

URBAN COHOUSING OTEPOTI LIMITED

AND

**THE MEMBERS
HIGH ST COHOUSING PROJECT**

HIGH STREET COHOUSING SHAREHOLDERS' AGREEMENT

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THIS AGREEMENT is made the day of

2018

PARTIES:

1. **URBAN COHOUSING OTEPOTI LIMITED (UCOL), “the company”**

A N D

2. Catherine Mary SPENCER
3. Alexander Charles KING
4. Susan Janice & Kristin Robert JACK
5. Susan Helen TAYLOR
6. Elizabeth Anne & Ian Armstrong THOMSON
7. Timothy Nigel and Philippa Lois ROSS
8. Juan Ignacion PURICELLI & Maria Fernanda CALLAU
9. Sara DA SILVA TELES GRANGEIO FERREIRA
10. Frances & Alexander John Fergus ROSS
11. Patricia Gay BUCKINGHAM
12. Janice Robyn BURCH
13. Rosemary Sheryl & Michael Charles Bouverie WILSON
14. Rainer Nicolaus BENEKE & Marian QUINN
15. Dennis Shen Han CHAN & Adelyn Ai Lyn LAU
16. Warren James HURLEY
17. Claire LOFTUS
18. Jessica Alice and James Alexander Francis ROSS
19. Sander Paul ZWANENBURG & Nga Fong OR
20. Donald SHAND & Miriam FRANCES
21. Geoffrey Alan & Anne Constance KING
22. Yu-Min LEE
23. Rachel Margaret GIBB

“the Shareholders”

1 BACKGROUND

- A. On 30th July 2013 a company, Urban Cohousing Otepoti Limited (“UCOL”) was incorporated.
- B. The parties, together with High Street Cohousing Project members, constitute “the Group”.
- C. The Group has, since February 2013, been planning to set up an environmentally and socially sustainable cohousing project in Dunedin, (“Project”), broadly in line with the information referred to in the Fourth Schedule (“Project Information”).
- D. On 30th July 2013 UCOL agreed to purchase land and existing buildings at 7 Montpellier St, Dunedin, the former High St School site (“Land”).
- E. On 16th September 2013, UCOL purchased the Land.
- F. The Land is to be used for the development of the Project to be a cohousing project (High St Cohousing) to be developed by UCOL on the Land and broadly in accordance with the Project Information.
- G. This Agreement sets out the steps that need to be taken to complete the Project and the relationship and obligations of the parties.

2. DEFINITIONS

In this Agreement unless the context requires otherwise:

“Agreement for Sale and Purchase” with “Further Terms of Sale” means an agreement to purchase one or more Units in the Project which agreement shall be made between UCOL as vendor and a Shareholder as purchaser, a draft form of which is attached as the Fifth Schedule.

“Company” means Urban Cohousing Otepoti Ltd (UCOL).

“Commons Development Fund” means a fund created and maintained by the Body Corporate to develop and sustain common areas.

“Contribution” means Share Capital or Loans agreed with each Shareholder.

“Development Lender” means any outside person, bank or institution (not being a party to this Agreement) that lends funds to the Company for the purpose of completing the Project, with or without security.

“Design” means the concept, developed, and detailed agreed design for the Project at 7 Montpellier Street, Dunedin through the Group Decision Making Process.

“Dispute” means a situation in which one or more parties or Group member consider any matter to be in dispute.

“Group” means the parties and High St Cohousing Project members.

“Group Decision Making Process” means the process at the date of signing this Agreement as described in 2nd Schedule or as changed from time to time by the Group for decisions to be made by the Group.

“High St Cohousing Project member” means prospective shareholders of the Project and those who have paid \$100 contribution.

“Land” means 4930m² more or less being Part Lot 2 Deposited Plan 6575, Section 7-9 Block II Certificate of Title 593975 (Town of Dunedin) and Lot 9 Deposited Plan 270, Certificate of Title 600867 (Town of Dunedin).

“Loan” means any loan agreed to be made by shareholders, as set out in individual Loan Agreements.

“Maximum Amount” means the maximum Loan agreed by each party to the Company.

“Parties” means the Company and Shareholders

“Project” means the **HIGH ST COHOUSING** Project at 7 Montpellier St., Dunedin City, being undertaken by the Group.

“Project Information” means the information referred to in the Fourth Schedule.

“Pro rata” means an even proportion.

“Prospective Shareholder” means a person who has reached Step 5 of the Induction Process, see Sixth Schedule (Induction Process).

“Shareholder capital” means the sum of \$5,000 (or such other sum as is agreed) paid by each shareholder as seed money for commencement of the Project.

“Shareholder” means those people who have completed the Induction Process and paid shareholder capital in accordance with this Agreement. This includes “Joint Shareholders”.

“Unit” means a dwelling pursuant to the Unit Titles Act 2010 constructed on the Land.

“Unit Purchaser” means those Shareholders who are listed as unit purchasers and who will enter into

an unconditional Agreement for Sale and Purchase with UCOL.

3. INTERPRETATION

In this Agreement:

- (a) a reference to a person includes any other entity or association recognised by law and the reverse;
- (b) words referring to the singular include the plural and the reverse;
- (c) any reference to any of the parties includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both;
- (d) everything expressed or implied in this Agreement which involves more than one person binds and benefits those people jointly and severally;
- (e) clause headings are for reference purposes only;
- (f) principles stated at the beginning of clauses are for reference purposes only;
- (g) a reference to a statute includes:
 - all regulations under that statute; and
 - all amendments to that statute; and
 - any statute substituting for it which incorporates any of its provisions.

4. HIGH STREET COHOUSING KAUPAPA

4.1 Purchasers of units in the High Street Co-housing development shall agree to cooperate with other residents and owners to manage the development in accordance with the following principles.

1. Resident Management – Residents and owners shall manage the development themselves, making decisions of common concern at community meetings, using the Group Decision Making Process as set out in the Cohousing Body Corporate Rules.
2. Non-Hierarchical Structure – Responsibility for decisions shall be shared by adult

residents and owners.

3. Common Facilities – Common areas are an integral part of the development intended for daily use to supplement private living areas.
4. Design for Community – The physical design of the development is intended to encourage interaction and build a strong sense of community.
5. At least one household member living in each residence shall be required to participate in regular community meetings. Unit owners are responsible for ensuring at least one resident from their unit participates by making attendance a requirement of residency. The frequency of community meetings and minimum requirements for participation are set at community meetings from time to time and notified to residents and owners.
6. Unit owners are required to meet their obligations under the Body Corporate Rules paying Body Corporate fees, which may include a Commons Development Fund for additional communal facilities for the benefit of all members.

5. ANTICIPATED PROJECT TIME FRAME

- 5.1 The parties anticipate that the following steps will be taken to complete the Project and that each step has been or is anticipated will be taken by the dates specified:
 1. 5th August 2013 - A deposit was paid on the Land;
 2. 16th September 2013 - The Land purchase was settled;
 3. 30 June 2014 – Resource consent was applied for;
 4. January 2015 – Resource consent was granted;
 5. April 2018 – Building Consent was applied for;
 6. August 2018 - Construction is planned to commence;
 7. February–May 2020 – All units forming part of the Project to be completed and settled with Unit Purchasers.
- 5.2 The Parties shall each co-operate and use their best endeavours to ensure the Project is completed in accordance with the time frames specified, the Project Information and this Agreement.

6. PROJECT INFORMATION

- 6.1 Each party to this Agreement acknowledges that it has viewed the Project Information.

7. COMPANY CONSTITUTION

Principle

The Company has been incorporated with a Constitution.

- 7.1 The Constitution can be found on the Companies Office website. The Constitution is that stipulated by the Companies Act 1993. See First Schedule.
- 7.2 Where the provisions of this Agreement conflict with those set out in the UCOL Constitution, the provisions of this Agreement shall prevail.

8. COMPANY DIRECTORS

- 8.1 The Directors of UCOL shall be appointed from the Shareholders of the company with a minimum of Three (3) and maximum of Ten (10) Directors. As of 18th December 2016 the Directors are:

Catherine Mary SPENCER
Alexander Charles KING
Susan Janice JACK and
Elizabeth Anne THOMSON

- 8.2 Directors shall be appointed or retired in accordance with the Group Decision Making Process set out in this Agreement.
- 8.3 The Company shall indemnify Directors and obtain Directors Liability Insurance.
- 8.4 A quorum is a minimum of 60% of Directors for Directors meetings and decisions.

9. SHAREHOLDERS

- 9.1 Each new Shareholder shall purchase Five (5) Shares for the sum of \$1000 each, giving a total of \$5000 per unit, once they satisfy the requirements to enter the Company. By the Group Decision Making Process UCOL will issue new Shares accordingly.

10. LOANS AND COMMITMENT TO LOAN

- 10.1 Each Shareholder shall make Loans as agreed and discussed through the Group Decision Making Process which will be recorded as separate Loan Agreements to complete the build.
- 10.2 The Company shall be entitled to request the agreed amount or amounts from each Shareholder ("Company Requests"), in accordance with this clause.
- 10.3 The amount and frequency of the Company Requests shall be determined pursuant to the Group Decision Making Process.
- 10.4 UCOL shall be entitled to convert Loans or portions of Loans to Shares on an equally per Shareholder purchasing a unit basis, at the rate of one share per \$1000 if necessary for solvency and issue Shares accordingly.
- 10.5 All loans to UCOL are to be recorded on the Loan Agreement form, together with any changes decided upon by the Group using the Group Decision Making Process, either in relation to the form generally or in relation to any particular Loan Contributor.

11. UNIT PURCHASERS

- 11.1 Each Unit Purchaser shall execute an Agreement for Sale and Purchase in respect of their Unit.
- 11.2 Unit Purchasers who are Shareholders, are prioritised in order of date of payment of Share Capital, for selecting a unit as shown in Schedule Six.

12. SUBSEQUENT LOANS

- 12.1 UCOL shall be entitled to accept further Loans as it sees fit as decided by the Group using the Group Decision Making Process.

13. CO-HOUSING COVENANT

- 13.1 The Agreement for Sale and Purchase shall require all Unit Purchasers to enter into a Cohousing Deed of Covenant which will be registered on each Unit Title. The Covenant requires the Unit Purchaser to comply with the provisions of this Agreement.
- 13.2 Unit Purchasers, excluding local authorities, who are not yet parties to this Agreement will

enter into this Agreement on or before entering into an Agreement for Sale and Purchase.

14. WITHDRAWAL OF LOANS

Principle

All the parties to this Agreement accept that Shares and loans, once committed, should remain committed until all units are sold and settled, and the Project is wound up. The viability of the Project must take precedence over the needs of individual lenders. However, the parties also acknowledge that there will be situations where it is unavoidable that a party withdraws either fully or partially.

14.1 Withdrawal of Shareholder

If a Shareholder wishes to withdraw either in whole or in part from the Project prior to the Project being completed, the procedure shall be as follows:

- 14.1.1 The withdrawing Shareholder must offer the Shares to any prospective Shareholders who shall have one further month from the date of the offer to respond;
- 14.1.2 If a withdrawing shareholder is unable to find a replacement under Clause 14.1.1 to purchase the Shares and assume the shareholder's Loan if any (including those loans still to be requested by the Company), and any Sale and Purchase Agreement settlement they shall have Six (6) further months to seek a replacement Shareholder from outside the existing Shareholders, provided that such replacement Shareholder shall first become a Shareholder in accordance with the Induction Process;
- 14.1.3 If a withdrawing Shareholder is unable to find a replacement under either Clause 14.1.1 or Clause 14.1.2 to purchase the Shares and assume the withdrawing Shareholder's Loan (including those loans still to be requested by the Company), and the Sale and Purchase Agreement costs, then the Company may pay out the withdrawing Shareholder, but shall be under no obligation to do so at that point. If the Company does not choose to pay out the withdrawing Shareholder at that point, the Shareholder shall not be entitled to a refund of that Shareholder's Loans until the completion of the Project.

15. COMPANY TO COMPLETE DEVELOPMENT

Principle

UCOL has been incorporated for the purpose of undertaking the development of the Project. The Company is expected to operate as a vehicle to fulfill the requirements of the Members in completing the Project.

15.1 Completion of Development

- 15.1.1 The Company shall complete a unit title development on the Land. The development will comprise up to 26 units, the common house, and other shared facilities and shall be completed in accordance with the Project Information and such other terms as are agreed by the Group in accordance with the Group Decision Making Process.
- 15.1.2 UCOL, in accordance with the Group Decision Making Process, reserves the right not to develop the common house to the full extent shown in the detailed design in the first instance.
- 15.1.3 The Body Corporate Rules will be determined by the Group in accordance with the Unit Titles Act and the Group Decision Making Process and will reflect both the principles and vision of the Group as set out in the Project Information, and, where relevant, the matters set out in this Agreement.

16. DECISION MAKING

Principle

The parties agree that the Group Decision Making Process shall be followed in respect of all decisions to be made in relation to the Project other than certain minor administrative decisions. However, the parties accept that ultimate control of the Project must rest with Directors and Shareholders of the Company.

16.1 Directors' powers

The Directors shall have the following powers in relation to the Project:

- 16.1.1 to pay any money which the Company is legally obliged to pay;
- 16.1.2 to make other decisions in the day to day management of the Company provided that they:
- (a) do not involve changes to the agreed design;
 - (b) do not involve changes to the project time frame outlined in this Agreement;
 - (c) do not involve expenditure above \$5,000 on any one item that has not already been agreed in the Group Decision Making Process;
- 16.1.3 to make such emergency decisions as they deem necessary in their reasonable

discretion, provided that in this case the Directors shall be obliged to certify to the Shareholders of the Company that the action was taken in the best interests of the Company.

16.2 Shareholders' Powers

- 16.2.1 All decisions other than Directors' decisions as set out in Clause 16.1 above, shall be made by Shareholders. Although prospective Shareholders may attend group meetings and participate in discussions they will not be eligible to participate in decisions unless invited by Shareholders. The procedure for making Shareholders decisions shall be as follows:
- 16.2.2 The Shareholders in each case shall consult with the Group using the Group Decision Making Process.
- 16.2.4 If a decision is not reached using the Group Decision Making Process within the shorter time of 10 days or two meetings then the Voting Procedure set out in Clause 16.3 shall at the request of any one Shareholder be followed.

16.3 Voting Procedure

- 16.3.1 In the event of no decision having been reached in accordance with Clause 16.2 the procedure shall be as follows:
- 16.3.2 The Directors shall give Five (5) days' notice of a meeting to resolve the issue to all Shareholders who have paid up Shares.
- 16.3.3 Every Shareholder entitled to vote shall be entitled to One (1) vote per share, and an additional One (1) vote for each \$5000 loan of loans contributed subject to Clause 16.3.5 below.
- 16.3.4 The number of votes to be allocated to each Shareholder entitled to vote shall be calculated as at the date of the meeting. The contributions as recorded against each person's name in the Company Share Register and loan record shall be irrefutable evidence of each party's contributions for the purpose of the vote.
- 16.3.5 The voting rights of each Shareholder shall be capped so that no Shareholder shall control more than 10% of the vote, regardless of the percentage of their contribution. Any decisions shall be required to be made by a 75% majority of shareholding votes present.
- 16.3.6 The quorum in a meeting shall comprise Shareholders present or by proxy who:
 - (a) comprise 75% of those Shareholders entitled to vote; and

- (b) hold not less than 75% of the total loan advances in the Company.
- (c) Those entitled to vote shall be entitled to vote by proxy.

17. CONSTRUCTION LOAN

Principle

It is possible that the Company may enter into a Construction Loan with a development lender, and that Shareholders will be required to indemnify those who guarantee the loan with a limited liability on a pro rata basis up to the cost of their own unit.

17.1 Loan Terms

17.1.1 The Shareholders shall, through the use of the Group Decision Making Process determine what loan funds are required for completion of the Project and the terms that are acceptable.

17.2 Obligation on Shareholders to Execute Loan Documentation

17.2.1 The Shareholders and Directors of the Company shall execute or shall procure the execution of such loan documentation as is reasonably required by the Development Lender. The parties acknowledge the Development Lender may reasonably require the following as its security:

- (a) a security over the assets of the Company;
- (b) a registered first mortgage over the Land;
- (c) an assignment by way of mortgage of the Agreements for Sale and Purchase;
- (d) an assignment of any construction contract entered into by the Company for completion of the Project;
- (e) personal limited guarantees up to the purchase price of the purchaser's unit.

18. SALE OF UNITS

Principle

It is intended that all units in the Project will be sold by the Company as soon as practicable with settlement immediately following completion and the issue of separate unit titles which each have a Cohousing Covenant.

18.1 The parties will do everything in their power to ensure that all units comprising the Project are sold at market value and in accordance with the time frame agreed by the Group

- 18.2 The parties agree that for income tax purposes the sale price is the market value of the unit established by the independent valuation. Where the actual price paid differs from the market value the unit purchaser agrees that any differences between the price paid and the market value is a gift between the unit purchasers.

Notwithstanding the above, if over the entire development the total market value of all the units is more or less than the total price paid for all the units, the difference (calculated globally over the entire development) would be regarded as a loan between the company and all unit purchasers.

18.3 Form of Agreement for Sale and Purchase

- 18.3.1 All parties intending to purchase a Unit shall sign an Agreement for Sale and Purchase generally in the form attached as the Fifth Schedule, together with any changes decided upon by the Group using the Group Decision Making Process, either in relation to the form generally or in relation to any particular purchaser.

18.4 Unit Preference

The parties acknowledge that the allocation of particular Units to Unit Purchasers will be determined by the Unit Preference List determined by the date of loan in lieu of shares is received by the company and the Group Decision Making Process as follows:

- 18.3.1 the Group shall prepare a list setting out the order in which Unit Purchasers shall be offered the chance to select a unit of their choice ("Unit Preference List");
- 18.3.2 Unit Purchasers shall select their unit in the order set out in the Unit Preference List which will be documented in Seventh Schedule;
- 18.3.3 the parties agree to work in good faith to finalise the Unit Preference List, and the signing of the Agreements for Sale and Purchase.

19. RESALE OF UNITS

Upon resale of units by any Unit Purchasers, 5% of any gross capital gain made shall be paid into the Commons Development Fund of the Body Corporate.

20. SETTLEMENT AND DISTRIBUTION

Principle

The parties anticipate that, following settlement of the sale of the units, the Company will be wound up. Returns cannot be guaranteed - this will depend on the success of the Project and funds available at the end. Partial returns may be paid out on a pro-rata basis if funds are insufficient to pay out the total agreed amounts. Interest returns are to be simple, not compounding. The Company may not be wound up if the parties decide to keep it in existence.

20.1 Settlement of Sale of Units

20.1.1 Each Unit Purchaser shall settle the purchase of their unit on the same day in accordance with their Agreement for Sale and Purchase, at which stage the company shall take into account the amount of their loan(s) as part of the purchase price. Failure for any Unit Purchaser to settle accordingly places the entire project in jeopardy.

20.2 Settlement on Sale of all Units in the Project

Funds received by the Company on settlement of the sales shall be applied in the following priority:

20.2.1 in payment of such funds as shall be required to be paid to the Development Lender;

20.2.2 in payment of any funds due by the Company as vendor to the Inland Revenue Department;

20.2.3 in payment of other debts owed by the Company other than loans from Shareholders;

20.2.4 in repayment of the principal amount of loans by Shareholders unless such repayment of loans shall have already occurred upon purchase by a Shareholder of that Shareholder's Unit;

20.2.5 in payment of any interest on loans from Shareholders as specified in the Loan Agreement, unless such payment of interest shall have already occurred upon purchase by a Shareholder of that Shareholder's Unit;

20.2.6 payment of interest on loans from Shareholders on a pro rata basis.

20.3 Return of Loan by Lender

20.3.1 Each Lender shall be entitled to a repayment of the Loan made by that Lender on settlement of the sale of the unit/units purchased by the Lender if allowed by the Development Lender. If the Lender has contracted to purchase more than one unit,

the repayment shall be made (if allowed by the Development Lender) on a pro rata basis on settlement of each unit.

21. PROCEDURES IN THE CASE OF DEATH, MENTAL DISORDER OR BANKRUPTCY

Principle

Because the Project as a whole relies on the commitment of individuals to the goals and principles of the Group, the parties wish to minimise any negative effects of certain events on the Project so far as they are legally able.

21.1 Mental Disorder or Bankruptcy

21.1.1 If a Shareholder becomes bankrupt; is mentally disordered and is under a Compulsory Treatment Order under the Mental Health Act; or subject to the Protection of Personal and Property Rights Act; the manager, attorney, assignee or personal representative of the Shareholder shall, if required by the company, as soon as possible and in any event not later than 3 months after the adjudication of the Shareholder as bankrupt; or the Shareholder becoming mentally disordered and under a Compulsory Treatment Order under the Mental Health Act; or become subject of the Protection of Personal and Property Rights Act; give a transfer notice in accordance with the Constitution of the Company in respect of the Shares held by the Shareholder. The provisions of the Constitution of the Company relating to pre-emptive rights on transfer will then apply.

21.2 Death

21.2.1 If a Shareholder dies before completion of the Project, the Beneficiaries of that Shareholder's estate will be entitled to go through the process of becoming members of the High Street Cohousing Project in accordance with the Project Information but shall not automatically become Members of the High Street Cohousing Project. If the Beneficiaries do not become Members of the High Street Cohousing Project within 6 months of the date of probate of the Will of the Shareholder, the provision of clause 14 shall apply. If the Beneficiaries do become members they shall inherit the place of the Shareholder in the list formed in accordance with Clause 11.

22. WIND UP OF COMPANY PRIOR TO COMPLETION OF PROJECT

22.1 The Company cannot be wound up until completion of the Project and settlement of the sale of each of the units has been completed unless agreed through the Group Decision Making Process.

22.2 Upon winding up of the Company, any profit or loss will be divided up between the Shareholders

pro rata according to Contributions made according to the priority order as in 18.3.

23. DEFAULT INTEREST

- 23.1 Any Shareholder who fails on due date to pay any payment due to the other party under this Agreement must notify the other party as soon as possible and may be asked to pay penalty interest on the amount in arrears up to the rate of 10% per annum.
- 23.2 Payment of arrears interest shall be made to the Company, which shall retain the funds on behalf of the Group. Any interest received will be credited to the Project costs.
- 23.3 This clause does not prejudice any other rights or remedies of either party.
- 23.4 If judgment is given for any amount payable under this Agreement the amount (including legal costs) will be deemed a payment due under this clause on the date of the judgment.
- 23.5 The interest payable accordingly forms part of the judgment.

24. FORCE MAJEURE

- 24.1 No party breaches this Agreement if its breach is caused by any reason beyond the control of that party ("force majeure"), but force majeure does not include any event which that party could have prevented, or overcome by reasonable care, or lack of funds for any reason.
- 24.2 If any party cannot perform its duties and obligations under this Agreement because of such reason, that party must give full details of the reason to the other parties in writing. On receipt of such details the Group shall use the Group Decision Making Process to determine:
 - 24.2.1 whether the Agreement as a whole shall be suspended while the force majeure continues; or
 - 24.2.2 whether the obligations of the party having given notice shall be suspended while the force majeure continues.
- 24.3 As soon as force majeure ceases, the party relying upon it must give written advice to each other party.
- 24.4 If force majeure continues for more than Seven (7) days and substantially affects the commercial basis of the Project, the parties agree to use the Group Decision Making Process to determine what action is to be taken in the circumstances. The parties must use good faith in the Group Decision Making Process and if appropriate must negotiate to modify the Agreement to enable it to proceed.

24.5 If no decision is reached pursuant to clause 24.4 the party claiming relief under this clause can withdraw from the Agreement in accordance with the provisions of clause 14.1.

24.6 In such event the Agreement between the remaining parties shall remain intact.

25. SEVERANCE

25.1 Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement, which will remain in full force and effect unless the commercial interests of each party are materially and adversely affected.

26. ASSIGNMENT

26.1 A party must have written approval of the Group through the Group Decision Making Process before:

26.1.1 assigning, selling or otherwise disposing of any right or obligation under this Agreement;

26.1.2 performing any obligation under this Agreement on behalf of a third party;

26.1.3 mortgaging, charging or encumbering any right or obligation under this Agreement, other than accordance with Clause 20.

26.2 The other parties may require that:

26.2.1 the party assigning or dealing with the Agreement ("the assigning party") pays all fees and expenses (including legal fees) the other parties incur in connection with the proposed assignment or dealing, including investigating the proposed assignee or other third party; and

26.2.2 the assignee or other third party (including Trustees or Directors) agrees in writing to comply with the assigning party's obligations under this Agreement as if they were an original contracting party to the Agreement.

26.3 Any decision as to whether consent will be given to the assignment shall be made using the Group Decision Making Process and shall involve becoming a member of the Group.

26.4 If a party is a company any effective change in the control of the company will be an assignment for the purposes of this clause.

27. ENTIRE AGREEMENT

- 27.1 The parties acknowledge that this Agreement (including the information contained or referred to in the Schedules) contains their understanding and supersedes all their prior oral or written representations, agreements or understandings. Should any discrepancy arise between the terms of the body of this Agreement and the Project Information, the terms of the body of this Agreement shall take precedence.
- 27.2 Each party acknowledges it has either:
- 27.2.1 taken independent legal advice as to the nature and effect of this Agreement; or
 - 27.2.2 has been offered the opportunity to take independent legal advice as to the nature and effect of this Agreement and has chosen not to do so.

28. AMENDMENT

- 28.1 This Agreement cannot be altered except in writing as approved through the Group Decision Making Process signed by the parties or their authorised representatives.

29. WAIVER

- 29.1 If either party delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy.
- 29.2 The single or partial exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy or its further exercise.
- 29.3 The rights and remedies provided in this Agreement are cumulative. They do not exclude any rights or remedies provided by law.
- 29.4 Any waiver or consent given by a party must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

30. PUBLIC STATEMENTS

- 30.1 The form, contents and timing of any public announcement concerning this Agreement must first be agreed between the parties in accordance with the Group Decision Making Process. Any public announcements made by the Marketing and Promotion Task Group appointed by the Members or by any media spokesperson appointed by the Members shall be deemed to have been made in accordance with the Group Decision Making Process.

31. FURTHER ASSURANCE

- 31.1 Each party agrees to do everything promptly that is reasonable and necessary to carry out this Agreement.

32. COSTS

- 32.1 The Group shall be responsible for the legal and other costs in preparing this Agreement. The Group may seek reimbursement from individuals of any costs arising through negotiations and explanation of issues pertaining to that individual. The Group shall determine whether such reimbursement shall be sought.
- 32.2 Each of the parties is responsible for its own independent legal advice and other associated costs in executing this Agreement.

33 NO PARTNERSHIP

- 33.1 Nothing in this Agreement constitutes the parties as partners, joint venturers or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Agreement.

34. DISPUTE RESOLUTION

34.1 Group Decision Making Process

- 34.1.2 A dispute will first be attempted to be resolved using the Group Decision Making Process as outlined in the Second Schedule.

34.2 DISPUTE RESOLUTION MEDIATION

- 34.2.1 If a dispute is not resolved pursuant to Clause 34.1 a party must use the mediation procedure to resolve a dispute before commencing legal proceedings.

- 34.2.2 The mediation procedure is:

- (a) The party who wishes to resolve a dispute must give a notice of dispute to the other party.
- (b) The notice must state that the dispute has arisen, and state the matters in

dispute.

- (c) The other party will either agree to proceed with the mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. If it is decided that mediation would not be helpful, then the provisions of clause 32 shall apply. If it is decided that mediation would be helpful then the parties will agree on a mediator within Seven (7) days of the written notice being received or will ask the New Zealand Dispute Resolution Centre Ltd to appoint a mediator. If this service is not available, the parties will ask the President of the Arbitrators' and Mediators' Institute of New Zealand Inc to appoint a mediator.
- (d) The parties must co-operate with the mediator in an effort to resolve the dispute.
- (e) The mediator may engage an appropriately qualified expert to give an opinion on technical matters. The cost will be a mediation cost.
- (f) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
- (g) If the dispute is not resolved within Fourteen (14) days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
- (h) Each party must pay a half share of the mediator's fee and costs including travel, room hire, refreshments etc.
- (i) The terms of settlement bind the parties and overrides this Agreement if there is any conflict.
- (j) The terms of settlement may be used as evidence in any arbitration or other legal proceedings.
- (k) The parties agree that written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any legal proceedings. This protects the confidentiality of the mediation.
- (l) This clause will not apply if either party seeks urgent interlocutory relief from any court.
- (m) Pending resolution of any dispute the parties will perform this Agreement in all respects including performance of the matter which is the subject of dispute.

34.3 DISPUTE RESOLUTION ARBITRATION

34.3.1 If a party has any dispute with any other party in connection with this Agreement and the dispute is unable to be resolved pursuant to Clauses 34.1 or 34.2 the dispute will be referred to arbitration.

34.3.2 The arbitration will be conducted by one arbitrator appointed by the parties. If the parties cannot agree on an arbitrator within Seven (7) days of the cessation of mediation, the appointment will be made by the New Zealand Dispute Resolution Centre. Should this service not be available, the parties will ask the President of the Arbitrators' and Mediators' Institute of New Zealand Inc to appoint an arbitrator.

34.3.3 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

34.3.4 No party will unreasonably delay the dispute resolution procedures in this clause.

This clause does not apply to:

34.3.5 any dispute arising in connection with any attempted renegotiation of this Agreement; or

34.3.6 an application by either party for urgent interlocutory relief.

35. EXPULSION OF CONTRIBUTORS

Principle

The parties acknowledge that there may be circumstances where, in the interests of the Project as a whole, disruptive persons will need to be expelled from the Group.

35.1 Decision Making Process to be Followed

35.1.1 If the parties to this Agreement, or any one of them, become concerned about the behaviour of any of the other parties to this Agreement, they shall be entitled to refer the matter to the Group for discussion and resolution in accordance with the Group Decision Making Process. An advocate may provide support and speak on behalf of the party deemed to be causing concern if requested.

35.2 Expulsion

35.2.1 If the Group Decision Making Process fails to resolve the matter, then the members

of the Group shall refer the matter to mediation in accordance with Clause 34.2. or Arbitration Clause 34.3. If it is decided that mediation would not be helpful, pursuant to Clause 34.2 or 34.3 then the members of the Group may agree in accordance with the provisions of Clause 35 to expel a party to this Agreement ("Expelled Party").

35.3 Expulsion of a Shareholder

35.3.1 If the Expelled Party is a Shareholder, the Company shall be obliged to procure payment of an amount equal to that part of the Expelled Party's contribution as has been paid from some other party and to ensure that the Expelled Party is paid out as soon as the Company is reasonably able.

35.4 Expulsion of Unit Purchaser Prior to Settlement

35.4.1 If the Expelled Party is a Unit Purchaser who is not a Shareholder, the Company shall terminate the Agreement for Sale and Purchase and shall refund all payments made by the Unit Purchaser as soon as the Company is reasonably able.

36. GOVERNING LAW

This Agreement is governed by and construed in accordance with the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

37 CLOSE BUSINESS ASSOCIATES

The parties to this Agreement each acknowledge that they are Close Business Associates of the Company and of each other, for the purposes of the Securities Act or regulations, or any other statutes or regulations governing investment.

SIGNED by the parties.

SIGNED by URBAN COHOUSING OTEPOTI LIMITED by:

CMSpencer
Director's Signature

S Jack
Director's Signature

King
Director's Signature

Elizabeth Thomson
Director's Signature

CATHERINE MARY SPENCER
Director's full name (please print)

Susan Janice JACK
Director's full name (please print)

Alexander Charles King
Director's full name (please print)

Elizabeth Anne Thomson
Director's full name (please print)

SIGNED by: CMSpencer.

SIGNED by: King

SIGNED by: S Jack

SIGNED by: Kristin Robert JACK

SIGNED by: Susan Helen TAYLOR

SIGNED by: Elizabeth Thomson

SIGNED by: Ian Armstrong THOMSON

SIGNED by: Timothy Nigel ROSS

SIGNED by: Philippa Lois ROSS

SIGNED by: Maria Fernanda CALLAU

SIGNED by: Juan Ignacion PURICELLI

SIGNED by: Sara Ferreira

Catherine Mary SPENCER

Alexander Charles KING

Susan Janice JACK

Kristin Robert JACK

Susan Helen TAYLOR

Elizabeth Anne THOMSON

Ian Armstrong THOMSON

Timothy Nigel ROSS

Philippa Lois ROSS

Maria Fernanda CALLAU

Juan Ignacion PURICELLI

Sara DA SILVA TELES GRANGEIO FERREIRA

Witness [Signature]
Date

SIGNED by: Frances Ross

Frances ROSS

SIGNED by: Alexander John Fergus Ross

Alexander John Fergus ROSS

SIGNED by: Patricia Gay Buckingham

Patricia Gay BUCKINGHAM

SIGNED by: Janice Robyn Burch

Janice Robyn BURCH

Witness
Janice Robyn Burch

SIGNED by: Rosemary Sheryl Wilson

Rosemary Sheryl WILSON

SIGNED by: Michael Charles Bouverie Wilson

Michael Charles Bouverie WILSON

SIGNED by: Rainer Nicolaus Beneke

Rainer Nicolaus BENEKE

SIGNED by: Marian Quinn

Marian QUINN

SIGNED by: Dennis Shen Han Chan

Dennis Shen Han CHAN

SIGNED by: Adelyn Ai Lyn Lau

Adelyn Ai Lyn LAU

SIGNED by: Warren James Hurley

Warren James HURLEY

SIGNED by: Claire Loftus

Claire LOFTUS

SIGNED by: Jessica Alice Ross

Jessica Alice ROSS

SIGNED by: James Alexander Francis Ross

James Alexander Francis ROSS

SIGNED by: Sander Paul Zwanenburg

Sander Paul ZWANENBURG

SIGNED by: Nga Fong Or

Nga Fong OR

SIGNED by: Donald Shand

Donald SHAND

SIGNED by: Miriam Frances

Miriam FRANCES

SIGNED by: Geoffrey Alan King

Geoffrey Alan KING

SIGNED by: Anne Constance King

Anne Constance KING

SIGNED by: Yu-Min LEE

Yu-Min LEE

Witness Signature

SIGNED by: Rachel Margaret GIBB

Rachel Margaret GIBB

SIGNED by: _____

SIGNED by: _____

DATE: 3-7-18

In the presence of on behalf of UCOL:

In the presence of on behalf of Shareholder:

Witness signature *[Signature]*

Witness signature *[Signature]*

Witness full name

Witness full name

**HELEN IRENE DAVIDSON
SOLICITOR
DUNEDIN**

NICHOLA ANN ROWLEY

Witness occupation

Witness occupation

MEDIATOR

Witness address

Witness address

24 CROSBY ST, DUNEDIN

DATE

DATE

3.7.18

3/7/18

FIRST SCHEDULE

URBAN COHOUSING OTEPOTI LIMITED COMPANY CONSTITUTION

The Companies Act 1993

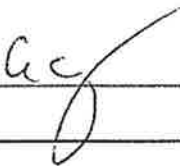
Constitution

of

URBAN COHOUSING OTEPOTI LIMITED

Certified true copy of the Constitution

- Adopted by the shareholders by special resolution, or
- Adopted by the company on registration.
(tick one)



Director

This Constitution contains regulations relating to the conduct of the company's affairs and must be read in conjunction with the Companies Act 1993.

SCHEDULE

~~1. Rights attaching to, consideration for and terms on which shares are to be issued: (clause 1.2)~~

~~(Default: All shares are standard shares with a nil consideration unless otherwise specified)~~

~~Here specify and define variations to the standard share including consideration and terms of issue, and special voting, quorum, distribution and other class rights~~



2. **Other Provisions:**
(Add other provisions and clauses as may be required)

37.0 Shareholders Agreement

37.1 If there is a Shareholders Agreement between all of the Shareholders and the Company then, to the extent permitted by law, in the event of a conflict between this Constitution and the Shareholders Agreement, the Shareholders Agreement shall prevail.

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INTERPRETATION

In this constitution, unless the context otherwise requires:

“Act” refers to a New Zealand Act of Parliament and any reference to an Act (but only where the context permits) is, where the relevant Act has been replaced or amended, to the replacement or amended Act.

“Companies Act” means the Companies Act 1993 and its amendments.

“s” means section references in an Act.

“[§]” refers to comparable sections and [§§] refers to the comparable subsections of the Companies Act.

“Schedule” means the Schedule to this constitution.

“Solvency test” means the solvency test in s4 of the Companies Act, as may be modified in accordance with the Companies Act.

Definitions in the Companies Act - Words or expressions used in this constitution bear the same meaning as in the Companies Act.

Masculine, feminine, and neuter - Words which import any gender include the other genders.

Singular and plural - Words which import the singular and plural number include the plural and singular number respectively.

No limitation - the words “include”, “including” or similar do not imply any limitation.

Conflict - If there is a conflict between the provisions of this constitution and a mandatory provision of an Act, the Act shall prevail, and if there is a conflict between any provision set out in the Schedule and any other provision in this constitution, the Schedule shall prevail.

PART I - SHARES

1 RIGHTS AND POWERS ATTACHING TO SHARES

Standard Shares

1.1 Unless otherwise provided by the terms of issue or by this constitution, a share confers on the holder [§36]:

1.1.1 The right to one vote on a poll at a meeting of the company on any resolution.

1.1.2 The right to an equal share in dividends authorised by the board.

1.1.3 The right to an equal share in the distribution of the surplus assets of the company.

Specified Shares

1.2 The rights conferred on the holder of a share or any class of share, and the consideration for and terms on which the share or any class of share will be issued, may be specified in the Schedule.

Other Classes

1.3 Any class of share may be issued by the company at any time including those which [§37]:

1.3.1 are convertible; or

1.3.2 are redeemable; or

1.3.3 are restricted or limited as to transfer; or

1.3.4 differentiate as to liability; or

1.3.5 confer preferential rights to distributions of capital or income; or

1.3.6 confer special quorum rights; or

1.3.7 confer special, limited or conditional voting rights; or

1.3.8 do not confer voting rights; or

1.3.9 confer the right to appoint or remove a number of directors; or

1.3.10 possess any combination of two or more of the foregoing characteristics.

2 ISSUE OF SHARES

Initial Share Issue

2.1 The company must issue the number and class of shares specified in the application for registration to the person or persons named therein [§41].

Subsequent Share Issues

2.2 The board may issue shares, securities that are convertible into shares or options to acquire shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit subject to the provisions of the Act and this constitution.

2.3 The issue of further shares ranking equally with, or in priority to, any existing shares, whether as to voting rights, distributions or otherwise, is deemed not to be an action affecting the rights attaching to the existing shares of that class.

Consideration for Share Issues

2.4 The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company [§46].

2.5 The persons named in the application for registration shall not be required to pay any consideration for the issue of a share on registration unless the consideration and terms of issue are fixed in the Schedule, or in any subscription application for the share or in any contract for the issue of the share.

2.6 Before the board issues shares (not being the issue of shares on registration of the company or to which subclause 14.6.7 applies) the board must [§§47(1)]:

2.6.1 decide the consideration for which the shares will be issued and the terms on which they will be issued; and

2.6.2 if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and

2.6.3 resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the company and to all existing shareholders; and

2.6.4 if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue.

2.7 Before shares that have already been issued are credited as fully or partly paid up other than for cash, the board must [§§47(3)]:

2.7.1 determine the reasonable present cash value of the consideration; and

2.7.2 resolve that, in its opinion, the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders;

2.7.3 and is not less than the amount to be credited in respect of the shares.

2.8 Before the board issues securities that are convertible into shares or any option to acquire shares the board must [§§49(1)]:

2.8.1 decide the consideration for which the convertible securities or options and, in either case, the shares will be issued and the terms on which they will be issued; and

- 2.8.2 if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- 2.8.3 resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
- 2.8.4 if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue.
- 2.9 The board must deliver notice of subsequent share issues to the Registrar of Companies within 10 working days of such issue. Directors who vote in favour of the resolutions required by subclauses 2.6, 2.7 or 2.8 must sign a certificate as to the matters set out in those clauses and deliver the same to the Registrar of Companies within 10 working days after it is given, as required by the Act [§§43, 47(5) & 49(3)].
- Pre-emptive Rights - New Issues**
- 2.10 Any shares, securities that are convertible into shares or options to acquire shares proposed to be issued by the company, must be offered for acquisition (in priority) as follows:
- 2.10.1 first, to the holders of the same class of share (which, in the case of a security that is convertible into a share or an option to acquire any share, shall be the class of share to which the security or option relates); and
- 2.10.2 secondly, to the holders of other classes of share (if any); and
- 2.10.3 thirdly, to any person or persons whom the board is prepared to register as a holder or holders of those shares, securities or options.
- 2.11 An offer to holders of shares already issued must be pro rata according to the number of shares held by them of the relevant class or classes and must remain open for acceptance for a reasonable time, not being less than 10 working days.
- 2.12 Shareholders of the same class of share shall be entitled to purchase additional shares to the extent that shareholders of that class do not accept the offer or accept the offer only in part. Competing applications for additional shares shall be allocated pro rata according to the number of shares held by the applicants.
- 2.13 Except as provided in subclauses 2.10 to 2.13 and the Act, the procedure for the offer, acceptance and issue of shares shall be determined by the board. No irregularity in such process shall affect the validity of the allocation and issue of shares.
- 2.14 A shareholder may waive its rights under subclauses 2.10 to 2.12 on written notice to the company.
- Consolidation and Subdivision of Shares**
- 2.15 The board may consolidate, divide or subdivide the shares or any class of shares in the company into a lesser or greater number of shares.
- 2.16 Subclauses 2.6 to 2.8 shall not apply to the consolidation, division or subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class [§48].
- 3 ALTERATION OF SHAREHOLDER RIGHTS**
- 3.1 The company may not take action that affects rights attached to shares unless that action has been approved by a special resolution of each interest group of shareholders (being a resolution approved by 75% of the votes of those shareholders entitled to vote and voting on that resolution), including the following rights [§117]:
- 3.1.1 the rights, privileges, limitations and conditions attached to the share by the Act or this constitution, including voting rights and rights to distributions; and
- 3.1.2 pre-emptive rights arising under subclauses 2.10 to 2.14; and
- 3.1.3 the right to have the procedure set out in §117 of the Companies Act and any further procedure required by this constitution for the amendment or alteration of rights, observed by the company; and
- 3.1.4 the right to have that a procedure required by this constitution for the amendment or alteration of rights not amended or altered.
- 4 LIABILITY OF SHAREHOLDERS**
- Limited Liability**
- 4.1 The liability of a shareholder to the company is limited to any amount unpaid on a share held by the shareholder [§97].
- 4.2 An amount unpaid on a share may comprise all or part of the consideration payable in respect of the issue of the share, or any other liability imposed on its holder by its terms of issue.
- Calls**
- 4.3 The board may make calls on the holder of a share, for any amount unpaid on the share, and not by the terms of issue made payable on a fixed date.
- 4.4 An amount which, by the terms of issue of a share, is payable on allotment or at a fixed date is deemed for the purposes of this constitution to be a call duly made and payable on the date on which the amount is payable.
- 4.5 The board must give the shareholder not less than 10 working days notice of a call specifying the amount, date and place of payment. A call may be revoked or postponed as the board may determine.
- 4.6 The joint holders of a share shall be jointly and severally liable to pay all calls.
- 4.7 Amounts unpaid on a share shall bear interest from the due date for payment to the date of actual payment at a rate to be determined by the board but not exceeding 4% per annum above the company's bank's prime overdraft rate; but the board shall be at liberty to waive payment of that interest wholly or in part.
- 4.8 In any proceedings for recovery of a call:
- 4.8.1 it is sufficient to prove that:
- 4.8.1.1 the name of the relevant shareholder is entered in the share register as the holder, or one of the holders, of the shares to which the call relates; and
- 4.8.1.2 except in relation to any amount which, by the terms of issue of a share, is payable on allotment or at a fixed date, the resolution making the call is entered in the records and notice of the call has been duly given.
- 4.8.2 Proof of the matters mentioned in subclause 4.8.1 is conclusive evidence of the debt and it is not necessary to prove the appointment or qualification of any member of the board which made the call nor any other matter.
- 4.9 The company may receive from any shareholder in advance any amount uncalled and unpaid upon any shares held by that shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the board and the shareholder agree.
- Application of Distributions**
- 4.10 Any dividend or distribution due to the holder of a share may be applied in reduction or satisfaction of any amount unpaid on that share or any other amount presently payable by the shareholder to the company.

5 LIEN ON SHARES

Existence and Subject Matter of Lien

5.1 The company shall have a first and continuing lien on its shares for:

5.1.1 amounts unpaid (whether presently payable or not) on those shares; or

5.1.2 other amounts presently payable by the then holder of those shares to the company on any account whatsoever.

5.2 The lien shall extend to all dividends and distributions from time to time declared in respect of those shares and all proceeds of sale of those shares.

Power of Sale

5.3 The company shall have power to sell, in a manner determined by the board, any share on which the company has a lien if:

5.3.1 an amount is presently payable to the company on that share or by the holder of that share; and

5.3.2 the company has demanded the amount in writing, and payment has not been made within 20 working days after the demand.

Transfer of Shares

5.4 To give effect to the power of sale, the company may:

5.4.1 receive the proceeds of sale; and

5.4.2 execute a share transfer in favour of the purchaser; and

5.4.3 enter the purchaser's name in the share register.

5.5 Any shares offered for sale in accordance with this clause 5 must be first offered by the board to existing shareholders in priority as set out in subclause 8.4.

Proceeds of Sale

5.6 The proceeds of sale must be applied first, in payment of costs and expenses incurred in enforcing the lien; and second in payment of the amount secured by the lien.

5.7 The balance, if any, shall be paid to the former shareholder provided however, if any consideration is payable at a future date in respect of the issue of the share over which the lien existed, the balance may be held in suspense by the company to the extent of any such consideration (without any obligation to account for interest), and applied in payment when such consideration is due.

5.8 The purchaser need not see to the application of the sale proceeds, nor will the purchaser's title to the shares be affected by any irregularity or invalidity in the enforcement of the lien.

Forfeiture of Shares

5.9 If a shareholder fails to pay any call on the due date, the company may at any time thereafter by written notice to that shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the company by reason of such non-payment.

5.10 The notice shall specify a further date (not earlier than 10 working days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the share in respect of which the call is due is liable to be forfeited.

5.11 If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any share in respect of which the notice has been given may be forfeited by a resolution of the board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited share and not paid before the forfeiture.

5.12 When a share has been forfeited, the company shall give notice of the resolution to the shareholder in whose name the share stood immediately prior to the forfeiture, and shall enter in the share register details of the forfeiture.

5.13 A forfeiture may be cancelled at any time before the forfeiture comes into effect, on such terms as the board thinks fit.

5.14 The holder of a share which has been forfeited ceases to be a shareholder in respect of the forfeited share, but remains liable to the company for all money payable in respect of the forfeited share.

6 SHARE REGISTER

Company to Maintain Share Register

6.1 The company must maintain a share register that records the shares issued by the company [§§87(1)].

6.2 The share register must state, with respect to each class of shares [§§87(2)] the following details for the last decade of:

6.2.1 the names, alphabetically arranged, and the latest known address of each person who is a shareholder; and

6.2.2 the number of shares of that class held by each shareholder; and

6.2.3 the date of any:

6.2.3.1 issue of shares to; or

6.2.3.2 repurchase or redemption of shares from; or

6.2.3.3 transfer of shares by or to.

each shareholder and the name of the person to or from whom the shares were transferred.

6.3 An agent may maintain the share register of the company [§§87(3)].

Share Register as Evidence of Legal Title

6.4 The entry of the name of a person in the share register as holder of a share is prima facie evidence that legal title to the share vests in that person [§§89].

6.5 The company may treat the registered holder of a share as the only person entitled to [§§89(2)]:

6.5.1 exercise the right to vote attaching to the share; and

6.5.2 receive notices; and

6.5.3 receive a distribution in respect of the share; and

6.5.4 exercise the other rights and powers attaching to the share.

Trusts not to be Entered on Register

6.6 No notice of a trust, whether express, implied, or constructive, may be entered on the share register [§92].

Personal Representative may be Registered

6.7 A personal representative of a deceased person whose name is registered in the share register of the company as the holder of a share in the company is entitled to be registered as the holder of that share as personal representative [§93].

6.8 The registration of a trustee, executor, or administrator pursuant to this clause does not constitute notice of a trust.

7 TRANSFER OF SHARES

Entry on the Register

7.1 A share may be transferred by entry of the name of the transferee on the share register [§84].

- Form of Transfer**
- 7.2 For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by its personal representative must be delivered to:
- 7.2.1 the company; or
- 7.2.2 an agent of the company who maintains the share register.
- 7.3 The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee.
- 7.4 A transfer shall be an instrument in writing:
- 7.4.1 in any form required by an Act; or
- 7.4.2 otherwise in any form required or approved by the Board.
- 7.5 On receipt of a form of transfer, the company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless [§§84(4)]:
- 7.5.1 the board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
- 7.5.2 notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and
- 7.5.3 the board is permitted by subclause 7.6 to refuse or delay registration.
- Rights to Refuse Transfer**
- 7.6 The board may refuse to register the transfer of any share if [§§84(4)(c)]:
- 7.6.1 the company has a lien on the share; or
- 7.6.2 the share is not fully paid; or
- 7.6.3 the holder of the share has failed to comply with the terms of any contract with the company; or
- 7.6.4 the rights of pre-emption contained in clause 8 have not been exhausted; or
- 7.6.5 the board considers that it would not be in the interests of the company to do so; or
- 7.6.6 the board believes effecting the transfer would be a breach of the law.
- Where Share Certificate Issued**
- 7.7 Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the shares, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board [§§95(5)].
- 8 PRE-EMPTIVE RIGHTS - SHARE TRANSFERS**
- Transfer Notice**
- 8.1 A shareholder intending to transfer any shares must give a transfer notice in writing to the company. The transfer notice shall state the number, class and asking price of the shares to be offered for sale.
- 8.2 The board shall be the agent of the transferor (to the exclusion of the transferor) for the sale of the shares specified in a transfer notice. A transfer notice may not be withdrawn except with the sanction of the board or as provided in this clause 8.
- 8.3 The transferor shall be under no obligation to sell or transfer part only of the shares specified in a transfer notice.
- Offer and Allocation of Shares**
- 8.4 The shares specified in a transfer notice must be offered for sale by the board in priority as follows:
- 8.4.1 first, to the holders of the same class of share (other than the transferor); and
- 8.4.2 secondly, to the holders of other classes of share (if any); and
- 8.4.3 thirdly, to any other person or persons whom the board is prepared to register as a holder or holders of that class of share.
- 8.5 An offer to holders of shares already issued must:
- 8.5.1 be in writing; and
- 8.5.2 be pro rata according to the number of shares held by them; and
- 8.5.3 remain open for acceptance for a reasonable time as determined by the board, not being less than 10 working days; and
- 8.5.4 state the number and class of share on offer, the transferor's asking price and the time period for acceptance.
- 8.6 Shareholders of the same class of share shall be entitled to purchase additional shares to the extent that shareholders of that class (or classes, if subclause 8.4.2 applies and there is more than one other class of share) do not accept the offer or accept the offer only in part. Competing applications for additional shares shall be allocated pro rata according to the number of shares held by the applicants.
- 8.7 An acceptance by holders of shares already issued:
- 8.7.1 must be in writing; and
- 8.7.2 may relate to all or only part of the shares offered for sale; and
- 8.7.3 may state the number of additional shares to be purchased from declined offers (if any); and
- 8.7.4 may be made conditional on a fair value for the shares being determined.
- 8.8 Offers for the sale of shares which have not been accepted in the time and manner set out in the preceding clauses shall be deemed to have been declined.
- 8.9 On expiry of the time period for acceptance of all offers, the board shall allocate the shares offered for sale according to acceptances received (including the allocation of additional shares from declined offers). The board shall give notice in writing of the share allocation to all persons who have been allocated shares aforesaid, within 10 working days from the expiry of the time for acceptance of all offers.
- 8.10 Except as provided in this clause 8, the procedure for the offer, acceptance and allocation of shares shall be determined by the board. No irregularity in such process shall affect the validity of the allocation and sale of shares.
- Determination of "Fair Value"**
- 8.11 If any acceptance is conditional on a fair value for the shares being determined, such fair value shall be determined by a single arbitrator, appointed by agreement between the transferor and the relevant transferee (or transferees, if more than one transferee has made an acceptance conditional on fair value being determined) or, if they fail to agree, by the current President of the Chartered Accountants Australia and New Zealand ("CA ANZ") (or any replacement organisation) on the application of the transferor or a relevant transferee.

8.12 The arbitration shall be conducted under the provisions of the Arbitration Act 1996. The provisions of the Second Schedule of the Arbitration Act 1996 shall apply to the arbitration only to the extent that the parties expressly agree. One half of the costs of the arbitration shall be borne by the transferor and the other half by the transferee (equally between or among them, if more than one transferee has made an acceptance conditional on fair value being determined), unless the arbitrator determines otherwise. The company shall promptly give a copy of the arbitration award to the transferor and the relevant transferee once the costs of the arbitration have been paid in full.

8.13 Except with the consent of the transferor, there shall be no determination of fair value until all shares offered for sale in a transfer notice have been accepted (either unconditionally or subject only to the determination of fair value) and allocated by the board.

8.14 The transferor shall not be bound to enter into more than one arbitration for the determination of fair value and every offeree who has conditionally accepted an offer to sell shares subject to determination of fair value shall be deemed a party thereto.

Transferor's Right to Withdraw

8.15 The transferor may withdraw the transfer notice in respect of all or any shares offered for sale if any share remains unallocated 3 months after issue of the transfer notice.

Settlement

8.16 The sale of the shares which are the subject of the transfer notice shall be settled on the later of the following dates:

8.16.1 If all of the shares offered for sale have been unconditionally accepted, 20 working days after the date of the notice of allocation of shares referred to in subclause 8.9; or

8.16.2 If any of the shares offered for sale have been accepted subject to determination of fair value, 20 working days after determination of such fair value.

8.17 The sale price shall be:

8.17.1 For offerees who have unconditionally accepted the offer for sale, the transferor's asking price; or

8.17.2 For offerees who have accepted the offer for sale subject to determination of fair value, the fair value so determined.

8.18 At settlement, the offerees who have been allocated shares for sale shall be bound to pay the sale price and the transferor shall be bound to transfer the allocated share or shares to such persons.

8.19 Nothing herein shall prevent the transferor from settling the sale of shares with one or more offerees who have been allocated shares, before the settlement date provided above. If the transferor so elects, the right to withdraw the transfer notice shall be deemed waived as to those shares.

Company May Effect Transfer

8.20 If a shareholder fails to give a transfer notice in accordance with this clause 8, the board may give a transfer notice on behalf of that shareholder, which may not be withdrawn except with the consent of the board. In such circumstances, the asking price shall be the fair value of the shares to be determined in accordance with this clause 8.

8.21 If the transferor, after becoming bound in accordance with this clause 8 does not transfer the shares on the settlement date, then the company may receive the sale price and cause the name of the offeree to be entered in the share register as the holders of the shares and shall hold the sale price in trust for the transferor (subject to any lien in favour of the company).

8.22 The board's receipt will be a good discharge to the offerees for the sale price and after the shares are registered in the names of the offerees, the validity of the proceedings may not be questioned by any person.

Sale to Third Parties

8.23 To the extent that a transfer notice has not been withdrawn, any shares which remain unallocated 3 months after the board has received a transfer notice may be sold by the transferor (at any time within the following 6 months) to any person at a price which is not lower than the asking price specified in the transfer notice.

Pre-emptive Rights Not to Apply

8.24 This clause 8 shall not apply to the transfer of shares:

8.24.1 to a parent, spouse, child, adopted child, stepchild, or grandchild of a shareholder, or to a spouse of such persons; or

8.24.2 to a trustee or trustees of a trust which is, in the opinion of the board, exclusively or principally for the benefit of one or more of the persons referred to in subclause 8.24.1; or to the subsequent transfer of such shares to one or more beneficiaries of the trust, being a person or persons in one of the relationships referred to in subclause 8.24.1, with the former shareholder; or

8.24.3 to a company which is, in the opinion of the board, exclusively or principally owned and effectively controlled by one or more of the persons referred to in subclause 8.24.1; or

8.24.4 to the personal representative of a deceased shareholder; or to a beneficiary of such deceased shareholder's estate; or

8.24.5 if all shareholders have agreed or concur in writing.

Company Shareholders

8.25 A transfer notice must be given by a company shareholder in respect of its shares in the company if, in the opinion of the board, ownership or effective control of the company shareholder is to be or has been transferred otherwise than to the persons or as referred to in subclause 8.24.

PART II - DISTRIBUTIONS

9 DISTRIBUTIONS TO SHAREHOLDERS

Board May Authorise Distributions if Company is Solvent

9.1 The board may, if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test, and subject to any restrictions in this constitution, authorise a distribution by the company at a time and of an amount and to any shareholders it thinks fit [§52].

9.2 A distribution may be any one or more of the following:

9.2.1 the payment of a dividend; and

9.2.2 the issue of shares in lieu of a proposed dividend; and

9.2.3 the offer of shareholder discounts in respect of some or all of the goods and services provided by the company; and

9.2.4 the cancellation or reduction of a shareholder's liability in relation to a share to be acquired or redeemed by the company, or as a result of a proposed alteration to this constitution; and

9.2.5 the purchase or acquisition by the company of its own shares; and

9.2.6 the redemption by the company of its shares; and

9.2.7 the giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company.

10.8 The board must not make an offer to acquire shares issued by the company if, after the passing of the resolutions and before the making of the offer the board ceases to be satisfied as to the matters resolved [§§60(6) & 61(4)].

11 COMPANY MAY HOLD TREASURY STOCK

11.1 Shares issued by the company which are purchased or acquired by it shall be deemed cancelled immediately on acquisition unless [§67A]:

11.1.1 the board resolves that the shares concerned shall be retained as treasury stock; and

11.1.2 the number of shares acquired, when aggregated with shares of the same class held by the company at the time of acquisition, does not exceed 5% of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled.

11.2 The rights and obligations attaching to any treasury stock owned by the company shall be suspended during any such period of ownership [§67B].

11.3 Transfer of treasury stock held by the company is deemed to be an issue of new shares and the provisions of subclauses 2.10 to 2.14 will apply accordingly.

12 COMPANY REDEMPTION OF SHARES

Right to Issue Redeemable Shares

12.1 The company may issue shares which are redeemable [§68]:

12.1.1 at the option of the company; or

12.1.2 at the option of the holder of the shares; or

12.1.3 on a date specified by their terms of issue,

for a consideration that is:

12.1.4 specified; or

12.1.5 to be calculated by reference to a formula; or

12.1.6 required to be fixed by a suitably qualified person who is not associated with or interested in the company.

Redemption at Option of Company

12.2 Shares may be redeemed at the option of the company only if [§§69(1)]:

12.2.1 the option is exercised in relation to all shareholders of the same class and in a manner that will leave unaffected relative voting and distribution rights; or

12.2.2 the option is exercised in relation to one or more shareholders, and:

12.2.2.1 all shareholders have consented in writing; or

12.2.2.2 the redemption is special and the resolutions and disclosure document referred to in subclauses 12.4 and 12.5 have been passed and given respectively.

Resolutions Required for Redemptions at Option of Company

12.3 The company may exercise an option to redeem shares only if the board has previously resolved that [§§69(2) & 70]:

12.3.1 it is satisfied on reasonable grounds that immediately after the shares have been redeemed, the company will satisfy the solvency test; and

12.3.2 the redemption of the shares is in the best interests of the company; and

12.3.3 the consideration for the redemption of the shares is fair and reasonable to the company.

Further Resolutions Required for Special Redemptions

12.4 Where the company exercises a special option to redeem shares in relation to one or more shareholders without the consent in writing of all shareholders, then the board must also resolve [§§71(1)]:

12.4.1 that the redemption is of benefit to the remaining shareholders; and

12.4.2 that the consideration for the redemption is fair and reasonable to the remaining shareholders.

Disclosure Document for Special Redemptions

12.5 Before the exercise of an option to redeem shares pursuant to a resolution under subclause 12.4, the company must send to each shareholder a disclosure document that sets out [§§71(5) & 72]:

12.5.1 the nature and terms of the redemption of the shares, and if the option to redeem the shares is to be exercised in relation to specified shareholders, the names of those shareholders; and

12.5.2 the text of the resolutions required by subclause 12.4, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed redemption.

12.6 The option must be exercised not less than 10 and not more than 30 working days after the disclosure document has been sent to each shareholder [§§71(6)].

Resolutions and Certificate

12.7 The resolutions referred to in this clause 12 must set out in full the reasons for the directors' conclusions [§§69(3) & 71(2)].

12.8 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§§69(4), 70(2) & 71(3)].

12.9 The company must not exercise an option to redeem shares if, after the passing of the resolutions and before the option is exercised, the board ceases to be satisfied as to the matters resolved [§§69(5), 70(3) & 71(4)].

13 FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES

Right to Give Financial Assistance

13.1 The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly if [§76]:

13.1.1 all shareholders have consented in writing; or

13.1.2 the financial assistance is special and the resolutions and disclosure document referred to in subclauses 13.4 and 13.5 have been passed and given respectively; or

13.1.3 the financial assistance is limited and is given in accordance with subclause 13.7.

13.2 For the purposes of this clause, "financial assistance" includes a loan, a guarantee, and the provision of a security.

Resolutions Required for Financial Assistance

13.3 The company may give financial assistance to purchase shares issued by the company only if the board has previously resolved that [§§76(2) & 77(1)]:

13.3.1 it is satisfied on reasonable grounds that the company will, immediately after the giving of financial assistance, satisfy the solvency test; and

13.3.2 the company should provide the assistance; and

- 13.3.3 giving the assistance is in the best interests of the company; and
- 13.3.4 the terms and conditions under which the assistance is given are fair and reasonable to the company.
- Further Resolutions Required for Special Financial Assistance**
- 13.4 Where the company gives special financial assistance of the nature contemplated by s78 of the Companies Act without the consent in writing of all shareholders or in accordance with subclause 13.7, then the board must also resolve [§78]:
- 13.4.1 that giving the assistance in question is of benefit to those shareholders not receiving the assistance; and
- 13.4.2 that the terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving the assistance.
- Disclosure Document for Special Financial Assistance**
- 13.5 Before financial assistance is given pursuant to a resolution under subclause 13.4, the company must send to each shareholder a disclosure document that sets out [§§78(5) & 79]:
- 13.5.1 the nature and terms of the financial assistance to be given, and to whom it will be given; and
- 13.5.2 if the financial assistance is to be given to a nominee for another person, the name of that other person; and
- 13.5.3 the text of the resolutions required by subclause 13.4, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed transaction.
- 13.6 The financial assistance may be given not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder [§§78(6)].
- Limited Financial Assistance**
- 13.7 Where the financial assistance is given without the consent in writing of all shareholders or is not of benefit to and fair and reasonable to those shareholders not receiving the assistance, the company may give financial assistance only if [§80]:
- 13.7.1 the amount of the financial assistance, together with any other financial assistance given by the company pursuant to this subclause 13.7, repayment of which remains outstanding, would not exceed 5% of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the company that comply with the Financial Reporting Act 2013; and
- 13.7.2 the company receives fair value in connection with the assistance; and
- 13.7.3 within 10 working days of providing the financial assistance, the company sends to each shareholder a notice containing the following particulars:
- 13.7.3.1 the class and number of shares in respect of which the financial assistance has been provided; and
- 13.7.3.2 the consideration paid or payable for the shares in respect of which the financial assistance has been provided; and
- 13.7.3.3 the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner; and
- 13.7.3.4 the nature and, if quantifiable, the amount of the financial assistance.
- Resolutions and Certificate**
- 13.8 The resolutions referred to in this clause 13 must set out in full the reasons for the directors' conclusions [§§76(3) & 78(2)].
- 13.9 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§§76(4), 77(2) & 78(3)].
- 13.10 The company must not give financial assistance if, after the passing of the resolutions and before the assistance is given, the board ceases to be satisfied as to the matters resolved [§§76(5), 77(3) & 78(4)].
- PART III - SHAREHOLDERS**
- 14 POWERS OF SHAREHOLDERS**
- Powers Reserved to Shareholders**
- 14.1 Powers reserved to the shareholders by the Companies Act or this constitution may be exercised only [§104]:
- 14.1.1 at an annual or special meeting of shareholders; or
- 14.1.2 by a resolution in lieu of a meeting.
- Ordinary Resolutions**
- 14.2 An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question [§105].
- 14.3 Unless otherwise specified in the Companies Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution.
- Special Resolutions**
- 14.4 A special resolution is a resolution approved by a majority of 75% of the votes of those shareholders entitled to vote and voting on the question [§2].
- 14.5 The shareholders must exercise the following powers by special resolution, namely to:
- 14.5.1 adopt a constitution, or alter or revoke the constitution [§32 & 106]; or
- 14.5.2 approve a major transaction [§106]; or
- 14.5.3 approve an amalgamation of the company [§106]; or
- 14.5.4 put the company into liquidation [§106]; or
- 14.5.5 appoint a liquidator [§241]; or
- 14.5.6 remove the company from the register [§318]; or
- 14.5.7 transfer the place of incorporation [§351].
- Unanimous Shareholder Agreement**
- 14.6 With the unanimous agreement of all shareholders the following actions may be undertaken (references are to sections of the Companies Act):
- 14.6.1 a dividend may be authorised otherwise than in accordance with §53; and
- 14.6.2 a discount scheme may be approved otherwise than in accordance with §55; and
- 14.6.3 shares in the company may be acquired otherwise than in accordance with §59 to §65; and
- 14.6.4 shares in the company may be redeemed otherwise than in accordance with §69 to §72; and

- 14.6.5 financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with §76 to §80; and
- 14.6.6 the provision of remuneration and other benefits to directors may be authorised otherwise than in accordance with §§161(1); and
- 14.6.7 shares may be issued otherwise than in accordance with §42.44 or 45; and
- 14.6.8 on the company entering into a transaction in which a director is interested, nothing in §140 and §141 shall apply to that transaction.
- 14.7 A power referred to in subclause 14.6.1 to 14.6.6 must not be exercised unless the board is satisfied on reasonable grounds that the company will, immediately after the exercise, satisfy the solvency test [§§108(1)].
- 14.8 The directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the company will, immediately after the exercise of the power, satisfy the solvency test [§§108(2)].
- 14.9 If, after a resolution is passed under subclause 14.7 and before the power is exercised, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the power is exercised, satisfy the solvency test, any exercise of the power is deemed not to have been authorised [§§108(3)].
- Management Review by Shareholders**
- 14.10 The chairperson of a meeting of shareholders must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management [§§109(1)].
- 14.11 A meeting of shareholders may pass a resolution relating to the management of the company but this shall not be binding on the board [§§109(2) & 109(3)].
- 14.12 The provisions of clause 16 govern proceedings at meetings of shareholders at which a resolution under subclause 14.11 is passed [§§109(2A)].
- 15 MEETINGS AND RESOLUTIONS**
- Annual Meeting of Shareholders**
- 15.1 The board of a company must call an annual meeting of shareholders to be held [§120]:
- 15.1.1 either:
- 15.1.1.1 in the case of an exempt company, if all the shareholders of the company agree, not later than 10 months after the balance date of the company; or
- 15.1.1.2 in any other case, not later than 6 months after the balance date of the company; and
- 15.1.2 not later than 15 months after the previous annual meeting; and
- 15.1.3 at such time and place as the board may appoint.
- 15.2 The company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.
- 15.3 The company must hold the meeting on the date on which it is called to be held.
- Special Meetings of the Shareholders**
- 15.4 A special meeting of shareholders entitled to vote on an issue [§121]:
- 15.4.1 may be called at any time by the board; and
- 15.4.2 must be called by the board on the written request of shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.
- Resolution in Lieu of Meeting**
- 15.5 Except as required by in s122(3)(a), 207I and 207J of the Companies Act a resolution in writing signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.
- 15.6 The company need not hold an annual meeting of shareholders if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in lieu of a meeting in accordance with subclause 15.5 [§§122(4)].
- 15.7 Within 5 working days of a resolution in lieu of a meeting being passed, the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed [§§122(5)].
- 15.8 A resolution in lieu of a meeting may be signed without any prior notice being given to shareholders [§§122(6)].
- 15.9 A resolution in writing in lieu of a meeting may consist of several documents (including letters, facsimiles electronic mail or other similar means of communication) in like form each signed or assented to by one or more shareholders [§§122(3A)].
- 16 PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**
- Chairperson**
- 16.1 If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of the shareholders, he or she must chair the meeting.
- 16.2 If no chairperson of the board has been elected or if, at any meeting of shareholders, the chairperson of the board is not present within 15 minutes of the time appointed for the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.
- 16.3 The chairperson may (and if so directed by the meeting must) adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting except the business which was left unfinished at the meeting which was adjourned.
- Notice of Meetings**
- 16.4 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 10 working days before the meeting.
- 16.5 The notice must state:
- 16.5.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- 16.5.2 the text of any special resolution to be submitted to the meeting.
- 16.6 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- 16.7 The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to a person who is entitled to receive notice of it, or by non-receipt of the notice by such a person.
- 16.8 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Entitlement to Notice of Meetings

- 16.9 The shareholders who are entitled to receive notice of a meeting of shareholders are [§§125(3)]:
- 16.9.1 if the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date; or
- 16.9.2 if the board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- 16.10 A date must not be fixed under the preceding clause that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

Methods of Holding Meetings

- 16.11 A meeting of shareholders may be held either:
- 16.11.1 by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 16.11.2 by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

- 16.12 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 16.13 In the absence of any special quorum rights attaching to shares or any class of shares, a quorum for a meeting of shareholders is present if shareholders or their proxies are present or have cast postal votes who are between them able to exercise a majority of the votes to be cast on the business to be transacted at the meeting.
- 16.14 if a quorum is not present within 30 minutes after the time appointed for the meeting:
- 16.14.1 in the case of a meeting called by the board on the written request of shareholders under [§121(b)], the meeting is dissolved; and
- 16.14.2 in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the directors may appoint, and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum.

Voting

- 16.15 In the case of a meeting of shareholders assembled together, unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- 16.15.1 voting by voice; or
- 16.15.2 voting by show of hands.
- 16.16 In the case of a meeting of shareholders held by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- 16.17 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded.
- 16.18 At a meeting of shareholders a poll may be demanded by:
- 16.18.1 not less than 5 shareholders having the right to vote at the meeting; or

16.18.2 a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or

16.18.3 a shareholder or shareholders holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right; or

16.18.4 The chairperson of the meeting.

16.19 A poll may be demanded either before or after the vote is taken on a resolution.

16.20 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

16.21 The chairperson of a shareholders' meeting is not entitled to a casting vote.

16.22 For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

Proxies

16.23 A shareholder may exercise the right to vote either by being present in person or by proxy.

16.24 A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

16.25 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

16.26 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

Vote Before Notice of Revocation

16.27 A vote given in accordance with the terms of a notice of appointment of proxy is valid notwithstanding:

16.27.1 the previous death or insanity of the shareholder; or

16.27.2 revocation of the notice or of the authority under which the notice was executed; or

16.27.3 transfer of the share in respect of which the notice is given.

if no notice in writing of the death, insanity, revocation, or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the notice is used, or presented at the meeting or adjourned meeting before the vote is given.

Postal Votes

16.28 A shareholder may not exercise the right to vote at a meeting by casting a postal vote unless the board determines prior to the meeting that the postal voting procedure will be available for such meeting and gives notice thereof in the notice of meeting.

16.29 If the board determines that the postal voting procedure will be available for a meeting (but not otherwise), such postal votes shall be cast and counted in accordance with the following provisions:

16.29.1 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.

16.29.2 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.

- 16.29.3 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shareholder's shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 16.29.4 It is the duty of a person authorised to receive and count postal votes at a meeting:
- 16.29.4.1 to collect together all postal votes received by it, or by the company; and
- 16.29.4.2 in relation to each resolution to be voted on at the meeting, to count:
- 16.29.4.2.1 the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
- 16.29.4.2.2 The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
- 16.29.4.3 to sign a certificate that it has carried out the duties set out in subclauses 16.29.4.1 and 16.29.4.2 and which sets out the results of the counts required by subclause 16.29.4.2; and
- 16.29.4.4 to ensure that the certificate required by subclause 16.29.4.3 is presented to the chairperson of the meeting.
- 16.29.5 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
- 16.29.5.1 on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; or
- 16.29.5.2 on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- 16.29.6 The chairperson of a meeting must call for a poll on a resolution on which it holds sufficient postal votes that it believes that if a poll is taken the result may differ from that obtained on a show of hands.
- 16.29.7 The chairperson of a meeting must ensure that a certificate of postal votes held by it is annexed to the minutes of the meeting.

Minutes

- 16.30 The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 16.31 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

Shareholder Proposals

- 16.32 A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
- 16.33 If the notice is received by the board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 16.34 If the notice is received by the board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required

to be given by the board, the board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

- 16.35 If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 16.36 If the directors intend that the shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 16.37 The board is not required to include in or with the notice given by the board:
- 16.37.1 any part of a statement prepared by a shareholder which the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
- 16.37.2 any part of a proposal or resolution by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).
- 16.38 Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

Corporations May Act by Representatives

- 16.39 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

Votes of Joint Holders

- 16.40 Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

Loss of Voting Rights if Calls Unpaid

- 16.41 If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than a meeting of an interest group.

Other Proceedings

- 16.42 Except as provided in this constitution and the Companies Act, a meeting of shareholders may regulate its own procedure.

PART IV - DIRECTORS

17 APPOINTMENT AND REMOVAL OF DIRECTORS

First Directors

- 17.1 A person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with the Companies Act or this constitution [§§153(1)].

Subsequent Directors

- 17.2 Subsequent directors of the company must be appointed by ordinary resolution [§§153(2)].

- 17.3 Two or more directors may be appointed by a single resolution [§§155(1)].
- Consent Required**
- 17.4 A person must not be appointed a director of the company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the company [§152].
- Removal**
- 17.5 A director of the company may be removed from office by ordinary resolution passed at a meeting called for the purpose or for purposes that include the removal of the director [§§156(1)].
- 17.6 The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the director [§§156(2)].
- Vacation of Office**
- 17.7 The office of director of the company is vacated if the person holding that office [§157]:
- 17.7.1 resigns by signing a written notice of resignation and delivering it to the address for service of the company, such notice to be effective when it is received at that address or at such later time specified in the notice; or
- 17.7.2 is removed from office in accordance with subclauses 17.5 or 17.8.3; or
- 17.7.3 becomes disqualified from being a director pursuant to s151 of the Companies Act; or
- 17.7.4 dies.
- Class Directors**
- 17.8 If the holders of any class of share are entitled to exclusively appoint one or more directors of the company, then notwithstanding subclauses 17.2 and 17.5:
- 17.8.1 a person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company who is intended to represent such holders shall be deemed to be a class director appointed by such holders; and
- 17.8.2 subsequent class directors may be appointed by ordinary resolution of those holders, provided that the number of class directors appointed by such holders and holding office at any time shall not exceed the number of directors which such holders are entitled to appoint; and
- 17.8.3 class directors appointed by such holders may only be removed from office by an ordinary resolution of those holders, passed at a meeting of those holders called for the purpose or for purposes that include the removal of the director.
- Additional Directors**
- 17.9 The directors may from time to time appoint any person to be an additional director, either to fill a casual vacancy or as an addition to the existing directors, who shall hold office only until the next annual meeting.
- Alternate Directors**
- 17.10 A director may from time to time appoint any person (except an existing director) to be his or her alternate director. An alternate director's appointment may be cancelled at any time by the director who made the appointment.
- 17.11 An alternate director may only attend meetings, vote and sign resolutions in the absence of the director who appointed him or her.
- 18 **POWERS OF DIRECTORS**
- Management of Company**
- 18.1 The business and affairs of the company must be managed by, or under the direction or supervision of, the board [§§128(1)].
- 18.2 The board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company [§§128(2)].
- 19 **MANAGING DIRECTOR**
- Appointment**
- 19.1 The board may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as the board thinks fit, and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.
- 19.2 The appointment of a managing director is automatically terminated if he or she ceases to be a director.
- Powers**
- 19.3 Subject to s130 of the Companies Act, the board may entrust to and confer on a managing director any of the powers exercisable by the board on such terms and conditions and with such restrictions as the board may think fit, and may from time to time revoke, withdraw, alter, or vary all or any of those powers.
- 20 **DUTIES OF DIRECTORS**
- Duty to Act in Good Faith and in Best Interests**
- 20.1 Subject to subclauses 20.2 to 20.4, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company [§131(1)].
- Subsidiary**
- 20.2 If the company is a wholly-owned subsidiary, a director may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company [§§131(2)].
- 20.3 If the company is a subsidiary (but not a wholly-owned subsidiary), a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which it believes is in the best interests of the company's holding company even though it may not be in the best interests of the company [§§131(3)].
- Joint Venture**
- 20.4 If the company is carrying on a joint venture between its shareholders, a director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company [§§131(4)].
- Exercise of Powers in Relation to Employees**
- 20.5 Nothing in subclause 20.1 limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business [§132].
- Powers to be Exercised for Proper Purpose**
- 20.6 A director must exercise a power for a proper purpose [§133].
- Directors to Comply with Act and Constitution**
- 20.7 A director must not act, or agree to the company acting, in a manner that contravenes the Companies Act or this constitution [§134].

- Reckless Trading**
- 20.8 A director must not [§135]:
- 20.8.1 cause or allow or agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.
- Duty in Relation to Obligations**
- 20.9 A director must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so [§136].
- Director's Duty of Care**
- 20.10 A director when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation [§137]:
- 20.10.1 the nature of the company; and
- 20.10.2 the nature of the decision; and
- 20.10.3 the position of the director and the nature of the responsibilities undertaken by it.
- 21 RELIANCE ON INFORMATION AND ADVICE**
- 21.1 A director of the company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons [§138]:
- 21.1.1 an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; and
- 21.1.2 a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; and
- 21.1.3 any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.
- 21.2 Subclause 21.1 applies to a director only if the director:
- 21.2.1 acts in good faith; and
- 21.2.2 makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- 21.2.3 has no knowledge that such reliance is unwarranted.
- 22 SELF INTEREST TRANSACTIONS**
- Interests Register**
- 22.1 A director must, forthwith after becoming aware of the fact that it is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board the nature and extent of the directors interest and the monetary value of it if the monetary value of the directors interest is able to be quantified. [§§140(1)]:
- 22.2 A general notice entered in the interests register and, if the company has more than one director, disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or trustee for another named person or company and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction [§§140(2)].
- 22.3 A director of the company is not required to comply with subclause 22.1 if [§§140(1A)]:
- 22.3.1 the transaction or proposed transaction is between the director and the company; and
- 22.3.2 the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- 22.4 A transaction entered into by the company in which a director of the company is interested may be avoided by the company at any time before the expiration of three months after the transaction is disclosed to all the shareholders (whether by means of the company's annual report or otherwise) [§§141(1)].
- 22.5 A transaction cannot be avoided if the company receives fair value under it [§§141(2)].
- 22.6 Nothing in subclauses 22.1 to 22.5 applies in relation to an indemnity given, insurance provided, or remuneration or any other benefit given to a director in accordance with this constitution [§143].
- Interested Directors May Vote**
- 22.7 A director of the company who is interested in a transaction entered into, or to be entered into, by the company, may [§144]:
- 22.7.1 vote on a matter relating to the transaction; and
- 22.7.2 attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and
- 22.7.3 sign a document relating to the transaction on behalf of the company; and
- 22.7.4 do any other thing in his or her capacity as a director in relation to the transaction,
- as if the director were not interested in the transaction.
- 23 USE OF COMPANY INFORMATION**
- 23.1 A director of the company who has information in its capacity as a director or employee of the company, being information that would not otherwise be available to it, must not disclose that information to any person, or make use of or act on the information, except [§§145(1)]:
- 23.1.1 for the purposes of the company; or
- 23.1.2 as required by law; or
- 23.1.3 in accordance with subclauses 23.2 or 23.3; or
- 23.1.4 in complying with s140 of the Companies Act.
- Disclosure - Nominee Director to Appointor**
- 23.2 A director of the company may, unless prohibited by the board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register [§§145(2)].
- Disclosure and Use of Information Generally**
- 23.3 A director of the company may disclose, make use of, or act on the information if [§§145(3)]:
- 23.3.1 particulars of the disclosure, use, or the act in question are entered in the interests register; and
- 23.3.2 the director is first authorised to do so by the board; and
- 23.3.3 the disclosure, use, or act in question will not, or will not be likely to, prejudice the company.

24 SHARE DEALING BY DIRECTORS**Disclosure**

24.1 A director of the company who acquires or disposes of a relevant interest in shares issued by the company must forthwith after the acquisition or disposition [§§ 148(2)]:

24.1.1 disclose to the board:

24.1.1.1 the number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be; and

24.1.1.2 the nature of the relevant interest; and

24.1.1.3 the consideration paid or received; and

24.1.1.4 the date of acquisition or disposition; and

24.1.2 ensure that particulars disclosed to the board under subclause 24.1 are entered in the interests register.

Restrictions

24.2 If a director of the company has information in its capacity as a director or employee of the company or a related company, being information that would not otherwise be available to it, but which is information material to an assessment of the value of shares or other securities issued by the company or a related company, the director may acquire or dispose of those shares or securities only if [§ 149]:

24.2.1 in the case of an acquisition, the consideration given for the acquisition is not less than the fair value of the shares or securities; or

24.2.2 in the case of a disposition, the consideration received for the disposition is not more than the fair value of the shares or securities.

25 PROCEEDINGS OF DIRECTORS**Chairperson**

25.1 The directors may elect one of their number as a chairperson of the board to hold office until they die or resign or until the directors elect a chairperson in its place.

25.2 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 10 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

Notice of Meeting

25.3 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with subclause 25.4.

25.4 Not less than 2 working days' notice of a meeting of the board must be sent to every director, whether or not it is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.

25.5 An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

Methods of Holding Meetings

25.6 A meeting of the board may be held either:

25.6.1 by a number of the directors, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

25.6.2 by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

25.7 No business may be transacted at a meeting of the board if a quorum is not present.

25.8 In the absence of any special quorum rights affecting class directors, a quorum for a meeting of the board is a majority of the directors.

Voting

25.9 In the absence of any special voting rights affecting class directors, every director has one vote.

25.10 The chairperson shall not have a casting vote.

25.11 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

25.12 A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless it abstains from or votes against the resolution at the meeting.

Minutes

25.13 The board must ensure that minutes are kept of all proceedings of the board.

Unanimous Resolution

25.14 A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

25.15 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

25.16 A copy of any such resolution must be entered in the minute book of board proceedings.

Other Proceedings

25.17 Except as provided in this constitution and the Companies Act, the board may regulate its own procedure.

26 REMUNERATION AND OTHER BENEFITS

26.1 The board may authorise the following if the board is satisfied that to do so is fair to the company [§§ 161(1)]:

26.1.1 payment of remuneration or the provision of other benefits by the company to a director for services as a director or in any other capacity; and

26.1.2 payment by the company to a director or former director of compensation for loss of office; and

26.1.3 making of loans by the company to a director; and

26.1.4 giving of guarantees by the company for debts incurred by a director; and

26.1.5 entering into of a contract to do any of the things permitted by this subclause 26.1.

26.2 If a payment, benefit, loan, guarantee or contract is authorised under subclause 26.1:

26.2.1 the board must ensure that particulars thereof are forthwith entered in the interests register [§§ 161(2)]; and

26.2.2 directors who vote in favour thereof must sign a certificate stating that, in their opinion, it is fair to the company, and the grounds for that opinion [§§161(4)].

27 INDEMNITY, AND INSURANCE

Company may Indemnify a Director or Employee

27.1 The company may indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding [§§162(3)]:

27.1.1 that relates to liability for any act or omission in its capacity as a director or employee; and

27.1.2 in which judgment is given in its favour, or in which it is acquitted, or which is discontinued.

27.2 The company may indemnify a director or employee of the company or a related company in respect of [§§162(4)]:

27.2.1 liability to any person other than the company or a related company for any act or omission in its capacity as a director or employee; or

27.2.2 costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

not being a breach of duty of the nature contemplated by s138A of the Companies Act, or otherwise any criminal liability in respect of a breach in the case of a director, of the duty specified in s131 of the Companies Act or, in the case of an employee, of any fiduciary duty owed to the company or a related company.

28 INSURANCE FOR A DIRECTOR OR EMPLOYEE

28.1 The company may, with the prior approval of the board, effect insurance for a director or employee of the company or a related company in respect of [§§162(5)]:

28.1.1 liability, not being criminal liability, for any act or omission in its capacity as a director or employee; or

28.1.2 costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or

28.1.3 costs incurred by that director or employee in defending any criminal proceedings:

28.1.3.1 that have been brought against the director or employee in relation to any act or omission in its capacity as a director or employee; and

28.1.3.2 in which it is acquitted.

28.1.4 The directors who vote in favour of authorising insurance under this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company [§§162(6)].

28.1.5 The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or a related company, are entered in the interests register [§§162(7)].

PART V - OTHER PROVISIONS

29 AMENDMENT OF CONSTITUTION

29.1 The shareholders of the company may, by special resolution, alter or revoke this constitution [§32].

30 METHOD OF CONTRACTING

30.1 A contract or other enforceable obligation may be entered into by the company as follows [§180]:

30.1.1 an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by:

30.1.1.1 two or more directors of the company; or

30.1.1.2 if there is only one director, by that director whose signature must be witnessed; or

30.1.1.3 a director, and another person or persons authorised to do so by the board whose signature or signatures must be witnessed; or

30.1.1.4 one or more attorneys appointed by the company in accordance with s181 of the Companies Act.

30.1.2 An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority.

30.1.3 An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.

31 COMPANY RECORDS

31.1 The company must keep the following documents at its registered office [§189]:

31.1.1 this constitution; and

31.1.2 minutes of all meetings and resolutions of shareholders within the last 7 years; and

31.1.3 an interests register; and

31.1.4 minutes of all meetings and resolutions of directors and directors' committees within the last 7 years; and

31.1.5 certificates given by directors under the Companies Act within the last 7 years; and

31.1.6 the full names and addresses of the current directors; and

31.1.7 copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports; and

31.1.8 copies of all financial statements and group financial statements required to be completed by the Companies Act or the Financial Reporting Act 2013 for the last 7 completed accounting periods of the company; and

31.1.9 the accounting records required by s194 for the current accounting period and for the last 7 completed accounting periods of the company; and

31.1.10 the share register.

32 ACCOUNTS

32.1 The board of the company must cause accounting records to be kept that [§194]:

32.1.1 correctly record and explain the transactions of the company; and

32.1.2 will at any time enable the financial position of the company to be determined with reasonable accuracy; and

- 32.1.3 will enable the directors to ensure that financial statements are prepared for the Company (and if required by the Act group financial statements) that meet the requirements of Part 11 of the Act. (Refer clause 33 and s200, s201, s202); and
- 32.1.4 will enable financial statements (and any group financial statements) to be audited if that is required by the Act. (Refer clause 34 and s206, s207).

33 FINANCIAL STATEMENTS

- 33.1 The Board must ensure that, if under Part 11 of the Act the Company is required to do so, financial statements (and if required group financial statements) are:
 - 33.1.1 prepared within 5 months after the Company's balance date, for that balance date,
 - 33.1.2 prepared in accordance with required accounting standards,
 - 33.1.3 presented to the Registrar of Companies within 5 months after the Company's balance date (s207D, 207E), and/or
 - 33.1.4 provided to any shareholder if requested to do so in accordance with s207F of the Act

- 33.2 Additionally the Board will ensure the Company's financial statements and reporting meet any other statutory obligation applying. (Consider Financial Reporting Act 2013, Part7 Financial Markets Conduct Act 2013).

34 AUDITOR

- 34.1 The Board must, if in accordance with sections 206 and 207 of the Act the Company is required to do so, ensure that its financial statements or any group financial statements audited by a qualified auditor.
- 34.2 The auditor will be required to conduct the audit in compliance with applicable auditing and assurance standards, and must provide a report to the shareholders on the financial statements or group financial statements audited.

35 NOTICES

- 35.1 Notices, statements, reports, accounts, or other documents must be served in accordance with Part 22 of the Companies Act.


36 OTHER PROVISIONS

- 36.1 Any other provisions set out in the Schedule shall form part of this constitution.



SECOND SCHEDULE

LOAN AGREEMENT

		Agreement Number:
		Agreement date:
		Loan Agreement
Between		
Name:		<i>the lender of</i>
Address:		
		Postcode:
Phone:	(H) (W)	(M)
Email:		
and Urban Cohousing Ōtepoti Ltd, <i>the borrower</i>		
Address for service: 7 Montpellier St, Dunedin, 9016		
Postal Address: P O Box 7103, Mornington, Dunedin, 9040		
Principal Amount: \$		Interest Rate:
Date of advance:		
Terms		
The borrower will repay the principal amount, plus any accrued simple interest on or before:		
1. A date six months after completion of the Urban Cohousing Project, or		
2. A date six months after the abandonment of the Urban Cohousing Project, or		
3. on __/__/__, (if specified) at the absolute discretion of the borrower or		
4. an earlier date if requested by the lender, at the absolute discretion of the borrower.		
The borrower may assign or transfer all or any of its rights, powers, remedies, authorities, discretions or obligations under this agreement without the consent of the lender, by giving notice to the lender. Each such assignee or transferee is to have the same rights, powers, remedies, authorities, discretions and obligations against the lender as if it was a party to this Agreement in place of the borrower.		
Signed by the Lender:		
Signed by the borrower:		
Director, Urban Cohousing Ōtepoti Ltd		Director, Urban Cohousing Ōtepoti Ltd
Signature of the witness:		
Name & Address of Witness:		
copies to each party		

THIRD SCHEDULE

GROUP DECISION MAKING PROCESS

UCOL: Communication Guidelines

- I will use "I" statements, and speak for myself, not others
- I will speak succinctly (short and to the point)
- I will take responsibility for owning and naming my own feelings
- I will respect others' rights to speak without interruption
- I undertake to respect other's privacy by not discussing outside the group other people's personal issues, which may arise within the group process.
- I undertake to keep relationships within the group clear by dealing with any problematic issues directly with the persons concerned.
- I recognise that we work best together when we remember to have fun!

Coloured Card Agreement Process

1. We use a particular consensus-building procedure to reach agreement, which has been adopted by many cohousing groups, as follows:
2. Each person should have a set of coloured cards: green, blue, orange, yellow, red and black.

The Process for Discussion

1. The cards can be helpful in preliminary discussions particularly if the group is large. Before being called on to speak on an issue, participants must first put up a coloured card according to the following guidelines:

Black: I have interpersonal difficulty and can't proceed.

- Red: I have a process observation, i.e. we are off topic or over time.
- Yellow: I have a question or need clarification
- Orange: I wish to acknowledge someone or something, often a thank you.
- Green: I can provide clarification or information
- Blue: I have a comment or opinion

2. The facilitator calls first on anyone holding a black card. The group then decides what happens next. The red cards are then dealt with. The red “stop the process” card can be raised at any time. It is used to point out a breach in the way we have agreed to proceed. People raising yellow cards to indicate questions receive the next attention. After a question has been asked, people holding green cards are called on to provide clarification. After all questions have been answered, the facilitator calls on participants holding blue cards to speak.

The Process to Reach Agreement is Through Consensus.

1. When deciding an issue, the minute taker and/or chair or others write the minute and read it out to the group for any further amendments, additions, corrections or discussion. The whole group is responsible for the wording of the minute. Then the chair calls on a show of cards and each person raises one of the cards:

- Green: I agree with the proposal.
- Blue: I am neutral about the proposal, or for it with some slight reservation.
- Yellow: I have a question concerning the proposal, which must be answered before I can make a decision.
- Orange: I have some serious reservations about the proposal, but am not willing to block consensus.
- Red: I am entirely against the proposal and will block consensus.

2. If all cards raised are not green, those people with reservations should voice their concerns, if they have not already done so. The process requires everyone to participate in decision-making. Dominant personalities will find it harder to push their ideas through at the expense of the less vocal, and softly spoken members must take responsibility for voicing their concerns.

FOURTH SCHEDULE

PROJECT INFORMATION

1. The Introduction to Urban Cohousing Otepoti Ltd Agreement (Introduction Agreement) that has been signed by every member when they become a full Member.
2. UCOL Induction Process (INDUCTION PROCESS) (Sixth Schedule) and any other associated documents as decided by the Group Decision Making Process.
3. Preference List (Schedule 6).
4. High Street Cohousing Project Design Building Consent documentation as dated:

6th April 2018.
5. List of Full Membership as at: 20th June 2018.
6. Minutes and notes of all full group and Directors' meetings.

A copy of each of these documents as amended from time to time by the Group Decision Making Process is held in the High Street Cohousing Project Administration Office for reference purposes.

FIFTH SCHEDULE

AGREEMENT FOR SALE AND PURCHASE

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: URBAN COHOUSING OTEPOTI LIMITED

PURCHASER:

and/or nominee

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:

Yes/No

PROPERTY

Address: Unit 7 Montpellier Street, Dunedin known as the High Street Cohousing Project

Estate: ~~FEE SIMPLE~~ ~~LEASEHOLD~~ STRATUM IN FREEHOLD ~~STRATUM IN LEASEHOLD~~
~~CROSSLEASE (FEE SIMPLE)~~ ~~CROSSLEASE (LEASEHOLD)~~ (fee simple if none is deleted)

Legal Description:

Area (more or less): Lot/Flat/Unit: DP: Unique Identifier or CT:

Unit being part of the land comprised and described in unique identifier 600867

PAYMENT OF PURCHASE PRICE

Purchase price: \$

~~Plus GST (if any)~~ OR ~~Inclusive of GST (if any)~~
 If neither is deleted, the purchase price includes GST (if any).

GST date (refer clause 14.0):

Deposit (refer clause 2.0): \$ loan or loans as set out in the First Schedule (see Clause 20)

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. Clause 23 Interest rate for late settlement: 12 % p.a.

~~CONDITIONS (refer clause 10.0)~~

~~Finance condition~~

~~LIM required: (refer clause 10.2)~~

~~Yes/No~~

~~Lender:~~

~~Building report required: (refer clause 10.3)~~

~~Yes/No~~

~~Amount required:~~

~~OIA Consent required: (refer clause 10.4)~~

~~Yes/No~~

~~Finance date:~~

~~Land Act/OIA date:~~

~~TENANCIES (if any)~~

~~Name of tenant:~~

~~Bond:~~

~~Rent:~~

~~Term:~~

~~Right of renewal:~~

SALE BY:

Private Treaty

Licensed Real Estate Agent under Real Estate Agents Act 2008

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

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or 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.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "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.
- (9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (15) "Property" means the property described in this agreement.
- (16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the 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 subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "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.
- (20) "Settlement date" means the date specified as such in this agreement.
- (21) "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.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title under the Unit Titles Act 2010.
- (24) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (25) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (26) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
- (27) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (28) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (29) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 1952.
- (30) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (31) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (32) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) 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 subclause 10.2(2) the 15th day of January) in the following year, both days inclusive; and
 - (d) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (33) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) 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
 - (b) 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.

1.2 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 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.
- (3) 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 subclause 1.2(2).

1.3 Notices

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

- (1) All notices must be served in writing.
- (2) 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.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by facsimile; or
 - (iv) by email; or
 - (v) 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.
- (4) In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the 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;
 - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
 - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

- (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
 - (f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 20(1) of the Electronic Transactions Act 2002, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.
- 1.4 Interpretation
- (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.

2.0 Deposit

- ~~2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/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:~~
- ~~(1) the requisition procedure under clause 6.6 is completed without either party cancelling this agreement; and~~
 - ~~(2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and~~
 - ~~(3) where the property is a unit title:~~
 - ~~(a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and~~
 - ~~(b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 149(2));~~
 - ~~have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or~~
 - ~~(4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.6(5) or where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.~~

3.0 Possession and Settlement

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 on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and 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.
- 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 subclause 3.12 or 3.14);
 - (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 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 subclause 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.
- 3.9 All obligations under subclause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

Last Minute Settlement

- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
 - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is 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 subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; 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 subclause 3.12(1).
- 3.13 Where subclause 3.12(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:
- (1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
 - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
 - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (5) 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;
 - (6) the amount determined to be payable shall not be limited by the interim amount; and
 - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.14 (1) For the purposes of this subclause 3.14:
- (a) the default period means:
 - (i) in subclause 3.14(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 subclause 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.14(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 subclause 3.14(2)(b) during the default period. A purchaser in possession under this subclause 3.14(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.14(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 subclause 3.14(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 subclause 3.14(2)(b) during the default period.
- (6) The provisions of this subclause 3.14 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) Where the parties are unable to agree upon any amount payable under this subclause 3.14:
- (a) an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined;
 - (b) the interim amount shall be the lower of:
 - (i) the amount claimed; or
 - (ii) 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.
 - (c) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (d) 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;
 - (e) the amount determined to be payable shall not be limited by the interim amount; and
 - (f) if the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Deferment of Settlement and Possession

- 3.15 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).
- 3.16 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.
- 3.17 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; 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 the warranty by the vendor in subclause 9.2(3),
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following 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 subclause 3.16, to the tenth working day following 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

- 3.18 (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 172A of the Land Transfer Act 1952, of that title is not obtainable by the tenth working day prior to the settlement date,
 - (c) 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 following 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) Subclause 3.18(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

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 subclause 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 subclause 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 subclause 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 subclause 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 subclause 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 subclause 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) in the case of a property 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 subclause 8.4 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 172A of the Land Transfer Act 1952 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.
- (4) In the event of cancellation under subclause 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.
- 6.3 (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 user covenant;
 - (b) in the case of a unit title, encroachments out of the principal unit or accessory unit or accessory unit part space (as the case may be);
- then the purchaser may requisition the title under subclause 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.
- 6.4 Except as provided by section 7 of the Contractual Remedies Act 1979, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.
- 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 settlement:
- (1) The chattels 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) but failure so to deliver them shall only create a right of compensation.
 - (2) All electrical and other installations on the property are free of any charge whatsoever.
 - (3) There are no arrears of rates, water rates or charges outstanding on the property.
 - (4) Where an allowance has been made by the vendor in the settlement statement for 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.
 - (9) Any chattels included in the sale are the unencumbered property of the vendor.
- 7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(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.
- 7.4 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.
- 7.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 6.4 and any right of equitable set-off.

8.0 Claims for compensation

- 8.1 If the purchaser claims a right to compensation either under subclause 6.4 or for an equitable set-off:
- (1) the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
 - (2) the notice must:
 - (a) in the case of a claim for compensation under subclause 6.4, state the particular error, omission, or misdescription of the property or title in respect of which compensation is claimed;
 - (b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
 - (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
 - (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 8.2 For the purposes of subclause 8.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given on or before the last working day prior to the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 11.1.
- 8.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 8.4 If the amount of compensation is disputed:
- (1) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
 - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
 - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (5) 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;
 - (6) the amount of compensation determined to be payable shall not be limited by the interim amount; and
 - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.
- 8.5 The procedures prescribed in subclauses 8.1 to 8.4 shall not prevent either party taking proceedings for the specific performance of the contract.

9.0 Unit title and cross lease provisions

Unit Titles

- 9.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act 2010 ("the Act") require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.
- 9.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
 - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
 - (3) Not less than five working days before the settlement date, the vendor will provide:
 - (a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and
 - (b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
 - (4) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.
 - (5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
 - (7) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
 - (a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; 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 owner under any provision of the Act or the Unit Titles Act 1972.
 - (8) 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 which have not been disclosed in writing to the purchaser.
 - (9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
 - (10) 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; or
 - (d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan, which has not been disclosed in writing to the purchaser.
 - (11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 9.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 9.2(3), 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.
- 9.4 If the property is a unit title, each party specifies that:
- (1) the facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Act; and
 - (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Act.
- 9.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

Unauthorised Structures – Cross Leases and Unit Titles

- 9.6 (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 subclauses 6.2(3) and 6.2(4) shall apply with the purchaser's demand under subclause 9.6(1) being deemed to be an objection and requisition.

10.0 Conditions and mortgage terms

Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
 - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - (c) this agreement is conditional upon the purchaser approving that LIM 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 fifteenth working day after the date of this agreement 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 fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 10.8(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether 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 tenth 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 subclause 10.8(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.
- 10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. 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. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (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 Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (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.
- 10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.
- 10.7 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.

Operation of Conditions

- 10.8 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.

Mortgage Terms

- 10.9 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.
- 10.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

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 either in all material respects ready, able, and willing to proceed to settle in accordance with this agreement or is not so ready, able, and willing 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 subclause 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 subclause shall be deemed the settlement date for the purposes of subclause 11.1.
 (3) The vendor may give a settlement notice with a notice under this subclause.
 (4) For the purpose of this subclause, 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 subclause 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 subclause 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; and
 - (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 as aforesaid 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 giving 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 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 Agent

- 13.1 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 appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.
- 13.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

14.0 Goods and Services Tax

- 14.1 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 subclause 3.8(1).
- 14.2 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.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

- 14.4 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1, 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 subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice under subclause 11.1 with a notice under this subclause.

15.0 Zero-rating

- 15.1 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 is correct at the date of this agreement.
- 15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 2 are correct at the date of this agreement.
- 15.3 Where the particulars stated on the front page and in Schedule 2 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.
- 15.4 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 2 or they have altered.
- 15.5 If any of the particulars stated by the purchaser in Schedule 2 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 2 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 15.6 If
- (1) the particulars in Schedule 2 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,
- the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 15.7 If
- (1) the particulars stated in Schedule 2 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 subclauses 15.3 and 15.4 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.

16.0 Supply of a Going Concern

- 16.1 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 herein:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 16.2 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 14.0 of this agreement shall apply.

17.0 Limitation of Liability

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

18.0 Counterparts

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

FURTHER TERMS OF SALE

As per attached Further Terms of Sale

DRAFT



SCHEDULE 1

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

~~Stove~~

~~Fixed floor coverings~~

~~Blinds~~

~~Curtains~~

~~Light fittings~~

DRAFT

**SCHEDULE 2
(GST Information – see clause 15.0)**

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

1.	The vendor's registration number (if already registered):	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 3 and 4 is "No", go to question 7

5.	The purchaser's details are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
6.	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). 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 Yes/No
7.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No

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

Section 2

8.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
9.	The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 8 and 9 is "No", there is no need to complete this Schedule any further.

10.	The nominee's details (if known to the purchaser) are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
11.	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). 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 Yes/No

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

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

Acknowledgements

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

Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010.

Signature of purchaser(s)

Signature of vendor(s)

.....
.....

.....
.....

BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - the purchaser wishes to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before the purchaser enters into the agreement:
 - the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010;
 - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 and 9.0:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 1 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

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

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

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

© This form is copyright to the Real Estate Institute of New Zealand Incorporated and Auckland District Law Society Incorporated

DATE:

VENDOR:

URBAN COHOUSING OTEPOTI LIMITED

Contact Details:

VENDOR'S LAWYERS:

Firm: Polson McMillan Lawyers

Individual Acting: Helen Davidson

Contact Details:

P O Box 5547, Moray Place, Dunedin

Phone: (03) 477 2238

Fax: (03) 474 5588

Email: helen@polsonmcmillan.co.nz

PURCHASER:

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details:

FURTHER TERMS OF SALE

19 Settlement Preconditions

- 19.1 Subject to clause 19.2 the Purchaser shall contemporaneously with and as a precondition of settlement:
- (a) enter into a High Street Cohousing Agreement (“HSC Agreement”) in the form attached, and arrange for delivery of an original signed copy to the Vendor; and
 - (b) enter into a Deed of Covenant to be bound by the principles of the HSC Agreement such Deed of Covenant to be in the form attached, and arrange for delivery of an original signed copy to the Vendor.
 - (c) enter into a Deed of Indemnity in the form attached (Eighth Schedule)
 - (d) enter into a Limited Power of Attorney in the form attached. (Ninth Schedule)
- 19.2 Where the Purchaser is a corporate body (such as a “Social Housing Provider”), an individual person shall be appointed to act as a contact/representative and participate in the High Street Cohousing Project from time to time. Any tenant of the Social Housing Provider shall be required to observe the principles (Kaupapa) of the HSC Agreement likewise.

20.0 Loan

- 20.1 Each purchaser of a unit in the High Street Cohousing Project shall pay an amount in the form of a loan as discussed and agreed through the Group Decision Making Process (as described in the Third Schedule of the HSC Agreement) which shall be recorded in a separate Loan Agreement between the Purchaser and the Vendor and used to assist in the completion of the High Street Cohousing Project.
- 20.2 The loan shall be made on or before execution of this Agreement.
- 20.3 It is intended the loan made shall be deducted from the purchase price upon settlement date in accordance with clause 20.3.1 of the HSC Agreement.

21 Completion of Works

- 21.1 The Purchaser acknowledges the Vendor company has been incorporated for the purpose of undertaking the development of the High Street Cohousing Project. The Vendor is expected to operate as a vehicle to fulfil the requirements of the collective Vendors in completing the Project.
- 21.2 The Vendor will:
- (a) Use its best endeavours and do all things reasonably required to ensure the deposit of the subdivision plan at Land Information New Zealand at the earliest possible date.
 - (b) Complete the works in a proper and professional manner and, subject to the provisions of this Agreement, substantially in accordance with the Land Use Resource Consent and construction plans.
- 21.3 The Vendor is not obliged to obtain deposit of the subdivision plan by any fixed date, nor will the Purchaser be entitled to make any claim against the Vendor for any delays, which may occur in the deposits of the subdivision plan and the issue of the title for the Unit.

- 21.4 Notwithstanding the provisions of this term (21) the Vendor, in accordance with the Group Decision Making process, reserves the right not to develop the Common House to the full scope of Stage 2 or to the full scope of the detailed designs, as attached, in the first instance.
- 22.0 Purchaser not to lodge Caveat**
- 22.1 The Purchaser shall not be entitled to lodge a caveat in respect of this Agreement, and acknowledges that any caveat lodged in breach of this condition may cause substantial loss or damage to the Vendor.
- 23.0 Settlement Date**
- 23.1 Subject to Clause 23.2 settlement shall take place on the 10th working day after the later of the following events:
- (a) the Vendor has given the Purchaser notice that a title search copy as defined in Section 172A of the Land Transfer act is available; and
 - (b) a Code of Compliance Certificate for the Unit is issued.
- 23.2 Settlement date can, however, be otherwise agreed between the Vendor and Purchaser.
- 24.0 Subdivision Plan**
- 24.1 The Vendor shall proceed promptly with the completion of all works required to give effect to the Land Use Consent LUC-2014-319 attached.
- 24.2 The Vendor will at the Vendor's cost:
- (a) Prepare the subdivision plan;
 - (b) Comply with any statutory or other lawful requirements of the local Territorial Authority relating to the development;
 - (c) Obtain approval of the subdivision plan by the local Territorial Authority and Land Information New Zealand;
 - (d) Deposit the subdivision plan and take all other steps necessary to obtain a separate title for the Property.
- 25.0 Area Approximate**
- 25.1 The area of the Unit shown in the subdivision plan is approximate only and is subject to adjustment on final survey and approval of the subdivision plan.
- 26.0 Objections or Requisitions**
- 26.1 The Purchaser will not be entitled to make any objection, requisition or claim for compensation by reason of any alteration or variation to the subdivision plan as may become necessary by the direction of the local Territorial Authority or by the practical exigencies of the subdivision. The Vendor reserves the right at any time to alter or vary the subdivision plan (including, but not limited to, the addition, alteration, variation or cancellation of any proposed easements shown on any plan) in such manner as the Vendor in its sole and absolute discretion considers appropriate having regard to the circumstances.
- 27.0 Unit sold subject to Easements and Other Encumbrances**
- 27.1 The Vendor may grant or receive the benefit of any easements, land covenants, rights,

obligations, consent notices or bonds over the Property and/or over the land of which the Property forms part and/or over any Unit on the subdivision in each case which the Vendor may require for the benefit of the subdivision or which the local Territorial Authority may require. The Purchaser will take title to the Property subject to all such matters and will have no claim or right of compensation for such matters.

28.0 No Retentions

28.1 The Purchaser shall not be entitled to withhold the balance of the purchase price (or any part of it) or demand any retention on settlement for any reason whatsoever.

29.0 Disputes

29.1 A party must use the Group Decision Making Process to resolve a dispute relating to this Agreement before commencing mediation or legal proceedings.

29.2 Mediation

If a dispute is not resolved pursuant to clause 29.1, a party must use the Mediation Procedure to resolve a dispute before commencing legal proceedings.

29.3 Dispute Resolution – Mediation

The Mediation procedure is:

- (a) The party who wishes to resolve a dispute must give a notice of dispute to the other party.
 - (i) The notice must state that the dispute has arisen, and state the matter in dispute.
 - (ii) The other party will either agree to proceed with the mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. If it is decided that mediation would not be helpful, then the provisions of clause 29.9 to 29.14 shall apply. If it is decided that mediation would be helpful then the parties will agree on a mediator within 7 days of the written notice being received or will ask the Arbitration & Alternative Dispute Resolution Centre NZ Limited to appoint a mediator. If this service is not available, the parties will ask the President of the Arbitrators & Mediators Institute of New Zealand to appoint a mediator.
 - (iii) The parties must co-operate with the mediator in an effort to resolve the dispute.
 - (iv) The mediator may engage an appropriately qualified expert to give an opinion on technical matters. The cost will be a mediation cost.
 - (v) If the dispute is settled, the parties must sign a copy of the term of settlement.

(vi) If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.

(vii) Each party must pay a half share of the mediator's fees and costs including travel, room hire, refreshments etc.

29.4 The terms of settlement bind the parties and override the contract if there is any conflict.

29.5 The terms of settlement may be used as evidence in any arbitration or other legal proceedings.

29.6 The parties agree that written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any legal proceedings. This protects the confidentiality of the mediation.

29.7 The mediation process will not apply if either party seeks urgent interlocutory relief from any Court.

29.8 Pending resolution of any dispute the parties will perform this Agreement in all respects including performance of the matter which is the subject to the dispute.

29.9 **Dispute Resolution – Arbitration**

29.10 If a party has any dispute with any other party in connection with this Agreement and the dispute is unable to be resolved using the Group Decision Making Process or mediation the dispute will be referred to arbitration.

29.11 The arbitration will be conducted by one arbitrator appointed by the parties. If the parties cannot agree on an arbitration within 7 days of the cessation of mediation, the appointment will be made by the Arbitration & Alternative Dispute Resolution Centre NZ Limited. Should this service not be available, the parties will ask the President of the Arbitrators & Mediators Institute of New Zealand to appoint an arbitrator.

29.12 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996

29.13 No party will cause unreasonable delay to the dispute resolution procedures in this clause.

29.14 This arbitration process does not apply to:

(a) any dispute arising in connection with any attempted re-negotiation of this Agreement; or

(b) an application by either party for urgent interlocutory relief.

30.0 **Settlement Notices**

30.1 The provisions of this clause shall not prevent either party issuing a settlement notice or acting on such settlement notice but if the relevant dispute relates to the right to issue and act on a settlement notice the party seeking to dispute the right of the other to issue and act on a settlement notice shall be entitled to apply for an interim injunction.

31.0 **Assignment**

31.1 The Purchaser shall not assign, transfer or otherwise dispose of or alienate the benefit of this Agreement, without the prior written consent of the Vendor (other than assignment or withdrawal of the Purchaser in accordance with Clauses 14 and 26 of the HSC Agreement), which consent shall not be unreasonably or arbitrarily withheld or delayed. In the event that the Vendor agrees to such assignment, transfer or disposal, the Agreement will be deemed to become conditional on clause 19 being satisfied in relation to the new purchaser within such timeframe as the Vendor shall determine in its reasonable discretion. The Purchaser shall at all times remain liable for all obligations on the part of the Purchaser under this Agreement. The Purchaser shall pay all costs of the Vendor and the Vendor's Solicitor in relation to any assignment.

32.0 Sole Agreement

32.1 The parties acknowledge that this Agreement, and the attachments to this Agreement and any other documents, information or specifications referred to in this Agreement, contain the entire Agreement for Sale & Purchase between the parties, notwithstanding any negotiations or discussions prior to the execution of this Agreement, and notwithstanding anything contained in any brochure, report or other document. The Purchaser acknowledges that it has not been induced to execute this Agreement by any representation, verbal or otherwise, made by or on behalf of the Vendor or any agent of the Vendor, which is not set out in this Agreement.

33.0 Severability

33.1 If any provision of this Agreement or the application thereof to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions shall not be affected by that event and each provision shall be valid and enforceable to the fullest extent permitted by law.

34 Lowest Price

34.1 The purchase price for the Property is the lowest price that the parties would have agreed upon for the Property at the date this Agreement is entered into under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis no income or expenditure arises in respect of the sale and purchase of the Property under those rules and the purchase price does not contain any capitalised interest.

35.0 Discounts

The parties agree that for income tax purposes the sale price is the market value of the unit established by the independent valuation. Where the actual price paid differs from the market value the unit purchaser agrees that any differences between the price paid and the market value is a gift between the unit purchasers.

Notwithstanding the above, if over the entire development the total market value of all the units is more or less than the total price paid for all the units, the difference (calculated globally over the entire development) would be regarded as a loan between the company and all unit purchasers.

36.0 Conflict

36.1 If there is a conflict between the Further Terms of Sale and the General Conditions of sale or any annexure or document referred to in this Agreement, the Further Terms of Sale shall prevail.

37.0 Force Majeure

- 37.1 In the event that war, civil disorder, monetary or economic developments, acts of government or other factors beyond the reasonable control of the Vendor, whether similar or not ("specified event") prevent the Vendor from commencing, continuing, or completing the subdivision of land of which the Property forms part or render it impracticable for the Vendor to commence, continue or complete the subdivision and development of the land, then the Vendor may by notice in writing to the Purchaser advise of the specified event and cancel this Agreement and the Vendor will do all in its power to have the loan made by the Purchaser repaid to the Purchaser in accordance with Clause 25 of the HSC Agreement.

SIXTH SCHEDULE

INDUCTION PROCESS

UCOL Induction Process

Our vision is to create an urban cohousing neighbourhood, which promotes social and environmental sustainability, based on respect and shared responsibilities.

- Through robust eco-design and layout establish a cohesive community, which fosters wellbeing, diversity and the right use of resources.
- Develop and foster a thriving living environment, which uses clear communication, decision-making and conflict resolution guidelines that promote tolerance, safety, respect and co-operation.

Process of Membership

1. Attend an induction workshop and go on Urban Cohousing Otepoti Ltd email list
2. Give a one-off koha (suggested \$100) per person to UCOL - Kiwibank a/c 38-9018-0373981-00.
3. Read resources listed below – Cohousing book, highstreetcohousing.nz website, other.
4. Attend weekly meetings, workshops, dream a little, become involved and start participating in the project, have fun, get to know your neighbours.
5. Spend time with a UCOL buddy/contact person, asking questions, discussing hesitations and clarifying your own individual needs.
6. Sign *Introduction to Urban Cohousing Otepoti Ltd Organising Agreement* and pay minimum non-refundable amount of \$5,000 per unit to purchase 5 x \$1,000 shares and become a shareholder in Urban Cohousing Otepoti Ltd. - to Kiwibank a/c 38-9018-0373981-00. *Lend further capital as able and needed for the project.*
7. Demonstrate your ability to fulfill the bank requirement of 20% of total purchase price of your unit, and produce documents to show your ability to follow through on purchase and sale agreements. You will be required to sign a guarantee up to this amount.
8. Participate in ongoing decision-making and planning/build work.
9. Agree to read the UCOL Child Protection Policy and sign the Declaration.
10. Sign Cohousing Organising Agreement, Sale and Purchase Agreements, other documents as required.
Any person who is deemed a property dealer or developer or associated to a property dealer or developer for the purposes of the Income Tax Act 2007 shall advise UCOL of such status before becoming a signatory to the Agreement and shall be prohibited from owning a sufficiently large share in UCOL that would deem any other Member to be a property developer by virtue of the definition of 'associated persons' given in the Income Tax Act 2007.
11. Ensure a Will and an enduring Power of Attorney (Property) are in place.
12. Receive unit title on payment of remaining balance once build is complete.
13. Move into your new eco-home and neighbourhood!

Resources

- *Creating Cohousing: Building Sustainable Communities* Kathryn McCamant and Charles Durrett (2011)
- Websites: www.highstreetcohousing.nz; www.facebook.com/highstreetcohousing; www.earthsong.org.nz; www.cohousing.org.nz
- Tabled documents: Minutes book; Introduction to Cohousing Organising Agreement, Draft High Street Cohousing Organising Agreement; Coloured Card Consensus Decision Making Process; Body Corporate Draft; Child Protection Policy

- People – talking, working together, sharing knowledge, skills and laughter

Contacts for Cohousing Project

Email us at: ucoldunedin@gmail.com

Catherine Spencer	03 453 6043	cmspencer.nz@zoho.com
Tim Ross	021 0692404	tim@architype.co.nz
Sue Taylor	03 454 5768	
Susan Jack	022 0334557	susanjack@gmail.com

SEVENTH SCHEDULE

UNIT PREFERENCE LIST

Unit Preference List (UCOL Shareholders)

Order	Name	Unit Type	Unit
1	Catherine Mary SPENCER	ALVA	A6
2	Alexander Charles KING	ALVA	A4
3	Susan Janice & Kristin Robert JACK	HIGH 5	H3
4	Susan Helen TAYLOR	HIGH 1	C3
5	Elizabeth Anne & Ian Armstrong THOMSON	HIGH 5	H2
6	Timothy Nigel & Philippa Lois ROSS	HIGH 5	H1
7	Juan Ignacio PURICELLI & Maria Fernanda CALLAU	HIGH 2/3	D5
8	Sara DA SILVA TELES GRANGEIO FERREIRA	M1	M1
9	Frances & Alexander John Fergus ROSS	ALVA	A5
10	Patricia Gay BUCKINGHAM	M3	M3
11	Janice Robyn BURCH	HIGH 1	C4
12	Rosemary Sheryl & Michael Charles Bouverie WILSON	M2	M2
13	Rainer Nicolaus BENEKE & Marian QUINN	HIGH 2/3	D6
14	Dennis Shen Han CHAN & Adelyn Ai Lyn LAU	HIGH 2/3	D3
15	Warren James HURLEY	HIGH 1	C2
16	Claire LOFTUS	HIGH 1	C1
17	Jessica Alice & James Alexander Francis Ross	ALVA	A1
18	Sander Paul ZWANENBURG & Nga Fong OR	ALVA	A3
19	Donald SHAND & Miriam FRANCES	HIGH 2/3	D4
20	Geoffrey Alan & Anne Constance KING	HIGH 1	C5
21	Yu-Min LEE	HIGH 2/3	D2
22	Rachel Margaret GIBB	HIGH 2/3	D1

sold to the DCC (not Shareholders in UCOL)

23	DCC	HIGH 1	C6
24	DCC	ALVA	A2

20th June 2018

EIGHTH SCHEDULE

DEED OF INDEMNITY

URBAN COHOUSING OTEPOTI LIMITED

DEED OF INDEMNITY

POLSON McMILLAN LAWYERS

PO Box 5547, Moray Place, Dunedin 9058

2nd Floor, Security Buildings,

115 Lower Stuart Street, Dunedin 9016

Tel: (03) 477-2238; Fax: (03) 474-5588

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11. ADDITIONAL INDEMNIFIERS

DEED dated the

day of

20

PARTIES

1. **[NAME]** (“the Indemnifier”)
2. Directors for the time being of **URBAN COHOUSING OTEPOTI LIMITED** (“the Indemnified”)

INTRODUCTION

- A. The Indemnifier has agreed to participate in the Cohousing Project based at High Street, Dunedin.
- B. The Indemnified have assumed or may assume certain obligations for the purpose of undertaking the Cohousing Project.
- C. The Indemnifier wishes to enter into this Deed setting out [his/her/their] relative liabilities in relation to the Cohousing Project and provide a reciprocal indemnity to all Indemnified.

OPERATIVE TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Interpretation

- 1.1.1 A reference to a person including any other entity or association recognised by law and the reverse;
- 1.1.2 Words referring to the singular include the plural and the reverse;
- 1.1.3 Any reference to any of the parties includes that party’s executors, administrators, personal representatives and successors;
- 1.1.4 Everything expressed or implied in this Deed which involves more than one person binds and benefits those people jointly and severally;

1.1.5 Clause headings are for reference purpose only.

1.2 Definitions

“Additional Deed” means any deed executed pursuant to clause 11 of this Deed.

“Authorised Representative” means a person appointed in writing as an authorised representative of a party.

“Company” means Urban Cohousing Otepoti Limited at Dunedin.

“UCOL Agreement” means the Agreement dated [date] made between the Company and the Members which agreement governs the inter-relationship of members with respect to the Cohousing Project.

“Cohousing Project” means the High Street Cohousing Project at Montpellier Street, Dunedin.

“Default Rate” means 16% per annum.

“Loss” means any claims, costs, losses, damages or expenses whatsoever incurred by the Indemnified arising out of the Obligations.

“Members” means the members from time to time of the Cohousing Project and includes shareholders of the Company and (to the extent that they are not shareholders) any owner of a dwelling in the Cohousing Project.

“Obligations” means all obligations assumed now or in the future by all or any one of the Indemnified in relation to the Cohousing Project, including by way of example any obligations of directors of the Company and the obligations of guarantors of financial accommodation to the Company.

2. THE OBLIGATIONS

2.1 It is acknowledged and agreed that the Indemnified are directors of the Company and/or guarantors of financial accommodation to the Company and/or may in some way take on Obligations and are or may be exposed to potential Loss which may arise out of the Obligations.

3. INDEMNITY

3.1 In consideration of the Indemnified assuming, or in the future agreeing to assume Obligations the Indemnifier shall jointly and severally indemnify and keep indemnified each Indemnified in respect of any Loss which that Indemnified incurs or suffers.

3.2 The Indemnifier will, if called upon by any of the Indemnified (or their Authorised Representative) who has suffered Loss envisaged by this Deed pay to the Indemnified a sum equivalent to the Loss suffered. Payment shall be made to the Company. Any demand made pursuant to this clause shall give reasonable details of the amount claimed and the basis for the claim and be supported by reasonable evidence of the Indemnified having suffered or incurred Loss.

3.3 No Indemnifier will be liable to indemnify any of the Indemnified where the loss or damage claimed arises as a result of the dishonesty or wilful default of the Indemnified, provided that this exclusion of indemnification will not apply where the Indemnified has:

3.3.1 Acted in accordance with any request made or mandate given by the Company and or its Members;

3.3.2 Abided where applicable by any decisions made in terms of the Cohousing Project's decision-making process;

in which case the Indemnified will remain indemnified by the Indemnifiers under this Deed.

3.4 The parties acknowledge that the Company will, at the direction of the directors:

3.4.1 Reimburse the Indemnified for the Loss suffered or incurred if the Indemnified has met the Obligations; and/or

3.4.2 Meet the Obligations in whole or in part of or to what extent the Obligations have not been met by the Indemnified.

4. TERMINATION

4.1 This Deed remains in force until terminated by:

4.1.1 Agreement of all Indemnified; or

4.1.2 Completion of the Cohousing Project and cessation of the Obligations.

5. RELEASE

5.1 An individual Indemnifier will be released from their obligations under this Deed when:

5.1.1 It is terminated pursuant to clause 4;

5.1.2 An Acknowledgement of Release is executed for and on behalf of the Indemnified in the form attached as Schedule 1; or

5.1.3 An individual Indemnifier sells, transfers, or assigns their unit in the Cohousing Project and the party acquiring the interest executes both a deed agreeing to be bound by the Cohousing Agreement confirming that party's participation in the Cohousing Project and a Deed of Indemnity in accordance with clause 11.1.

6. DEFAULT BY ANY PARTY

6.1 Any party who fails on any due date to pay any payment due to the other under this Deed will pay interest at the Default Rate on the amount of arrears from the date such payment was due until the actual date of payment (calculated daily).

6.2 This clause 6 does not prejudice any other rights or remedies any party may have as to enforcement of their rights under this Deed.

6.3 Each party indemnifies the others to the extent that any liability, action or cost arises as a result of their default in meeting the obligations contained in this Deed.

7. SEVERANCE

7.1 Any provision of this Deed which is held to be illegal, unenforceable or void will not affect the remaining provisions of this Deed which will remain in full force and effect.

8. ASSIGNMENT

8.1 No party may transfer, assign or encumber that party's right under this Deed.

9. AMENDMENT

9.1 This Deed cannot be varied except in writing signed by the parties, or by an Authorised Representative of the parties.

10. COSTS

10.1 Each of the parties is responsible for its own legal and other costs in preparing this Deed.

11. ADDITIONAL INDEMNITIES

11.1 Should other Indemnifiers be found who wish to enter into the indemnity arrangements recorded in this Deed, the parties acknowledge and confirm that the reciprocal indemnity given under this Deed shall extend to each new party who executes without alteration, a deed in the same form as this Deed.

SIGNED by: _____

[Full name]

as Indemnifier

in the presence of:

Witness signature

DATE

Witness full name

Witness occupation

Witness address

NINTH SCHEDULE

LIMITED POWER OF ATTORNEY

LIMITED POWER OF ATTORNEY

(Urban Cohousing Otepoti Limited)

Date: _____

THIS is a Power of Attorney by way of Deed signed by me:

[name as (or to be) shown on certificate of title]

[address]

[occupation]

INTRODUCTION:

A. For the purposes of this Deed the following definitions shall apply:

“Common Property” shall mean that part delineated as common property on the Unit Plan.

“Development” means the proposed development of the Land by the Developer.

“Developer” means Urban Cohousing Otepoti Limited or its successors and assigns.

“Land” Means the land at 7 Montpellier Street, Dunedin, comprised in Certificate of Title 593975.

“Territorial Authority” means the territorial authorities having jurisdiction over the Land.

“the Unit” means the Unit on the land of which I am a registered proprietor.

“Unit Owners(s)” means the owner(s) (for the time being) of any Unit of the Unit Plan.

“Unit Plan” means Deposited Plan including any staged, substituted or redeveloped versions of that plan.

- B. Any other term in this Deed which is not defined in this section shall have the meaning given to it in the Agreement.

BY THIS DEED:

1. **I IRREVOCABLY NOMINATE CONSTITUTE AND APPOINT** the Developer or its assignee to be my attorney (“the attorney”) **TO PERFORM AND EXECUTE** to the exclusion of myself all of my powers, rights, duties, obligations and other functions which may be necessary to carry out the Development including and without limitation:
 - 1.1 complete the Development including stage 2 of the Development;
 - 1.2 effect the creation, registration or notification (as the case may be) of the Encumbrances;
 - 1.3 exercise the Purchaser’s voting rights as a member of the Body Corporate with respect to the Unit until such time as the Development has been completed (including registration or notification of Encumbrances);
 - 1.4 approve and deposit any plan, staged development plan, proposed unit development plan or redevelopment plan in relation to the Development until final completion of the Development; and
 - 1.5 withdraw any caveat lodged against any titles or derivative titles to the Land, or the Unit (except to the extent that a caveat is lodged pursuant to a Separate Loan Agreement.

2. **THIS** power of attorney is given for valuable consideration and shall operate, continue and be irrevocable until such time as the Developer or its assignee resigns as the attorney or until the date of issue of the last of the Principal Units and certificates of title for the Development (whichever date is the earlier).

3. **THE** Developer may appoint in its place one or more attorney or attorneys to exercise any or all of the powers and authorities hereby conferred and from time to time to revoke any such appointment and appoint any further one or more attorney or attorneys in place of such attorney.

4. I hereby ratify and confirm and agree to ratify and confirm all deeds, acts and things done and performed by the Developer or its assignee as the attorney.

5. **WHILE** this power of attorney remains in force and effect I agree that I shall not sell, transfer or mortgage the Unit or enter into any agreement which would support a caveat on the title to the Unit or the Land except to a transferee or mortgagee or other interested party who has first agreed to be bound by the agreements on my part contained in this Deed and who executes a power of attorney in favour of the Developer or its nominee or assignee in the same form and for the same duration as contained in this Deed.

SIGNED by me as a Deed in the presence of:

(Signature)

Witness sign

Witness Print name

Occupation

Address

