

**THE WELLINGTON COMPANY LIMITED**

**TARANAKI WHANUI LIMITED**

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**VICTORIA QUARTER DEVELOPMENT  
LIMITED PARTNERSHIP AGREEMENT**

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**PARTIES**

1. **THE WELLINGTON COMPANY LIMITED** at Wellington, New Zealand (**TWC**)
2. **TARANAKI WHANUI LIMITED** at Wellington, New Zealand (**TWL**)

**BACKGROUND**

- A. TWC and TWL have discussed a potential joint venture to acquire, develop and subdivide suitable land.
- B. TWC and TWL have identified the Land for the Development and have agreed, that subject to certain Conditions (as that term is defined below), to establish a limited partnership to carry out the proposed Development.
- C. TWC and TWL wish, on the satisfaction of the Conditions:
  - (a) to establish and register the Limited Partnership, which will be governed by the Act and this agreement, with the General Partner as the general partner and the Limited Partners as the limited partners; and
  - (b) for the Limited Partnership to carry on the Business in accordance with this agreement.

**THIS AGREEMENT RECORDS THAT:**

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this agreement, unless the context indicates otherwise:

**Accounting Period** means each 12 month period commencing on the day immediately following the Balance Date and ending on and including the Balance Date in the immediate following year and, in the case of the first Accounting Period, commencing on the date of registration of the Limited Partnership and ending on the first Balance Date or, in all other cases, on the day following the preceding Balance Date;

**Act** means the Limited Partnerships Act 2008;

**Affiliate** means any entity which in relation to the person concerned is:

- (a) a Holding Company or a Subsidiary of that person or another Subsidiary of that Holding Company;
- (b) any company, body corporate, trust, limited partnership, person or partnership where 50% or more of the votes exercisable, directly or indirectly, at a meeting or partners meeting, or more than 50% of the profits of which are controlled, or received, directly or indirectly by such person; or
- (c) any company, body corporate, trust, partnership, limited partnership or person which, directly or indirectly, controls, is controlled by or is under common control of or with the person;

**Auditors** means such firm of chartered accountants as appointed pursuant to clause 13.3 to act as auditors to the Limited Partnership;

**Balance Date** means 30 June or (in the case of the final Accounting Period) the date when the Limited Partnership is terminated in accordance with the Act;

**Bill Rate** means:

- (a) in respect of any day of a month, the average of the bid rates for 90 day bank accepted bills of exchange, expressed as a percentage per annum (to two decimal places) as quoted on Reuters page BKBM or any successor page displaying substantially the same information (subject to manifest error) at 10.45 am on the first Business Day of the month in respect of which the rate is to be calculated; or
- (b) if this rate does not appear on that Reuters page on that Business Day, the average of the mean bid and offered rates of Westpac New Zealand Limited for bank bills of exchange having a tenor of 90 days at 10.45 am on that Business Day;

**Budget** has the meaning given to it in the Development Management Agreement or as otherwise amended, or deemed to be amended in accordance with clause 14.2(c)(ii);

**Business** means the business of the Limited Partnership set out in clause 3.9;

**Business Day** means a day other than a Saturday or Sunday or public holiday in Auckland;

**Capital** means amounts properly determined by the General Partner to be in the nature of capital (including capital gains);

**Capital Contribution** means the Initial Capital Contribution and the Excess Capital Contribution;

**Committed Capital** means the Initial Committed Capital and the Excess Committed Capital (if any and as applicable);

**Conditions** mean the condition precedent set out in clause 2.1;

**Conflict of Interest** means an actual or potential conflict of interest between:

- (a) the General Partner, a Limited Partner or any respective Affiliate; and
- (b) the Limited Partnership;

**Constitution** means the constitution of the General Partner as adopted or amended from time to time by the General Partner, and being in the form at the time of entry into this agreement as set out in Schedule 4;

**Defaulting Partner** has the meaning set out in clause 5.2;

**Delinquent Payor** has the meaning set out in clause 5.1;

**Development** has the same meaning as set out in the Development Agreement;

**Development Costs** has the meaning set out in the Development Agreement (but, for the purposes of providing the services under the Development Agreement;

**Development Agreement** means the development management agreement to be entered into between the Limited Partnership and [ ] attached as Schedule 3;

**Manager** means the development manager appointed to manage the Development under the Development Agreement;

**Dispute Notice** has the meaning set out in clause 15.11;

**Drawdown Notice** means a notice served by the General Partner on the Limited Partners pursuant to clause 4.3, or deemed to have been served, calling for contributions of Committed Capital in accordance with this agreement;

**Excess Capital Contribution** means, in respect of any or all of the Partners, the total of all Excess Committed Capital that, pursuant to a Drawdown Notice, has been paid or contributed to the capital of the Limited Partnership by the Partner(s) in cash or (by agreement with the General Partner) in kind, from time to time in accordance with this agreement;

**Excess Committed Capital** means:

- (a) in respect of all the Partners, the amount in NZ dollars contributed, or agreed to be contributed, to the capital of the Limited Partnership by those Partners; and
- (b) in respect of a Partner, the amount in NZ dollars contributed, or agreed to be contributed, to the capital of the Limited Partnership by that Partner,

(including any part of such amount paid or contributed as Excess Capital Contribution) as agreed or determined after the date of this agreement under clause 4.5(b) and otherwise in accordance with this agreement (and having regard to the principles in clause 4.6);

**Force Majeure** means, in relation to either party (**Affected Party**) an event or circumstance which is beyond the reasonable control of the Affected Party, including any:

- (a) act of God;
- (b) strike, lock out or other industrial disturbance by or amongst employees of a person other than the Affected Party;
- (c) act of public enemy, or declared or undeclared war or threat of war;
- (d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party); or
- (e) governmental or regional or local authority restraint, legislation or by law,

but does not include any:

- (f) event or circumstance which could have been avoided by the exercise, by the Affected Party, of Good Industry Practice; or
- (g) lack of funds or authority or power on the part of the Affected Party;

**General Partner** means the general partner of the Limited Partnership;

**Good Industry Practice** means, in relation to any activity, the exercise of a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in New Zealand in the same type of activity, under the same or similar circumstances;

**Governmental Agency** means any government or local authority or body;

**GST** means goods and services tax as defined under the Goods and Services Tax Act 1985;

**Holding Company** has the meaning given in section 5 of the Companies Act 1993;

**Income** means all profits, interests, dividends and other benefits of the Limited Partnership properly determined by the General Partner to be in the nature of income (but excluding Capital);

**Initial Capital Contribution** means, in respect of any or all of the Partners, the total of all Initial Committed Capital that, pursuant to a Drawdown Notice, has been paid or contributed to the capital of the Limited Partnership by the Partner(s) in cash or (by agreement with the General Partner) in kind, from time to time in accordance with this agreement;

**Initial Committed Capital** means:

- (a) in respect of all the Partners, the amount in NZ dollars agreed to be initially contributed to the capital of the Limited Partnership by those Partners; and
- (b) in respect of a Partner, the amount in NZ dollars agreed to be initially contributed to the capital of the Limited Partnership by that Partner,

(including any part of such amount paid or contributed as Initial Capital Contribution) on the date of this agreement as set out in Schedule 1;

**Initial Limited Partners** means TWC and TWL;

**Land** has the meaning set out in the SPA;

**Limited Partner** means the Initial Limited Partners for so long as they remain a limited partner of the Limited Partnership;

**Limited Partner Reserved Matters** means any one of the following:

- (a) amending any of the terms of this agreement (other than in accordance with clause 15.3);
- (b) any change to the nature and scope of the Business;
- (c) removing the General Partner;
- (d) approving a replacement General Partner;
- (e) any change in capital structure of the Limited Partnership, including any issue, redemption or purchase of any interests in the Limited Partnership or any issue

of new Limited Partnership Shares other than in accordance with this agreement;

- (f) solvent liquidation, winding-up, dissolution, restructuring, reorganisation or assignment to its creditors or any similar transaction of the Limited Partnership;
- (g) terminating the Limited Partnership (other than in accordance with clause 11.3);
- (h) adding or removing a Limited Partner; or
- (i) any matter that otherwise requires a Unanimous Resolution under this agreement;

**Limited Partnership** means the limited partnership to be incorporated and established in accordance with clause 3;

**Limited Partnership Shares** means each Limited Partner's respective Partnership Interest, expressed as a number of shares and as specified from time to time in the Partnership Share Register during the term of this agreement;

**Losses** means a loss of Income or Capital;

**Ordinary Resolution** means a resolution of the Limited Partnership passed:

- (a) by written resolution signed (in one or more documents) by the Limited Partner(s) holding more than 50% of the total number of Limited Partnership Shares; or
- (b) at a Partners' meeting by those Limited Partner(s) holding more than 50% of the total number of Limited Partnership Shares,

in each case excluding a Defaulting Partner and its Limited Partnership Shares where applicable pursuant to clause 5.2;

**Partner** or **Partners** means the General Partner and/or all or any of the Limited Partners as the context may require;

**Partnership Assets** means all of the assets of the Limited Partnership including the rights to any unpaid Capital Contributions;

**Partnership Interest** has the meaning set out in the Act;

**Partnership Share Register** means the register established and maintained under clause 3.8 and initially in the form set out in Schedule 1;

**Pro Rata (Excess Committed Capital)** means on a pro rata basis in proportion to the respective Excess Committed Capital;

**Pro Rata (Initial Committed Capital)** means on a pro rata basis in proportion to the respective Initial Committed Capital;

**Registrar** means [ Registrar of Companies in New Zealand;

**SPA** means as defined in the Development Agreement;

**Subsidiary** has the meaning given in section 5 of the Companies Act 1993;

**Terminating Event** means any of the events set out in clause 11.3;

**Transaction Documents** means:

- (a) this agreement;
- (b) the Constitution; and
- (c) the Development Agreement; and
- (d) the SPA.

**Unanimous Resolution** means a resolution of the Limited Partnership:

- (a) passed by written resolution signed (in one or more documents) by all of the Limited Partners; or
- (b) passed unanimously at a Partners' meeting by those Limited Partner(s),

but in all cases excludes a Defaulting Partner when relevant under clause 5.2.

**Winding Up Event** means any circumstances where:

- (a) the Development Agreement has been validly terminated in accordance with its terms; and
- (b) the Crown has exercised its call option over all, but not some of, of the Land owned by or transferred to the Limited Partnership in accordance with the Development Agreement; and
- (c) no Developed Buildings are otherwise in existence or continue to be owned by the Limited Partnership at the time of the termination of the Development Agreement (for the purposes of this definition, the term "Developed Building" has the meaning given to it in the Development Agreement).

1.2 **Construction:** In the construction of this agreement, unless the context requires otherwise:

- (a) capitalised terms will have the meaning set out in this agreement or as are otherwise defined in the Development Agreement (as applicable);
- (b) the Background and schedules form part of this agreement;
- (c) all amounts are plus GST, if any;
- (d) headings appear as a matter of convenience and do not affect the construction of this agreement;
- (e) references to clauses are references to clauses in this agreement, unless stated otherwise;
- (f) including and similar words do not imply any limitation;
- (g) a reference to a person includes a company, limited partnership, and also any body of persons, whether corporate or unincorporated and includes their representatives, executors and permitted assigns;



- (h) references to dollars and \$ are references to New Zealand dollars and all amounts payable under this agreement are payable in New Zealand dollars;
- (i) the singular includes the plural and vice versa, and words importing one gender include the other genders; and
- (j) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations.

## 2. **CONDITIONS**

2.1 **Agreement Conditional:** This agreement is conditional on the following:

- (a) the Limited Partnership entering into and executing the Development Agreement; and
- (b) the adoption of the Constitution by the Limited Partners.

2.2 **Fulfilment of Conditions:** The parties will each use all reasonable endeavours to ensure that the Conditions in clause 2.1 are fulfilled at the earliest reasonable opportunity.

2.3 **Consequences of Non Fulfilment:** If the Conditions are not fulfilled or waived on or before [ ], then either party may terminate this agreement by written notice to the other party, in which case this agreement will end, and no party will have any claim against any other party arising under or in connection with this agreement, except in respect of any breach of this agreement which occurs prior to such termination.

## 3. **ESTABLISHMENT OF THE GENERAL PARTNER AND THE LIMITED PARTNERSHIP**

Subject to the Conditions being fulfilled or waived on or before the Condition Date, TWC and TWL agree:

3.1 **Establishment of GP and LP:** to apply to incorporate and establish:

- (a) the Limited Partnership; and
- (b) the General Partner;

3.2 **Adoption of Constitution:** to procure the General Partner to adopt the Constitution;

3.3 **Transaction Documents:** to procure the General Partner to (as applicable):

- (a) (and to the extent it is a party to the relevant document) enter into; and
- (b) use its reasonable endeavours to procure all other relevant parties (as applicable) to enter into,

all of the Transaction Documents on or about (but in any event as soon as possible after) the date of this agreement; and

3.4 **Initial Transactions:** procure the General Partner (on behalf of the Limited Partnership) to enter into the Development Agreement,

on the basis that:

3.5 **Name:** the name of the:

- (a) Limited Partnership will be Victoria Quarter Development Limited Partnership; and
- (b) General Partner will be Miro Street Limited;

3.6 **Registered Office:** the registered office of the:

- (a) Limited Partnership will be [ ] or, subject to section 68 of the Act, such other place as the General Partner from time to time determines; and
- (b) General Partner will be [ ] or, subject to section 187 of the Companies Act 1993, such other place as the directors of the General Partner from time to time determine;

3.7 **Address for Service:** the address for service of the:

- (a) Limited Partnership is to be [ ], subject to section 71 of the Act, such other place as the General Partner from time to time determines; and
- (b) General Partner is to be [ ], subject to section 193 of the Companies Act 1993, such other place as the directors of the General Partner from time to time determine.

3.8 **Compliance with the Law:** the General Partner must, subject to its obligations under the Act, to the extent that it is reasonably able to do so, procure that:

- (a) particulars of any relevant changes in the composition, terms or details of the Limited Partnership are notified to the Registrar in accordance with the Act; and
- (b) the requirements of the Act and of any other legislation or regulations applicable to the Limited Partnership are met appropriately;

3.9 **Business:** the business of the Limited Partnership will be to:

- (a) acquire and develop the Land and conduct the Development pursuant to the Development Agreement;
- (b) upon any stage of the Development being completed, to progressively sell individual houses or other saleable units in the Development;
- (c) undertaking any other activity unless unanimously determined by the Limited Partners, not prohibited by the Act, and
- (d) carry out those activities set out in Schedule 2;

3.10 **Business Activity:** the Limited Partnership may execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as in the opinion of the General Partner be necessary or advisable in order for it to carry out the Business; and

- 3.11 **Duration:** the Limited Partnership will continue in accordance with the Act until it is removed from the register by the Registrar at which point there will be no partnership between any or all of the Partners.

#### 4. **CAPITAL CONTRIBUTIONS**

- 4.1 **Capital Contributions:** Subject to clauses 2 and 3, the Limited Partners must contribute the Committed Capital in such amounts as are determined and called for by the General Partner in accordance with clauses 4.3, 4.4, and 4.5 (and having regard to the principles in clause 4.6). Each Limited Partner must contribute its Committed Capital without set-off or deduction in such amounts and on such dates as may be determined and called for by the General Partner.

- 4.2 **Initial Committed Capital:** The Initial Committed Capital of each Limited Partner is as set out in Schedule 1.

- 4.3 **Drawdown Notices:** The General Partner may at any time, by giving not less than 20 Business Days' prior written notice to the Limited Partner(s) (as applicable), call for payment of any previously uncalled Committed Capital under clauses 4.4 and 4.5, provided that:

- (a) the General Partner will be deemed to have called for any previously uncalled Committed Capital in accordance with the Budget (as that term is defined in the Development Management Agreement) in accordance with any staging or timing requirements set out in that Budget;
- (b) any Limited Partner may, as nominee for and on behalf of the General Partner, give any written notice required in accordance with this clause 4.3 to call for any previously uncalled Committed Capital in the manner contemplated by this clause; and
- (c) all Drawdown Notices will specify the amount of the drawdown.

- 4.4 **Initial Drawdowns:** The General Partner will call the Initial Committed Capital as follows:

- (a) **[\$Insert]** Pro Rata (Initial Committed Capital), so that such amount is due and payable to the Limited Partnership within 10 Business Days after the incorporation of the Limited Partnership under clause 3.1(a) to fund the initial costs of the Limited Partnership in respect of the Development; and
- (b) as called upon, **[\$Insert]** Pro Rata (Initial Committed Capital) in accordance with the Budget (as approved in accordance with the Development Management Agreement).

- 4.5 **Subsequent Drawdowns:** Following completion of the drawdowns pursuant to clause 4.4:

- (a) the General Partner will call the balance (in one or more tranches) of Initial Committed Capital Pro Rata (Initial Committed Capital); and
- (b) if the General Partner requires further capital for the Limited Partnership (having regard to the feasibility, Budget and the actual costs to be incurred to successfully complete the Development), then subject to the Limited Partners agreeing to contribute Excess Committed Capital or being deemed to have agreed to contribute Excess Committed Capital in accordance with clause 15.2,

the General Partner will call any Excess Committed Capital on a Pro-Rata (Excess Committed Capital) basis.

4.6 **Excess Committed Capital:** The parties acknowledge and agree that the following principles will apply should the need arise for Excess Committed Capital to be committed to the Limited Partnership:

- (a) a Limited Partner will have an obligation to contribute Excess Committed Capital to the Limited Partnership that the Limited Partners have agreed to contribute, or have been deemed to have agreed to contribute in accordance with clause 15.2, on a Pro-Rata (**Excess Committed Capital**) basis;
- (b) if any Limited Partner contributes Excess Committed Capital to the Limited Partnership then the Limited Partner concerned will be entitled to receive the repayment of its Excess Committed Capital (plus any interest expense on the Excess Committed Capital contributed under clause 7.2(b)(i)) as a priority payment ahead of the payment of any Capital or Income by the Limited Partnership to the Limited Partners in the manner set out in clause 7.2(b); and
- (c) a failure by a Limited Partner to pay any Excess Committed Capital will constitute a default pursuant to clause 5.2 (and if there is such a default by a Limited Partner, another Limited Partner may elect, instead of exercising its rights in clause 5.3, to contribute the Excess Committed Capital which is due and owing and recover such contribution in accordance with clause 4.6(b)).

4.7 **Maintenance of Register:** The General Partner will create and maintain a register of the Limited Partners and their respective Initial Committed Capital, Excess Committed Capital, Capital Contribution and Limited Partnership Shares.

4.8 **Register as Evidence of Legal Title:** Subject to section 22 of the Act, the entry of the name of a person in the Partnership Share Register as holder of a Limited Partnership Share is prima facie evidence that legal title to the Limited Partnership Share vests in that person.

4.9 **Limited Partnership Shares:** Each Limited Partner will hold:

- (a) one Limited Partnership Share per dollar of its Initial Committed Capital; and
- (b) the same number of General Partner Shares as it holds Limited Partnership Shares.

4.10 **No Interest Payable:** No interest is payable to Partners on their Initial Committed Capital.

## 5. DEFAULTING PARTNERS

5.1 **Default in Payment of Initial Committed Capital or Excess Committed Capital:** Without limiting any legal rights of the Partners and the Limited Partnership, if a Limited Partner (**Delinquent Payor**) fails to pay all or some of its Initial Committed Capital or Excess Committed Capital called pursuant to a Drawdown Notice (the amount in arrears being the **Default Amount**) within 10 Business Days of the due date for payment of that Initial Committed Capital or Excess Committed Capital, the other Limited Partner (**Other Limited Partner**) may as agent for and on behalf of the General Partner give the Delinquent Payor notice requiring it to pay the Default Amount within 5 Business Days. If the Delinquent Payor, after receiving notice requiring it to pay the

Default Amount, fails to comply with the notice within 5 Business Days of being notified, then the Other Limited Partner may as agent for and on behalf of the General Partner give notice of that fact to the Other Limited Partner.

**5.2 Default:** If a Limited Partner (**Defaulting Partner**):

- (a) is a Delinquent Payor and fails to pay the amount of Initial Committed Capital or Excess Committed Capital in accordance with a notice from the General Partner issued in accordance with clause 5.1;
- (b) has committed a material breach of this agreement and, where that breach is reasonably capable of being remedied within 5 Business Days, fails to comply with an earlier written notice given by any other party:
  - (i) specifying that breach; and
  - (ii) requiring that the Limited Partner remedy that breach within the period specified in the earlier notice (which, in order for that notice to be effective, must be at least 5 Business Days after receipt of the earlier notice); or
- (c) has committed a material breach of this agreement, where that breach is not reasonably capable of being remedied by the Limited Partner within 5 Business Days,

then:

- (d) the Defaulting Partner may not attend a meeting (or must excuse themselves from any relevant part of a meeting) of the Partners or participate in a Unanimous Resolution to the extent that it relates to that Defaulting Partner and the Defaulting Partner will not be included among the Partners for the purposes of calculating the total number of Limited Partnership Shares on issue;
- (e) any director appointed by the Defaulting Partner may not attend any meeting of the directors (or must excuse themselves from any relevant part of a meeting) and will be excluded for the purposes of calculating any quorum requirements or requirements to passing any resolution under the Constitution of the Limited Partnership;
- (f) all distribution rights of the Defaulting Partner under this agreement and the Act are suspended until it pays the Default Amount; and
- (g) provided that the Other Limited Partner is not, at the time of giving any notice under clause 5.1 or 5.2(b), or at the time of the breach pursuant to clause 5.2(c), in default of any of its obligations under this agreement, then the Defaulting Partner will be deemed to have granted to the Other Limited Partner an option to acquire all (but not some) of the Defaulting Partner's Limited Partnership Shares (**Option**) in accordance with clause 5.3.

**5.3 Exercise of Option:** The Option may be exercised by the Other Limited Partner for so long as the Defaulting Partner remains a Defaulting Partner under clause 5.2 (**Exercise Period**) as follows:

- (a) the Option will be exercised by the Other Limited Partner giving written notice to the Defaulting Partner at any time during the Exercise Period (**Exercise Notice**), which will state:
  - (i) the number of Limited Partnership Shares the subject of the Exercise Notice (being all, and not some of, the Defaulting Partner's Limited Partnership Shares as at the date of the Exercise Notice) (**Option Shares**);
  - (ii) the aggregate exercise price (**Exercise Price**) payable by the Other Limited Partner to the Defaulting Partner, being an amount equal to:
    - (aa) the sum of the Defaulting Partner's Initial Capital Contribution and Excess Capital Contribution;
    - (bb) less any amounts previously paid by the Limited Partnership to the Defaulting Partner by way of a distribution of any Income or Capital; and
    - (cc) less the Defaulting Partner's Pro Rata (**Initial Capital Contribution**) share of any costs payable by the Limited Partnership under clause 6.4, including any costs incurred by the Limited Partnership that have not yet been invoiced to the Limited Partnership; and
  - (iii) the date on which the Exercise Price will be paid by the Other Limited Partner to the Defaulting Partner (the actual date of payment being the **Completion Date**) being no later than 5 Business Days after the date of the Exercise Notice. Following payment of the Exercise Price on the Completion Date, the General Partner will update the register of Limited Partners to reflect the transfer of the Option Shares to the Other Limited Partner and the Defaulting Partner will return to the Other Limited Partner all Confidential Information that relates to the Other Limited Partner or the Limited Partnership; and
- (b) provided that if the Defaulting Partner is no longer a Defaulting Partner under clause 5.2 at any time prior to the Completion Date, the Option (and any corresponding Exercise Notice) will immediately be deemed to have expired and will lapse.

5.4 **Rights Reserved:** If a Limited Partner becomes a Defaulting Partner, the General Partner may, at its sole discretion, pursue any and all other rights and remedies available to it and the Limited Partnership against the Defaulting Partner.

5.5 **Disposal of Option Shares:** If the Defaulting Party fails to comply with its obligations relating to the purchase of the Option Shares, then with effect from the date of any such failure, the Defaulting Party irrevocably appoints and authorises the Other Limited Partner in respect of the purchase of the Option Shares to act as its agent (with the full authority to bind the Defaulting Party) to exercise all powers (including doing all things and signing all documents) necessary to give effect to any obligations of the Defaulting Party in relation to the purchase of the Option Shares (even if the Other Limited Partner has a conflict of interest in exercising these powers and/or has a direct interest in the means or result of that exercise of powers).

## 6. **RIGHTS AND DUTIES OF THE PARTNERS**

## 6.1 **Management:**

- (a) The General Partner has exclusive responsibility for the management and control of the business and affairs of the Limited Partnership and, subject to the terms of this agreement:
  - (i) must devote as much of its time and attention as is reasonably required for the management of the Business;
  - (ii) must procure that all filings and registrations required in relation to the Limited Partnership pursuant to the Act are promptly made;
  - (iii) must operate the Limited Partnership in accordance with this agreement;
  - (iv) subject to clause 6.1(b), may consider, but is not required to follow or give effect to, any resolutions, advice or recommendations of the Limited Partners; and
  - (v) will act as the project control committee in relation to the Development on the basis that it will:
    - (aa) provide a forum for communication between any Limited Partners;
    - (bb) monitor and observe the progress of the Development and the performance of the Development Manager under the Development Agreement and, where appropriate, instruct and direct the Development Manager;
    - (cc) receive, consider and provide feedback on any reports required to be produced by the Development Manager pursuant to the Development Agreement; and
    - (dd) act as an initial forum to discuss issues and identify acceptable solutions in relation to the operation of the Limited Partnership and the Development,

provided that any decision by the General Partner will be only binding on the Limited Partnership and will not be binding on the Limited Partners unless expressly agreed in writing by the Limited Partners.

- (b) In respect of the Limited Partner Reserved Matters, the General Partner must only proceed with, and will be bound by and must consider, follow or give effect to the resolutions, advice or recommendations made by the Partners pursuant to, a Unanimous Resolution in accordance with this agreement and the terms of the Unanimous Resolution.
- (c) Subject to clauses 6.1(d) and 6.1(e) and the Act, the General Partner may delegate the general administration services and other secretarial services required by the Limited Partnership in connection with the Business to any person, including an Affiliate of a Limited Partner.
- (d) The General Partner will remain responsible and liable for the performance of its obligations under the Act and this agreement, notwithstanding any

delegation. The General Partner is responsible for the acts or omissions of any delegates when fulfilling or exercising (or purporting to fulfil or exercise) powers or obligations of the General Partner, as if they were the acts of the General Partner.

- (e) The General Partner must monitor and review the activity of any delegates of the General Partner.

6.2 **Use of Funds:** The General Partner will ensure that the Capital Contributions contributed as a result of the calls referred to in clause 4.4 and clause 4.5 will be utilised by the Limited Partnership solely for the purposes for which those funds were called as set out in clauses 4.4 and 4.5.

6.3 **Right to Borrow:** Without prejudice to the generality of clause 6.1, the Limited Partnership may only borrow funds:

- (a) to assist with the Development, provided that such debt is consistent with the Budget and business plan of the Limited Partnership and will be non-recourse to the Limited Partners; and
- (b) if a Limited Partner fails to pay all or some of a Capital Contribution called pursuant to a Drawdown Notice, at the Delinquent Payor's cost and expense (including interest expense), up to the amount of the defaulted Capital Contribution.

6.4 **Fees and Expenses:**

- (a) The Limited Partnership is to bear:
  - (i) the reasonable establishment and registration costs of the Limited Partnership including those of the General Partner and the Initial Limited Partners, including legal costs;
  - (ii) all fees, costs and expenses (including GST) associated with operating the Limited Partnership including negotiating the Development Agreement and the Development Agreement, reporting, regulatory, accounting and legal costs, audit and certification fees and the costs of the Limited Partnership's administration together with any legal and other professional costs (including the fees for reporting accountants) relating to the Business, insofar as they are not recoverable from any other person;
  - (iii) except as otherwise provided, all taxes, duties and all fees or other charges levied by any Governmental Agency against the Limited Partnership in connection with its activities; and
  - (iv) the costs of an independent expert appointed under the constitution of the General Partner where and to the extent the appointment relates to the Business.
- (b) The Limited Partnership is responsible for meeting all costs and expenses (including GST) incurred in relation to the production and distribution of the reports and accounts referred to in clause 14 and any other valuations or certifications required pursuant to this agreement including the fees of the Auditors.



- (c) To the extent any of the fees referred to in clauses 6.4(a) and 6.4(b) are paid by any other Partner on behalf of the Limited Partnership, the Limited Partnership will only be entitled to reimburse that Partner if the General Partner is satisfied the Limited Partnership will meet the requirements for a distribution set out in clause 8.3.

#### 6.5 **Limited Partners:**

- (a) Notwithstanding any other provisions of this agreement, the Limited Partners must not take part in the management or control of the business and affairs of the Limited Partnership, and have no right or authority to act for the Limited Partnership or to take any part in or in any way interfere in the conduct or management of the Limited Partnership or to vote on matters relating to the Limited Partnership except as expressly provided for in this agreement and where that is not prohibited by the Act.
- (b) Subject to any legal (including contractual) obligation requiring otherwise, the Limited Partners must on request by the General Partner promptly provide all information to the General Partner as may be reasonably necessary for the operation of the Limited Partnership including any registration, regulatory and taxation requirements.

#### 6.6 **Exclusion of Fiduciary Duties:**

- (a) Except as specifically outlined in this agreement, no Partner owes fiduciary duties or any other duties at law or in equity to another Partner or the Limited Partnership as a result of being a Partner or being a party to this agreement, and the application of section 49 of the Act is excluded.
- (b) The General Partner must not compete with the Business.

6.7 **Best Interests:** Subject to clause 6.6, the General Partner must act in good faith, openly and honestly and in the best interests of the Limited Partnership in conducting the Business.

6.8 **Exclusivity:** The functions and duties which the General Partner undertakes on behalf of the Limited Partnership are not exclusive to the Limited Partnership and the General Partner may perform similar functions and duties for itself and for others.

#### 6.9 **Restriction on Withdrawal and Transfer of Capital Contribution:**

- (a) A Limited Partner is not entitled to withdraw any or all of its Capital Contribution from the Limited Partnership.
- (b) A Limited Partner is not entitled to transfer any or all of its Capital Contribution except if that Limited Partner is carrying out an assignment or transfer of its Partnership Interest in accordance with clause 9.2.

### 7. **ALLOCATION OF INCOME, CAPITAL AND LOSSES**

7.1 **Allocation of Gains and Losses:** The General Partner will ensure that all Income, Capital and Losses are:

- (a) allocated in accordance with this clause 7; and

- (b) recorded in the accounts described in clause 7.4.

**7.2 Determining Amounts of Income, Capital and Losses to be Allocated:** For the purposes of determining Income, Capital and Losses to be allocated between Partners, such amounts are to be allocated as follows:

- (a) firstly:
  - (i) the fees, costs, expenses, liabilities, tax (other than income tax of the Limited Partners), contingencies; and
  - (ii) any other Losses of the Limited Partnership,are to be allocated between the Limited Partners' Pro Rata (Initial Capital Contribution); and
- (b) then secondly, all Income and Capital is to be allocated as follows (and in the following descending order of priority):
  - (i) to a Limited Partner for an amount equal to any payment it has made as a result of another Limited Partner failing to pay any Excess Committed Capital pursuant to clause 4.6(c) plus interest; and then
  - (ii) to the Limited Partners' Pro Rata (Excess Capital Contribution) until all Excess Capital Contributions have been repaid in full by the Limited Partnership; and then
  - (iii) to the payment of an amount equal to the Excess Capital Contributions made to the Limited Partnership, to those Limited Partners who provided such Excess Capital Contributions, until all such amounts have been paid in full by the Limited Partnership; and then
  - (iv) to the Limited Partners' Pro Rata (Initial Capital Contribution) until all Initial Capital Contributions have been repaid in full by the Limited Partnership; and then
  - (v) to the Limited Partners pro rata to the number of Limited Partnership Shares held by each Limited Partner.

**7.3 Allocation of Liabilities:**

- (a) The Limited Partners have no personal obligation for the debts, liabilities or obligations of the Limited Partnership, except to the extent provided in the Act, this agreement (including contributing their respective Capital Contributions in full) or in other applicable laws, if any.
- (b) The General Partner is responsible for all the debts, liabilities and obligations of the Limited Partnership to the extent set out in the Act.

**7.4 Accounts:** Subject to the Act, the Limited Partnership must establish and maintain such accounts and records for each of the Partners as the General Partner determines and amounts must be credited or debited to and from these accounts as appropriate to reflect the allocation of Income, Capital and Losses of the Limited Partnership amongst the Partners on the basis set out in clause 7.1.

## 8. DISTRIBUTIONS

8.1 **Nature of Distributions:** For the purpose of this agreement, distributions of Income and Capital include:

- (a) all sums actually paid or distributed to the Partners from the Limited Partnership out of Capital or Income (without any deduction for any withholding tax payable by any person in respect of the amount paid or distribution costs or expenses incurred by or taxation payable by any Limited Partner in relation to such payments or distributions) and such payments or distributions are deemed to be made on the date of payment or distribution;
- (b) all distributions in kind to the Partners; and
- (c) all distributions in cash or in kind to the Partners following termination of the Limited Partnership.

8.2 **Distribution:** Subject to clause 8.3, the Limited Partnership must (as soon as possible) distribute all Income and Capital in accordance with the allocations to each Limited Partner under clause 7.2(b) (after payment of or making appropriate provision (if any) for Losses, fees, costs and expenses).

8.3 **Limitations on Distributions:** The General Partner must not cause the Limited Partnership to make any distribution pursuant to this clause 8:

- (a) unless there is cash available for such distribution;
- (b) in the case of a distribution in kind, unless there is relevant property available for such distribution;
- (c) unless the Limited Partnership and the General Partner will comply with the provisions of the Act relating to such distributions; and
- (d) which, in the reasonable opinion of the General Partner, would or might leave the Limited Partnership with insufficient funds or without suitable property to meet any present or future contemplated obligations, working capital requirements, liabilities or contingencies including obligations to the General Partner or otherwise to protect the interests of the Limited Partners.

## 9. ASSIGNMENT OF AND DEALING WITH INTERESTS

9.1 **Assignment of Interest of the General Partner:**

- (a) The General Partner must not sell, assign, transfer, exchange, pledge, encumber, grant security over or otherwise dispose of or grant any participation in all or any part of its Partnership Interest (if any) or voluntarily dissolve or withdraw as the General Partner, except as may be approved by a Unanimous Resolution.
- (b) Subject to the provisions of clause 9.1(a), any General Partner may be removed without cause by a Unanimous Resolution followed by notification to the Registrar of the removal in accordance with the Act.

- (c) Any replacement General Partner must be appointed by a Unanimous Resolution, with effect from registration of the appointment with the Registrar in accordance with the Act.

9.2 **Assignment of Interest of a Limited Partner:** Subject to clause 9.3, at no time may any Limited Partner (the **Transferor**) sell, assign, transfer, exchange, pledge, encumber, grant security over or otherwise dispose of or grant any participation in all or any of its Partnership Interest (including its Limited Partnership Shares), except (and subject at all times to clause 4.9):

- (a) to another Limited Partner; or
- (b) to an Affiliate of the Transferor.

9.3 **Assignment of Interest to Lender:** A Limited Partner (**First Party**) may grant in favour of a third party lender (**Lender**) a security over any receivables or money payable to the First Party under this agreement, provided that the security interest does not grant a security interest to the Lender over the First Party's Partnership Interest.

## 10. **CONFLICTS OF INTEREST**

10.1 If a Partner of the Limited Partnership experiences a Conflict of Interest, it must immediately disclose the existence of that Conflict of Interest to the remaining Partners and the Limited Partnership.

## 11. **TERMINATION**

11.1 **Termination of Development Management Agreement for Non-Satisfaction of Conditions:** The parties acknowledge and agree that if the Development Management Agreement is validly terminated for non-satisfaction of any condition set out in Part B in the Development Management Agreement, then either TWC or TWL may terminate this agreement on not less than 5 Business Days' prior written notice to the other, in which case clause 11.2 will apply.

11.2 **Effect of Termination Under Clause 11.1:** If this agreement is terminated pursuant to clause 11.1 by TWC or TWL (**First Party**), then the party who receives the notice of termination (**Second Party**) under clause 11.1 may elect in its sole discretion by written notice to the First Party within 10 Business Days to:

- (a) require the First Party to assign or novate all of the First Party's Partnership Interest to the Second Party; and/or
- (b) require the First Party to assign or novate all or some of any ancillary documents, resource consents, building consents, or approvals entered into by the First Party in connection with the Development to enable the Second Party to continue and complete the Development (**Development Agreement Documents**),

provided that if the Second Party:

- (c) elects to take an assignment or novation of all of the First Party's Partnership Interest or all or some of the Development Agreement Documents, it will pay to the First Party within 5 Business Days of receipt of the written notice to assign or novate all of the First Party's Partnership Interest or all or some of the

Development Agreement Documents under clause 11.2, the total amount paid by the First Party by way of any Capital Contribution to the Limited Partnership and if any costs have been incurred by the First Party in relation to the Development have not been reimbursed by the Limited Partnership, the amount of those costs) If there are any specific documents which do not permit an assignment or novation of the Development Management Agreement Documents to the Second Party, the parties agree to take all steps to first procure the consent of the other party to such document(s) to the assignment or novation (such assignment or novation to release the First Party from any residual liability under such document(s)) and if after using all commercially reasonable endeavours to do so, the parties are unsuccessful in procuring the consent of the other party, the parties will then take all steps to terminate any such documents; or

- (d) does not elect to take an assignment or novation of the Development Management Agreement Documents within 10 Business Days of receipt of the written notice to terminate this agreement under clause 11.1, the parties agree to take all steps lawfully available to them to terminate any documents and contractual commitments entered into by the Limited Partnership and to wind up or otherwise dissolve the General Partner and the Limited Partnership, on the basis that each party will be responsible for and will otherwise bear one half of the costs of the winding up or the dissolution of the General Partner and the Limited Partnership.

**11.3 Termination:** Subject to clause 11.4, the Limited Partnership and this agreement will terminate on the occurrence of any of the following events, without prejudice to any other rights or remedies:

- (a) by Unanimous Resolution to that effect;
- (b) if the Second Party (as defined in clause 11.2) does not elect to take an assignment or novation of the Development Management Agreement Documents within 10 Business Days of receipt of the written notice to terminate this agreement under clause 11.1 or does not obtain consent to such assignment or novation;
- (c) subject to the Act, if the General Partner is removed under this agreement and a replacement General Partner is not appointed under this agreement and the Act within 10 Business Days of that removal;
- (d) a notice being served by the General Partner on the Limited Partners following any change in the law as a result of which, in the reasonable opinion of the General Partner, the continuation of the Limited Partnership becomes unlawful, impractical or inadvisable;
- (e) a notice being served by the General Partner on the Limited Partners that no further Business will be carried out under the terms of this agreement and that all Partnership Assets have been disposed of and all liabilities of the Limited Partnership have been satisfied and the proceeds have been distributed pursuant to clause 8;
- (f) all of the parties to this agreement agree in writing to terminate this agreement;
- (g) any event otherwise specified as a terminating event in the Act, other than section 86(1)(b) of the Act, which is excluded;

(h) the Development is completed in accordance with the Development Management Agreement, the Limited Partnership has made all distributions in accordance with this agreement and any warranties given by the Limited Partnership have otherwise expired; or

(i) a Winding Up Event occurs,

in which case clause 11.4 will apply.

**11.4 Effect of Termination Under Clause 11.3:** On the occurrence of a terminating event under clause 11.3, no further Business is to be conducted by, or on behalf of, the Limited Partnership except for such action as is necessary for completing a transaction unfinished at the time of termination, winding-up of the affairs of the Limited Partnership and, subject to, and following any distribution made or to be made under, clause 8, the distribution of the Partnership Assets amongst the Partners in the manner contemplated by clause 7.2. Any costs incurred by the Limited Partnership under this clause 11.4 will be met by the Partners in proportion to their Limited Partnership Shares.

**11.5 Consequence of Termination:**

(a) In the event that this agreement is terminated pursuant to this clause 11 then, notwithstanding any other provisions of this agreement, the provisions of clauses 7, 8, 11.2, 11.4, 11.5, 15.1, 15.2, 15.4 and 15.7 and any other provisions of this agreement which are necessary for the performance of the obligations set out under those clauses, are to survive such termination.

(b) Termination of this agreement will be without prejudice to either party's rights and remedies in respect of any breach of this agreement by the other party, where the breach occurred before the termination of this agreement.

## **12. FORCE MAJEURE**

If and to the extent to which either party is unable to carry out any of its obligations under this agreement because of any event or circumstance which is, in relation to that party (Non Performing Party), a Force Majeure, the Non Performing Party will have no liability to the other party in respect of the non-performance by the Non Performing Party of such obligations, provided that:

(a) **Notice:** whenever the Non Performing Party becomes aware that such a result has occurred or is likely to occur, the Non Performing Party will notify the other party by written notice accordingly;

(b) **Best Endeavours:** each party will continue to use its best endeavours to perform its obligations as required under this agreement; and

(c) **Costs:** neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure,

and that any Condition Dates specified under this agreement will automatically be extended by an equivalent amount of time equal to the length of time of the Force Majeure Event.

## **13. ACCOUNTS, REPORTS AND AUDITORS**

### 13.1 **Account:**

- (a) The General Partner must prepare and approve financial statements of the Limited Partnership in respect of each Accounting Period in accordance with the Act and generally accepted accounting practice (as defined in the Financial Reporting Act 2013). The General Partner will, if required by any Limited Partner, cause such financial statements to be audited by the Auditor provided that the Limited Partner requiring such audit shall be liable for the costs of such audit.
- (b) A set of the financial statements including any report of the Auditors and a statement of accounting policies together with any relevant tax information in connection with the Limited Partnership will be provided to each Limited Partner as soon as practicable (but in any event within 5 months) following the end of each Accounting Period.

### 13.2 **Reports:** In addition to the reports provided under clause 13.1, the General Partner must ensure the following unaudited reports are provided:

- (a) quarterly reports to all Partners on the progress and conduct of the Business; and
- (b) Partner tax statements setting out each Limited Partner's share of any reasonable income and deductions of the Limited Partnership for the preceding Accounting Period within 120 Business Days of the end of each Accounting Period and other information reasonably required by each of the Partners to complete any New Zealand taxation returns in respect of their income or loss from the Limited Partnership.

### 13.3 **Auditors:** The Limited Partners may at any time by a Unanimous Resolution appoint an auditor (being a firm of chartered accountants) to act as auditors to the Limited Partnership, and may at any time by Unanimous Resolution replace an existing Auditor so appointed.

## 14. **MEETINGS OF PARTNERS**

### 14.1 **Procedure:**

- (a) On:
  - (i) the General Partner requiring a meeting; or
  - (ii) the written request of Partners representing 20% or more of all Limited Partnership Shares,the General Partner is to call a meeting of the Partners.
- (b) Notice of such meeting is to be given to each Partner by the General Partner, in the case of clause 15.1(a)/14.1(a)(ii), within 10 Business Days of receipt by the General Partner of such request, and the meeting will be held within 20 Business Days of the date on which such notice is received by the Partners, and not earlier than 10 Business Days from that date.
- (c) Each notice of a meeting of the Partners must state the time and the place at which such meeting will be held (such time and place to be reasonably selected

by the General Partner and such meeting may be held by telephone, internet or any other reasonable means which allows the participants to hear each other) and must state briefly the purpose of and the business to be transacted at the meeting.

- (d) A Limited Partner may, by written notice signed by the Limited Partner, appoint a representative to attend and vote on its behalf at a meeting. The notice must state whether the appointment is for a particular meeting or for a specified term.
- (e) A quorum for a meeting of Partners is present if Partners who represent at least 75% of Partnership Interests are present in person or by proxy, provided that if no quorum is present within 30 minutes after the time approved for a meeting, the meeting will be adjourned to the same day in the following week at the same time and place, and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Partners present will constitute a quorum.
- (f) Resolutions of the Partners will be passed by Ordinary Resolution unless this agreement or the Act requires a Unanimous Resolution.
- (g) A Unanimous Resolution regarding any Limited Partner Reserved Matters will bind the Limited Partnership and General Partner.
- (h) The Limited Partners present at a meeting may choose one of their number to chair the meeting.
- (i) A minimum of one meeting will be held each year.
- (j) Except as provided in this agreement and the Act, a meeting of the Limited Partnership may regulate its own procedure through the General Partner.

**14.2 Failure to Pass Unanimous Resolution Approving Increase to the Budget or Provision of Further Capital:** If the General Partner or one of the Limited Partners considers that the Limited Partnership requires any increase to the Budget or for the Partners to provide further excess capital to complete the Development, but the Limited Partners fail to agree, or are otherwise unwilling to agree to any increase to the Budget or to provide any Excess Committed Capital to the Limited Partnership, then:

- (a) a Limited Partner or the General Partner can require an independent expert to determine the amount required to complete the Development in accordance with the following:
  - (i) the independent expert will be a quantity surveyor of at least 7 years' experience, appointed jointly by the parties, and in the absence of agreement, either party can apply to the President for the time being (or his or her nominee) of the New Zealand Institute of Quantity Surveyors to appoint the independent expert;
  - (ii) the independent expert will act as an expert and not an arbitrator, and will act fairly and impartially in determining the matter;
  - (iii) the independent expert must give his or her determination in writing with reasons as soon as reasonably practicable, and a copy of the decision will be provided to the General Partner and any Limited Partners as soon as the decision is final; and



- (iv) the cost assessment of the independent expert will be final and binding, absent manifest error;
- (b) the General Partner will, within 10 Business Days of receipt of the independent expert's decision, provide the Limited Partners with a report outlining the available funds to the Limited Partnership, the costs identified by the expert required to complete the Development, any increases required to the Budget and the amount of any shortfall (the Shortfall); and
- (c) if a Shortfall is identified in the General Partner's report provided in accordance with clause 15.2(b)/14.2(c), then:
  - (i) the Limited Partners will be deemed to have approved, by way of Unanimous Resolution, an increase to the Budget by an amount equivalent to the amount recommended by the independent expert and/or (as applicable) the Limited Partners contributing the amount of the Shortfall by way of Excess Committed Capital; and
  - (ii) the General Partner will be deemed to be authorised to make a call on the Limited Partners for Excess Committed Capital equal to the amount of the Shortfall.

## 15. MISCELLANEOUS

### 15.1 Indemnification of the General Partner:

- (a) Subject to clause 15.1(b), to the extent allowed by law, the General Partner, and its officers (including employees and directors) have no liability for any loss incurred by the Limited Partnership or any Limited Partner howsoever arising in connection with the services provided by any of them pursuant to this agreement and each of them is, on demand, indemnified out of the Partnership Assets against any and all claims, liabilities (whether in contract or tort including negligence), costs or expenses (including legal fees) incurred or threatened to the extent relating to their role (direct or indirect) in respect of the Limited Partnership.
- (b) A person will not be indemnified under clause 15.1(a) with respect to any matter to the extent it results from that person's negligence, dishonesty, fraud, misconduct, illegal act or breach of this agreement.
- (c) In particular, but without prejudice to clause 15.1(a), the General Partner is, on demand, indemnified against any tax liability (including withholding taxes) in respect of tax on income or capital gains paid or allocated to any Limited Partner, such indemnity to be satisfied in the first instance by the Limited Partner concerned but, if not so satisfied, out of the Partnership Assets in which event the Limited Partnership will be subrogated to the rights of the General Partner against such Limited Partner.

- 15.2 **Third Party Rights:** The Partners and the Limited Partnership acknowledge that the provisions of clause 15.1 provide a benefit for the relevant third parties as set out in that clause for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017. Except as expressly set out in this agreement, no other provision of this agreement will provide a benefit to any third party for the purposes of the Contract and Commercial Law Act 2017.

- 15.3 **Variation of Limited Partnership Agreement:** This agreement may, with the consent of the General Partner, be amended by a Unanimous Resolution.
- 15.4 **Confidential Information:** The Partners and the Limited Partnership must not, and must use all reasonable endeavours to procure that neither they nor any person connected or associated with each such Partner or the Limited Partnership, (including any Affiliates), disclose to any person, firm or corporation (except legal, accounting and other professional advisers where appropriate confidentiality agreements (whether written or otherwise) have been obtained), or use to the detriment of the Limited Partnership or any of the Partners, any confidential information which may have come to its knowledge as a result of being a Partner of the Limited Partnership concerning:
- (a) the affairs of the Limited Partnership; or
  - (b) any of the Partners (including the identity of the Limited Partners),
- unless required to do so by law or by the rules or regulations of any relevant stock exchange or other relevant regulatory authority or any request from any tax authority.
- 15.5 **Notices:** Notices which may or are required to be given under this agreement by any party to another must be in writing and sent by e-mail, courier or by prepaid post, to the relevant party:
- (a) in respect of each Limited Partner:
    - (i) for notices by courier or by pre-paid post, at their registered office or address for service registered with the Companies Office (or similar authority) at the time of the notice; and
    - (ii) for notices by e-mail, at the e-mail address set out in the Partnership Share Register (or such other e-mail address as may be designated by notice addressed to the Limited Partnership); or
  - (b) in respect of the General Partner:
    - (i) for notices by courier or by pre-paid post, at their registered office or address for service registered with the Companies Office (or similar authority) at the time of the notice; and
    - (ii) for notices by e-mail, at the e-mail address designated by notice addressed to the Limited Partnership and each Limited Partner from time to time; and
  - (c) any notice sent by e mail is deemed to be received immediately, any notice sent by courier will be deemed to be received upon receipt and any notice sent by prepaid post will be deemed to be received 5 Business Days after the date of posting.
- 15.6 **Agreement Binding Upon Successors and Assigns:** Except as otherwise specified in this agreement, this agreement is binding upon the heirs, executors, administrators or other representatives, successors and permitted assigns of the parties to it.
- 15.7 **Governing Law:**

- (a) This agreement and the rights of the parties are governed by and construed in accordance with the laws of New Zealand.
  - (b) Each of the parties irrevocably agrees that the courts of New Zealand have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.
- 15.8 **Execution in Counterparts:** This agreement may be executed in counterparts (including by e-mail or PDF transmission) each of which is deemed to be an original, and is deemed to have been signed by, or on behalf of, a Limited Partner if the Limited Partner signs an application form or similar document evidencing a subscription for Limited Partnership Shares in a form accepted by the General Partner.
- 15.9 **Application of the Act:** Where this agreement is inconsistent with the Act and such inconsistency is not permitted or contemplated by the Act, the terms of the Act apply.
- 15.10 **Further Assurances:** The parties will each execute and deliver such other documents, pass such resolutions and do such further and other things as may be necessary to implement and carry out this agreement's intent including without limitation, exercising their respective best efforts to ensure any directors appointed by them to the General Partner act in accordance with this agreement's intent.
- 15.11 **Disputes:** If a dispute arises in respect of this agreement (except in relation to the need of the Limited Partnership for further Capital, which matter will be addressed in accordance with clause 15.2), then any party may, by notice (Dispute Notice) in writing to the other parties:
- (a) refer the dispute to the board (either of the relevant parties or of the General Partner) or (where the party has a Chief Executive Officer) the Chief Executive Officers of the relevant parties, who will negotiate with one another in good faith and use their reasonable endeavours to resolve such dispute to the mutual satisfaction of the parties within 10 Business Days;
  - (b) where a dispute is not resolved within the period referred to in clause 15.11(a), a party may submit the dispute to arbitration under the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule to that Act). The arbitration will be conducted by one arbitrator who is agreed by the parties. Where the parties fail to agree on an arbitrator within 3 Business Days of the submission to arbitration, either party may request that an appropriate person is nominated by the President for the time being of the New Zealand Law Society (having regard to the matters the subject of the dispute) and the parties will accept the nominated person as arbitrator. The decision of the arbitrator will be final and binding on the parties, and the costs of the arbitrator will (subject to any award by the arbitrator) be borne equally by them; and
  - (c) nothing in this clause 15.11 precludes any party from taking action to obtain urgent interlocutory relief.
- 15.12 **Costs:** Unless otherwise stated in this agreement, each party will bear its own costs and expenses incurred in connection with the negotiation, preparation and implementation of this agreement.

## **SIGNATURES**

**SIGNED** on behalf of **THE  
WELLINGTON COMPANY LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**SIGNED** by **TARANAKI WHANUI  
LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

## SCHEDULE 1

### FORM OF PARTNERSHIP SHARE REGISTER

**[TO BE COMPLETED]**

Limited Partner and address	Initial Committed Capital	Excess Committed Capital	Initial Capital Contribution	Excess Capital Contribution	Limited Partnership Shares	Proportion of Partnership Shares	Date of Issue/ Transfer of Limited Partnership Shares	Transfer Details (name of other party)	General Partner Shares
Taranaki Whanui Limited  Address: [ ], Email:						50%			
The Wellington Company Limited [ ], Email:						50%			
<b>TOTAL</b>									

## **SCHEDULE 2**

### **BUSINESS**

Without limiting the generality of clause 3.9, the business of the Limited Partnership will include:

- (a) acquisition of the Land on the terms set out in the Development Agreement, funded by the Initial Capital Contribution;
- (b) assigning or novating any consents obtained or applied for or contracts entered into by TWC, TWL or any Affiliate of those parties as set out in the Development Agreement;
- (c) production of a budget for the Development; and
- (d) contracting with [ ] as development manager of the Development to carry out those services specified in the Development Agreement as the Development Manager;
- (e) will invoice the Limited Partnership on a monthly basis for a development fee as detailed in the Development Agreement;
- (f) will keep records of the Development Costs (on an "open-book" basis) and provide regular reports to the General Partner (at no more than monthly intervals) updating the General Partner on progress with the Development.

**SCHEDULE 3**  
**DEVELOPMENT AGREEMENT**

**SCHEDULE 4**  
**CONSTITUTION**