice where the Apartment is available and has not otherwise been pre-booked or otherwise allocated at the time the request is made.
 - b. If the Apartment is not available (other than as a result of an assignment of the Landlord Occupancy), the Tenant shall endeavour to allocate another unit in the Hotel to the Landlord or those exercising the right to Landlord Occupancy ("the Substitution Unit").

- c. From the Commencement Date to the end or earlier termination of the Term, whichever is the earlier, if a Substitution Unit is allocated, the Rent derived from the letting of the Landlord's Apartment (calculated in accordance with the Second and Third Schedule) shall be assigned without deduction to the landlord of the Substitution Unit.
- d. Occupation of a Substitution Unit is deemed to be provision to the Landlord of the equivalent period of Landlord Occupancy in accordance with clause 33.3.

33.20 No compensation or other amounts shall be payable to the Landlord by the Tenant if the Landlord has given less than three (3) months' notice of an intention to occupy and the Apartment is not available or has been pre-booked or otherwise allocated. In such circumstances, the provisions of this clause shall otherwise continue to apply to such occupancy.

Split use of Apartment

33.21 The Landlord may in each written request for either Seasonal Landlord Occupancy (clause 33.7) or Additional Landlord Occupancy (clause 33.11) require that only a specified room or rooms of the Apartment be made available for Seasonal Landlord Occupancy or for Additional Landlord Occupancy or both, so that the balance of the Apartment is free from Landlord Occupancy and continues to have the benefit of an allocation of guests in accordance with clause 33.2 ("Split Use").

33.22 In the event that the Landlord does so require Split Use of the Apartment, then the provisions of this Lease will apply separately to each part of the Apartment that is subject to Split Use.

33.23 For the avoidance of doubt, and without limitation, in the event that the Landlord wishes to end Split Use of the Apartment, then the provisions of clause 33.12 will apply to the part of the Apartment that has been subject to Landlord Occupancy.

34. WAIVER

No waiver or failure to act by the Landlord in respect of any breach by the Tenant shall operate as a waiver of another breach.

35. NOTICE

35.1 Subject to the provisions of the Property Law Act 2007 any notice to be given to the Landlord or the Tenant hereunder shall be deemed sufficiently served if:

- a. sent by registered post to the addressee's last know address in New Zealand; or
- b. forwarded or delivered to that party at the last address they advised the other party pursuant to clause 35.2.

Any notice so posted or placed shall be deemed to have been served on the day following the posting or placing thereof or on the date of personal delivery. Anything served or given by the Landlord or the Tenant shall be valid if served or given under the hand of the Managing Director, General Manager, Secretary or a Director or other authorised representative of the Landlord or the Tenant (as the case may be).

35.2 Each party shall advise the other in writing of an address for service and shall (if necessary) forthwith advise the other party of any changes to that address. All notices, correspondence and communications may be sent or delivered to the last notified address.

36. FORCE MAJEURE

36.1. If any circumstances constituting force majeure as hereunder defined has a substantial adverse effect upon the operation of the Tenant's business and such circumstances continue for a period of ninety (90) days, then the Tenant shall have the right, by notice in writing to the Landlord, to terminate this Lease. The Tenant shall be excused from and shall not be liable for, any delay or failure in the performance of its obligations under this Lease due to any circumstances constituting force majeure as hereunder defined. For the purposes of this Lease, force majeure shall mean any act occasioned by a cause beyond the reasonable control of the Tenant including, but not limited to, acts of God, acts of war, civil disturbances, sabotage, arson, adverse Government decision and the like.

36.2 The Tenant shall promptly notify the Landlord in writing of the occurrence of any force majeure conditions and of cessation of such conditions.

37. PROMOTIONAL USE

37.1 The Tenant shall be entitled to provide the employees and representatives of the Hotel Operator who are visiting the Hotel exclusively in connection with the management, marketing or operation thereof, and tour operators (and their staff) and travel agents (and their staff) who are visiting the Hotel in connection with promotional visits organised by the Tenant, with free accommodation at the Apartment and use of amenities of the Hotel without any charge whatsoever to the Tenant or the said employees, representatives, agents or their staff for a maximum of six (6) nights in any calendar year, and at no time during Additional Landlord Occupancy.

37.2 The Tenant shall not use the Apartment in this manner free of charge in circumstances where the Apartment could have been leased to a paying guest on that particular day.

38. OWNERSHIP OF DOCUMENTS

All books, cards, register, receipts, documents, brochures, promotional material, signs and any other papers or material in connection with the operation of the Tenant's business or this Lease, are and shall be and remain the sole property of the Tenant.

39. TRADEMARKS

Trademarks, service marks or other trade registration of the Tenant, or any party associated with the Tenant, used in connection with the Tenant's business shall be and remain the sole property of the Tenant. The Landlord warrants that the Tenant shall be entitled to use the name of the Hotel and the Apartment in its promotional material, advertising or brochures, and all stationery and other documents without any payment being due to the Landlord or to any other party. There shall be no royalty or other payment due from the Tenant to the Landlord for the use of any name associated with the Hotel or the Apartment.

40. **SALE BY LANDLORD**

Prior to selling, assigning or charging its interest in the Apartment or the chattels, furniture, furnishings or fittings therein, the Landlord shall (at its cost in all matters) arrange for the new owners, assignee, mortgagee or chargeholder to first enter into a Deed of Covenant with the Tenant pursuant to which it covenants to observe, perform and be bound by the provisions of this Lease and to perform the Landlord's obligations therein.

41. **ARBITRATION**

All disputes and differences between the parties shall be submitted to the arbitration of a single arbitrator if one can be agreed upon, if they cannot agree, to an arbitrator appointed by the President of the Canterbury District Law Society or their Nominee, with such arbitration to be carried out in accordance with the provisions of the Arbitration Act 1996 or any then statutory provisions relating to arbitration.

42. **PARTIES' RELATIONSHIP**

The parties' relationship is that of Landlord and Tenant. The Tenant is an independent contractor under this Lease. Nothing in this Lease shall be construed as creating a partnership, joint venture or other relationship between the Landlord and the Tenant except that of independently contracting parties.

43. **INDEPENDENT AUDIT**

The Tenant shall on an at least annual basis provide upon request all necessary records and other assistance necessary to enable any auditor appointed by the Landlord to review and reconcile Rent and any other matters in accordance with the terms of this Lease.

44. **INTERPRETATION**

44.1 In this Lease:

- a. "Additional Landlord Occupancy" shall bear the meaning ascribed to it in clause 33.3(e).
- b. "Ancillary Services" means any or all of the following services:
 - i. foreign exchange;
 - ii. laundry and drycleaning;
 - iii. telephone and facsimile;
 - iv. pay to view movies;
 - v. movie and DVD hire and related services;
 - vi. any other ancillary service initiated by the Tenant; and

does not mean package items, including without limitation, golf, breakfast and transfers.

- c. "Ancillary Services Rent" means the amount calculated and determined in accordance with the provisions of the Third Schedule, which is to be paid by the Tenant to the Landlord. The term does not include any amounts which are not required to be paid to the Landlord by the Tenant.
- d. "Business Use" shall bear the meaning ascribed to it in clause 15 and in the First Schedule.
- e. "Constitution" means the constitution of the Owners Society attached to this Lease as the Sixth Schedule and as updated from time to time.
- f. "Furniture, Fitout and Equipment Levy" means the levy of an amount equal to three per cent (3%) of the Gross Apartment Revenue plus GST which will be retained by the Tenant and applied towards the cost of those items listed in clause 8.3.
- g. "Gross Apartment Revenue" means all the money actually received (and not merely due and payable) by the Tenant from guests occupying the Apartment by way of accommodation charges (including all money actually received by way of non-refundable deposits) after first excluding –
 - (i) the GST component or other similar tax components of such charges; and
 - (ii) any charges for Hotel Services.
- h. "High Season" shall bear the meaning ascribed to it in clause 33.5(a).
- i. "Hotel" means the hotel complex of which the Apartment forms part.
- j. "Hotel Outgoings" means those Hotel Outgoings described in the Fifth Schedule.
- k. "Hotel Services" means all usual hotel services, including without limitation, servicing the Apartment on a daily/weekly basis or providing laundry and room service, and for the avoidance of doubt, does not include Ancillary Services.
- l. "Imprest Account" means the account referred to in clause 3.1 which the Tenant operates in respect of all Key Holders.
- m. "Key Holder" means the registered proprietor of any unit or property on the Certificate of Title which is leased by the Tenant.
- n. "Landlord" and "Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and Tenant.
- o. "Landlord Occupancy" shall bear the meaning ascribed to it in clause 33.3.
- p. "Low Season" shall bear the meaning ascribed to it in clause 33.5(c).

- q. "Net Ancillary Revenue" means all the money actually received (not merely due and payable) by the Tenant from guests occupying the Apartment in respect of any Ancillary Service(s) after first excluding;
 - i. the GST component or other similar tax components of such Ancillary Services and the cost to the Tenant of providing such Ancillary Services; and
 - ii. any charges for Ancillary Services.
 - r. "Outgoings" means Hotel Outgoings and Apartment Outgoings.
 - s. "Owners Society" means the Clearwater Resort Owners Society Incorporated.
 - t. "Rent" or "rent" means the amount calculated and determined in accordance with the provisions of the Second and Third Schedules which is to be paid by the Tenant to the Landlord.
 - u. "Season" shall bear the meaning ascribed to it in clause 33.6.
 - v. "Seasonal Landlord Occupancy" shall bear the meaning ascribed to it in clause 33.3(d).
 - w. "Seasons" shall bear the meaning ascribed to it in clause 33.6.
 - x. "Shoulder Season" shall bear the meaning ascribed to it in clause 33.6(b).
 - y. "Split Use" shall bear the meaning ascribed to it in clause 33.21.
 - z. "Substitution Unit" shall bear the meaning ascribed to it in clause 33.19(b).
 - aa. "Apartment" means the Apartment described in Schedule A.
 - bb. "Apartment Outgoings" means those Outgoings described in the Fourth Schedule.
- 44.2 Whenever words appear in this Lease that also appear in any of the Schedules then those words shall mean and include the details supplied after them in such Schedule.
- 44.3 Where the context requires or admits words importing the singular shall import the plural and vice versa.
- 44.4 For the avoidance of doubt, the use of the word "Term" in this Lease includes any renewed or further term or terms, unless required otherwise by the context.

FIRST SCHEDULE

Term:	[] years and [] days, being the period from the Date of Commencement to the 13 December 2027.
Commencement Date:	[<i>settlement date</i>].
Further Terms:	Three (3) of five (5) years each.
Renewal Dates:	The 14 th day of December 2027, 14 th day of December 2032 and the 14 th day of December 2037.
Final Expiry Date:	The 13 th day of December 2042.
Proportion of Outgoings:	<p>The Landlord shall pay one hundred per centum (100%) of the separately levied Apartment Outgoings relating to the Apartment (see clause 4).</p> <p>The Tenant shall pay one hundred per centum (100%) of the Hotel Outgoings relating to the conduct of the Business Use from the Apartment (see clause 4).</p>
Default Interest:	Four per centum (4%) per annum above the current Westpac Trust base lending rate or the Tenants Bankers rate, whichever is the lesser as at the date of any breach.
Business Use:	Tourist accommodation and/or the leasing/renting of the Apartment (and the furniture, furnishings and chattels therein) to the public for use as accommodation and all services and uses incidental thereto.
Improvements Rent Percentage:	The interest rate for first mortgages over residential property of the Tenant's bankers as at the relevant date.

SECOND SCHEDULE

RENT PAYABLE FROM THE COMMENCEMENT DATE

1. Subject to deductions made in accordance with this Lease, including (without limitation) any amounts deducted in accordance with clauses 4.4 and 33.14, the Rent payable to the Landlord in respect of the period from the Commencement Date to the end or earlier termination of the Term, whichever is the earlier, is the Gross Apartment Revenue, less:
 - (i) an amount equal to three per centum (3%) of the Gross Apartment Revenue plus GST as a Furniture, Fit-Out and Equipment Levy; and
 - (ii) an amount equal to up to three per centum (3%) of the Gross Apartment Revenue plus GST, to be spent by the Tenant on marketing, and.
 - (iii) an amount equal to fifty per centum (50%) of the Gross Apartment Revenue plus GST, which will be retained by the Tenant.

**THIRD SCHEDULE
ANCILLARY SERVICES RENT
FROM THE COMMENCEMENT DATE**

1. Subject to deductions made in accordance with this Lease, including (without limitation) any amounts deducted in accordance with clauses 4.4 and 33.14, the Ancillary Services Rent payable to the Landlord from the Commencement Date to the end or earlier termination of the Term, whichever is the earlier, is as follows:
 - a. an amount equal to ten per centum (10%) of the Net Ancillary Revenue in respect of laundry and drycleaning revenue;
 - b. an amount equal to twenty five per centum (25%) of the Net Ancillary Revenue in respect of telephone and facsimile revenue;
 - c. an amount equal to five per centum (5%) of the Net Ancillary Revenue in respect of movie and DVD hire and related services.
2. The Ancillary Services Rent payable to the Landlord in respect of any other Ancillary Services agreed pursuant to clause 44.1(b)(vi) will be agreed between the Landlord and the Tenant on a case by case basis and recorded as a variation of this Lease.

**FOURTH SCHEDULE
APARTMENT OUTGOINGS TO BE PAID BY THE LANDLORD**

Subject to clause 4.4, Apartment Outgoings to be paid by the Landlord are all those outgoings relating to the Apartment as distinct from the Hotel Outgoings including, but not limited to:

Apartment Outgoings to be paid by the Landlord direct:

1. Rates or levies payable to any local or territorial authority.
2. Maintenance items/charges payable by the Landlord under this Lease and which do not form part of the Furniture, Fitout and Equipment.

Apartment Outgoings to be paid by the Landlord direct or at the Tenant's election to be deducted from the Imprest Account in accordance with the Second Schedule:

3. Furniture, Fitout and Equipment Levies.

Apartment Outgoings to be paid by the Landlord as part of the Amounts it pays to the relevant service provider:

4. Charges for water, gas, electricity, telephones and other utilities or services.
5. Rubbish collection charges.
6. New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
7. All insurance premiums and related valuation fees.
8. Service contract charges for air conditioning, lifts and other building services (if any).
9. The provisioning of toilets and other shared facilities (if any).
10. The costs incurred and payable by the Landlord to supply to the territorial authority a Building Warrant of Fitness and obtaining reports as required by the Building Act 2004 or any similar Act.
11. Security charges.
12. Sky TV, Cable TV or similar charges.
13. Building fund or similar charges.

**FIFTH SCHEDULE
HOTEL OUTGOINGS TO BE PAID BY THE TENANT**

Subject to clause 33.14, Hotel Outgoings to be paid by the Tenant are all those outgoings and costs payable relating to the conduct of the Business Use from the Apartment (but excluding any Apartment Outgoings), including, but not limited to the following outgoings and costs payable in respect of:

1. All costs associated with the marketing and promotion of the Apartment.
2. Any agents' commissions incurred in obtaining the accommodation charges from guests occupying the Apartment and the GST component or other similar tax components of such agents' commissions.
3. Rentals payable for service areas and equipment leases by the Tenant as required for the efficient conduct of the Business Use.
4. All accounting and audit fees relating to the Business Use.
5. The conduct of the Business Use, including without limitation, the operation and management of the Hotel and the provision of Hotel Services required for the management and operation of the Hotel and to prepare the Apartment for occupation by guests at the rate charged by the operator of the Hotel from time to time for such operation, management and servicing.
6. The provision of Ancillary Services.

SIXTH SCHEDULE

CONSTITUTION OF THE CLEARWATER RESORT OWNERS SOCIETY INCORPORATED

SCHEDULE 7

NOTICE OF CHANGE OF LANDLORD

[Note of explanation: Prior to settlement of the apartment, it will have in place the Lease between Clearwater Quays Apartments Ltd and THC Group Limited ("THC Group"). At that time, on settlement, the Purchaser's lawyer provides the notice below to Mike Sharp of THC Group that you are the new Landlord, if you plan to live in the apartment you notify THC Group that you are triggering the Additional Landlord Occupancy in accordance with clause 33.11 of the Lease. There is no City Plan time limit specified for Additional Landlord Occupancy.]

Whereas pursuant to the Deed of Lease dated [] ("the Lease") Clearwater Quays Apartments Limited leased to you Apartment [] at the Quays Development, Clearwater Resort, Christchurch.

We hereby notify you that my client, [Purchaser], has purchased the Apartment and by virtue of taking title to the Apartment and pursuant to the Agreement for Sale and Purchase of the Apartment and the Lease [Purchaser] is now your Landlord and is therefore entitled to receive any rental or other amounts payable under the Lease from [].

[Purchaser's] nominated bank account is:

[details of bank account].

SCHEDULE 8

SOCIETY'S OFFER OF MEMBERSHIP & DISCLOSURE DOCUMENT



Clearwater Resort Owners' Society Incorporated

11 August 2020

Purchaser – Clearwater Resort Developed Property

Dear Purchaser,

Membership in the Clearwater Resort Owners' Society Incorporated ("the Society")

We are pleased to offer you, as the purchaser of a Developed Property within Clearwater Resort, the opportunity to become a member of the Society on the terms set out in this letter. Entering into an Agreement ("the Agreement") to purchase a developed property at Clearwater will constitute subscription by you to become and remain a member of the Society on settlement as recorded in the Society's Encumbrance attached to the Agreement.

Any money paid by you under the Agreement (including the purchase price) is not consideration of you becoming a member of the Society in accordance with this offer. This offer is made by the Society.

Prior to signing the Agreement please sign the **attached** disclosure document, acknowledging receipt of the relevant documentation prior to your subscription for membership in the Society.

We look forward to welcoming you on board as a member of the Society.

Yours sincerely,

Michael Sharp
Manager – Clearwater Resort Owners' Society Incorporated



www.societies.govt.nz | 0508 SOCIETIES | 0508 762 438
Send completed forms to: Companies Office, Private Bag 92061, Victoria Park

10062982140

societies.govt.nz

Certificate - Alteration of rules

Section 21 Incorporated Societies Act 1908

1. Name of society

Clearwater Resort Owners Society Incorporated.

2. Society number

1114507

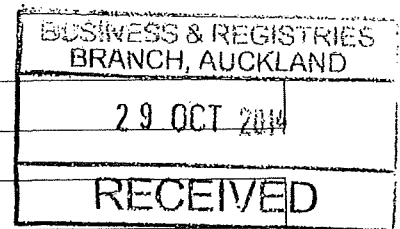
I certify that the alteration has been made in accordance with the rules of the society.

Name

Barry Johnston

Position

Chairman



Signature

[Handwritten Signature]

26 / 9 / 14

3. Complete this checklist before filing your application

- This certification has been completed by an officer of or a solicitor for the society.
- A copy of the rule alteration(s) is attached. **NOTE** | This can either be a complete copy of the updated rules with the alterations underlined or in bold type, or a copy of the particular rule(s) that were altered.
- The copy of the alteration to rules has been signed by three members of the society.

For society name changes --

- This rule alteration also includes a name change for the society, and
- We have checked that the new name of the society is available by conducting Register Searches at both www.societies.govt.nz and www.companies.govt.nz.

What must be included in your rules?

Section 6 of the Incorporated Societies Act 1908 requires that a society's rules include the following:

- The name of the society (ending with the word incorporated)
- The objects for which the society is established
- How people become members of the society and cease being members of the society
- How meetings of the society will be called and held and how voting will take place
- How officers of the society will be appointed
- Control and use of the common seal
- How the society's funds will be controlled and invested
- The powers (if any) that the society has to borrow money
- How any property of the society will be distributed in the event of the society being wound up
- How the rules of the society can be altered

4. Your contact details

Name and postal address

Michael Sharp
PO Box 36211
Merivale
Christchurch

Tel

Email (optional)

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CONSTITUTION OF CLEARWATER RESORT OWNERS SOCIETY

INTRODUCTION



1. **NAME**

1.1 **Name of Society:** The name of the Society shall be ~~Clearwater Resort~~
Owners Society Incorporated.

2. **DEFINITIONS AND INTERPRETATION**

2.1 **Definitions:** In these rules, unless the context otherwise requires:

"Act" means the Incorporated Societies Act 1908.

"Bank" means a bank registered under the Reserve Bank of New Zealand Act 1989.

"Capital Improvements" means structural repairs to, and the replacement or renewal of, the Residential Communal Facilities.

"Clearwater Resort" means all development undertaken by Clearwater Resort Limited and/or Clearwater Land Holdings Limited and their associated and/or subsidiary companies within that area known as Clearwater Resort (accessed from Johns Road Christchurch and as shown on the attached plan) including but not limited to the golf course, clubhouse building, recreational facilities, hotel, apartments, residential land, the lakes and all other associated infrastructures on the site.

"Committee" means the committee members from time to time elected to manage the affairs of the Society pursuant to this Constitution.

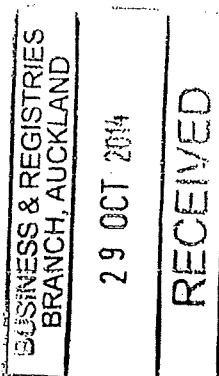
"Constitution" means this Constitution as amended or added to, including all schedules to this Constitution.

"Default Interest Rate" means four per cent above the Society's banker's overdraft rate applicable during the continuance of the default.

"Design Control Committee" means the committee members from time to time appointed under rule 15.1 to consider design approval applications by Members.

"Design Guidelines" means the design guidelines issued by the Design Control Committee, pursuant to rule 15.2.

"Developed Property" means a property within Clearwater Resort:



- a. for which a separate title (including, without limitation, a unit title or a certificate of title for an estate in fee simple) has issued; and
- b. which has been fully developed as a residential property, hotel apartment, suite or villa or for any other permitted use by the Developer, or which is a bare section available for such development.

"Developer" means Clearwater Resort Limited and/or Clearwater Land Holdings Limited and their associated and/or subsidiary companies (including without limitation Clearwater East Peninsula Limited and/or Clearwater Hotel 2004 Limited) promoting and carrying out the development of Clearwater Resort and/or any assignee and/or successor in title whether in whole or in part or parts of Clearwater Resort.

"Development Issue" means any matter relating to one or more of the following:

- a. matters affecting and/or arising in anyway whatsoever from the Developer's commercial and/or economic ability to develop and/or complete Clearwater Resort and the disposition of the same including without limitation all matters arising under or affected by the Resource Management Act, the Transit NZ Act, Waimakariri Flood Plains legislation, any valuation matters, all necessary statutory compliance matters and any matters arising in any way whatsoever from securities given or to be given by the Developer to any Bank or other lender;
 - b. matters affecting and/or arising in anyway whatsoever from Clearwater Resort's relationship with Christchurch International Airport Limited ("CIAL") or any successor to it, including but not limited to correspondence with CIAL; liaising with CIAL in relation to encumbrances over titles to land within Clearwater Resort and the Developer's plans for further development of Clearwater Resort;
 - c. matters associated with setting and levying of the Operating Expenses;
 - d. matters associated with promulgation or amendment of the Design Guidelines and any matter associated with the activities of the Design Control Committee or its composition;
 - e. matters associated with water bodies and lake edge development and management;
 - f. the appointment of the Manager of the Society from time to time;
 - g. any amendments to this Constitution.
-

"District Plan" means the Christchurch City Proposed District Plan.

"Expense Year" means each 12 month period commencing on 1 April and ending on 31 March, or such other 12 month period as the Committee from time to time sets.

"Initial Price" in respect of any Developed Property, means the price (inclusive of Goods and Services Tax) at which the Developed Property is first sold to any Owner by the Developer, or if the Developed Property has not been sold, the price at which the Developed Property is listed for sale by the Developer.

"Invitee" means any invitee of or any visitor to an Owner or Occupier.

"Manager" means the manager or management company of the Society (if any), appointed under rule 12.1. Where no manager has been appointed, any reference to the "Manager" in this Constitution shall be deemed to be, where appropriate, a reference to the chairperson of the Committee.

"Member" means each person who is from time to time a member of the Society pursuant to rules 4.1 to 4.8.

"Member's Proportion" means ~~the proportion that the aggregate of the Section Values of the Developed Properties owned by a Member bears to the Total Value.~~ the proportion that the aggregate number of Developed Properties owned by a Member bears to the total number of all Developed Properties in Clearwater Resort.

"New Members" shall mean, where the context requires, persons who have joined (whether or not they have previously been a Member of the Society) the Society after the 18th day of September 2005.

"Occupier" means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include all members of an Owner's family.

"Operating Expenses" means the total sum of all rates, taxes, costs and expenses of the Society properly or reasonably assessed or assessable, paid or payable or otherwise incurred in respect of the Residential Communal Facilities, and the operation of the Society (including, without limitation, the Management Expenses and Management Fee, as defined in the agreement referred to in rule 12.1), but shall exclude any costs payable in respect of Capital Improvements.

"Owner" means each person registered as a proprietor (whether individually or with others) of a Developed Property.

"Owner's Title" means the certificate of title issued for an Owner's Developed Property.

"Rating Valuation" means the capital value of any Developed Property as it appears on the district valuation roll pursuant to the Rating Valuations Act 1998 or any successor to the district valuation roll.

"Registrar" means the person holding office from time to time as Registrar of Incorporated Societies in terms of the Act.

"Residential Communal Facilities" means all land, plant, equipment, facilities, utilities and amenities including any private roads and walkways within Clearwater Resort owned, leased, licensed or otherwise held or operated by the Society (as the Society may determine) from time to time including those facilities from time to time transferred to the Society by the Developer in accordance with the Deed of Transfer attached as Schedule 2 to this Constitution.

~~**"Section Value"** means, in respect of each Developed Property:~~

- ~~(a) the Rating Valuation; or~~
- ~~(b) if the Rating Valuation is not available, the Initial Price.~~

"Society" means Clearwater Resort Owners Society Incorporated.

"Special Resolution" means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members as, being entitled to do so, in person or by proxy at such general meeting.

~~**"Total Value"** means the sum total of the Section Values as at a given date.~~

2.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- a. words denoting the singular shall include the plural and vice versa;
- b. one gender shall include the other genders;
- c. words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;

- d. any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- e. reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- f. any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
- g. references to rules are references to rules in this Constitution;
- h. the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way;
- i. reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.

3. OBJECTS

3.1 **General:** The Society is formed to promote the following objects for the benefit of Members:

- a. The promulgation and enforcement of bylaws and covenants benefiting Members and Clearwater Resort generally.
- b. The creation and maintenance of appropriate Design Guidelines and control mechanisms in respect of each Developed Property.
- c. The proper operation, maintenance, repair, renovation and replacement of the Residential Communal Facilities; the proper landscaping of any landscaped area on any Developed Property and the levying of Members for the purpose of providing funds for and meeting the costs and expenses of such work.
- d. The ownership and continued ownership of any Residential Communal Facilities by the Society.
- e. The full and proper use of the Residential Communal Facilities by Members.
- f. The promulgation and enforcement of bylaws and covenants to ensure that obligations regarding the development and management of water bodies and lake edges are upheld.

- g. The promulgation and enforcement of bylaws and covenants to ensure that to the fullest extent permitted by law that no New Members joining or rejoining the society after the 18th day of September 2005 and the Society itself and no occupier or successor of land owned by any New Member of the Society shall object to, complain about, bring any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages or injunctive or other relief or orders), or otherwise opposing, noise resulting from the operations of CIAL (including without limitation, from the operation of aircraft, the testing of aircraft engines, bird scaring, bird hazard management, or the operation of motor vehicles and associated equipment) or the effects of or resulting from such noise.
- h. The promulgation and enforcement of bylaws and covenants requiring any New Member joining the Society after the 18th day of September 2005 and the Society itself and any occupier or successor of land owned by any New Member of the Society, to comply with the following provisions:-
- i. Each New Member shall procure that, except as required by law, no person occupying (whether temporarily or permanently) any Clearwater land owned by that New Member objects to, complains about, brings any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages or injunctive or other relief or orders) in respect of, or otherwise opposes, noise resulting from the Operations of CIAL (including, without limitation, from the operation of aircraft, the testing of aircraft engines, bird scaring, bird hazard management, or the operation of motor vehicles and associated equipment) or the effects of or resulting from such noise.
 - ii. The provisions of clauses 3.1(g) and 3.1(h), with the exception of any bylaws, restrictive covenants or other restraints of any kind on land owners in respect of bird management and lake transport, shall not apply to a New Member that does not own a Developed Property located (whether in whole or part) between the Extended Centreline and the Ldn 50 dBA Noise Contour.
 - iii. The Society may from time to time issue rules, and amend such rules, providing for obligations and restrictions to ensure that no New Member interferes with the Operations of CIAL whether by action or omission or otherwise. All New Members shall duly comply with any

such rules in effect from time to time. The Society shall enforce those rules in effect from time to time.

iv. Except as required by law, no New Member may object to, complain about, bring any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages or injunctive or other relief or orders in respect of, interfere with, prevent, hinder, obstruct, or otherwise oppose in any way, the development and operations of CIAL including, without limitation, by opposing, whether directly or indirectly, any:

1. application;
2. variation to the Proposed City Plan; or
3. statutory or regulatory enactment, variation or repeal;

sought or supported by CIAL. No New Member may, whether directly or indirectly, procure, fund, or support, any person or action to do or omit anything that would be in breach of this clause if done or omitted by the New Member.

v. Each New Member will use reasonable endeavours to discourage and actively prevent any bird species identified by CIAL as being a potential threat to aircraft operations at CIAL from visiting or inhabiting the New Member's Developed Property. Those reasonable endeavours include, but are not limited to:

1. attention generally to choice of vegetation and planting regimes, water body and land management systems and control and management of persons occupying, using and visiting the New Member's Developed Property;
2. not planting or permitting to grow on the New Member's Developed Property any plant, shrub or tree that CIAL advises from time to time would or could encourage to a greater extent than other types of plant, shrub or tree any bird species identified by CIAL as being a potential threat to aircraft operations at CIAL to visit or inhabit the New Member's Developed Property;
3. preventing the growth of trees and other vegetation on the New Member's Developed

Property that overhangs any water body on or adjacent to the New Member's Developed Property;

4. mowing all grass edges on the New Member's Developed Property that are adjacent to any water body so that the length of such grass is always at least 200 millimetres but not more than 600 millimetres;
5. not feeding or allowing the feeding of any wild birds on the New Member's Developed Property whether by the New Member, or any other occupant of the New Member's Developed Property, or visitor to the New Member's Developed Property, or otherwise;
6. choosing fertiliser and pesticides for use on the New Member's Developed Property that do not run off into adjacent water bodies thereby encouraging the growth of vegetation in such water bodies; and
7. any other reasonable actions CIAL requires to be taken to mitigate any actual or potential problem or nuisance caused to the operation of aircraft using CIAL by birds;

- vi. The Society shall take all reasonable measures to procure that the New Members of the Society comply with their obligations under sub-clauses [1-7].

3.2 **Pecuniary gain not to be an object:** The Society does not have as an object the pecuniary gain of Members, and (subject to rule 16.1) no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society.

3.3 **Members may contract:** A Member may enter any agreement or understanding with the Society for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

MEMBERSHIP

4. MEMBERSHIP

4.1 **Existing Members:** The Existing Members ("Existing Members") of the Society shall be those members named in Schedule 3.

4.2 **Owners to be Members:** Each Owner shall be a Member, and only Owners shall be Members, and for that purpose:

- a. Each Owner shall (immediately when called upon to do so) grant in favour of the Society an encumbrance ("Encumbrance") to be noted against that Owner's Title, securing that Owner's obligations to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing the terms required by the Society's solicitors. Each Encumbrance will bind the respective Owners' successors in title so that contemporaneously with the acquisition of any interest in any Developed Property all such successors in title must become and remain a Member, and observe and perform the obligations of a Member as set out in this Constitution. In order to facilitate the effectiveness of the Encumbrances, each Owner shall comply with rule 8.2. The Encumbrances shall be prepared by the solicitors for the Society, and the respective Members shall pay the reasonable legal fees and disbursements of the Society's solicitors.
- b. A Member shall be deemed to have resigned from the Society immediately that Member is no longer an Owner, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
- c. Each Owner shall, immediately upon becoming an Owner, (and thereafter as any details change), provide the Society with the details necessary for maintenance of the register of Members pursuant to rule 4.4, and shall upon entry of the details into the register, become a Member.

4.3 **Developer as Controlling Member:** Until the development of Clearwater Resort is "fully completed", the Developer shall be the controlling member ("**Controlling Member**") of the Society, regardless of whether the Developer is at any time a Member. The Controlling Member shall have only the rights specified in this Constitution, and shall have no other rights or obligations of a Member, unless expressly provided for. No reference in this Constitution to a Member shall be taken as including a reference to the Controlling Member. Upon development of Clearwater Resort being completed, the Developer shall be deemed to have resigned as Controlling Member, and thereafter, there shall be no Controlling Member in respect of the Society. For the purposes of this clause 4.3, "fully completed" means the date the Developer ceases to own or control any property at Clearwater Resort which it intends to develop for any residential, commercial or related purpose. For clarity, once Clearwater Resort is fully completed, the Developer ceases to be the Controlling Member of the Society.

- 4.4 **Register of Members:** The Society shall maintain a register of Members recording:
- a. **For each Member:** name, address, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
 - b. **For each Occupier:** name, address, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
 - c. **Membership:** the date upon which each Member became a Member.
 - d. **Voting:** where there is more than one Owner of a Developed Property, which of such Owners is entitled to vote in accordance with rule 14.1.
 - e. **Mortgagee:** name, contact person, telephone number and facsimile number of any person holding a mortgage over the Member's Developed Property.
- 4.5 **No notice of trust** No notice of any trust express, implied or constructive will be entered on the register of Members.
- 4.6 **Register to be audited:** The Committee shall ensure that the register of Members is audited once a year by a qualified auditor, unless a resolution that no auditor be appointed is passed in a general meeting.
- 4.7 **Not assignable:** The rights, privileges and obligations of a Member are not assignable.
- 4.8 **More than one Owner:** If there is more than one Owner for a Developed Property, such Owners shall collectively constitute one Member.
5. **NOTICE OF AND USE OF RESIDENTIAL COMMUNAL FACILITIES**
- 5.1 The Committee must keep a schedule of the Residential Communal Facilities, which shall be available for inspection by any Member on request. In order to ensure the Committee can comply with this obligation, the Developer must notify the Committee not less than 21 days before transferring any such facility to the Society in accordance with the Deed of Transfer attached as Schedule 2 to this Constitution.
- 5.2 **Use of Residential Communal Facilities:** Subject to any rules of the Society relating to the use of the Residential Communal Facilities, each

Member, Occupier and Invitee shall be entitled to make full use of the Residential Communal Facilities.

- 5.3 **Persons not entitled to use Residential Communal Facilities:** No person, other than those persons set out in rule 5.2, shall be entitled to use the Residential Communal Facilities, except by special consent of the Committee which shall specify the occasions and times for such use.

6. OBLIGATIONS OF MEMBERS

- 6.1 **Levies:** Prior to, or as soon as practicable after the commencement of each Expense Year, the Society shall by written notice advise each Member of the Society's estimate ("Society's Estimate") of each Member's Proportion of Operating Expenses for that Expense Year, plus such contingency sum as the Society shall, in its sole discretion, fix.
- 6.2 **Payment of levies:** Subject to rules 6.4 and 6.7c, each Member shall, on the first day of each month in each Expense Year, or on such other appropriate period, pay one twelfth, or such other proper apportionment, of the Society's Estimate applicable to that Expense Year. Payment shall be made by each Member in the manner set by the Society.
- 6.3 **Statement of Operating Expenses:** As soon as practicable after the end of each Expense Year the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the just completed Expense Year or any period in terms of rule 6.7b, as the case may be. If the Member's Proportion of actual Operating Expenses for the previous Expense Year or any period in terms of rule 6.7b is greater than the total of the monthly payments made by the Member pursuant to rule 6.2 or 6.7c, as appropriate, the Member shall forthwith pay to the Society the difference. If the Member's Proportion of actual Operating Expenses for the previous Expense Year or any period in terms of rule 6.7b is less than the total of the monthly payments made by the Member pursuant to rule 6.2 or 6.7c as appropriate, the Society shall credit the difference to the Society's Estimate for the then current Expense Year.
- 6.4 **Failure of Society to advise Society's Estimate:** If the Society has failed to advise a Member of the Society's Estimate for an Expense Year before the date the first payment is due under rule 6.2, the Member shall on that date and every other date on which a payment is due under rule 6.2 until the Society's Estimate is available pay one twelfth, or such other proper apportionment, of the Society's Estimate applicable to the previous Expense Year. On the Society's Estimate for the Expense Year being advised to that Member:

- a. Rule 6.2 shall apply in respect of the payments due on the first day of each month, or on such other appropriate period, for the balance of the Expense Year.
- b. If the aggregate of a Member's payments made under this rule 6.4 during the Expense Year exceeds the aggregate of payments which should have been made under rule 6.2, the Society shall credit the difference to the Society's Estimate.
- c. If the aggregate of a Member's payments under this rule during the Expense Year is less than the aggregate of payments which should have been made under rule 6.2, the Member shall immediately pay the Society the difference.

6.5 Special Levies: The Committee:

- a. shall from time to time fix an additional monthly (or such other appropriate period) levy to be paid by each Member together with the monthly (or such other appropriate period) instalments of the Society's Estimate for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements; and
- b. may from time to time fix such levies, payable by each Member at such times as are set by the Society, as the Society considers are necessary for it to meet its obligations under this Constitution,

provided that any levy payable by a Member under this rule shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members.

6.6 Staged Development: The Members acknowledge that the residential component of Clearwater Resort may be developed in stages, with new Owners becoming Members as each stage is completed.

6.7 New Developed Properties: Where in any Expense Year New Developed Properties become available:

- a. The Society shall provide to all Members (excluding the Owners of the New Developed Properties) an itemised statement of the actual Operating Expenses for the period from the commencement of the current Expense Year to the date the new Developed Properties became available ("**Period**"). The date of availability shall be determined by the Manager. If the amount of an Existing Member's Proportion of Operating Expenses for the Period is greater than the total of the monthly payments made or due for that Period, the Existing Member shall forthwith pay to the Society the difference. If the amount

of an Existing Member's Proportion of Operating Expenses for the Period is less than the total of the monthly payments made or due for that Period, the Society shall credit the difference to the Society's estimate for the balance of the term of the current Expense Year pursuant to rule 6.7b.

- b. As soon as practicable after the date the New Developed Properties became available, the Society shall by written notice advise all Members of the Society's estimate of each Member's Proportion of Operating Expenses for the balance of the term of the current Expense Year.
- c. Each Member shall, on the first day of each month, or on such other appropriate period, until the end of the current Expense Year, pay an equal proportion of the Society's estimate given pursuant to rule 6.7b.

6.8 Sale of Developed Property: Where a Member sells (or otherwise parts with possession of) a Developed Property ("the Vendor"):

- a. Notwithstanding any other rule in this Constitution, the Vendor shall remain liable for sums owed to the Society by that Vendor.
- b. Without limitation, the Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the Purchaser of the Developed Property to the Society until such time as:
 - i. the transfer to the Purchaser is registered at the Land Transfer Office; and
 - ii. the Purchaser is legally bound by the Encumbrances secured against the Developed Property; and
 - iii. the Vendor has complied with its obligations under rules 6.8 and 8.2 .
- c. The purchaser of the Developed Property shall be liable as a Member for all indebtedness of the Vendor to the Society in respect of the Developed Property purchased and a certificate of the Society given pursuant to rule 6.12 shall be conclusive as to the sum of this indebtedness.

6.9 Lease of Developed Property: No Member shall:

- a. lease, licence or otherwise part with possession of the Member's Developed Property (other than by sale made in accordance with rule 6.8);
- b. in the event of any such lease, licence or parting with possession, allow any assignment of such right, subletting or otherwise allow any further change in possession of the Member's Developed Property;

without first obtaining the written consent of the Society which the Society may withhold or grant in its sole and unfettered discretion. Without limiting the Society's discretion or the nature of any conditions of such consent, any consent given by the Society may be made subject to the fulfilment of the following conditions:

- c. the Member proves to the satisfaction of the Society that the proposed lessee, licensee, assignee, subtenant or other person gaining possession of the Developed Property ("the New Occupier") is respectable, responsible and has the financial resources to meet the Member's obligations under this Constitution;
- d. all monies due by the Member under this Constitution have been paid and there is not any subsisting breach of the Member's obligations;
- e. any document recording the change of possession complies with rule 8.2 and prohibits any further change of possession otherwise than in accordance with this Constitution;
- f. in any case where the New Occupier is a company (other than a publicly listed company) a deed of guarantee in customary form approved or prepared by the Society's solicitors is duly executed by the principal shareholders of the company and by the directors of the company and is delivered to the Society;
- g. the Member pays the Society's proper costs and disbursements in respect of giving its consent to the change of possession and all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Society concerning the New Occupier.

- 6.10 Any assignment or subletting of the type or in the manner referred to in Section 109(2) of the Property Law Act 1952 shall be a breach of the provisions of this Constitution.
- 6.11 Where any Member is an unlisted company or any Occupier is an unlisted company then any change in the legal or beneficial ownership of any of its shares, issue of new capital or amalgamation which results in a change in the effective management or control of the company is deemed to be a parting with possession in terms of rule 6.9.
- 6.12 **Society to provide statement:** The Society shall, on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application. The statement shall show:
 - a. the Society's estimate of such Member's Proportion of Operating Expenses for the current Expense Year;

- b. payments made by the Member on account of Operating Expenses in the current Expense Year;
- c. payments due from the Member on account of Operating Expenses in the current Expense Year, and not paid by the Member; and
- d. any accumulated unpaid default interest.

6.13 **Covenants and bylaws:** Each Member agrees to promptly and fully comply with any bylaws made by the Society from time to time, and any covenants given in favour of the Society by such Member (whether by separate Deed of Covenant or as noted against each Owner's Title). In the event of there being any conflict between the provisions of this Constitution (including any rule or bylaw) and the provisions of any restrictive covenant registered against the title to the Developed Property, the provisions of this Constitution (including any rule or bylaw) shall prevail and be given priority over the provisions of any such restrictive covenant.

6.14 **Mortgagee of Developed Property:** Before granting any mortgage over a Developed Property, a Member shall procure the intended mortgagee to enter into a deed with the Society (at the cost of the Member) covenanting to observe and perform all the rules of the Constitution upon exercising any powers as mortgagee.

OBLIGATIONS OF THE CONTROLLING MEMBER

6.15 **Controlling Member:** The Controlling Member (so long as it remains the Controlling Member of the Society) shall provide to the Society at the Controlling Member's expense, the following security:

- a. 24 hour video surveillance cameras at such strategic locations in the Resort as the Controlling Member shall determine;
- b. periodic assessment of the video surveillance by staff employed by the Controlling Member and/or Clearwater Golf Club Limited.
- c. cabling facilities to each Developed Property to enable owners to install their own security systems.

7. MEMBERS' ASSISTANCE TO DEVELOPER

7.1 **Future Development:** The Members acknowledge:-

- a. that development of Clearwater Resort is ongoing until the Resort is fully completed as defined in clause 4.3;

- b. that the Society is required to allow the Developer such access to, and interests in, the Residential Communal Facilities as are necessary or desirable for the development to proceed;
- c. that the Society shall be obliged to allow the Developer to add, remove or alter structures and services forming part of the Residential Communal Facilities; and
- d. to procure that Members amend this Constitution if such amendment is necessary or desirable for the development to proceed.

And each Member agrees:

- e. to, and hereby allows, the Developer access to the Developed Property of that Member for the purpose of proceeding with the development provided that the Developer has no other reasonable means of proceeding with the Development other than through the Member's developed property and must give such Member reasonable verbal notice of its requirement for access and its best estimate of the duration of such access; and provided that the Developer must, without delay, make good any damage or harm to the Member's Developed Property resulting from such access; and
- f. to, and hereby grants, such easements in favour of the Developer over or under the Member's Developed Property as are required for the development to proceed or as may be necessary or desirable for development of Clearwater Resort provided that the Developer has no other reasonable means of proceeding with the Development other than by benefiting from such access. The Developer must pay the reasonable expenses incurred by the Member relating to the grant of any such easement; and
- g. not to prevent, hinder or obstruct the use by the Developer of the Residential Communal Facilities, the addition, removal or alteration of structures or services forming part of the Residential Communal Facilities by the Developer, or the granting of any interests in the Residential Communal Facilities by the Society to the Developer; and
- h. that neither the Member nor the Society shall oppose, or take part in any opposition to, the development of Clearwater Resort; and
- i. to support any resolution to amend this Constitution, where the Society is bound by agreement with the Developer, to procure such amendment.

- j. to sign any document or do any other thing reasonably necessary to support any Resource Consent or other authorisation applied for by or on behalf of the Developer in respect to the development of Clearwater Resort; and
 - k. that New Members being the owners of land covenant to prevent interference with CIAL activities and/or all members joining or rejoining the Society after the 18th day of September 2005 shall not prevent, hinder or obstruct CIAL in any way in the development of a 24 hour seven day a week non-curfewed international airport operation, including without limitation, not mounting any challenge or taking any objection to any planning initiative, application or consent process, district scheme change or special legislation enacted in favour of CIAL's stated objective of being a 24 hour seven day a week non-curfewed international airport operation; and
 - l. to support any resolution to amend this Constitution where the Developer seeks an amendment to assist the Developer in implementing, proceeding with and completing its development of Clearwater Resort.
- 7.2 In exercising any of its rights pursuant to clause 7.1, in respect of residential communal facilities the Developer must:
- a. act reasonably; and
 - b. first provide 30 days written notice to the Society of its intention to invoke any of the provisions of clause 7.1 (other than clause 7.1(e)), that notice to set out in detail the proposed further development of Clearwater Resort and any likely effects on relevant Developed Properties. At the request of the Society following provision of such notice, the Developer will consult with the Society as to any reasonable concerns of Members about such further development.

8. BREACH OF OBLIGATIONS

- 8.1 **Occupiers and Invitees:** A reference to an act or omission by any Member, shall include any act or omission by any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member, and the purchaser of such Member's Developed Property ("Users of the Member's Developed Property").
- 8.2 Each Member must, without limitation and in addition to the requirements of rules 4.2 and 6.8:
- a. procure that all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to

the Member's Developed Property include a provision for the benefit of the Society that requires all such Users of the Member's Developed Property to comply with this Constitution; and

- b. make all such Users of the Member's Developed Property aware of the Encumbrance described in rule 4.2; and
- c. attach a copy of this Constitution to all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property; and
- d. take all reasonable steps (including enforcing the terms of all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property) to ensure that all Users of the Member's Developed Property comply with this Constitution. In any case of persistent default by a User of the Member's Developed Property of this Constitution, the Owner shall on demand by the Society and where legally possible, terminate the User's of the Member's Developed Property rights to the Developed Property.

8.3 Consequences: Upon any breach of this Constitution by a Member ("**Offending Member**") without prejudice to the Society's other rights and remedies:

- a. Where damage has been caused to the Residential Communal Facilities, the Offending Member, or the Controlling Member, if responsible for the damage, shall immediately made good such damage to the standard reasonably required by the Society.
- b. If such default continues for seven days after notice is given by the Society to the Offending Member or Controlling Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default.
- c. All money paid and the expenses incurred by the Society (including any legal costs of the Society) in remedying, or attempting to remedy, any breach by an Offending Member or Controlling Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement, or attempted enforcement of any power, right or remedy of the Society in respect of such breach, shall be a debt due from the Offending Member to the Society.
- d. If any money payable by an Offending Member or Controlling Member to the Society is in arrears and unpaid for seven days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money shall

be payable on demand and shall bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full.

- e. For the avoidance of doubt, the payment by the Society to remedy any default by an Offending Member or the Controlling Member, shall notwithstanding its quantum, be considered a temporary shortfall in accordance with the provision of 10.1 and the Society shall be entitled to borrow to meet the Society's obligations under this Constitution for the purposes of clause 8.3(b).

THE SOCIETY

9. OBLIGATIONS OF THE SOCIETY

- 9.1 **Bylaws:** The Society shall promulgate, amend and distribute to Members from time to time bylaws for the use of the Residential Communal Facilities (including any restrictions on use for security, maintenance or other reasons), bylaws concerning the behaviour of Owners, Occupiers and Invitees, and bylaws governing the use of Developed Properties. The first such bylaws shall be those bylaws attached as Schedule 1 to this Constitution.
- 9.2 **Repair of Residential Communal Facilities:** The Society shall ensure the proper operation, maintenance, repair, renovation and replacement of the Residential Communal Facilities consistent with standards generally proposed or adopted in international golf resorts or in international resorts of this nature, and shall undertake such Capital Improvements as are necessary for this purpose.
- 9.3 **Insurance:** The Society shall effect and maintain all insurances as it considers prudent with respect to the Residential Communal Facilities and the Society's affairs, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances).
- 9.4 **Service contractors and utility suppliers:** The Society may, from time to time, nominate a service contractor (with respect to security, landscaping, rubbish collection or other such essential services as the Society considers desirable) or a utility supplier (with respect to the supply of utilities to Developed Properties) as an exclusive service contractor or utility supplier to Clearwater Resort. Any Member wishing to contract for services within Clearwater Resort or to have utilities supplied to the Developed Property, shall, where a service contractor or utility supplier has been nominated in respect of those services or utilities, only use that service contractor or utility supplier.

10. LIMITATIONS OF THE SOCIETY

- 10.1 **No indebtedness:** The Society shall not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except by Special Resolution.
- 10.2 **No encumbrances:** The Society shall hold the Residential Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with such Residential Communal Facilities, except by Special Resolution, provided that where the Society is obliged to grant any interest in or right in respect of the Residential Communal Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee.
- 10.3 **No investments:** The Society shall hold all funds with a Bank, and shall not invest those funds other than by deposit with a Bank, except by Special Resolution.
- 10.4 **No improper use:** All Residential Communal Facilities designed for recreational purposes shall be used only for such purposes. The Society shall procure the noting of a restrictive covenant to that effect against the title for such facilities for the benefit of all Members.

OPERATION OF THE SOCIETY

11. COMMITTEE

- 11.1 **Powers:** The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the Committee. The Committee may exercise all the powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as they deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may from time to time be imposed by the Society. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed shall in the exercise of the powers so delegated conform to directions of the Committee.
- 11.2 **Bank accounts:** The Society shall establish a bank account with a Bank and any drawings on that account (including any cheque drawn on that account) shall be made only under the signature of the Manager and one other member of the Committee.
- 11.3 **Deeds:** Any contract which, if made between private persons, must be by deed shall, when made by the Society, be in writing under the common seal of the Society, to be affixed in accordance with rule 11.14.

- 11.4 **Other Documents:** All other documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson.
- 11.5 **Composition:** The Committee shall comprise the following persons:
- a. a chairperson;
 - b. a treasurer/secretary; and
 - c. a minimum of five and a maximum of twelve general Committee members, as determined by the Society in general meeting before election of Committee members.
- 11.6 **Committee Members:** The Chairperson shall be the Controlling Member (if there is one) or where there is no Controlling Member the Chairperson shall be as elected by the Committee at every annual general meeting. The treasurer/secretary shall be the Manager or, where no Manager has been appointed, such other person as the Committee shall appoint from time to time. The balance of the Committee shall be elected by the Society at every annual general meeting, and may be elected at any other time by the Society in general meeting.
- 11.7 **Duration of Membership:** A Committee member shall hold the elected position until the earliest of:
- a. the next annual general meeting following election (when the Committee member shall be eligible for re-election);
 - b. the date written resignation from position is received by the Society;
 - c. the date of removal from such position by the Society in general meeting; or
 - d. the date of cessation of membership.
- 11.8 **Casual vacancies on Committee:** In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of membership from the Society, or some other means) the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Society in general meeting.
- 11.9 **Manager and Controlling Member:** Notwithstanding any other rule in this Constitution, the Manager shall remain as treasurer/secretary, and the Controlling Member shall remain as Chairperson, for so long as they remain Manager and Controlling Member respectively, and the Society shall not be entitled to remove either from those positions for any reason whatsoever.

11.10 Duties of Treasurer/Secretary: The treasurer/secretary shall:

- a. convene general meetings when requested to do so in accordance with this Constitution;
- b. attend all meetings of the Committee and have full speaking rights at such meetings;
- c. give all notices required to be given by these rules or as directed from time to time by the Society or the Committee;
- d. keep minutes at all general meetings and Committee meetings and enter into the minute book:
 - i. the time, date and venue of such meeting;
 - ii. all business considered and resolutions passed at such meeting;
- e. hold in safe custody the common seal of the Society;
- f. receive, and issue receipts for, all annual levies, additional fees, and any other moneys paid to the Society;
- g. operate and maintain a current bank account in the name of the Society;
- h. pay all accounts properly incurred by or on behalf of the Society;
- i. report immediately to the Society any Member who fails to pay annual levies or additional fees within the prescribed period;
- j. keep all financial records and any security documents in safe custody;
- k. compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Society; and
- l. compile the financial statements immediately following each financial year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as reasonably practicable after each audit is completed.

11.11 Conduct of Meetings: The Committee may meet together, adjourn and otherwise regulate its meeting and procedures for conducting its business as it thinks fit. A majority of the members of the Committee from time to time, provided that such majority includes the Controlling

Member (if there is one) shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place. The Committee may meet at any time and the secretary shall, upon the request of the chairperson or any three Committee members, convene a meeting of the Committee.

- 11.12 **Chairperson:** Subject to Rule 11.6, the Committee from time to time shall appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
- 11.13 **Chairperson to have casting vote:** In the case of a tie in votes, the chairperson may exercise a casting vote.
- 11.14 **Seal:** The Committee shall obtain a common seal for the use of the Society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Committee. Every instrument to which the common seal is affixed shall be signed by the Chairperson and one other member of the Committee.
- 11.15 **Voting:** Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote, provided that the treasurer/secretary shall not be entitled to vote and further provided that the Controlling Member (if there is one) shall, on any matter relating to a Development Issue, be entitled to exercise a number of votes equal to one more than the number of other Committee members present at any Committee meeting. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 11.16 **Validity of Committee's actions :** All acts properly done by any meeting of the Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, or that they were disqualified, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.
- 11.17 **Committee minutes and records :** The Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Committee. All business transacted at such meetings signed by the chairperson shall be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

12. **MANAGER**

- 12.1 **Duties** : Subject to rule 11.9, the Committee may appoint, remove and replace a manager from time to time to carry out such of the obligations of the Society, and exercise such of the discretions and powers of the Society, as the Committee shall see fit.

13. **GENERAL MEETINGS**

- 13.1 **Annual general meeting** : In addition to any other meetings in that year, the Society shall hold an annual general meeting each year. Not more than 18 months shall elapse between the date of one annual general meeting and that of the next. The Committee will determine the time and place of each year's annual general meeting.
- 13.2 **Special general meetings** : A general meeting other than an annual general meeting may be requested by the Committee, or by written requisition signed by not less than 25% of current Members. The secretary shall call a special general meeting within 14 days of receiving an effective request.
- 13.3 **Powers of the Society in general meeting** : The Society in a general meeting may, by resolution, exercise all powers, authorities and discretions of the Society notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by 75% of the Members entitled to vote in person or by proxy at general meetings, together with the Controlling Member (if there is one), shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.
- 13.4 **Quorum** : No business shall be transacted at any general meeting of the Society unless the quorum is present when a meeting proceeds to business. Quorum shall be not less than 20% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person or by proxy, together with the Controlling Member (if there is one).
- 13.5 **Notice of general meeting** : A note of general meeting of the Society shall be sent to every Member not less than 10 working days before the date of such meeting. Such notice shall specify the date, time and venue of such meeting. In the case of a general meeting other than an annual general meeting such notice shall specify all business and all notices of motions to be considered at such meeting. No business or notice of motion which is not specified shall be discussed or transacted at such meeting.

- 13.6 **Failure to give notice** : The accidental omission to give notice, or the non-receipt of such notice by a Member, shall not invalidate the proceedings at any such meeting.
- 13.7 **The chairperson** : The chairperson at any general meeting shall be :
- a. the chairperson of the Society; or
 - b. if the chairperson is not present or is unwilling to take the chair, then those committee members who are present may choose one of their number to chair the meeting: or
 - c. if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 13.8 **Adjournment** : If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Committee shall determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Controlling Member (if there is one) shall constitute a quorum.
- 13.9 **Adjourned meetings** : No business other than that business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.
14. **VOTING**
- 14.1 **One Member one vote** : Each member present at a general meeting of the Society (not at that time being in breach of the Constitution) shall be entitled to one vote for each Developed Property of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Owner in respect of any property within Clearwater Resort, and such Owners are collectively a Member pursuant to rule 4.8, only one such Owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the certificate of title to the property within Clearwater Resort shall be entitled to exercise that vote. On the death of any Member the Trustee of that Member's estate shall be entitled to exercise that Member's vote.

- 14.2 **Controlling Member's vote:** The Controlling Member (if there is one) shall, on any Development Issue, be entitled to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting.
- 14.3 **Exercise of Controlling Member's Vote:** In the event that the Controlling Member intends to exercise a vote equivalent to one more than the number of Members entitled to vote at any meeting. In accordance with Rules 11.15 and 14.2 above, the Controlling Member shall provide to every member of the Society seven (7) days notice in writing (including the day of sending and the day of receipt in the ordinary course of posting) of their intention to exercise such vote. Every notice under this Rule shall outline the matter at issue together with a statement of intention from the Controlling Member as to the vote they intend to cast. During the 7 day notice period every Member shall have the right to provide written submissions to the Controlling Member regarding the matter at issue. The Controlling Member shall in good faith consider all submissions prior to exercising the Controlling Member's vote, however the Controlling Member shall not be under any obligation whatsoever to adopt any submission, in whole or in part, and the Controlling Member's discretion in this regard shall be completely unfettered.
- 14.4 **Corporation representatives :** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member, and references in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.
- 14.5 **No vote if fees unpaid :** Unless all annual levies and additional fees presently payable by the Member to the Society have been paid in full, the Member shall not be entitled to vote at any general meeting of the Society, whether in his own right or as a proxy for another person.
- 14.6 **Voting at meetings :** At any general meeting :
- a. A resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote.
 - b. Resolutions put to the vote shall be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by :
 - i. the chairperson of the meeting; or

- ii. at least five Members present in person or by proxy;
 - c. In the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost or an entry to that effect in the Society's minute book, shall be conclusive evidence of that fact, without further proof of the number or portion of votes recorded in favour of or against such resolution.
 - d. Resolutions shall be passed by a majority of votes, except where Special Resolution or the unanimous resolution of all Members is required by this Constitution.
 - e. In the case of a tie in votes, the chairperson may exercise a casting vote.
- 14.7 **Good faith** : Members shall, in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Society, and that each Member shall bear that Member's Proportion of all Operating expenses and of all costs and expenses to be met by levies made by the Society under rule 6.5, irrespective of whether any expenditure by the Society benefits all Members.

15. DESIGN CONTROL COMMITTEE

- 15.1 **Composition** : The initial Design Control Committee shall comprise the following persons:
- a. a landscape architect with expertise in golf resort design appointed from time to time by the Developer;
 - b. an architect appointed from time to time by the Institute of Architects (Canterbury); and
 - c. two representatives of the Controlling Member appointed by the Controlling Member, for so long as there is a Controlling Member.

At such time as the Society is in a position to do so the Society shall appoint a representative to join the Design Control Committee and thereafter it shall be a requirement that a representative of the Society forms part of the Design Control Committee

- 15.2 **Design guidelines** : The Design Control Committee may publish from time to time Design Guidelines in respect of residential development within Clearwater Resort.
- 15.3 **Design approval** : Before commencing any residential building or development or other structure within Clearwater Resort or obtaining

any consent from any local authority to build, a Member must first submit the design of the proposed building/structure to the Design Control Committee for its written approval, which shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority :

- a. the District Plan;
- b. any bylaws made under rule 9.1 of this Constitution; and
- c. any relevant Design Guidelines.

15.4 **Approval Costs:** All costs of the design approval process (including without limitation, any disbursements or professional charges of a member of the Design Control Committee) shall be met by the Member seeking the approval.

15.5 **Bonds**

- (a) **Approval Bond:** A refundable bond of \$2,000 (or such other amount as the Design Control Committee reasonably determines) will be required to be deposited with the Developer by the Member at the time of lodging any design for approval. The bond paid by the Member minus any deductions and approval fees will be returned to the Member once the finished project matches the approved drawings to the satisfaction of the Design Control Committee.
- (b) **Construction Bond :** A refundable bond of \$5,000 will be required to be deposited with the Developer by the Member prior to commencement of any work on the Developed Property, to cover any damage to any services, private roading, kerbing or other facility/structure not owned by the Member.

GENERAL

16. **GENERAL**

16.1 **Dissolution :** The Society may be wound up in accordance with section 24 of the Act. Upon the winding up of the Society:

- a. ownership of the Residential Communal Facilities shall vest in; and
- b. the contents of any sinking fund collected by the Committee in accordance with rule 6.5a shall be distributed to,

the Members as tenants in common in shares equal to the Member's Proportion as at the date of winding up, and the Society shall take all

necessary steps to vest legal title to the Residential Communal Facilities in the Members.

- 16.2 **Alteration of Constitution** : Subject to rule 16.3 the Constitution shall not be amended, added to or rescinded unless:
- a. such action is taken at an annual general meeting, or a general meeting convened for that purpose; and
 - b. written notice of the proposed amendment, addition or rescission has been given to all Members in accordance with this Constitution; and
 - c. such action is taken by Special Resolution; and
 - d. such action is taken with the written consent of the Controlling Member (if there is one).
- 16.3 **Rights of Controlling Member** Notwithstanding any other rule in this Constitution, this Constitution shall not be amended, added to or rescinded so as to alter, add to or rescind rules 4.2, 5.2, 6.8, 7.1, 8.2, 9.1, 12.1, 14, 15, 16.1, 16.2, 16.3 or so as to detrimentally affect the rights of the Controlling Member.
- 16.4 **Acceptance by Registrar** : No such amendment, addition or rescission shall be valid unless and until accepted by the Registrar of Incorporated Societies under the Incorporated Societies Act.
- 16.5 **Registered office** : The registered office shall be situated at a place nominated by the Committee.
- 16.6 **Liability of Members** : No Members shall be under any liability in respect of any contract or other obligation made or incurred by the Society.
- 16.7 **Society to indemnify Members** : The Society shall indemnify each Member against any liability properly incurred by such Member in respect of the affairs of the Society, to the extent of property owned by the Society.
- 16.8 **No action in favour of Members** : No action in law or otherwise shall lie in favour of any Member against any other Member or the Committee, or any Committee member in respect of any act or omission pursuant to this Constitution. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 16.9 **Member to indemnify Society** : Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability which the Society

may become liable in respect of or arising from any breach of this Constitution by the Member.

16.10 **Arbitration** : Any difference or dispute which may arise between a Member and the Society concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution shall be referred to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such arbitration shall be a condition precedent to the commencement of any action at law.

16.11 **Approval** : Where in this Constitution any reference is made to the approval or consent of the Society or the Developer:

- a. such approval or consent shall be given at the sole discretion of the Society, or the Developer, as appropriate;
- b. no approval or consent given on any occasion by either the Society or the Developer shall serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
- c. such reference shall mean the prior written approval or consent of the Society or the Developer, as appropriate.

**SCHEDULE 1
SOCIETY BYLAWS**

1. USE

- 1.1 Each member shall make no improper, offensive or unlawful use of any Residential Communal Facilities, and shall use the Residential Communal Facilities only for the purposes for which they were designed.
- 1.2 No Member shall fetter, obstruct or impede the use of any Residential Communal Facilities by any other member.
- 1.3 No Member shall place anything in or on Residential Communal Facilities without the approval of the Manager.
- 1.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Residential Communal Facilities.

2. PROHIBITED ACTS

- 2.1 No Member shall drop any litter in or on the Residential Communal Facilities.
- 2.2 No Member shall operate any motorised craft on any lake or river which forms part of the Residential Communal Facilities.
- 2.3 No Member shall do any act that detracts from the attractiveness or state of repair of the Residential Communal Facilities. Any Member who discovers any damage to the Residential Communal Facilities shall immediately report such damage to the Manager.
- 2.4 No Member will exhibit or put on any part of the land including the outside of the Developed Property or in any building any trade business or professional or advertising sign or any notice or name board or plate provided that the Developer may permit a nameplate of a uniform design and size in respect of the dwelling in common with that permitted for other dwellings at the Clearwater Resort.
- 2.5 No Member shall obstruct or interfere with or disturb or trespass upon the rights of any other Member or occupier of any other Developed Property in the quiet and uninterrupted occupation and enjoyment of the premises so occupied by him or her.
- 2.6 No Member shall do or permit to be done anything whereby any obstruction, restriction or hindrance may be caused to the roads, driveways and pathways or other parts of the Clearwater Resort or to persons lawfully using the same.

3. CLOSURE OF RESIDENTIAL COMMUNAL FACILITIES

- 3.1 The Manager shall be entitled to close any or all of the Residential Communal Facilities as the Manager considers necessary for security reasons, or for the purpose of maintaining and repairing Residential Communal Facilities.

4. ROADS

- 4.1 Each Member shall provide the Manager with the registration number of all vehicles belonging to that Member which shall be used on any of the roads within Clearwater Resort.
- 4.2 No Member shall park any vehicle on the roads or any other Residential Communal Facilities, other than in spaces specified by the Manager from time to time as suitable for that purpose.

5. CODE OF CONDUCT

- 5.1 No Member shall use or permit any Developed Property to be used for any purpose which is illegal or may be injurious to the reputation of Clearwater Resort.

6. CONDUCT AND NOISE

- 6.1 No Member shall engage in, or allow any person to engage in, any criminal activity within Clearwater Resort.
- 6.2 No Member shall make or permit any improper or unreasonable noise within Clearwater Resort, nor act in any fashion so as to annoy, disturb or irritate any other Member.
- 6.3 If intoxicating liquor is consumed within Clearwater Resort, the Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.
- 6.4 The Society reserves the right to exclude or evict from Clearwater Resort any person who in the opinion of the Society is under the influence of intoxicating liquor, drugs or substances, or who in any manner acts in violation of the Constitution or these rules. This right has been delegated to the Manager.
- 6.5 No Member shall burn any material or substance within Clearwater Resort or do anything which may create a fire hazard or contravene fire regulations.
- 6.6 No Member shall dispose of any rubbish except into bins or receptacles for removal on usual days by the local authority or by independent contractors.

7. MEMBERS' RESIDENCES

- 7.1 Each Member shall have the duty to keep each property which they own within Clearwater Resort and all improvements to those properties in a well maintained and attractive condition and shall not permit the accumulation thereon of unsightly rubbish or materials or in any other way permit the appearance of a property to detract from the general standards established for Clearwater Resort.
- 7.2 Each Member shall at all times comply with the requirements of all statutes, regulations and local authorities, and shall duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Developed Properties.
- 7.3 No Member shall erect any notice or sign on a Developed Property or the Residential Communal Facilities without the prior written consent of the Society.
- 7.4 Each Member shall properly secure that Member's Developed Property when it is not occupied.
- 7.5 No Member shall allow any animal, bird or pet (collectively "pet") to cause a nuisance to any other Member.
- 7.6 Without limiting the generality of bylaw 7.5, each Member shall ensure, that:
- a. the number and size of any Pets are reasonable given the size of the Member's Developed Property and any high density residential environment at Clearwater Resort;
 - b. when Pets are outside the boundaries of the Member's Developed Property, Pets are under the control and supervision, and for this purpose, all dogs are on a leash;
 - c. all pet droppings are immediately picked up and disposed of.
 - d. no Pet shall make any noise so as to disturb or otherwise cause a nuisance;
 - e. all Pets are maintained in a healthy and clean condition, and all laws and regulations relating to the keeping of such Pets are complied with;
 - f. no dangerous Pets are kept within Clearwater Resort;
 - g. all dogs remain inside the boundaries of the Developed Property. As fences are not encouraged within the residential areas of the Clearwater Resort (other than for safety purposes)

Members may need to give consideration to alternative means or methods to comply with this bylaw.

- 7.7 Each Member shall be liable for the costs of repairing any damage caused by that Member's Pets.
- 7.8 No Member shall allow any Developed Property to become infested by vermin or insects.
- 7.9 No Member shall erect or permit to be erected on any Developed Property any aerials, satellite dishes or other communication receivers of any kind whatsoever, other than those approved by the Society which permission may in the Society's absolute discretion be withheld should it consider that these do not conform to the standards desirable for the development of Clearwater Resort.
- 7.10 No Member shall hold or permit to be held any auction sale on any Developed Property without the prior written approval of the Society.

8. DESIGN APPROVAL

- 8.1 **Design approval** : Before commencing any residential building or development or other structure within Clearwater Resort or obtaining any consent from any local authority to build, a Member must first submit the design of the proposed building/structure to the Design Control Committee for its written approval, which shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority :
 - a. the District Plan;
 - b. any bylaws made under rule 9.1 of this Constitution; and
 - c. any relevant Design Guidelines.
- 8.2 **Approval Costs**: All costs of the design approval process (including without limitation, any disbursements or professional charges of a member of the Design Control Committee) shall be met by the Member seeking the approval.
- 8.3 **Approval Bond**: A refundable bond of \$2,000 (or such other amount as the Design Control Committee reasonably determines) will be required to be deposited with the Developer by the Member at the time of lodging any design for approval. The bond paid by the Member minus any deductions and approval fees will be returned to the Member once the finished project matches the approved drawings to the satisfaction of the Design Control Committee.
- 8.4 **Construction Bond** : A refundable bond of \$5,000 will be required to be deposited with the Developer by the Member prior to

commencement of any work on the Developed Property, to cover any damage to any services, private roading, kerbing or other facility/structure not owned by the Member.

- 8.5 **Right to disapprove plans** The Design Control Committee retains the right to refuse to approve any plans which in its reasonable opinion do not meet the minimum standards of design quality as outlined in these bylaws.
- 8.6 **Approval Process** : The Design Control Committee and the Member shall comply with the following approval process before undertaking any work to the Lot:
- a. Pre-Design Conference (optional). Member and the architect/designer review their ideas with the Design Control Committee.
 - b. Preliminary Submittal (required). Review of conceptual plans with the Design Control Committee to discuss site planning and building concepts prior to commencing working drawings.
 - c. Final Submittal including:
 - i. Legal Description
 - ii. Landscape Plan (1:100 scale)
 - utilities locations
 - drainage and location/size of soakage pits (dry wells)
 - set backs – easements
 - sidewalks, stairways, parking, driveways, decks, patios, courtyards, swimming pools, awnings and walls, exterior lights, garage, other out-buildings
 - safety fencing location, height and appearance
 - planting location of planters, lawn area, new trees, natural ground cover areas, and associated plant species
 - plant list including species, size, height at maturity
 - jetties/lake edge development
 - iii. Building Plans (1:50 scale)
 - plan of works
 - plans, sections, elevations
 - colours and materials identified
 - any rooftop equipment, chimneys
 - iv. Specifications

- samples and colours of roof and wall materials and of other special features.
- d. Location of building foundations and grades, exterior design, materials and colours are reviewed by the Design Control Committee within 15 business days of a complete submission being received.
 - e. Approved plans are then available to be picked up. In the event of non-approval the Member and/or their architect may work with the Design Control Committee to obtain approval or lodge an appeal.
 - f. In the event of an appeal in terms of design, a final decision will be made by an arbitrator (appointed by the Design Control Committee in consultation with the Member) based on written submissions from the Member and the Design Control Committee.
 - g. Member acquires building consents from the local authority.
 - h. Member's builder excavates and forms all footings/slabs.
 - i. Prior to pouring the footings, the Member submits to the Design Control Committee an engineer's or surveyor's certificate confirming that grades and locations are correct.
 - j. When the house is complete the Member notifies the Design Control Committee to have the final inspection carried out.
 - k. The bond paid by the Member under bylaw 8.3 minus any deductions and approval fees will be returned to the Member once the finished project matches the approved drawings to the satisfaction of the Design Control Committee.

9. SECURITY MEASURES

- 9.1 Private security devices, if installed, shall be monitored so as to ensure prompt and effective response when activated, and deactivation by independent persons if the occupant is absent.

10. BIRD STRIKE AND OTHER MATTERS CHRISTCHURCH INTERNATIONAL AIRPORT

- 10.1 The development of Clearwater Resort includes the creation of bodies of water that may contribute to the risk of bird strike to aircraft using the Airport.
- 10.2 Each Member shall use all reasonable endeavours to restrict any bird species identified as being a potential threat to aircraft operations at

the Airport from visiting or inhabiting the Member's Developed Property. These reasonable endeavours will include (without limitation) all matters referred to in clause 3.1 (h) i to vi.

- 10.3 No New Member of the Society being the owner of land covenanted and/or joining or rejoining the Society after the 18th day of September 2005 shall:
- a. interfere in any way with CIAL activities nor shall oppose or procure any other party to oppose in any way any Resource Management Act application made by CIAL in the furtherance of its objective of being a 24 hour seven day a week non-curfewed international airport;
 - b. prevent or object to, complain about, bring any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise and whether seeking damages or injunctive or other relief or orders), or otherwise oppose, noise resulting from the operations of Christchurch International Airport (including, without limitation), from the operation of aircraft, testing of aircraft engines, bird scaring, bird hazard management, or the operation of motor vehicles and associated equipment) or the effects of or resulting from such noise.

**SCHEDULE 2
DEED OF TRANSFER**

**CLEARWATER RESORT OWNERS SOCIETY
INCORPORATED**

DEED FOR TRANSFER OF RESIDENTIAL COMMUNAL FACILITIES

DEED dated

PARTIES

CLEARWATER RESORT LIMITED AND/OR CLEARWATER LAND HOLDINGS LIMITED AND THEIR ASSOCIATED AND/OR SUBSIDIARY COMPANIES ("Developer")

AND

CLEARWATER RESORT OWNERS SOCIETY INCORPORATED ("Society")

INTRODUCTION

- A. The Developer intends to develop Clearwater Resort, which includes a residential development on a site generally as shown on the plan annexed to the constitution of the Society.
- B. The Developer wishes to transfer property to the Society, which property shall be for the common use of all owners of Clearwater Resort. The Society shall hold, own and maintain that property in accordance with its constitution.

COVENANTS

1. DEFINITIONS

- 1.1 In this Deed, unless the context otherwise requires:

"Residential Communal Facilities" means all land, plant, equipment, facilities, utilities and amenities including any private roads and walkways within Clearwater Resort owned, leased, licensed or otherwise held or operated by the Society (as the Society may determine) from time to time including those facilities from time to time transferred to the Society by the Developer in accordance with this Deed of Transfer.

"Development" means the construction of Clearwater Resort as a complete residential development.

2. RESERVATION

- 2.1 The Society acknowledges that whilst it is the intention of the Developer to construct the Residential Communal Facilities, the Developer reserves the right to not proceed with the construction of the Residential Communal Facilities, to vary those facilities designated as Residential Communal Facilities, and to vary the location and specifications of the Residential Communal Facilities.

2.2 This deed shall oblige the Developer only to assign such Residential Communal Facilities as it completes, and shall not oblige the Developer to construct any Residential Communal Facilities, or to construct any Residential Communal Facilities to any particular specification or in any particular location.

2.3 The Developer expressly disclaims any liability to the Society in respect of anything and of the consequences of anything done or omitted to be done by any person in reliance upon any Residential Communal Facilities being constructed, or constructed to any particular specification or in any particular location.

3. TRANSFER

3.1 The Developer shall, as each stage of the Development is completed, transfer to the Society any Residential Communal Facilities constructed which are intended to be used by owners of properties within that stage, subject to such encumbrances as the Developer sees fit.

3.2 The Developer warrants that any Residential Communal Facilities transferred to the Society shall be complete, and that all work in respect of such Residential Communal Facilities shall be to a proper and professional standard.

3.3 The Developer covenants for the purposes of rule 3.1, that it shall promptly make, do and execute all deeds, documents and actions required of it by the Society to effect the assignment to it of Residential Communal Facilities.

3.4 The Developer shall indemnify and keep indemnified the Society against any and all stamp duty for which the Society may become liable as a result of the transfer of Residential Communal Facilities pursuant to rule 3.1 provided that should the Society reasonably believe it may become liable for any such stamp duty, the parties shall seek a ruling on this point from the Commissioner of Inland Revenue and shall co-operate fully in taking all steps necessary for this purpose (including making submissions in respect of, and objecting to, this ruling) before the transfer of the Residential Communal Facilities.

3.5 The Society shall hold Residential Communal Facilities in accordance with its Constitution, and generally for the benefit of the owners of Clearwater Resort.

4. DEVELOPMENT RIGHTS

4.1 The Society shall ensure that its constitution:

- a. allows the Developer access to the Developed Property of that Member for the purpose of proceeding with the development

provided that the Developer has no other reasonable means of proceeding with the Development other than through the Members developed property and must give such Member reasonable verbal notice of its requirement for access and its best estimate of the duration of such access; and provided that the Developer must, without delay, make good any damage or harm to the Member's Developed Property resulting from such access; and

- b. grants such easements in favour of the Developer over or under the Member's Developed Property as are required for the development to proceed or as may be necessary or desirable for development of Clearwater Resort provided that the Developer has no other reasonable means of proceeding with the Development other than by benefiting from such access. The Developer must pay the reasonable expenses incurred by the Member relating to the grant of any such easement; and
- c. does not prevent, hinder or obstruct the use by the Developer of the Residential Communal Facilities, the addition, removal or alteration of structures or services forming part of the Residential Communal Facilities by the Developer, or the granting of any interests in the Residential Communal Facilities by the Society to the Developer; and
- d. does not allow a Member nor the Society to oppose, or take part in any opposition to, the development of Clearwater Resort; and
- e. requires Members to support any resolution to amend this Constitution, where the Society is bound by agreement with the Developer, to procure such amendment; and
- f. requires members to sign any document or do any other thing reasonably necessary to support any Resource Consent or other authorisation applied for by or on behalf of the Developer in respect to the development of Clearwater Resort; and
- g. requires that New Members being the owners of land covenant to prevent interference with CIAL activities and/or all members joining or rejoining the Society after the 18th day of September 2005 shall not prevent, hinder or obstruct CIAL in any way in the development of a 24 hour seven day a week non-curfewed international airport operation, including without limitation, not mounting any challenge or taking any objection to any planning initiative, application or consent process, district scheme change or special legislation enacted in favour of CIAL's stated objective of being a 24 hour seven day a week non-curfewed international airport operation; and

- h. requires Members to support any resolution to amend this Constitution where the Developer seeks an amendment to assist the Developer in implementing, proceeding with and completing its development of Clearwater Resort.
- 4.2 In exercising any of its rights pursuant to clause 7.1, in respect of residential communal facilities the Developer must:
- a. act reasonably; and
 - b. first provide 30 days written notice to the Society of its intention to invoke any of the provisions of clause 7.1 (other than clause 7.1(e)), that notice to set out in detail the proposed further development of Clearwater Resort and any likely effects on relevant Developed Properties. At the request of the Society following provision of such notice, the Developer will consult with the Society as to any reasonable concerns of Members about such further development.
- 4.3 The Society hereby grants to the Developer the rights to:
- a. Access and remain on the Residential Communal Facilities with such vehicles, machinery and tools as the Developer may desire; and
 - b. Temporarily close any Residential Communal Facilities; and
 - c. Add, remove or alter structures or services forming part of the Residential Communal Facilities.

As required to further the Development.

- 4.4 The Society shall, when called upon by the Developer, grant such easements or rights in respect of the Residential Communal Facilities in favour of any person nominated by the Developer, as required to further the Development.
- 4.5 The Society shall amend its constitution, when advised by the Developer that such amendment is necessary or desirable for the Development to proceed.

5. SOCIETY'S OBLIGATIONS

- 5.1 Until the Developer certifies to the Society that the Development is complete, the Society shall:
- a. cause the Residential Communal Facilities to be maintained to the standard specified by the Developer; and

- b. enforce any covenants granted by any resident of Clearwater Resort in favour of the Society, when called upon to do so by the Developer.

6. OPERATING EXPENSES

- 6.1 The Developer acknowledges that during the Development, it may, in carrying out any works, add to the costs of maintaining and repairing Residential Communal Facilities transferred to the Society and agrees to, within 30 days of written demand being made by the Society, make payment to the Society in reimbursement of such additional costs, provided that the Developer may require the Society to provide invoices verifying expenditure in respect of the additional costs.

7. GOOD FAITH

- 7.1 The parties shall act in good faith, and shall use their best endeavours to promote the mutual interests of the parties in the development and maintenance of Clearwater Resort as a high quality residential development.
- 7.2 The Developer shall exercise its voting rights as Controlling Member (as defined in the Society's constitution) so as to ensure that:
 - a. Clearwater Resort is developed and completed in accordance with the requirements of all statutes, regulations and regulatory authorities;
 - b. the Residential Communal Facilities are maintained to a standard commensurate with the Developer's promotion of Clearwater Resort as a high quality residential development;
 - c. owners of Clearwater Resort comply with any covenants granted in favour of the Society;
 - d. the Development proceeds smoothly and efficiently, in accordance with the plans of the Developer,

and otherwise for the benefit of owners of Clearwater Resort.

8. ASSIGNMENT

- 8.1 This agreement may be assigned by the Developer, provided that the assignee enters into an agreement with the Society under which the assignee agrees to be bound by the terms of this agreement.

9. **CONTRACTS (PRIVITY) ACT 1982**

9.1 In terms of section 4 of the Contracts (Privity) Act 1982, this deed is for the benefit of all registered proprietors of residential properties within Clearwater Resort , and the obligations of the Developer pursuant to this deed may be enforced by any such registered proprietor.

10. **POWER OF ATTORNEY**

10.1 The Society irrevocably appoints the nominee of the Developer, as the attorney of the Society, to execute and perform any act, deed, matter or things as fully and effectually as the Society could do, where the Society is required to execute or perform such act, deed, matter or thing by the provisions of this deed, and the parties agree to execute a full and proper power of attorney in this respect immediately upon execution of this agreement.

EXECUTION AS A DEED

CLEARWATER RESORT LIMITED
by:

]

Signature of Director _____

Name of Director _____

Signature of Director _____

Name of Director _____

THE COMMON SEAL of CLEARWATER RESORT OWNERS SOCIETY INCORPORATED

Was affixed in the presence of:

Name and office of signatory _____

Name and office of signatory _____

**SCHEDULE 3
EXISTING MEMBERS**

556 Investments Limited

A

Ahn, J T & Im, K J

Al Jafar Trust

Andytrac Limited

Austin, E U

B

Baker/Thomas Ventures Ltd

Battiston, J

Berryman, F

Berryman, F

Blackhouse Investments Limited

Bruce, J & N

Brundell Properties Limited

Buckingham Limited

Burrett, G D , Fuller M J & The Directors of the Amberley Hotel Ltd

C

Cam 2000 Limited

Canres Limited

Caroline Melville Family Trust

Charles, Sir Bob & Lady Verity

Chiverton Holdings Ltd

Chiverton Holdings Ltd

Clear Blue Investments Limited

Clearwater Hotel 2004 Limited

Clearwater Hotel 2004 Limited

Clearwater Land Holdings Limited

Cournane, F

Cox, J

Cox, J

Cox, R N S & G M

Crisp, P J

D

Darby, J J & B M

Dipsy Doodle Investments Limited

Dollar Munchers Investments Limited
Donnithorne Investments Limited
Dunlop, J R & R A L t/a Mayfield Grove Partnership
Durning Communications Limited
Durning, J

E

Edge Properties (2003) Limited
Elliott, J M
Ellwood, K G

F

Fleming, D J & W L

G

Giesen, Henderson & Giesen
Gill, S S & G J L
Glenross Properties Limited
Grena Nominees Limited
Greta Holdings Limited

H

Harris, C & L
Hazlett Investments Limited
Hazlett, D
Hazlett, D
Helder Holdings Limited
Howat, M E & S J
Hoyle, S N & C A

I

Imak Investments Limited
Isaac Construction Company Limited

J

Jaffray Family Investments Limited
James Robert Investments Limited
Johnstone, C & McBride, G

K

Kirkland, J M & Tait, E J
Kirkpatrick, G F, Bowden P I, McGowan, A L & Purvis J L

L

Lee, J W & Chang, C Y

Limestone Hills Vineyards & Olive Groves Limited

Ludgater Holdings Limited

M

Maxband Holdings Limited

McDonald, K

McDonald, K

McFarlane, P & P

McLaughlin, P B & J A

McGuinness, P T

MD4 Ltd

Min, D K & Ok, S

Moore, D & V

O

One Foot Forward Limited

O'Shannessey, T J & S

Outrigger Hotels & Resorts Australia Pty Limited

P

Parkhouse Trust

Peak, L & Perry, M

Peate, R S & J A

Porra, M F & T B

R

Randle, P L

Rapper Investments NZ Limited

S

S.K. (Chch) Ltd

Saunders, M & Sissons, R

Scarlett Black Property Investments Ltd

Selby, C R & J E

Selby, C R & J E

Sloane, A W B & N E & Harry, B J

Smith, K J & Turner, J R

Smith, K & J

Sundstrum, B

T

The Hadlow Corner Trust

The Winward Trust

Three Greens Limited

Timbs, P W & W A

V

Vieceli, B J & Carswell, C C

W

Warjen Properties Limited

Whelan, P D

Williams, R & A & Keegan, A

**CLEARWATER RESORT
MASTER DEVELOPMENT PLAN**

BETWEEN

CLEARWATER RESORT OWNER'S SOCIETY INCORPORATED
("Society")

AND

THC GROUP LIMITED
("Manager")

MANAGEMENT AGREEMENT

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THIS DEED is dated the 11th day of August 2020

BETWEEN CLEARWATER RESORT OWNERS' SOCIETY INCORPORATED ("Society")

AND THC GROUP LIMITED ("Manager")

INTRODUCTION

- A. The Constitution requires the Society to operate, manage, maintain, renovate and replace the Residential Communal Facilities for the benefits of its Members, such Members being property owners at Clearwater.
- B. The Manager has agreed to manage the Society on the terms set out in this agreement.

AGREEMENT

1. INTERPRETATION

- 1.1. In this Agreement unless the context otherwise requires the following descriptions shall apply:

"**Agreement**" means this Management Agreement.

"**Commencement Date**" means the date of this Management Agreement.

"**Committee**" means the committee members from time to time elected to manage the affairs of the Society pursuant to the Constitution.

"**Constitution**" means the constitution of the Society.

"**Developed Property**" shall bear the meaning ascribed thereto in the Constitution.

"**Management Fee**" means the fee payable by the Society to the Manager pursuant to clause 5.

"**Residential Communal Facilities**" shall bear the meaning ascribed thereto in the Constitution.

"**Termination Date**" means the date upon which this agreement is terminated in accordance with clause 10.

Defined Terms in this Agreement shall have the same meaning as those terms in the Constitution.

2. APPOINTMENT OF MANAGER

- 2.1. The Society may appoint, remove and replace the Manager from time to time to carry out such of the obligations of the Society.
- 2.2. The Society hereby appoints the Manager as the manager and the treasurer/secretary ("Treasurer/Secretary") of the Society.

3. TERM

- 3.1. This Agreement shall commence on the Commencement date and shall expire on the Termination Date.

4. ROLE OF MANAGER

- 4.1. The relationship between the Society and the Manager shall be that of principal and agent.
- 4.2. Nothing in this Agreement shall be deemed or construed to constitute a part, a partner of the other party, or to create any trust. Neither party shall have the authority to act for nor to incur any obligation on behalf of the other party except as expressly provided in this Agreement or any Agreement entered into pursuant to this Agreement.
- 4.3. The Manager shall not by reason of its management of the Society be liable for any of the Society's legal, equitable, statutory or other obligations.
- 4.4. The Manager will report to, take directions from, and be accountable to, the Society in relation to its duties under this Agreement.
- 4.5. Subject to the specific terms of this Agreement, the Manager may exercise all powers, authority and discretions of the Society as set out in the Constitution, and do on its behalf all such acts as it deems necessary or expedient.

5. MANAGEMENT FEE

- 5.1. The Society shall pay to the Manager being that fee determined by the Society.
- 5.2. Subject to the receipt of a tax invoice, the Management Fee shall be paid by the Society to the Manager monthly in arrears by the 20th day of the months following the month in question.

6. MANAGER'S OBLIGATIONS

- 6.1. The Manager shall:
 - 6.1.1. Manage the Society in accordance with sound commercial practice and in accordance with any reasonable directions (not inconsistent with the terms of this Agreement) which may from time to time be given to the Manager by the Society;
 - 6.1.2. Carry out the duties of the Treasurer/ Secretary under the Constitution;

- 6.1.3. Use its best endeavours to promote the interests and welfare of the Society and its Members; and
 - 6.1.4. Employ sufficient competent staff to effectively manage the Society and carry out the duties of the Treasurer/Secretary.
- 6.2. Subject to any reasonable directions (not inconsistent with the terms of this Agreement) which may from time to time be given to the Manager by the Society and to the restrictions imposed by clause 6.3, the Manager's duties shall include, without limitation to the provisions of clause 6.1:
- 6.2.1. Those duties as Manager specified in the first schedule to this Agreement; and
 - 6.2.2. Those duties as Treasurer/Secretary as specified in the second schedule to this Agreement.
- 6.3. The Manager shall not be entitled, without the prior approval of the Committee:
- 6.3.1. Subject to clause 6.4, to enter into any agreement, arrangement, transaction or contract on behalf of the Society;
 - 6.3.2. To carry out any capital improvements;
 - 6.3.3. To levy any Members;
 - 6.3.4. To promulgate bylaws under the Constitution;
 - 6.3.5. To allow any person, other than an Occupier or an Invitee, to use the Residential Communal Facilities;
 - 6.3.6. Spend, or commit to the expenditure of, any amount over \$5,000.00 plus GST, or any higher amount the Committee specifies from time to time; and
 - 6.3.7. To initiate any action at law or equity, or to enter into any dispute resolution or mediation, on behalf of the Society.
- 6.4. For the purposes of clause 6.3.1, the Society may, from time to time, advise the Manager of any clause of contract (including contracts being for a consideration less than a sum specified by the Society) which the Manager is approved to enter into on behalf of the Society.
- 6.5. Notwithstanding the provisions of clause 6.3 there shall be no limits on the Manager's authority where the Manager, in its reasonable opinion, decides that to delay a decision or an action while awaiting the approval of the Society would be detrimental to the best interests of the Society. However, the Manager shall first give notice of the intended decision or action to the Chairperson of the Committee either by telephone, facsimile or email and shall have waited a reasonable time from the giving of such notice without having received a response from the Chairperson of the Committee (after having made reasonable efforts to obtain such approval during that period).

7- SOCIETY'S OBLIGATIONS

7.1. The Society shall:

- 7.1.1. Permit the Manager to manage the Society without interruption or disturbance by the Committee, or the Society's agents, employees or contractors;
- 7.1.2. Grant the Manager and all persons authorised by the Manager the right to enter upon the Residential Communal Facilities at all times in connection with the fulfilment of the Manager's duties and obligations; and
- 7.1.3. Promptly do all things which may reasonably be necessary to enable the Manager to fully and effectively manage the Society in the manner contemplated including, without limiting the generality of the foregoing, arranging the execution of all notices, papers and documents reasonably required by the Manager to enable the Manager to carry out its obligations and functions.

8. LIABILITY

- 8.1. The Society shall not make any claim against the Manager in its capacity as Manager in respect of any alleged errors of judgment made in good faith in connection with the performance of its obligations under this Agreement and this limitation shall apply equally to claims against third parties performing such services pursuant to contacts with the Manager in its capacity as Manager of the Society.
- 8.2. If any claim, demand, action or proceeding is made or brought by any third party against the Manager in respect of or arising out of the performance of the Manager's obligations under this Agreement the Society shall indemnify the Manager against all losses, damages, costs and expenses in connection therewith except to the extent that the same may arise out of or be attributed to the breach of this Agreement or the gross negligence, wilful misconducts or misfeasance of the Manager or the Manager's employees or agents.
- 8.3. The Manager shall indemnify the Society against any claim, demand, action or proceeding made or brought by any third party against the Society in respect of or arising out of any breach of this Agreement by the Manager.

9. DEFAULT INTEREST

- 9.1. If any money owing to either of the parties under this agreement is in arrear and unpaid for 14 days after the due date for payment, whether or not any formal or legal demand for payment has been made, the other party shall pay default interest on the amount unpaid at the default interest rate computed on a daily basis from the due date until the overdue amount and all accrued interest is paid in full. The recovery of or right to recover interest by either party shall be without prejudice to that party's other rights, powers and remedies.

10. TERMINATION

- 10.1. This Agreement may be terminated by the Society by six months' notice in writing to the Manager.
- 10.2. Notwithstanding any other provision of this Agreement, this Agreement may be terminated by either party, without prejudice to any of their other rights or remedies, by notice in writing to the other party if:
- 10.2.1. The other party is in default in respect of any term of this Agreement. However, notice of default must first have been served upon such other party and such default shall have remained unheeded for a period of 60 days thereafter;
 - 10.2.2. The other party has a receiver or manager appointed over its undertaking or assets or enters into any assignment, composition or arrangement with its creditors;
 - 10.2.3. Proceedings for the winding up of the other party are presented or advertised or if a resolution is passed for the winding up of the other party or if any declaration as to the dissolution of the other party is made; or
 - 10.2.4. The other party shall be or become unable to pay its debts as they fall due in terms of section 287 of the Companies Act 1993 or shall be deemed to be unable to pay its debts or shall suspend payment to its creditors or shall cease or threaten to cease to carry on its business.
- 10.3. Upon termination the Manager shall forthwith deliver to the Society all contracts, documents, papers and records pertaining to the Society and shall take such action as the Society may reasonably require in order to ensure an orderly and systematic termination of the Manager's duties and activities under this Agreement.
- 10.4. Upon termination neither party shall be released from liability to pay any money owing but unpaid up to the date of termination or from liability for any previous breach of this Agreement.
- 10.5. The provisions contained in clause 12 shall remain in full force and effect after the termination of this Agreement and shall not be, or deemed to be, waived, merged or extinguished upon such termination.

11. ASSIGNMENT AND SUB-CONTRACTING

- 11.1. This Agreement may be assigned by the Manager with the consent of the Society (which consent shall not be unreasonably withheld) where the Manager establishes to the reasonable satisfaction of the Society that the assignee is in all respects a suitable person capable of undertaking the obligations of the Manager under this Agreement, and the assignee enters into an Agreement with the Society under which the assignee agrees to be bound by the terms of this Agreement.
- 11.2. The Manager shall be entitled to sub-contract with the consent of the Society (which consent shall not be unreasonably withheld) any or all of its obligations under this Agreement to a third party where the Manager establishes to the reasonable satisfaction of the Society that the sub-contractor is a suitable

person capable of undertaking these obligations. The sub-contracting of its obligations shall not in any way release the Manager from its obligations to the Society under this Agreement.

- 11.3. The consent of the Society is not required under clauses 11.1 and 11.2 where the assignee or sub-contractor is a related company (as defined in the Companies Act 1993) of the Developer. However, any such assignee must enter into the Agreement with the Society provided in clauses 11.1.

12. CONFIDENTIAL INFORMATION

- 12.1. Except in the proper performance of this Agreement, neither party shall at any time (whether during or after the termination of this Agreement), either directly or indirectly, use or divulge to any person or entity any knowledge or information which it may acquire during the term of this Agreement, or may have already acquired, concerning the Society, or the operations, affairs, property, customers, clients or principals of the other party ("Confidential Information") except:

12.1.1. With the consent of the other party;

12.1.2. In respect of Confidential Information which has become public knowledge other than as a result of unauthorised disclosure by either of the parties or their directors, officers, employees, agents, contractors or representatives; or

12.1.3. Confidential information which shall be required to be disclosed to the auditors of either party or to any governmental agency or otherwise as required by law.

- 12.2. Each party shall use its best endeavours to ensure that its directors, officers, employees, agents, contractors or representatives who are at any time in possession of Confidential Information do not disclose or suffer or permit the disclosure or use of such Confidential Information except as specifically provided in clause 12.1.

13. NOTICE

- 13.1. Any notice to be given pursuant to the terms of this Agreement shall be in writing addressed to the party to whom it is given and may without prejudice to any other mode of service authorised by law be delivered to or sent by prepaid registered post to the registered or principal place of business of such party and any such notice shall be deemed to be served in the case of registered post two working days after it was posted.

14. WAIVER

- 14.1. No failure to exercise and no delay in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy or any other right or remedy.
- 14.2. No waiver by any party of any breach of this agreement shall operate as a waiver of any right or remedy of that party in respect of any further or other breach of this Agreement.
- 14.3. Any waiver by a party shall be limited to the specific right, event, matter or circumstances to which that waiver relates.

14.4. No single or partial exercise of any right or remedy shall preclude any other or further exercise of such right or remedy or the exercise of any other right or remedy.

14.5. The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights and remedies provided by law.

15. PARTIAL INVALIDITY

15.1. If at any time any provision of this Agreement shall be held by a court of competent jurisdiction to be unreasonable, illegal, invalid or unenforceable for any reason whatsoever, that unreasonableness, illegality, invalidity or unenforceability shall not affect the ability of the Society to enforce any other provision of this Agreement and such provision shall be modified only to the extent necessary to give effect to the ruling of the court.

16. FORCE MAJEURE

16.1. Neither party shall be liable to the other party for failure or delay in the performance of any of its obligations under this Agreement if and to the extent that such failure or delay shall be by reason of any matter or thing beyond the reasonable control of such party.

17. DISPUTE RESOLUTION BY AGREEMENT OR MEDIATION

17.1. If a party has any dispute with the other party in connection with this deed:

17.1.1. That party will promptly give full written particulars of the dispute to the other party; and

17.1.2. the parties will promptly meet together and in good faith try and resolve the dispute.

17.2. If the dispute is not resolved within 20 working days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation. The mediation process set out in clause 17.3 shall be followed before the disputing party can commence arbitration or legal proceedings.

17.3. The mediation shall be conducted as follows:

17.3.1. The parties will jointly appoint a mediator and if they fail to agree on such appointment within 20 working days of written particulars being given (or any longer period agreed to by the parties), a mediator shall be appointed by the President of the New Zealand Law Society or the President's nominee at either party's request.

17.3.2. The parties must co-operate with the mediator in an effort to resolve the dispute.

17.3.3. If the dispute is not resolved within 20 working days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation shall cease.

17.3.4. The parties shall pay the costs of the mediator's fee and disbursements and any other costs associated with the mediation in equal shares.

- 17.4. The terms of settlement are binding on the parties and shall override the terms of this deed if there is any conflict.
- 17.5. The terms of settlement may be entered in evidence of any arbitration or legal proceedings.
- 17.6. The parties agree that written statements given to the mediator or to one another, and any discussion between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.
- 17.7. Either party may commence arbitration proceedings when mediation ceases under this clause 17.
- 17.8. Neither party will unreasonably delay the dispute resolution procedures in this clause.
- 17.9. This clause does not apply to any application by either party for urgent interlocutory relief.
- 17.10. Pending resolution of any dispute, the parties will perform their obligations under this deed in all respects, including performance of the matter which is the subject of dispute.

EXECUTION

SIGNED for and behalf of
CLEARWATER RESORT OWNERS' SOCIETY
INCORPORATED
in the presence of:-

) _____
) Chairperson JO KNOWLES.
)
)
)

Witness Signature: _____
[Handwritten Signature]

Witness Name: LEA KNOWLES.

Witness Occupation: MANAGER.

Witness Address: 538 MORRISON NE CATH.

SIGNED for and on behalf of
THC GROUP LIMITED
in the presence of:-

) _____
) Director *[Handwritten Signature]*
)
)
)

Witness Signature: _____
[Handwritten Signature]

Witness Name: Koree Roberts

Witness Occupation: Accounts Administrator

Witness Address: 4 Walker St, Christchurch.

FIRST SCHEDULE

DUTIES AS MANAGER – CLAUSE 6.2.1

1. The services that are to be provided by the Manager subject to the terms of the Constitution include (but are not limited to):
 - 1.1. management of all of the Society's affairs;
 - 1.2. responsibility for the collection of all money due;
 - 1.3. a central point for all enquiries, requests for service and complaints;
 - 1.4. various membership services (maintenance of the Membership & Plans Registers etc);
 - 1.5. infrastructure operations and maintenance;
 - 1.6. a central point for the co-ordination of all third parties who have been commissioned to provide services to Clearwater;
 - 1.7. maintenance of the service contractors register;
 - 1.8. preparation of the 5 year trading projections;
 - 1.9. preparation of the Society's Annual Financial Statements;
 - 1.10. enforcement of the Society's Constitution and Bylaws;
 - 1.11. management and maintenance of all of the Society's records.

SECOND SCHEDULE**Duties as Treasurer/Secretary – Clause 6.2.2**

1. The Treasurer/ Secretary shall be responsible for:
 - 1.1. Convene general meetings when requested to do so in accordance with this Constitution;
 - 1.2. Attend all meetings of the Committee and have full speaking rights at such meetings;
 - 1.3. Give all notices required to be given by these rules or as directed from time to time by the Society or the Committee;
 - 1.4. Keep minutes of all general meetings and Committee meetings and enter into the minute book:
 - 1.4.1. The time, date and venue of such meeting;
 - 1.4.2. All business considered and resolutions passed at such meeting;
 - 1.5. Hold in safe custody the common seal of the Society;
 - 1.6. Receive and issue receipts for all annual levies, additional fees, and any other moneys paid to the Society;
 - 1.7. Operate and maintain a current bank account in the name of the Society;
 - 1.8. Pay all accounts properly incurred by or on behalf of the Society;
 - 1.9. Report immediately to the Society any Member who fails to pay annual levies or additional fees within the prescribed period;
 - 1.10. Keep all financial records and any security documents in safe custody;
 - 1.11. Compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Society; and
 - 1.12. Compile the financial statements immediately following each financial year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as reasonably practicable after each audit is completed.

DEED OF TRANSFER

Plan Schedule

Residential Communal Facility	Master Plan	Title Reference	Projected Transfer Date
Sewage Pump Station 1	A		2022
Sewage Pump Station 2	B		2022
Sewage Pump Station 3	C		2022
Sewage Pump Station 4	D		2022
Sewage Pump Station 5	E		2021
Sewage Pump Station 6	F		2021
Harts Creek Lane (incl. street lights, footpaths, berms, sewerage pipes)	G		2021
East Stream Lane (incl. street lights, footpaths, berms, sewerage pipes)	H		2021
Kaikainui Lane (incl. street lights, footpaths, berms, sewerage pipes)	I		2021
Waterview Lane (incl. street lights, footpaths, berms)	J		2021
Waterway Lane (incl. street lights, footpaths, berms)	K		2021
Mayfly Lane (incl. street lights, footpaths, berms)	L		2021
Rotoiti Lane (incl. street lights, footpaths, berms, sewerage pipes)	M		2022

SCHEDULE 9
AIRPORT ENCUMBRANCE

ENCUMBRANCE INSTRUMENT

Section 100 Land Transfer Act 2017



Land Registration District

Canterbury

BARCODE

Record of Title (unique identifier)	All/part	Area/Description of part
	All	Principal Unit on Deposited Plan 569303 [and Accessory Unit on Deposited Plan 569303]

Encumbrancer

Surname(s) must be underlined or in CAPITALS

RED STAG INVESTMENTS LIMITED

Encumbrancee

Surname(s) must be underlined or in CAPITALS

CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Stratum in Freehold

Encumbrance Memorandum Number

(if applicable)

Not Applicable

Nature of security

State whether sum of money, annuity or rentcharge and amount

Annual Rent Charge of \$1.00

Operative clause

Delete words in [], as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above record of title(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the ~~above Encumbrance Memorandum~~ [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the ~~above Encumbrance Memorandum~~ [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this Encumbrance.

Terms

- 1 Length of term **Continued on Annexure Schedule 2**
- 2 Payment date(s)
- 3 Rate(s) of interest
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable

Covenants and conditions

Continue in Annexure Schedule(s), if required

Continued on Annexure Schedule 2

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

Continued on Annexure Schedule 2

ANNEXURE SCHEDULE 2

Continuation of "Terms", "Covenants and conditions" and "Modification of statutory provisions"

BACKGROUND

General

- A. The land described in the schedule called "Affected instrument Identifier and type" (the *Land*) is part of the land at Clearwater Resort, an international golf resort (the *Resort*). Red Stag Investments Limited has been responsible for development of parts of the Resort.
- B. As a condition of the granting of resource consent for the Resort, the original developer (Clearwater Resort Limited) was obliged to undertake certain obligations with respect to the Land.
- C. In order to secure the honouring of these obligations, Red Stag Investments Limited (the Encumbrancer) has agreed to encumber the Land on the terms set out below so as to bind the owners of the Land from time to time.

Birdstrike

- E. The Resort is adjacent to Christchurch International Airport which is operated by the Encumbrancee.
- F. Development of the Resort has included the creation of significant bodies of water which may contribute to the risk of birdstrike to aircraft using Christchurch International Airport. The Land comprises part of the land within the Resort that is adjacent to these bodies of water.
- G. The Environment Court, by a consent order dated 27 February 1997 ("the Order"), ordered that various measures be taken to reduce the risk of birdstrike to aircraft using the Christchurch International Airport.
- H. In accordance with the Order, Clearwater Land Holdings Limited has undertaken a monitoring programme ("the Monitoring Programme") in conjunction with Christchurch International Airport Limited which endeavoured to establish the nature and extent of the bird population of the area and migration patterns prior to the development of the Resort to endeavour to establish any variation in the nature and extent of bird numbers as a result of the development.

ENCUMBRANCE

Definitions

1. In this Encumbrance Instrument, unless the context otherwise requires:

Airport Land means the land contained in Certificate of Title 544121.

Application means an application for resource consent made to the relevant consent authority under the Resource Management Act 1991 (the *RMA*) in relation to the establishment or Operations of Christchurch International Airport and all activities undertaken or proposed to be undertaken at or in association with Christchurch International Airport or any other activity on any land owned by the Encumbrancee and includes:

- (a) any application for change or cancellation or review of consent conditions; and
- (b) any requirement for a designation, any outline plan submitted, any requirement to alter a designation, and any notice requiring a designation to be included in a proposed plan, under sections 168, 168A, 176A, 181 or clause 4 of the First Schedule to the RMA.

Christchurch International Airport means the airport known as "Christchurch International Airport" and includes all activities undertaken, or proposed to be undertaken, at or in association with that airport.

Operations includes operating as a 24 hour non-curfewed international airport operation every day of every year.

General

2. The Encumbrancer encumbers the Land for the benefit of the Encumbrancee for a term of 999 years commencing on the date of this Encumbrance Instrument determinable however under clause 6 with an annual rent charge of \$1.00 to be paid on 31 January each year if demanded.
3. The Encumbrancer covenants with the Encumbrancee not to transfer the Land without notifying the transferee of the provisions of this Encumbrance Instrument.
4. This Encumbrance Instrument binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of any interest in the Land all such successors in title must comply with the covenants of this Encumbrance Instrument.
5. If during the 12 months preceding 31 January 2022 and each successive 12 months thereafter there has been no breach of the covenants and obligations of the Encumbrancer contained in this Encumbrance Instrument then the annual rent charge payable under this Encumbrance Instrument will be deemed to have been paid.
6. That this rent-charge shall immediately determine and the Encumbrancer shall be entitled to a discharge of this Encumbrance Instrument if the covenants expressed in this Encumbrance Instrument become obsolete or no longer enforceable or if no part of the Airport Land is used for, or in conjunction with, Christchurch International Airport.
7. That the Encumbrancer shall pay its costs of preparation and registration of this Encumbrance Instrument and any other costs incurred by the Encumbrancee during the continuance of this Encumbrance Instrument and in relation to it.
8. No covenants on the part of the Encumbrancer and their successors in title are implied in this Encumbrance Instrument other than the covenants implied for further assurance implied by section 208 of the Land Transfer Act 2017.

Non Opposition

9. Except as required by law the Encumbrancer shall not object to, complain about, bring any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages or injunctive or other relief or orders) in respect of, or otherwise oppose, noise resulting from the Operations of Christchurch International Airport (including without limitation, from the operation of aircraft, the testing of aircraft engines, bird scaring, bird hazard management or the operation of motor vehicles and associated equipment) or the effects of or resulting from such noise.
10. The Encumbrancer shall procure that, except as required by law, no person occupying (whether temporarily or permanently) all or any part of the Land objects to, complains about, brings any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages or injunctive or other relief or orders) in respect of, or otherwise opposes, noise resulting from the Operations of Christchurch International Airport (including without limitation, from the operation of aircraft, the testing of aircraft engines, bird scaring, bird hazard management or the operation of motor vehicles and associated equipment) or the effects of or resulting from such noise.
11. Except as required by law the Encumbrancer shall not object to, complain about, bring any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages or injunctive or other relief or orders) in respect of, interfere with, prevent, hinder, obstruct, or otherwise oppose in any way, the development and Operations of Christchurch International Airport including, without limitation, by opposing, whether directly or indirectly, any:
- (a) Application;
 - (b) variation to the operative district plan for the City of Christchurch under the RMA;
 - (c) statutory or regulatory enactment, variation or repeal;

sought or supported by the Encumbrancee. The Encumbrancer shall not, whether directly or indirectly, procure, fund, or support any person or action to do or omit anything that would be in breach of this clause if done or omitted by the Encumbrancer.

Birdstrike

12. The Encumbrancer will use reasonable endeavours to discourage and actively prevent any bird species identified by Christchurch International Airport Limited as being a potential threat to aircraft operations at Christchurch International Airport from visiting or inhabiting the Land. Those endeavours include, but are not limited to:
- (a) attention generally to water body design, choice of vegetation and planting regimes, water body and land management systems and control and management of persons occupying, using and visiting the Land;
 - (b) not planting or permitting to grow on the Land any plant, shrub or tree that Christchurch International Airport Limited advises from time to time would or could encourage to a greater extent than other types of plant, shrub or tree any bird species identified by Christchurch International Airport Limited as being a potential threat to aircraft operations at Christchurch International Airport to visit or inhabit the Land. As at the date of this Encumbrance, Christchurch International Airport Limited has advised the following list of plants, shrubs and trees as being a potential risk to its operations:

Cordyline australis (cabbage tree) , Coprosma species , Cupressus macrocarpa (Macrocarpa), Metrosideros species (Pohutukawa), Phorium tenax (NZ Flax), Pinus radiata, Pinus pinea, Banksia integrifolia, Quercus species (Oaks), Malus species (Crab apple).

- (c) preventing the growth of trees and other vegetation on the Land that overhangs any water body on or adjacent to the Land;
 - (d) mowing all grass edges on the Land that are adjacent to any water body so that the length of such grass is always at least 200 millimetres but not more than 600 millimetres;
 - (e) not feeding or allowing the feeding of any wild birds on the Land whether by the Encumbrancer, or any other occupant of the Land, or visitor to the Land, or otherwise;
 - (f) choosing fertiliser and pesticides for use on the Land that do not run off into adjacent water bodies thereby encouraging the growth of vegetation in such water bodies; and
 - (g) any other reasonable actions Christchurch International Airport Limited requires be taken to mitigate any actual or potential problem or nuisance caused to the operation of aircraft using Christchurch International Airport by birds.
13. The Encumbrancer will allow Christchurch International Airport Limited and/or Clearwater Land Holdings Limited and any person authorised by Christchurch International Airport Limited and/or Clearwater Land Holdings Limited at a reasonable time and upon giving reasonable notice such access to the Land required by Christchurch International Airport Limited and/or Clearwater Land Holdings Limited to undertake any work in relation to the Monitoring Programme (including any amendments following any review under clause 13(g)) and any other monitoring programme undertaken by or for Christchurch International Airport Limited and/or Clearwater Land Holdings Limited to establish the nature and extent and composition of the bird population of the area, and the feeding, nesting and migratory patterns of those birds.

Modification of Statutory Provisions

14. This Encumbrance Instrument shall not entitle the Encumbrancer to any of the powers and remedies given to encumbrancers under the Land Transfer Act 2017 or entitle the Encumbrancee to any of the powers and remedies given to mortgagees under the Land Transfer Act 2017 or the Property Law Act 2007 except that the Encumbrancee shall be entitled to the benefit of section 208 of the Land Transfer Act 2017 and to sections 23, 203, 204, 205, 289, 290, 301 and 302 of the Property Law Act 2007 or their equivalent sections in any successor, consolidated or amendment Acts.
15. The Encumbrancee hereby consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Land, but without prejudice to the Encumbrancee's rights under this Encumbrance:
- (a) the creation, variation or surrender of an easement (Sections 110(5), 110(6) and 112(4) Land Transfer Act 2017);
 - (b) the variation of a mortgage instrument or priority of mortgages (Sections 101(4), 101(6) and 102(6) Land Transfer Act 2017);
 - (c) the registration of a lease, a lease variation instrument or the surrender of lease, (Sections 91(4), 93 and 94(4) Land Transfer Act 2017);
 - (d) the disposal of a licence or shares to which the licence relates (Section 134 Land Transfer Act 2017);
 - (e) the creation, variation or surrender of a land covenant;

and this consent shall be deemed to be the consent of the mortgagee (which term includes Encumbrancee), as specified in the Land Transfer Act 2017, to the registration of a particular instrument specified in subparagraph 15(a), (b), (c), (d) and (e) above.

16. If it is determined that written consent is required from the Encumbrancee (rather than deemed consent) then the Encumbrancee shall as soon as practical at the request of the Encumbrancer, give that written consent.

17. If any person challenges the enforceability of this Encumbrance Instrument, or for any reason this Encumbrance Instrument is required to be discharged or removed from the computer freehold registers to the Land, while the obligations under this Encumbrance Instrument are, or would be, on the face of the wording of this Encumbrance Instrument still required to be performed or observed, then notwithstanding clause 6 of this Encumbrance Instrument the Encumbrancer agrees to accept, execute and deliver any documents, and to do all things, as are reasonably required by the Encumbrancee to secure the due performance and observance of the obligations expressed to operate under this Encumbrance Instrument.

SCHEDULE 10

DEVELOPER'S ENCUMBRANCE

ENCUMBRANCE INSTRUMENT

Section 100 Land Transfer Act 2017



Land Registration District

Canterbury

BARCODE

Record of Title (unique identifier)	All/part	Area/Description of part
	All	Principal Unit on Deposited Plan 569303 [and Accessory Unit on Deposited Plan 569303]

Encumbrancer

Surname(s) must be underlined or in CAPITALS

Red Stag Investments Limited

Encumbrancee

Surname(s) must be underlined or in CAPITALS

Red Stag Investments Limited, Clearwater Quays Apartments Limited, Eros Clearwater Holdings Limited & Clearwater Quays Limited

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Fee simple

Encumbrance Memorandum Number

(if applicable)

Not applicable

Nature of security

State whether sum of money, annuity or rentcharge and amount

Annual Rent Charge of \$1.00

Operative clause

Delete words in [], as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above record of title(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the ~~above Encumbrance Memorandum~~ [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the ~~above Encumbrance Memorandum~~ [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this Encumbrance.

Terms

- 1 Length of term Continued on Annexure Schedule 2
- 2 Payment date(s)
- 3 Rate(s) of interest
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable

Covenants and conditions

Continue in Annexure Schedule(s), if required

Continued on Annexure Schedule 2

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

Continued on Annexure Schedule 2

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Insert instrument type

[Empty box for instrument type]

Continue in additional Annexure Schedule, if required

Continuation of "Terms", "Covenants and conditions" and "Modification of statutory provisions"

BACKGROUND

General

A. The land described on the front page under "Unique Identifier" ("the Land") is part of the land at Clearwater Resort, an international golf resort located within the O3D Zone, ("the Resort"). Clearwater Resort Limited was responsible for development of the majority of the Resort, in its initial stages. Eros Clearwater Holdings Limited, Clearwater Quays Limited, Clearwater Land Holdings Limited, The Isaac Lakes Limited, Gilgamesh No.2 Limited, Humboldt Limited, Clearwater Hotel 2004 Limited and Clearwater Golf Club Limited and their related companies have subsequently also been responsible for development of parts of the Resort.

B. In order to maintain the integrity of the Quays Development, Red Stag Investments Limited has agreed to encumber the Land on the terms set out in this Memorandum of Encumbrance.

Planning Proposals

C. The development of the Resort is ongoing and may be undertaken in stages. In order to ensure the ongoing development, the Encumbrancer has agreed not to lodge any Submission against any Planning Proposal made by the Encumbrancee to subdivide, develop or use any part of the Resort or the O3D Zone and has agreed likewise to encumber the Land on the terms set out below so as to bind the owners of the Land from time to time.

D. In addition, the Encumbrancer has agreed to sign any necessary written approval to any Planning Proposal referred to in paragraph C above if called upon to do so.

ENCUMBRANCE

General

1. The Encumbrancer encumbers the Land for the benefit of the Encumbrancee for a term of 200 years commencing on the date of this Memorandum of Encumbrance determinable however under clause 5 with an annual rent charge of \$1.00 to be paid on 31 January each year if demanded.

2. The Encumbrancer covenants with the Encumbrancee not to transfer the Land without notifying the transferee of the provisions of this Memorandum of Encumbrance.

3. This Memorandum of Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of any interest in the Land all such successors in title must comply with the covenants of this Memorandum of Encumbrance.

4. If during the 12 months preceding 31 January 2022 and each successive 12 months thereafter there has been no breach of the covenants and obligations of the Encumbrancer contained in this Memorandum of Encumbrance then the annual rent charge payable under this Memorandum of Encumbrance becomes obsolete or no longer enforceable.

5. That this rent charge shall immediately determine and the Encumbrancer shall be entitled to a discharge of this Memorandum of Encumbrance if the covenants expressed in this Memorandum of Encumbrance become obsolete or no longer enforceable.

6. That the Encumbrancer shall pay the costs of preparation and registration of this Memorandum of Encumbrance and any other costs incurred by the Encumbrancee during the continuance of this Memorandum of Encumbrance and in relation to it.

If this annexure schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

2015/5049 APPROVED Registrar-General of Land
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Insert instrument type

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Continue in additional Annexure Schedule, if required

7. No covenants on the part of the Encumbrancer and their successors in title are implied in this Memorandum of Encumbrance other than the covenants implied for further assurance implied by section 208 of the Land Transfer Act 2017.

8. The obligations the Encumbrancer has to the Encumbrancee under this Memorandum of Encumbrance are included for the benefit of Red Stag Investments Limited, Clearwater Quays Apartments Limited, Eros Clearwater Holdings Limited and Clearwater Quays Limited, and where Red Stag Investments Limited is the registered proprietor of the Land from time to time, the interests of the Encumbrancee and Encumbrancer shall not merge. For certainty, it is acknowledged that sections 56 and 278 of the Property Law Act 2007 shall apply to the covenants and agreements contained in this Memorandum of Encumbrance.

Modification of Statutory Provisions

9. Sections 203, 204 & 205 of the Property Law Act 2007 apply to this Memorandum of Encumbrance but otherwise and without prejudice to the Encumbrancee's rights of action at common law as a rent charge or encumbrancee.

10. The Encumbrancee shall be entitled to none of the powers and remedies given to encumbrancee by the Land Transfer Act 2017 and the Property Law Act 2007.

11. The Encumbrancee hereby consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Land:

- (a) the creation, variation or surrender of an easement (Sections 109(3), 109(4), 110(5), 110(6) and 112(4) Land Transfer Act 2017);
 - (b) the variation of a mortgage instrument or priority of mortgages (Sections 101(4), 101(6) and 102(6) Land Transfer Act 2017);
 - (c) the registration of a lease, a lease variation instrument or the surrender of lease (Sections 91(4), 93(1), 93(2), 94(4), 94(5) and 94(6) Land Transfer Act 2017);
 - (d) the disposal of a licence or shares to which the licence relates (Sections 130(1) and 130(2) Land Transfer Act 2017);
 - (e) the creation, variation or surrender of a land covenant;
- and this consent shall be deemed to be the consent of the mortgagee (which term includes Encumbrancee), as specified in the Land Transfer Act 2017, to the registration of a particular instrument specified in subclause 11(a), (b), (c), (d) and (e) above.

12. If it is determined that written consent is required from the Encumbrancee (rather than deemed consent) then the Encumbrancee shall immediately at the request of the Encumbrancer, give that written consent.

Planning Proposals

13. The Encumbrancer covenants not at any time to Lodge any Submission against any Planning Proposal made by or on behalf of the Encumbrancee to subdivide, develop or use any part located within the Resort or any other land located within the O3D Zone.

14. The Encumbrancer covenants that it will, if called upon to do so by the Encumbrancee, sign any document, or give its written approval for the purposes of the Resource Management Act 1991 or do any other thing reasonably necessary to support any Planning Proposal referred to in clause 13. The Encumbrancer shall provide any necessary further written approval to such planning proposal if requested by the Encumbrancee and in the event of the Encumbrancer failing to do so, the Encumbrancee shall be entitled to provide a copy of this Memorandum of Encumbrance to the relevant consent authority as evidence that such written approval is given.

15. For the purposes of this Memorandum of Encumbrance:

- (a) "City Plan" means the Christchurch City Council City Plan;
- (b) "Lodge any Submission" includes personally or through any agent, servant or third party directly or indirectly lodge or support in any way any objection or submission to a Planning Proposal and includes (without limitation)

If this annexure schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.
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Insert instrument type

Continue in additional Annexure Schedule, if required

taking any part in a planning hearing, appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise;

(c) "O3D Zone" means the Open Space 3D (Clearwater) Zone as identified in the City Plan, and includes any subsequent variations to and/or extensions to the boundaries of that zone; and

(d) "Planning Proposal" includes any application for resource consent and/or plan change and/or a variation of any nature under or to the relevant City Plan or the proposed City Plan, and includes, for clarity, any such planning proposal to extend the boundaries of the O3D Zone.

(e) "Subdivide" means a subdivision of Land as that term is defined in section 218 of the Resource Management Act 1991 and "Subdividing" has a corresponding meaning.

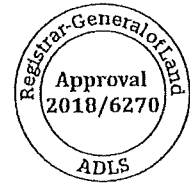
If this annexure schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

SCHEDULE 11

SOCIETY'S ENCUMBRANCE

ENCUMBRANCE INSTRUMENT

Section 100 Land Transfer Act 2017



Land Registration District

Canterbury

BARCODE

Record of Title (unique identifier)	All/part	Area/Description of part
	All	Principal Unit on Deposited Plan 569303 [and Accessory Unit on Deposited Plan 569303]

Encumbrancer

Surname(s) must be underlined or in CAPITALS

Red Stag Investments Limited

Encumbrancee

Surname(s) must be underlined or in CAPITALS

Clearwater Resort Owners Society Incorporated

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Stratum in Freehold

Encumbrance Memorandum Number

(if applicable)

Not applicable

Nature of security

State whether sum of money, annuity or rentcharge and amount

Annual Rent Charge of \$1.00

Operative clause

Delete words in [], as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above record of title(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the ~~above Encumbrance Memorandum~~ [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the ~~above Encumbrance Memorandum~~ [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this Encumbrance.

Terms

- 1 Length of term *Continued on Annexure Schedule 2*
- 2 Payment date(s)
- 3 Rate(s) of interest
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable

Covenants and conditions

Continue in Annexure Schedule(s), if required

Continued on Annexure Schedule 2

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

Continued on Annexure Schedule 2

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Registrar-General of Land

Insert instrument type

[Empty box for instrument type]

Continue in additional Annexure Schedule, if required

Continuation of "Terms", "Covenants and conditions" and "Modification of statutory provisions"

BACKGROUND
General
A. The land described on the front page under "Unique Identifier" ("the Land") is part of the land at Clearwater Resort, an international golf resort located within the O3D Zone, ("the Resort").
Clearwater Resort Owners Society Incorporated

B. The Encumbrancer has agreed to become and remain a member of the Clearwater Resort Owners Society Incorporated while the Encumbrancer continues to be registered proprietor of the Land (or part thereof) upon the terms set out below.

ENCUMBRANCE
General

1. The Encumbrancer encumbers the Land for the benefit of the Encumbrancee for a term of 200 years commencing on the date of this Memorandum of Encumbrance determinable however under clause 5 with an annual rent charge of \$1.00 to be paid on 31 January each year if demanded.
2. The Encumbrancer covenants with the Encumbrancee not to transfer the Land without notifying the transferee of the provisions of this Memorandum of Encumbrance.
3. This Memorandum of Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of any interest in the Land all such successors in title must comply with the covenants of this Memorandum of Encumbrance.
4. If during the 12 months preceding 31 January 2022 and each successive 12 months thereafter there has been no breach of the covenants and obligations of the Encumbrancer contained in this Memorandum of Encumbrance then the annual rent charge payable under this Memorandum of Encumbrance be deemed to have been paid.
5. That this rent charge shall immediately determine and the Encumbrancer shall be entitled to a discharge of this Memorandum of Encumbrance if the covenants expressed in this Memorandum of Encumbrance become obsolete or no longer enforceable.
6. That the Encumbrancer shall pay the costs of preparation and registration of this Memorandum of Encumbrance and any other costs incurred by the Encumbrancee during the continuance of this Memorandum of Encumbrance and in relation to it.
7. No covenants on the part of the Encumbrancer and their successors in title are implied in this Memorandum of Encumbrance other than the covenants implied for further assurance implied by section 208 of the Land Transfer Act 2017.

Modification of Statutory Provisions

8. Sections 203, 204 & 205 of the Property Law Act 2007 apply to this Memorandum of Encumbrance but otherwise and without prejudice to the Encumbrancee's rights of action at common law as a rent charge or encumbrancee.
9. The Encumbrancee shall be entitled to none of the powers and remedies given to Encumbrancees by the Land Transfer Act 2017 and the Property Law Act 2007.

If this annexure schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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Registrar-General of Land

Insert instrument type

Continue in additional Annexure Schedule, if required

10. The Encumbrancee hereby consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Land:

(a) the creation, variation or surrender of an easement (Sections 109(3), 109(4), 110(5), 110(6) and 112(4) Land Transfer Act 2017);

(b) the variation of a mortgage instrument or priority of mortgages (Sections 101(4), 101(6) and 102(6) Land Transfer Act 2017);

(c) the registration of a lease, a lease variation instrument or the surrender of lease (Sections 91(4), 93(1), 93(2), 94(4), 94(5) and 94(6) Land Transfer Act 2017);

(d) the disposal of a licence or shares to which the licence relates (Sections 130(1) and 130(2) Land Transfer Act 2017);

(e) the creation, variation or surrender of a land covenant;

and this consent shall be deemed to be the consent of the mortgagee (which term includes Encumbrancee), as specified in the Land Transfer Act 2017, to the registration of a particular instrument specified in subclause 11(a),

(b), (c), (d) and (e) above.

11. If it is determined that written consent is required from the Encumbrancee (rather than deemed consent) then the Encumbrancee shall immediately, at the request of the Encumbrancer, give that written consent.

Clearwater Resort Owners Society Incorporated

12. The Encumbrancer covenants to become and remain a member of the Clearwater Resort Owners Society Incorporated and be bound by the constitution of that society, while the Encumbrancer continues to be registered proprietor of the Land (or part thereof).

13. The Encumbrancer covenants to comply with all design guidelines:

(a) advised from time to time by the Encumbrancee; or

(b) created from time to time in accordance with the constitution of Clearwater Resort Owners Society Incorporated; which are applicable to that part of the Land which is owned by the Encumbrancer from time to time.

If this annexure schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

SCHEDULE 12
BODY CORPORATE RULES

Instrument Type Order for New Certificate of Title

Head Records of Title	Land Districts
993538	Canterbury

Registered Owners**Red Stag Investments Limited**

New titles(s)	Legal description
1026103	Principal Unit 1 Deposited Plan 569303
1026104	Principal Unit 2 Deposited Plan 569303 and Accessory Unit 21 Deposited Plan 569303
1026105	Principal Unit 3 Deposited Plan 569303 and Accessory Unit 30 Deposited Plan 569303
1026106	Principal Unit 4 Deposited Plan 569303 and Accessory Units 40 and 41 Deposited Plan 569303
1026107	Principal Unit 5 Deposited Plan 569303 and Accessory Units 50 and 51 Deposited Plan 569303
1026108	Principal Unit 6 Deposited Plan 569303 and Accessory Units 60 and 61 Deposited Plan 569303
1026109	Principal Unit 7 Deposited Plan 569303 and Accessory Unit 90 Deposited Plan 569303
1026110	Principal Unit 8 Deposited Plan 569303 and Accessory Units 80 and 81 Deposited Plan 569303
1026111	Principal Unit 9 Deposited Plan 569303 and Accessory Unit 70 Deposited Plan 569303
1026112	Principal Unit 10 Deposited Plan 569303 and Accessory Units 100 and 101 Deposited Plan 569303
1074194	Supplementary Record Sheet

***** End of Report *****

APPLICATION TO DEPOSIT UNIT PLAN

Sections 17, 21, 24, 30, and 68, and subpart 3 of Part 4, Unit Titles Act 2010

Applicant: Red Stag Investments Limited

Unit plan: LY 569303

Address for service: 4 Walker Street, Christchurch, 8011

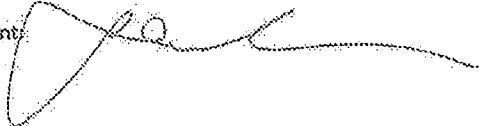
Schedule of land: All land comprised in Record of Title number 993538 (Canterbury Registry)

Application:

1. The applicant is the registered owner of the estate in land comprised in the record of title referred to the schedule of land.
2. The applicant applies to deposit the attached unit plan under section 17 of the Unit Titles Act 2010.
3. The first body corporate operational rules are set out in the attached notice of body corporate operational rules.

Date: 10 October 2022

Signature of applicant:



Before me:

Full name of witness:

Aino Catherine Hoar

Address of witness:

17 Wentworth Drive, Redwood,
Hamilton, New Zealand



APPLICATION TO DEPOSIT UNIT PLAN

Sections 17, 21, 24, 30, and 68, and subpart 3 of Part 4, Unit Titles Act 2010

Applicant: Red Stag Investments Limited

Unit plan: UT 569303

Address for service: 4 Walker Street, Christchurch, 8011

Schedule of land: All land comprised in Record of Title number 993538 (Canterbury Registry)

Application:

1. The applicant is the registered owner of the estate in land comprised in the record of title referred to the scheduled of land.
2. The applicant applies to deposit the attached unit plan under section 17 of the Unit Titles Act 2010.
3. The first body corporate operational rules are set out in the attached notice of body corporate operational rules.

Date: 7/10/22

Signature of applicant:



Before me:

Full name of witness: *ANDREW JOHN SPARD MCGROSSER*

Address of witness: *Raglan*



FORM 14 - NOTICE OF BODY CORPORATE OPERATIONAL RULES

Section 105, Unit Titles Act 2010

Applicant: Red Stag Investments Limited

Unit plan: LT 569303

Supplementary Record Sheet: 1074194

Notice:

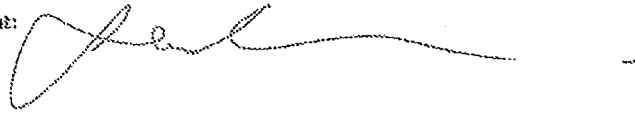
The body corporate for the unit title development created by the deposit of the above unit plan will be subject to the operational rules set out in the schedule of body corporate operational rules.

Schedule of body corporate operational rules

As per attached Mixed Use Model Operational Rules marked "A".

Date: 10 October 2022

Signature of applicant:



Before me:

Full name of witness: Anna Catherine Horn

Address of witness: 57 Wentworth Drive, Rotorua
Hamilton, New Zealand



FORM 14 - NOTICE OF BODY CORPORATE OPERATIONAL RULES

Section 105, Unit Titles Act 2010

Applicant: Red Stag Investments Limited

Unit plan: LT 569303

Supplementary Record Sheet: 1074194

Notice:

The body corporate for the unit title development created by the deposit of the above unit plan will be subject to the operational rules set out in the schedule of body corporate operational rules.

Schedule of body corporate operational rules

As per attached Mixed Use Model Operational Rules marked "A".

Date: 7-10-20

Signature of applicant:



Before me:

Full name of witness: Andrew John Suarez McGee

Address of witness: RAGLAN



"A"

Mixed Use Model Operational Rules

1. **Interpretation of terms, and rules binding on owners, occupiers, employees, agents, invitees, licencees and tenants**
 - 1.1 Terms defined in the Unit Titles Act 2010 ("Act") have the same meaning in these rules as they have in the Act, unless the context otherwise requires.
 - 1.2 These rules are binding on all owners and occupiers of units in the unit title development as well as the employees, agents, invitees, customers, licencees and tenants of all owners and occupiers of units in the unit title development.
 - 1.3 "Owner" has the same meaning in these rules as it has in the Act, and for the purposes of these rules it also includes occupiers of a unit in the unit title development and the employees, agents, invitees, licencees and tenants of all owners and occupiers of units in the unit title development, unless the context otherwise requires.
 - 1.4 "Design Control Committee" means the committee members appointed from time to time in accordance with the Constitution of the Clearwater Resort Owners Society Incorporated (as amended or added to from time to time).
 - 1.5 "Design Guideline" means the design guidelines issued by the Design Control Committee.
 - 1.6 "Developer" means Red Stag Investments Limited, Clearwater Quays Apartments Limited, nominated entity or assigns and any related company or companies that undertake any development of Clearwater Quays, and includes any agent, contractor or other entity/person authorised by Red Stag Investment Limited or Clearwater Quays Apartments Limited to carry out any work or complete any activity on its behalf.
 - 1.7 "Development" means the subdivision and development known as Clearwater Quays and includes the proposed development of Lot 1 DP 561475.
 - 1.8 "Society" means the Clearwater Resort Owners Society Incorporated (NZBN 9429043066292).
2. **Interference and obstruction of common property**
 - 2.1 An Owner of a unit must not:
 - 2.1.1 interfere with the reasonable use or enjoyment of the common property by other Owners;
 - 2.1.2 obstruct any lawful use of the common property by other Owners;

2.1.3 restrict any light or air in any unit or common property, or obstruct or cover any windows, sky lights, lights or other means of illumination of any unit or common property.

3. Damage to common property

3.1 An Owner of a unit must not:

3.1.1 damage or deface the common property; and

3.1.2 drive, operate or use, or permit to be driven, operated or used, any vehicle or machinery on the common property of a size and weight that is likely to cause damage to the common property and any such damage caused or contributed to shall be paid for by the Owner responsible.

4. Use of facilities, assets and improvements within the common property

4.1 An Owner of a unit must not use any facilities contained within the common property or any assets and improvements that form part of the common property for any use other than the use for which those facilities, assets or improvements were designed and constructed and must comply with any conditions of use for such facilities or assets or improvements set by the Body Corporate from time to time.

4.2 Any part of the common property that is used as an entrance or accessway to the unit title development and any easement area giving access to the unit title development shall not be used by any Owner for any other purpose than for entering or leaving the unit title development.

5. Vehicle parking

5.1 An Owner of a unit must not park a vehicle or permit a vehicle to be parked on any part of the common property unless the Body Corporate has designated it for vehicle parking or the Body Corporate has given prior written consent.

5.2 An Owner of a unit that is designated for use as a vehicle park must:

5.2.1 only use the vehicle park for the purpose of parking vehicles;

5.2.2 ensure the vehicle park is kept tidy and free of litter;

5.2.3 not use the vehicle park or permit it to be used for storage;

5.2.4 ensure that any vehicle parked in the vehicle park is parked within the boundaries of the vehicle park; and

5.2.5 must clearly mark any vehicle parks designated solely for use by employees or customers of the Owner.

5.3 The Body Corporate may remove a vehicle from the unit title development that the Body Corporate considers is parked in such a manner that is in breach of this rule 5, at the expense of the owner of the vehicle concerned, and the Body Corporate shall not be liable for any resulting damage, loss or costs.

6. Aerials, satellite dishes and antennas

An Owner of a unit must not erect, fix or place any aerial, satellite dish, antenna or similar device on or to the exterior of a unit or on or to common property without the prior written consent of the Body Corporate which shall not be unreasonably or arbitrarily withheld. The consent of the Body Corporate may be withheld, varied or revoked if the rights of another Owner are adversely affected by the exterior aerial, satellite dish, antenna or similar device.

7. Signs, notices, advertising and promotion

7.1 An Owner of a unit must not, without the prior written consent of the Body Corporate which shall not be arbitrarily or unreasonably withheld, erect, fix, place or paint any signs or notices of any kind on or to any part of the common property or on or to any external part of a unit.

7.2 An Owner of a unit must not display any temporary or mobile signage, including but not limited to sandwich boards and portable banners ("temporary signage"), at any time other than during the opening hours of the business operating from a unit, and must not display any temporary signage on the common property or any accessory unit without the prior written consent of the Body Corporate which shall not be arbitrarily or unreasonably withheld.

7.3 An Owner of a unit must not display any goods or services on common property or any accessory unit or use the common property or any accessory unit for any business, promotional or commercial purpose without prior written consent of the Body Corporate which shall not be arbitrarily or unreasonably withheld.

7.4 Rules 7.2 and 7.3 do not apply to any unit used solely for residential purposes.

8. Contractors

An Owner of a unit who carries out any repair, maintenance, additions, alterations or other such work on a unit must ensure that any contractors or other such persons employed by the Owner cause minimum inconvenience to all other Owners and ensure that such work is carried out in a proper workmanlike manner.

9. Rubbish and pest control

9.1 An Owner of a unit:

- 9.1.1 must not leave rubbish, recycling material, trade refuse or waste, dirt or other material on the common property except in areas designated for rubbish collection by the Body Corporate, and where such material is left in a designated rubbish collection area it must not be left in such a way that interferes with the enjoyment of the common property by other Owners;
- 9.1.2 must dispose of rubbish and recycling material promptly, hygienically and tidily and ensure such disposal does not adversely affect the health, hygiene or comfort of other Owners;
- 9.1.3 must not burn any rubbish anywhere on the common property or in any unit; and
- 9.1.4 shall keep the unit free of vermin, pests, rodents and insects.

10. Cleaning and garden maintenance

An Owner of a unit must ensure the unit is kept clean at all times and any gardens, grounds, yards or paved areas within the unit are kept neat and tidy and are regularly maintained.

11. Cleaning and replacing glass

An Owner of a unit must keep clean all glass contained in windows or doors of a unit, and replace any cracked or broken glass as soon as possible with glass of the same or better weight and quality.

12. Lawns and gardens on common property

An Owner of a unit must not damage any lawn, garden, tree, shrub, plant or flower being part of or situated on the common property or, without the prior consent of the Body Corporate use any part of the common property as a garden for their own purposes.

13. Use of water services

- 13.1 All things required for the provision of water supply, drainage, wastewater and sewage services to units or common property and all things attached to and used in relation to such services, including but not limited to pipes, drains, taps, faucets, toilets, baths, showers, sinks, sink incinerators and dishwashers, must only be used for the purpose for which they were designed and constructed. If any Owner causes or permits any damage, loss or costs to be incurred due to misuse or negligence that Owner shall pay for such damage, loss or costs.

13.2 An Owner of a unit shall not waste water unnecessarily and shall ensure that all taps in the unit are turned off after use.

14. **Washing**

14.1 An Owner of a unit:

14.1.1 shall not hang any clothes, washing, bedding, towels or other items outside or from a unit or outside or from any building contained within a unit or on or from any deck or balcony; and

14.1.2 shall not hang any clothes, washing, bedding, towels or other items on the common property other than on parts of the common property designated by the Body Corporate as washing line areas, and such items may only be hung for a reasonable period.

15. **Security and ventilation equipment**

An Owner of a unit shall comply at all times with the operating and maintenance instructions of any security, fire alarm, air conditioning or ventilation equipment in the unit.

16. **Floor coverings**

Except in kitchen, laundry, toilet or bathroom areas of a unit, an Owner of a unit must ensure that all floor space in a unit is covered or otherwise treated to an extent sufficient to prevent noise transmission from the unit that is likely to disturb the quiet enjoyment that could reasonably be expected by the Owner of another unit.

17. **Noise, behaviour and conduct**

An Owner of a unit shall not make or permit any noise or carry out or permit any conduct or behaviour, in any unit or on the common property, which is likely to interfere with the use and enjoyment of the unit title development by other Owners.

18. **Pets**

18.1 An Owner of a unit must not, without the prior written consent of the Body Corporate, bring or keep any animal or pet in any unit or the common property. Consent of the Body Corporate shall not be unreasonably or arbitrarily withheld and may be revoked upon written notice if the rights or interests of any other Owner are adversely affected by any animal or pet.

18.2 Notwithstanding rule 18.1 any Owner of a unit who relies on a guide, hearing or assistance dog may bring or keep such a dog in a unit, and may bring such a dog onto the common property.

18.3 An Owner of any animal or pet permitted under rule 18.1 or any dog permitted under rule 18.2 must ensure that any part of a unit or the common property that is soiled or damaged by the animal, pet or dog must promptly be cleaned or repaired at the cost of the Owner.

19. **Security**

19.1 An Owner of a unit must:

19.1.1 keep the unit locked and all doors and windows closed and securely fastened at all times when the unit is not occupied, and do all things reasonably necessary to protect the unit from fire, theft or damage;

19.1.2 take all reasonable steps to ensure any electronic security cards, security keys or security codes to a unit or common property are not lost, destroyed or stolen or given to anyone other than a registered proprietor, occupier or tenant of the unit to which the security card, security key or security code relates;

19.1.3 not duplicate or permit to be duplicated any electronic security cards, security keys or security codes to a unit or common property; and

19.1.4 notify the Body Corporate as soon as reasonably practicable if rules 19.1.2 or 19.1.3 are breached.

20. **Moving and installing heavy objects**

An Owner of a unit must not, without the prior written consent of the Body Corporate, bring onto or through the common property or any unit, or erect, fix, place or install in any unit, any object of such weight, size, nature or description that could cause any damage, weakness, movement or structural defect to any unit or common property, and any such damage caused or contributed to shall be paid for by the Owner responsible.

21. **Lifts**

An Owner of a unit must comply at all times with any notice or instruction displayed in any lift in the unit title development. If any lift in the unit title development, other than a goods lift, is to be used for carrying anything other than passengers, lift protection equipment supplied by the Body Corporate must be used.

22. **Delivery areas**

22.1 Any part of common property designated by the Body Corporate as an area for the receipt, delivery or other movement of goods, supplies, produce, merchandise, freight, or other articles, including but not limited to a loading dock or lift designed for goods only, (together called "delivery area"), must only be used:

- 22.1.1 by Owners of units or anyone permitted by an Owner;
 - 22.1.2 for the purpose for which it was designed and constructed; and
 - 22.1.3 during certain hours set by the Body Corporate from time to time.
- 22.2 Any delivery area in a unit must only be used by the Owner of the unit or anyone permitted by the Owner and must only be used for the purpose for which it was designed and constructed.
- 22.3 An Owner of a unit that contains a delivery area must not move any goods, supplies, produce, merchandise, freight, or other articles in or out of the unit except through the delivery area.
23. **Hazards, insurance and fire safety**
- 23.1 An Owner of a unit must not bring onto, use, store, or do, in a unit or any part of the common property anything that:
- 23.1.1 increases the premium on or is in breach of any Body Corporate insurance policy for the unit title development; or
 - 23.1.2 is in breach of any enactment or rule of law relating to fire, insurance, hazardous substances or dangerous goods, or any requirements of any Territorial Authority; or
 - 23.1.3 creates a hazard of any kind; or
 - 23.1.4 affects the operation of fire safety devices and equipment or reduces the level of fire safety in the unit title development.
24. **Emergency evacuation drills and procedures**
- An Owner of a unit must cooperate with the Body Corporate during any emergency evacuation drills and must observe and comply with all emergency evacuation procedures.
25. **Notice of damage, defects, accidents or injury**
- Upon becoming aware of any damage or defect in any part of the unit title development including its services, or any accident or injury to any person in the unit title development, an Owner of a unit must immediately notify the Body Corporate. Any cost to repair any such damage or defect shall be paid by the Owner that caused or permitted the damage or defect.

26. Compliance with Sale of Liquor Act and other statutes

Where a business operating from a unit is subject to the Sale of Liquor Act 1989 or any other statute, regulation or enactment to which the business is subject (together called "statute") the Owner must ensure that the requirements of the statute are complied with at all times and must take all reasonable steps to ensure that the business operation does not interfere with the use and enjoyment of the unit title development by other Owners.

27. Leasing a unit

27.1 An Owner of a unit must:

27.1.1 provide a full copy of these rules and a full copy of all future amendments to these rules to any tenant or occupier of the unit; and

27.1.2 provide the Body Corporate with written notice of the full name, landline phone number, cell phone number, email address and address for service for the purposes of the Act for the Owner and for all tenants or occupants of the unit, and promptly notify the Body Corporate in writing of any changes to such details.

28. Owner's Assistance to Developer

28.1 Future Development:

The Owner acknowledges:

28.1.1 the Development is ongoing until it is fully completed. For the avoidance of doubt, "fully completed" means the date the Developer no longer owns land or a unit in the Development; and

28.1.2 the Body Corporate is required to allow the Developer such access to the common property as is necessary or desirable for the Development to proceed; and

28.1.3 the Body Corporate is obliged to allow the Developer to add or alter structures and services forming part of the common property.

The Owner therefore agrees:

28.1.4 to, and hereby allows the Developer access to the unit of that Owner for the purpose of proceeding with the Development. This is provided the Developer has no other reasonable means of proceeding with the Development other than through the Owner's unit. The Developer must give such Owner reasonable verbal notice of its requirement for access and its best estimate of the duration of such access; and provided that the Developer must, without delay, make good any damage or harm to the Owner's unit resulting from such access; and

- 28.1.5 to, and hereby grants, such easements in favour of the Developer over or under the Owner's unit as are required for the Development to proceed or as may be necessary or desirable for the Development, provided to the Developer has no other reasonable means of proceeding with the Development other than by benefiting from such access. The Developer must pay the reasonable expenses incurred by the Owner relating to the grant of any such easement; and
- 28.1.6 not to prevent, hinder or obstruct the use by the Developer of the common property, the addition, or alteration of structures or services forming part of the common property by the Developer, or the granting of any interests in the common property by the Body Corporate to the Developer.
- 28.2 In exercising any of its rights pursuant to clause 28.1, in respect of the common property the Developer must:
- 28.2.1 act reasonably; and
- 28.2.2 first provide 30 days written notice to the Body Corporate of its intention to invoke any of the provisions of clause 28.1, that notice to set out in detail the proposed further development of the Development and any likely effects on relevant units. At the request of the Body Corporate following provision of such notice, the Developer will consult with the Body Corporate as to any reasonable concerns of Owners about such further development.
29. **Design Approval**
- 29.1 Before making any alterations, additions, or improvements to his or her or their unit that would materially affect other units or the common property, or obtaining any consent from any local authority in respect of such alterations, additions, or improvements, an Owner must obtain written consent from the Body Corporate.
- 29.2 The Body Corporate's consent will be contingent upon the Owner obtaining the approval of the Design Control Committee.
- 29.3 **Design Control Committee:** The Design Control Committee's approval shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:
- 29.3.1 the District Plan;
- 29.3.2 any bylaws made under the Constitution of the Clearwater Resort Owners Society Incorporated (as amended or added to from time to time); and
- 29.3.3 any relevant Design Guidelines.

- 29.4 **Approval Costs:** All costs of the design approval process (including without limitation, any disbursements, or professional charges of an Owner of the Design Control Committee) shall be met by the Owner seeking the approval.
- 29.5 **Body Corporate:** The Owner must notify the Body Corporate of his or her intention to carry out any additions or structural alterations before the commencement of any work.
- 29.6 Any additions or alterations must not materially affect any other unit or the common property without the written consent of the Body Corporate.

SCHEDULE 13

PRE-CONTRACT DISCLOSURE STATEMENT

Form 18
Pre-contract disclosure statement
section 146, Unit Titles Act 2010

Unit plan: DP 569303

**Body Corporate
Number:** 569303

Unit Number: Principal Unit 7; Accessory Unit 90

Pre-contract disclosure statement

- 1 This pre-contract disclosure statement is provided to prospective buyers of the property in accordance with section 146(1) of the Unit Titles Act 2010.

General information

- 2 *The following section contains a brief explanation of important matters relevant to the purchase of a unit in a unit title development. You should read and understand the information contained in this section and this statement before signing a contract to buy a unit in a unit title development.*

Further information on buying, selling a unit and living in a unit title development can be obtained by:

- *reading the publication "A quick guide to unit title developments", which is available on the Tenancy Services website: www.tenancy.govt.nz*
- *the Ministry of Business, Innovation and Employment contact centre can answer questions on unit titles: 0800 UNIT TITLES*

You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing a unit or your prospective rights and obligations as a member of a body corporate.

Unit title property ownership. Unit titles are a common form of multi-unit property ownership. They allow owners to privately own an area of land or part of a building and share common property with other unit owners. Unit title developments may also be structured in varied ways including staged unit title developments and layered unit title developments.

This combination of individual and shared ownership of land and buildings, often in an intensive built environment, means owning a unit title involves a different set of rights and responsibilities than traditional house and land ownership.

Unit title developments have a body corporate management structure to ensure decisions affecting the development can be made jointly by the unit owners. The creation and management of unit title developments is governed by the Unit Titles Act 2010 and supporting regulations.

Unit plan. Every unit title development has a unit plan, which shows the location of the principal units as well as any accessory units and common property in the development. The unit plan is the formal record of all the boundaries of the units and the common property.

Ownership and utility interests. Each unit is allocated an ownership interest and a utility interest and such interests are relevant to the determination of many of the unit owner's rights and responsibilities under the Unit Titles Act 2010.

Ownership interest is a number that reflects the relative value of each unit to the other units in the development, and is used to determine a range of matters including the unit owners' beneficial share in the common property, and share in the underlying land if the unit plan is cancelled.

By default, the utility interest of a unit is the same as the ownership interest (unless it is otherwise specified on the deposit of the unit plan or subsequently changed), and is used to calculate how much each owner contributes to the operational costs of the body corporate.

Body corporate operational rules. The body corporate for a unit title development can make its own operational rules on the use of the development and governance of the body corporate. These operational rules are subject to the provisions of the Unit Titles Act 2010 and regulations made under that Act.

All unit owners, occupiers, tenants, and the body corporate must follow the body corporate operational rules that apply to their unit title development.

Transitional provisions for unit title developments created before the Unit Titles Act 2010 came into effect on 20 June 2011 apply to the body corporate rules in place at that time.

Pre-settlement disclosure statement. Before settlement of the sale of a unit, the seller must provide a pre-settlement disclosure statement to the purchaser, which includes information on:

- the unit number and body corporate number;
- the amount of the contribution levied by the body corporate for that unit;
- the period covered by the contribution;
- how the levy is to be paid;
- the date on or before which the levy must be paid;
- whether any amount of the levy is currently unpaid and, if so, how much;
- whether legal proceedings have commenced in respect of any unpaid levy;
- whether any metered charges (eg, for water) are unpaid and, if so, how much;
- whether any costs relating to repairs to building elements or infrastructure contained in the unit are unpaid and, if so, how much;
- the rate of interest accruing on any unpaid amounts;
- whether there are any legal proceedings pending against the body corporate;
- whether there have been any changes to the body corporate rules.

There are legal consequences on the seller for failing to provide the pre-settlement disclosure in the timeframes required by the Unit Titles Act 2010 including delay of settlement and cancellation of the contract.

Additional disclosure statement. The buyer of a unit can request an additional disclosure statement or may request some, but not all, of the information required to be in an additional disclosure statement (specific prescribed information) at any time before whichever of these dates occurs first:

- the close of the fifth working day after they enter into the sale and purchase agreement;

- the close of the tenth working day before settlement of the unit.

The seller has five working days to provide the additional disclosure statement.

The additional disclosure statement contains more information about the unit title development and the operation of the body corporate. It must include:

- contact details of the body corporate and committee (if there is one);
- the balance of every fund or bank account held by the body corporate at the date of the last financial statement;
- amounts due to be paid by the body corporate;
- details of regular expenses that are incurred once a year;
- amounts owed to the body corporate;
- details of every current insurance policy held by the body corporate;
- details of every current contract entered into by the body corporate;
- information about any lease of the underlying land (if the development is leasehold);
- the text of motions voted on at the last general meeting, and whether those motions were passed;
- any changes to the default body corporate operational rules;
- a summary of the long-term maintenance plan.

The seller may require the buyer to meet the reasonable cost of providing the additional disclosure statement. An estimate of that cost is set out in paragraph 9 below.

There are legal consequences on the seller for failing to provide the additional disclosure in the timeframes required by the Unit Titles Act 2010 including delay of settlement and cancellation of the contract.

Computer register. Previously known as a certificate of title, for a unit title development this document records the ownership of a unit, contains a legal description of the unit boundaries, and records any legal interest which is registered against the title to the unit (for example a mortgage or easement). A copy of the computer register for a unit should come with:

- the unit plan attached. Unit title plans were discussed earlier in this section.
- a supplementary record sheet attached. A supplementary record sheet records the ownership of the common property, any legal interests registered against the common property or base land, and other information such as the address for service of the body corporate and the body corporate operational rules.

The common property in a unit title development does not have a computer register.

Land Information Memorandum. A land information memorandum (LIM) is a report which provides information held by the local council about a particular property. You must order and pay for a LIM from the applicable local council. Delivery times vary between councils. The information contained in a LIM will vary between councils, but is likely to include details on:

- rates information;
- information on private and public stormwater and sewerage drains;
- any consents, notices, orders, or requisitions affecting the land or buildings;
- District Plan classifications that relate to the land or buildings;
- any special feature of the land the local council knows about including the downhill movement, gradual sinking or wearing away of any land, the falling of

rock or earth, flooding of any type and possible contamination or hazardous substances;

- any other information the local council deems relevant.

Full details of what a local council is obliged to provide in a LIM is contained in section 44A of the Local Government Official Information and Meetings Act 1987.

Easements and covenants. An easement is a right given to a landowner over another person's property (for example, a right of way, or right to drain water). A land covenant is an obligation contained in a deed between two parties, usually relating to the use of one or both properties (for example a covenant to restrict one party using their property in a certain way).

Easements or covenants may apply to:

- a unit and are usually recorded on the computer register for that unit.
- common property and will be recorded on the supplementary record sheet for the unit title development.

3 Further information about the matters set out above can be obtained from:

Unit title property ownership	Ministry of Business, Innovation and Employment www.tenancy.govt.nz 0800 UNIT TITLES (0800 864 884)
Unit plan Ownership and utility interests Computer register Easements and covenants	Land Information New Zealand www.linz.govt.nz 0800 ONLINE (0800 665 463)
Body corporate operational rules Pre-settlement disclosure statement Additional disclosure statement	The body corporate of the unit title development
Land Information Memorandum	Your local council

For detailed information on any of the above matters relating to your specific circumstances, the Ministry of Business, Innovation and Employment recommends you obtain independent legal advice from your lawyer.

Information about the unit

- 4 The amount of the contribution levied by the body corporate under section 121 of the Unit Titles Act 2010 in respect of the units is \$5,020.00.
- 5 The period covered by the contribution in paragraph 4 is 1 January 2023 to 30 June 2023.
- 6 The body corporate proposes to levy \$10,040.00 under section 121 of the Act in the next 12 months.
- 7 The body corporate proposes to carry out the following maintenance on the unit title development in the next 12 months:

Landscape maintenance (common areas).

- 8 The body corporate has the following accounts:

ASB Current Account (\$6,526.25).

- 9 Under section 148 of the Unit Titles Act 2010, a buyer may request an additional disclosure statement or may request some, but not all, of the information required to be in an additional statement (specific prescribed information) before the settlement of an agreement for sale and purchase of a unit. The buyer must pay to the seller all reasonable costs incurred by the seller in providing the additional disclosure statement. The estimated cost of providing an additional disclosure statement is \$250.00.

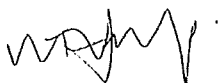
- 10 *Select the statement that applies:*

~~The unit or the common property is, or has been, the subject of a claim under the Weathertight Homes Resolution Services Act 2006 or other civil proceedings relating to water penetration of the buildings in the unit title development.~~

~~or~~

The unit or the common property is not currently, and has never been, the subject of a claim under the Weathertight Homes Resolution Services Act 2006 or any other civil proceedings relating to water penetration of the buildings in the unit title development.

Date: 31 May 2023



Signed by:

Michael Sharp
THC Group Limited

SCHEDULE 14

BUILDING ACT DISCLOSURE FORM AND PRESCRIBED CHECKLIST

Prescribed disclosure information
Section 362D, Building Act 2004

Information about the building contractor

Name of building contractor (full legal name):	
Type of business: Individual/partnership/limited liability company*:	
Date partnership/company* formed, if applicable:	
Postal address:	
Telephone number:	
Email address:	

*Select one.

Key contact person (If identified at the time when this information is provided)

(Information about the key contact person, being a person who will manage or supervise the building work and who is available to the client to discuss any aspect of the building project)

Name of key contact person:	
Telephone number:	
Mobile telephone number:	
Role in the building project (for example, "project manager", "site foreman"):	
Relevant qualifications, skills, and experience:	
Licensed building practitioner number (if any):	

Note: The building contractor must notify the client if the key contact person changes.

Insurance policies

(Details of every insurance policy or policies that the building contractor has, or intends to obtain, in relation to the building work)

Complete for each policy:

Type of policy: [specify: eg, contract works, professional indemnity, public liability]	
Amount of cover:	
Relevant exclusions on policy coverage, (if any):	

Type of policy: <i>Specify: eg, contract works, professional indemnity, public liability</i>	
Amount of cover:	
Relevant exclusions on policy coverage, (if any):	

Type of policy: <i>Specify: eg, contract works, professional indemnity, public liability</i>	
Amount of cover:	
Relevant exclusions on policy coverage, (if any):	

Information about any guarantees or warranties

(Information about any guarantees or warranties the building contractor offers in relation to the building work)

Complete for each guarantee or warranty:

Nature or type of guarantee or warranty: <i>Specify: eg, guarantee, product warranty, completed work warranty</i>	
If guarantee or warranty is a product warranty, specify the product:	
Period of guarantee or warranty cover:	
Limits or exclusions on cover, (if any):	

Nature or type of guarantee or warranty: <i>Specify: eg, guarantee, product warranty, completed work warranty</i>	
If guarantee or warranty is a product warranty, specify the product:	
Period of guarantee or warranty cover:	
Limits or exclusions on cover, (if any):	

Nature or type of guarantee or warranty: <i>Specify: eg, guarantee, product warranty, completed work warranty</i>	
If guarantee or warranty is a product warranty, specify the product:	
Period of guarantee or warranty cover:	
Limits or exclusions on cover, (if any):	

SCHEDULE 15

OVERSEAS INVESTMENT OFFICE RESIDENTIAL LAND



Residential Land Statement

Section 51A of the Overseas Investment Act 2005

Please complete Part 1a for an individual or Part 1b for a non-individual (including company, trust or other entity).

A separate statement is required for each individual. One statement may be provided on behalf of a company, trust or other entity (see the guidance document for more information).

Part 1a Individual

I am an individual completing the statement for myself (*purchasing the residential land in your own name*)

Am I eligible to buy under the Overseas Investment Act 2005?

(Tick which one applies)

Yes, I am a current New Zealand citizen

Yes, I am an Australian or Singaporean citizen buying residential land only

Yes, I hold a New Zealand residence class visa **or** I am an Australian or Singaporean Permanent Resident buying residential land only **and all** of the following applies:

- I have been residing in New Zealand for at least the immediately preceding 12 months; and
- I am a tax resident in New Zealand; and
- I have been present in New Zealand for 183 days or more in the immediately preceding 12 months

Yes, I am an Australian or Singaporean Citizen **or** I am an Australian or Singaporean Permanent Resident buying residential land that is **also** sensitive for another reason **and** I have consent from the Overseas Investment Office

→ Please provide Overseas Investment Office case number

Yes, I have consent from the Overseas Investment Office, or an exemption applies

→ Please provide Overseas Office case number, or statutory reference

Part 1b Non-individual (including company/trust/other entity)

(Tick which one applies)

I am completing the statement for a body corporate, company, partnership or other entity

I am completing the statement on behalf of trustees of a trust, or for someone else under an enduring power of attorney

→ Please attach a certificate of non-revocation if you are acting under an enduring power of attorney

Is the non-individual eligible to buy under the Overseas Investment Act 2005?

(Tick which one applies)

Yes, the non-individual is neither an "overseas person" nor an "associate" of an "overseas person" as defined in the Overseas Investment Act 2005

Yes, the non-individual has consent from the Overseas Investment Office, or an exemption applies

→ Please provide Overseas Office case number, or statutory reference

If you require consent and have not applied, or an exemption does not apply, contact the Overseas Investment Office or seek legal advice.

Part 2

Name(s)

What is the full name(s) of the individual or non-individual that will appear on the Record of Title as the new owner(s)?

Part 3

The residential land being acquired

What is the Record of Title reference for the residential land, or the street address?

Part 4

Signature

I certify that all of the information in this statement is true and correct.

Your name

Signature

Date signed

Position or office held (if signing as an authorised person)



You must provide this statement to your conveyancer or lawyer

The conveyancer or lawyer will rely on the information provided in the statement in giving effect to the acquisition of the interest in residential land.

Providing a statement that is false or misleading is an offence under the Overseas Investment Act 2005 and you may be liable for a penalty of up to \$300,000.

Contact the Overseas Investment Office

Phone: 0800 665 463 (in NZ) or +64 7 974 5595 (if overseas)

Email address: oio@linz.govt.nz

Website address: www.linz.govt.nz/oio

PURCHASERS ACKNOWLEDGEMENT

Please complete your details below and sign this form before you submit an offer to purchase the property at: **APARTMENT # _____, CLEARWATER QUAYS, 54 ROTOITI LANE, NORTHWOOD, CHRISTCHURCH** _____ (property)

Purchaser Name: _____

Address: _____

Phone: _____

Email: _____

Solicitor: _____

(Name)

(Firm)

The Purchaser, prior to signing this document, acknowledges and agrees that the purchaser has been:

- Recommended to seek legal and technical or other advice and information and advice and given a reasonable opportunity to do so;
- Provided a copy of the approved Real Estate Authority guide relating to sale and purchase agreements;
- Made aware of the agents in-house complaints and dispute resolution procedures and given a copy. Made aware that they may access the Real Estate Authority's complaints process without using the agents in-house procedures and that any use of the in-house procedure does not preclude the making of a complaint to the Real Estate Authority;
- Advised of any EQC or private insurance claims (that the agent is aware of) relating to the property and their current status. If you are in any doubt about the status of any insurance claim you acknowledge that you have been recommended to seek technical advice from your insurance and/or solicitor;
- Advised that the licensee is not obligated or qualified to provide them with representation on the boundaries of the property. If you are in doubt or seek clarification on the actual boundaries, you acknowledge that you have been advised to engage a survey or seek further advice from your Solicitor regarding the boundaries;
- Made aware of any known defects in the property and/or advised that the property maybe subject to hidden or underlying defects and/or advised the ability to make an offer to purchase the property conditional on obtaining a building report;
- Provided the property files by document download (including but not limited to Title / Council files)

Overseas Investment Act

- I/We understand that residential property purchases are now subject to the provisions of the Overseas Investment Act 2005 (OIA). Before any residential property is transferred to me/us, my lawyer will require me/us to complete a Residential Land Statement certifying that I/we meet the eligibility criteria. If I/we require OIA consent, do not have OIA consent and do not make our offer conditional upon obtaining it, we will be in breach of the OIA and may be liable for fines of up to \$300,000, I/we may not be able to settle the transaction and may incur liability to the vendor (including losing our deposit)

IF YOU ARE UNCERTAIN ABOUT YOUR ELIGIBILITY OR WHETHER THE PROPERTY IS SUBJECT TO THE OIA, YOU MUST MAKE YOUR OFFER SUBJECT TO OBTAINING OVERSEAS INVESTMENT OFFER CONSENT.

PURCHASERS ACKNOWLEDGEMENT

Disclosures (salesperson to delete if not relevant) The Purchaser, prior to signing this document, confirms the salesperson has disclosed the following to them: Disclosure of known defects (if any)

~~The purchaser acknowledges the attached further terms of sale (an additional 188 pages) have been produced by Saunders Robinson Brown (vendors solicitor) which outlines property specifications, chattels, and further due diligence clauses, including but not limited to; Clause 44, 44.1-44.4 (44.1.2. [This Agreement is subject to and conditional upon] the Purchaser completing and being satisfied in all respects that the Property is suitable for the Purchaser after the Purchaser has carried out a due diligence investigation on all aspects of the Property which the purchaser considers necessary or relevant. The date for satisfaction of the conditions in Clause. 44.1 is ten (10) working days from the date of this Agreement. The salesperson and their company, Calder & Co. have encouraged due diligence regarding the supplied material and offer no warranty regarding the correctness of information supplied by other parties.~~

If it is indicated that this property has insulation, it is the purchaser's responsibility to investigate if the insulation meets the R.T.A Regulations

Representations made by the licensee that the purchaser is relying on (provided verbally, via information provided and/or marketing)

Regarding the pre-disclosure statement, refer to the rear of the S&P Agreement; As of 7 Jul 2023, 15:03, the salesperson has requested an updated pre-disclosure statement from the vendors solicitor, their response is as follows "We have also requested an updated Pre-Contract Disclosure Statement for Apartment 7 from the THC Group Limited and will provide a copy of this when we receive it. Alternatively, we will advise if the levies for the period commencing 1 July 2023 remain unchanged from the Pre-Contract Disclosure Statement you have already."

Relationship Disclosure (if any)

Related Party Transaction

We acknowledge that we were advised that section 134 and 136 of the Real Estate Agents Act 2008 do not apply

Permission to market the property after sale

- The purchaser authorises the agent to market the property as Sold for a reasonable period of time. This will include a photo of the property and the suburb.

ATTENTION:

Do NOT sign the attached Sale and Purchase Agreement without reading and understanding this document. Do NOT sign the Sale and Purchase Agreement if you feel pressured.

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____

If you are intending to purchase the property as trustees of a trust, all trustees must sign this form. If a company is purchasing the property, by signing this form you acknowledge that you are duly authorised to sign this form on the company's behalf.

Salesperson Signed: _____

Date: _____

Salesperson Signed: _____

Date: _____