

Disclosure to Purchaser

prior to entry into an Agreement for Sale and Purchase

We hereby acknowledge and consent to the following matters relative to the sale of the property located at:

Property Address 2/1 Aurora Street, Petone, Lower Hutt	Purchaser to Initial
1. That we are not an overseas buyer as defined by the Overseas Investment Act 2005, and no director, trustee or nominee under this Agreement for Sale and Purchase is an overseas buyer. <i>If you are an overseas buyer please strike out the word 'not' above. If you are an overseas buyer or are unsure as to your status, we recommend you seek legal advice before signing any offer.</i>	
2. That we were provided with the New Zealand Residential Property Sale and Purchase Agreements Guide .	
3. That we entered into this Agreement for Sale and Purchase freely and voluntarily, without any undue influence or duress , and Redcoats recommended to us and gave us reasonable opportunity to seek legal, tax, technical or specialist advice before signing. We understand that once signed, this will be a binding contract with only restricted rights of termination.	
4. That if we are signing this agreement on behalf of another party , we have authority to bind the party named as 'vendor' or 'purchaser' on the front page.	
5. That we were provided with a copy of the Record of Title to the property, and we were advised to have a Title Search done by our solicitor as a condition of any offer that we make, so that the Title could be explained in more detail.	
6. That we were advised to obtain our own LIM / Building Report and/or Toxicity Test . <i>If we require a Toxicity Test, we understand that we must first obtain the written permission of the vendor to conduct this test by using the appropriate condition in our offer, and that a Toxicity Test cannot be done as part of our Building Report. Also, that any report provided by the vendor <u>may not</u> be relied upon by a third party.</i>	
7. That we were provided with the following documents : AGM minutes 2022,2023,2024, Constitution Document, Company Share Lease Details	
8. That some insurance companies are not currently writing new business and we should check whether we can get insurance , either prior to submitting an offer or as a condition of our offer, particularly if the home is in or near an area GWRC identifies as at risk of sea level rise . We acknowledge the agent recommended we check the Wellington Water Web Map for flood risk in Hutt City: https://wellingtonwater.maps.arcgis.com/apps/MapSeries/index.html?appid=d2c1de318f464ef38a95d3e6438f4bc0 .	
9. That any house built of monolithic cladding, either Polystyrene or Harditex with a plastered finish and typically built between 1990 and 2006, may be prone to watertightness issues and Redcoats recommend we seek our own expert advice .	
10. That if the property is commercial or mixed use with a purchase price exceeding \$1 million , or a residential property with a purchase price exceeding \$7.5 million , we have been advised to seek specialist advice with regards to the Purchase Price Allocation (PPA). <i>(Note: a PPA addendum should be included in the sales agreement for affected property).</i>	
11. That if the property is on a Unit Title , we were provided with the Pre-Contract Disclosure Statement at least 24 hours prior.	
12. That all private rental housing (including boarding houses) must be compliant with the Healthy Homes Insulation Standard and the Residential Tenancies Act. Information can be found on tenancy.govt.nz .	
13. That neither we nor any person associated with us has a relationship as defined in section 137 of the Real Estate Agents Act 2008, with the licensee <i>(eg: the purchaser is related to a Professionals, Redcoats Limited staff member)</i> . OR Disclosure of relationship is:..... <i>(Complete and attach Form 2 under section 134 REAA 2008).</i>	
14. Agent disclosure of any relationship between the vendor and the licensee is: N/A <i>Applies where a person related to the licensee may get a financial benefit from the transaction – s 136 REAA 2008 (eg: the vendor is related to a Professionals, Redcoats Limited staff member). Note: A licensee means an agent, branch manager or salesperson.</i>	
15. Any other relevant disclosure: : This is a company share, please read constitution and all relevant documents, Contract is subject to board accepting new owner	
16. That Redcoats made us aware that there may be another offer being made on the property and we acknowledge that the offer we have made is our best offer and we have been made aware that we may not have a chance to make a better offer and that we may be unsuccessful if our offer is not accepted.	
17. That we have been made aware that if we are the successful purchasers, when the property reaches an unconditional status , Movinghub's concierge service will initiate contact to offer their services .	
18. That Redcoats adheres to all privacy legislation in New Zealand. A copy of our Privacy Policy is available at https://redcoats.professionals.co.nz/privacy-policy .	
19. That we have been made aware of Redcoats' complaints procedure , whereby if we have a complaint, we are best to first discuss the issue with the agent or staff member we've been dealing with. If this does not resolve the issue, we can contact the office on 04 566 2233 and ask to speak to the branch manager or submit feedback in writing to info@redcoats.co.nz . We are aware of our option of accessing the Real Estate Authority (REA) complaints process on rea.govt.nz .	

SIGNED

Purchaser: Date: Time: am/pm

Name Printed:

Purchaser: Date: Time: am/pm

Name Printed:

On behalf of Agent: Date: Time: am/pm

Buying or selling your property?

New Zealand Residential Property
Sale and Purchase Agreement Guide



This guide tells you...

- what a sale and purchase agreement is
- what's in a sale and purchase agreement
- what happens after you sign the sale and purchase agreement
- what happens if you have a problem
- where to go for more information

Where to go for more information

This guide is available in other languages. You can find translated copies of this guide on [rea.govt.nz](https://www.rea.govt.nz) and [settled.govt.nz](https://www.settled.govt.nz).

The New Zealand Residential Property Agency Agreement Guide is also available on [settled.govt.nz](https://www.settled.govt.nz). The guide tells you more about the agreement you sign with the agency helping to sell your property.

We welcome any feedback you have on this publication.

The information in this guide was accurate when published. However, the requirements this information is based on can change at any time. Up-to-date information is available at [rea.govt.nz](https://www.rea.govt.nz).

New Zealand Residential Property Sale and Purchase Agreement Guide

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Key things to know about sale and purchase agreements

- A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property.
- You must sign a written sale and purchase agreement to buy or sell a property.
- You need to read and understand the sale and purchase agreement before you sign it.
- Even if a standard sale and purchase agreement is being used, you should always get legal advice before you sign the agreement and throughout the buying and selling process.
- You can negotiate some of the terms and conditions in a sale and purchase agreement.
- You can include additional clauses, such as what to do if there are special circumstances. Your lawyer plays an important role in providing advice on what the sale and purchase agreement should say.
- A sale and purchase agreement becomes unconditional once all the conditions are met.
- In most cases, the real estate professional is working for the seller of the property, but they must treat the buyer fairly.
- If your real estate professional or anyone related to them wants to buy your property, they must get your written consent to do this. They must also give you a valuation of your property by an independent registered valuer.
- The sale and purchase agreement is only available in English. You may need assistance interpreting it if English is not your primary language.

What a sale and purchase agreement is

A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property. It sets out all the details, terms and conditions of the sale. This includes things such as the price, any chattels being sold with the property, whether the buyer

needs to sell another property first or needs a property inspection and the settlement date.

A sale and purchase agreement provides certainty to both the buyer and the seller about what will happen when.



What's in a sale and purchase agreement

Your sale and purchase agreement should include the following things.

Basic details of the sale

Different sale methods like tender or auction might mean the sale and purchase agreement can look different, but all sale and purchase agreements should contain:

- the names of the people buying and selling the property
- the address of the property
- the type of title, for example, freehold or leasehold
- the price
- any deposit the buyer must pay
- any chattels being sold with the property, for example, whiteware or curtains
- any specific conditions you or the other party want fulfilled
- how many working days you have to fulfil your conditions (if there are any conditions)
- the settlement date (the date the buyer pays the rest of the amount for the property, which is usually also the day they can move in)
- the rate of interest the buyer must pay on any overdue payments (such as being late on paying the deposit or the remaining amount at the settlement date).

General obligations and conditions you have to comply with

The sale and purchase agreement includes general obligations and conditions that you will need to comply with. For example, these may include:

- access rights – what access the buyer can have to inspect the property before settlement day
- insurance – to make sure the property remains insured until the settlement date and outline what will happen if any damage occurs before settlement day
- default by the buyer – the buyer may have to compensate the seller if they don't settle on time, for example, with interest payments
- default by the seller – the seller may have to compensate the buyer if they don't settle on time, for example, by paying accommodation costs
- eligibility to buy property in New Zealand – people who have migrated to New Zealand may not be permitted to immediately buy property or may need to get consent from the Overseas Investment Office.

Your lawyer will explain these clauses to you.

Check...

Always check your sale and purchase agreement with a lawyer before signing.

Buying or selling a property where the owner isn't able to participate, like a mortgagee sale or deceased estate, can mean the real estate professional has limited information about the property. It pays to allow for this when deciding what conditions the buyer and seller might need.

Remember...

Before you sign a sale and purchase agreement, whether you're the buyer or the seller, the real estate professional must give you a copy of this guide. They must also ask you to confirm in writing that you've received it.

Specific conditions a buyer may include

Some buyers will present an unconditional offer, which means there are no specific conditions to be fulfilled. Some buyers will include one or more conditions (that must be fulfilled by a specified date) in their offer such as:

- title search – this is done by the buyer's lawyer to check who the legal owner of the property is and to see if there are any other interests over the property such as caveats or easements
- finance – this refers to the buyer arranging payment, often requiring bank approval for a mortgage or loan
- valuation report – a bank may require the buyer to obtain a valuation of the property (an estimate of the property's worth on the current market) before they agree to a loan
- Land Information Memorandum (LIM) – provided by the local council, this report provides information about the property such as rates, building permits and consents, drainage, planning and other important information
- property inspection – a buyer paying for an inspection provides an independent overview of the condition of the property rather than relying on an inspection that has been arranged by the seller

- engineer's or surveyor's report – similar to the above but more focused on the entire section and the structure of the property
- sale of another home – the buyer may need to sell their own home in order to buy another.

The real estate professional helps the buyer and the seller to include the conditions they each want. Even though the real estate professional works for the seller, they also have to deal fairly and honestly with the buyer. While they're not expected to discover hidden defects, they can't withhold information and must tell the buyer about any known defects with the property. If a buyer needs time to check a property for defects, including a property inspection condition may be important.



What happens after you sign the sale and purchase agreement

Signing the sale and purchase agreement is not the end of the sale or purchase process.

Both parties work through the conditions until the agreement is unconditional

A conditional agreement means the sale and purchase agreement has one or more conditions that must be met by a specified date and before the sale goes through.

The buyer pays the deposit. Depending on what the sale and purchase agreement says, the buyer may pay the deposit when they sign the agreement or when the agreement becomes unconditional. If the deposit is made to the real estate agency, it must be held in their agency's trust account for 10 working days before it can be released to the seller.

An agreement for sale and purchase commits you to buy or sell

Once you've signed the sale and purchase agreement and any conditions set out in it have been met, you must complete the sale or purchase of the property.

The length of time between the conditions being met and the settlement date varies. Settlement periods can be lengthy if the property hasn't been built yet or the sale and purchase agreement includes conditions for one party to buy or sell another property. The real estate professional has obligations to keep you informed of important updates that come up during this time.

Pre-settlement inspection

This is the chance for the buyer to check the property and chattels are in the same condition they were when the sale and purchase agreement was signed and to check that the seller has met any conditions, for example, there is no damage to walls or chattels haven't been removed from the property.

It's important to raise any concerns you find at the pre-settlement inspection with your lawyer and the real estate professional as soon as possible to allow enough time for an issue to be resolved. If it's less than 24 hours before settlement, the vendor may not be obligated to set things right.

Payment of a commission

Once the sale is complete, the seller pays the real estate professional for their services. The real estate agency usually takes the commission from the deposit they're holding in their trust account. The seller should make sure the deposit is enough to cover the commission. The real estate professional cannot ask the buyer to pay for their services if they have been engaged by the seller.

The buyer pays the rest

The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer.

Buying a tenanted property

If the property is tenanted, the agreement for sale and purchase should specify this. It may also contain a specific date for possession that may differ from the settlement date.

If the buyer requires the property to be sold with 'vacant possession', it is the seller's responsibility to give the tenant notice to vacate in accordance with the tenant's legal rights.

It is recommended that you seek legal advice if you are buying a property that is currently tenanted.

What happens if you have a problem

If something has gone wrong, first discuss your concern with the real estate professional or their manager. All agencies must have in-house procedures for resolving complaints.

If you can't resolve the issue with the real estate agency or you don't feel comfortable discussing it with them, you can contact the Real Estate Authority (REA). We can help in a number of ways if your complaint is about the real estate professional. For example, we can help you and the real estate professional or agency to resolve

the issue and remind them of their obligations under the Real Estate Agents Act 2008. When you contact us, we'll work with you to help you decide the best thing to do.

Call us on **0800 367 7322**, email us at info@rea.govt.nz or visit us online at rea.govt.nz

About settled.govt.nz



Settled.govt.nz guides you through home buying and selling.

Buying or selling your home is one of the biggest financial decisions you will make. It's a complex and sometimes stressful process with potentially significant emotional and financial impacts if things go wrong.

Settled.govt.nz provides comprehensive independent information and guidance for home buyers and sellers. You can find information about the risks and how they can impact you and get useful tips on how to avoid some of the major potential problems.

Settled.govt.nz will help to inform and guide you through the process from when you're thinking of buying or selling right through to when you're moving in or out. You'll find valuable information, checklists, quizzes, videos and tools. From understanding LIMs, to sale and purchase agreements, to when to contact a lawyer, **settled.govt.nz** explains what you need to know.

Settled.govt.nz is brought to you by the Real Estate Authority – Te Mana Papawhenua (REA).

About the Real Estate Authority – Te Mana Papawhenua (REA)

REA is the independent government agency that regulates the New Zealand real estate profession.

Our purpose is to promote and protect the interests of consumers buying and selling real estate and to promote public confidence in the performance of real estate agency work.

What we do

Our job is to promote a high standard of conduct in the real estate profession and protect buyers and sellers of property from harm.

- We provide independent information for people who are buying and selling property through our **settled.govt.nz** website.
- We provide guidance for real estate professionals and oversee a complaints process.
- We license people and companies working in the real estate industry.

- We maintain a Code of Conduct setting out the professional standards real estate professionals must follow.

- We maintain a public register of real estate professionals that includes information about disciplinary action taken in the last 3 years.

The Real Estate Agents Authority is a Crown agent, established under the Real Estate Agents Act 2008. The Real Estate Authority is the operating name of the Real Estate Agents Authority.

For more information

To find out more about REA, visit rea.govt.nz, call us on **0800 367 7322** or email us at info@rea.govt.nz



Agreement for Sale and Purchase of Shares

2/1 Aurora Street, Petone

David O'Byrne & Judith O'Byrne

(Vendor)

[

(Purchaser)

and/or nominee]

Agreement dated the _____ day of _____ 20____

Parties

1. **David O'Byrne & Judith O'Byrne** ("the Vendor")
2. [_____] **and/or nominee**, ("the Purchaser")

Background

- A. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Shares on the terms and conditions set out in this agreement.

The parties agree

1. Interpretation

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

"Company" means SOMES FLATS LIMITED, a duly incorporated company having its registered office at 294 Jackson Street, Petone, Lower Hutt and being register under number 19127.

"Company's Representative" means Brian Pike.

"Interest Rate for Late Settlement" means 14% per annum.

"Property" means the property situated at 2/1 Aurora Street, Petone, Lower Hutt, PT 45-46, DP 393, WN365/264 - WN365/265

"Purchase Price" means \$[_____] [inclusive/exclusive] of GST (if any).

"Settlement Date" means [_____] Working Days following confirmation of this agreement as unconditional.

"Share Transfer" means a memorandum of transfer in respect of the Shares from the Vendor to the Purchaser properly executed in accordance with all applicable statutes and/or laws.

"Shares" means 10,500 shares held by the Vendor in respect of the Company being the shares numbered 10801 to 21300 (both numbers inclusive) in respect of the Property.

“Working Day” means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Matariki, Labour Day, New Zealand’s Anniversary Day and Wellington Anniversary Day; and
- (b) A day in the period commencing 24th day of December in any year and ending on the 5th day of January of the following year, both days inclusive.

A Working Day shall be deemed to commence at 9:00am and terminate at 5:00pm. Any act done pursuant to this agreement by a party after 5:00pm on a Working Day or on a day which is not a Working Day, shall be deemed to have been done at 9:00am on the next succeeding Working Day. With two or more acts (including service of notices) done pursuant to this agreement 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 the second sentence of this clause.

- 1.2 **Parties:** references to parties are references to parties to this agreement and shall be deemed to include the executors, administrators and successors of the parties. If there is more than one Vendor or Purchaser, the liability of the Vendors of Purchasers, as the case may be, is joint and several. Where the Purchaser executes this agreement with provision for a nominee, or as an 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.
- 1.3 **Persons:** references to persons shall be deemed to include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- 1.4 **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background;
- 1.5 **Headings:** clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this agreement;
- 1.6 **Clauses and Schedules:** references to clauses and schedules are references to clauses of and schedules to this agreement;
- 1.7 **Plural and Singular:** words importing the singular number shall include the plural and vice versa;
- 1.8 **Schedules:** the schedules to this agreement and the provisions and conditions contained in such schedules shall have the same effect as if set out in the body of this agreement; and

- 1.9 **Negative Obligations:** any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.10 **Statutory Provisions:** References to statutory provisions shall be constructed as references to there provisions as they may be amended of re-charted or as their application is modified by other provisions from time to time.

2. [Pre-Emptive Rights]

- 2.1 [The Vendor confirms that prior to entering into this agreement it has followed the share transfer process set out at clause [3.1] of the Company's registered constitution and that it has not received an offer from any other shareholder to purchase the Shares.]

3. Conditions

- 3.1 This agreement is subject to and conditional upon:
- (a) The Vendor obtaining the consent of the board of the Company to the transfer of the Shares to the Purchaser and agreement to the entry of the Purchaser's name on the register of shareholders of the Company within [] working days from the date of this agreement. This condition is inserted for the sole benefit of the Vendor.
 - (b) The Purchaser's approval of the [insert documents i.e. - constitution of the Company, the occupation licence, minutes from the last two Annual General Meetings of the Company and a copy of the most recent financial statements of the Company] within [] working days of the date of this agreement. This condition is inserted for the sole benefit of the Purchaser.

4. Provisions relating to condition

- 4.1 In relation to the conditions set out in clause 3 above, the following will apply:
- (a) The conditions will be condition subsequent;
 - (b) The party for whose benefit the condition has been inserted must do all things which may be reasonably necessary to enable the condition to be fulfilled by the date for fulfilment;
 - (c) Time will be of the essence for the fulfilment of the condition, and for any extended time for fulfilment of that condition to a fixed date;

- (d) The condition will not be deemed to be fulfilled until written notice of fulfilment has been served by one party on the other;
- (e) 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 any party that has paid money to the other will be entitled to the return of that money, without deduction or set-off, and neither party will have any right or claim against the other.

5. Sale and Purchase

- 5.1 Subject to clause 5.2, the Vendor agrees to sell to the Purchaser who agrees to purchase the Shares for the Purchase Price.
- 5.2 The Shares are sold subject to an occupation licence to be entered into in substitution for the current occupation licence in respect of the Property pursuant to clause 8.

6. Deposit

- 6.1 The sum of []% of the Purchase price shall be paid on confirmation of this agreement becoming unconditional in all respects to be paid to [insert payment details] who shall hold the deposit:
 - (a) as stakeholder pursuant to section 123 of The Real Estate Agents Act 2008; and
 - (b) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived.
- 6.2 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.
- 6.3 The deposit shall be in part payment of the purchase price.

7. Payment of Balance of Purchase Price

- 7.1 The balance of the Purchase Price (being the Purchase Price less any deposit paid, together with any apportionments of any outgoings and incomings in respect of the Shares) shall be paid in one lump sum in cleared funds, on the Settlement Date in accordance with clause 8.

8. Possession and Settlement

- 8.1 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.
- 8.2 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:
- (a) 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
 - (b) to re-enter the Property no later than the day prior to the Settlement Date to confirm compliance by the Vendor with any agreement made by the Vendor to carry out any work on the Property, the chattels and the fixtures.
- 8.3 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.
- 8.4 Upon this agreement becoming unconditional in all respects, the Purchaser shall prepare, at the Purchaser's own expense, a memorandum of transfer in respect of the Shares, executed by the Purchaser if necessary. The Purchaser shall tender the memorandum of transfer to the Vendor or the Vendor's solicitor at a reasonable time prior to the Settlement Date.
- 8.5 The Vendor shall prepare at the Vendor's own expense, a settlement statement showing all outgoing and incomings in respect of the Shares apportioned at the Settlement Date. The Vendor shall tender the settlement statement to the Purchaser or the Purchaser's solicitor at a reasonable time prior to the Settlement Date.
- 8.6 In addition to undertaking the matters set out in clauses 8.4 and 8.5:
- (a) The Vendor shall:
 - (i) procure the Company's Representative to prepare and have executed a surrender of the current occupation licence in respect of the Shares;
 - (ii) subject to the matters contained in clause 8.6(b) having been complied with in all respects, procure the Company's Representative to prepare and have executed by the Company a new occupation licence relating to the Property on the form of

licence required pursuant to the Company's registered constitution, which the holder of the Shares is entitled to occupy by virtue of owing the Shares;

- (iii) procure the Company's Representative to issue a share certificate for the Shares in the name of the Purchaser to be handed to the Purchaser on or shortly after settlement; and
 - (iv) procure a full release and/or discharge of any and all charges, liens, mortgages and/or security interests against the Shares and provide such release(s) and/or discharge(s) to the Purchaser to the intent that the Shares are sold free of all such charges.
- (b) The Purchaser shall on receipt of the new occupation licence relating to the Property which the holder of the Shares is entitled to occupy by virtue of owning the Shares, duly execute the said licence and forward the same to the Vendor's solicitor in good time prior to the Settlement Date.

8.7 On the Settlement Date:

- (a) The Purchaser shall pay or satisfy the balance of the Purchase Price, interest and other monies, if any, due in cash or as otherwise provided in this agreement.
- (b) The Vendor shall concurrently:
 - (i) provide to the Purchaser the memorandum of transfer in respect of the Shares properly executed so as to cause the Company's share register to be updated upon presentation of the memorandum of transfer to the Company's secretary, together with the new occupation licence referred to in clause 8.6(a)(ii); and
 - (ii) provide to the Purchaser the share certificate issued by the Company for the Shares in the name of the Purchaser.

(together "the Settlement Documents").
- (c) 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.

8.8 The obligations in subclauses 8.7(a) and (b) are interdependent.

8.9 **Purchaser Default:** If due to the delay of the Purchaser settlement takes place between 4:00pm and 5:00pm on the Settlement Date ("Last Minute Settlement"). The Purchaser shall pay to Vendor:

- (a) One day's interest at the Interest Rate for Late Settlement upon the portion of the Purchase Price paid in the Last Minute Settlement; and
- (b) 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.

8.10 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:

- (a) 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);
- (b) 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 purpose of this clause, a payment made on a day other than a Working Day or after the termination of a Working Day shall be deemed to be made on the next following Working Day and interest shall be computed accordingly.

8.11 **Vendor Default:** For the purposes of subclauses 8.11 to 8.13:

- (a) The default period means in subclause 8.12, the period from the Settlement Date until the date when the Vendor is able and willing to provide the Settlement Documents.
- (b) The Vendor shall be deemed to be unwilling to give ownership of the Shares if the Vendor does not offer to give the Settlement Documents; and
- (c) The Purchaser shall be deemed not to be in default if the Purchaser provides reasonable evidence of the Purchaser's ability to perform the Purchaser's obligations under this agreement.

8.12 If the Vendor is unable or unwilling to hand the Settlement Documents to the Purchaser on the Settlement Date, then, provided that the Purchaser is not in default:

- (a) The Vendor shall pay the Purchaser, an amount equivalent to interest at the Interest Rate for Late Settlement on the 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 solicitor'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 Shares.
- 8.13 The provisions of subclauses 8.11 and 8.12 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.
- 8.14 **Deferment of Settlement:** If neither party is ready, willing and able to settle on the Settlement Date, the Settlement Date shall be deferred to the second Working Day following the date upon which one of the parties gives notice it has become ready, willing and able to settle.

9. Notices to Complete and Remedies on Default

- 9.1 If the sale is not settled on the Settlement Date either party may at any time thereafter serve on the other party notice ("Settlement Notice") to settle in accordance with this clause; but 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 the Settlement Notice or is not so ready able and willing to settle only by reason of the default or omission of the other party.
- 9.2 Upon service of the Settlement Notice the party on whom the notice is served shall settle:
- (a) On or before the twelfth Working Day after the date of service of the Settlement Notice; or
 - (b) On the first Working Day after the 20th 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 20th day of January, both days inclusive,

time being of the essence, but without prejudice to any intermediate right of cancellation by either party.

9.3 If the Purchaser does not comply with the terms of the Settlement Notice served by the Vendor then:

- (a) Without prejudice to any other rights or remedies available to the Vendor at law or in equity the Vendor may:
 - (i) sue the Purchaser for specific performance; or
 - (ii) cancel this agreement by notice and pursue either or both of the following remedies namely:
 - A. 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
 - B. sue the Purchaser for damages.
- (b) 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 Shares 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.
- (c) The damages claimable by the Vendor under subclause 9.3(a)(ii)B 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:
 - (i) 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
 - (ii) all costs and expenses reasonably incurred in any resale or attempted resale.
- (d) Any surplus money arising from a resale as aforesaid shall be retained by the Vendor.

9.4 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:

- (a) Sue the Vendor for specific performance; or
- (b) 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.

- 9.5 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 Settlement Notice.
- 9.6 Nothing in this clause shall preclude a party from suing for specific performance without giving a Settlement Notice.
- 9.7 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 Settlement Notice.

10. Claims for Compensation

- 10.1 If the Purchaser has not purported to cancel this agreement, the breach by the Vendor of any term of this agreement does not defer the Purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 10.0.
- 10.2 The provisions of this clause apply if:
- (a) The Purchaser (acting reasonably) claims a right to compensation for:
 - (i) a breach of any term of this agreement;
 - (ii) a misrepresentation;
 - (iii) a breach of section 9 of the Fair Trading Act 1986;
 - (iv) an equitable set-off, or
 - (b) there is a dispute between the parties regarding any amounts payable:
 - (i) under clause 8.9, 8.10, 8.11 or 8.12.
- 10.3 To make a claim under this clause 10.0:

- (a) the claimant must serve notice of the claim on the other party on or before the last Working Day prior to the Settlement Date, time being of the essence (except for claims made after the Settlement Date for amounts payable under clause 8.9, 8.10 or clause 8.11 or clause 8.12, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
 - (b) the notice must:
 - (i) state the particular breach of the terms of this agreement, or the claim under clause 8.9, 8.10 or 8.11 or 8.12, or for misrepresentation, or for breach of section 9 of the Fair Trading Act 1986, or for an equitable set-off; and
 - (ii) state a genuine pre-estimate of the loss suffered by the claimant; and
 - (iii) be particularised and quantified to the extent reasonably possible as at the date of the notice; and
 - (c) the claimant must not have made a prior claim under this clause 10.0 (to the intent that a claimant may make a claim under this clause 10.0 on only one occasion, though such claim may address one or more of the elements in clause 10.2).
- 10.4 If the claimant is unable to give notice under clause 10.3 in respect of claims under clause 10.2(a) or clause 10.2(b) on or before the date that notice is due under clause 10.3(a) by reason of the conduct or omission of the other party, the notice may be served on or before the Working Day immediately preceding the last Working Day on which settlement must take place under a Settlement Notice served by either party under clause 9, time being of the essence.
- 10.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the Purchaser on settlement.
- 10.6 If the Purchaser makes a claim for compensation under clause 10.2(a) but the Vendor disputes that the Purchaser has a valid or reasonably arguable claim, then:
- (a) the Vendor must give notice to the Purchaser within three working days after service of the Purchaser's notice under clause 10.3, time being of the essence; and
 - (b) the Purchaser's right to make the claim (on the basis that such claim is valid or reasonably arguable) shall be determined by an experienced property lawyer or an experienced litigator appointed by the parties. If the parties cannot agree on the appointee, the appointment shall be made on

the application of either party by the president for the time being of the Wellington District Law Society. The appointee's costs shall be met by the party against whom the determination is made or otherwise as determined by the appointee.

- 10.7 If the Purchaser makes a claim for compensation under clause 10.2(a) and the Vendor fails to give notice to the Purchaser pursuant to clause 10.6, the Vendor is deemed to have accepted that the Purchaser has a valid or reasonably arguable claim.
- 10.8 If it is accepted, or determined under clause 10.6, that the Purchaser has a right to claim compensation under clause 10.2(a) but the amount of compensation claimed is disputed, or if the claim is made under clause 10.2(b) and the amount of compensation claimed is disputed, then:
- (a) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - (b) 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 Wellington District Law Society;
 - (c) the interim amount must be a reasonable sum having regard to the circumstances, except that:
 - (i) where the claim is under clause 8.11 or 8.12 the interim amount shall be the lower of:
 - A. the amount claimed; or
 - B. 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.
 - (ii) neither party shall be entitled or required to undertake any discovery process, except to the extent this is deemed necessary by the appointee under clause 10.8(d) for the purposes of determining that the requirements of clauses 10.3(b)(ii) and -(iii) have been met.
 - (d) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, or an experienced litigator. The appointee's costs shall be met equally by the parties, or otherwise as determined by the appointee. If the parties cannot agree on the appointee, the appointment shall be made on the application of either

party by the president for the time being of the Wellington District Law Society;

- (e) the amount of the claim determined to be payable shall not be limited by the interim amount;
- (f) the stakeholder shall lodge the interim amount on an interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the Vendor and the Purchaser;
- (g) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount; and
- (h) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.

- 10.9 Where a determination has to be made under clause 10.6(b) or clause 10.8(d) and the Settlement Date will have passed before the determination is made, the Settlement Date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these clauses, the Settlement Date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations. However, the Settlement Date will only be deferred under this clause 10.9 if, prior to such deferral, the Purchaser's lawyer provides written confirmation to the Vendor's lawyer that but for the resolution of the claim for compensation, the Purchaser is ready, willing, and able to complete settlement.
- 10.10 The procedures prescribed in clauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of this agreement.
- 10.11 A determination under clause 10.6 that the Purchaser does not have a valid or reasonably arguable claim for compensation under clause 10.2(a) shall not prevent the Purchaser from pursuing that claim following settlement.
- 10.12 Where a determination is made by a person appointed under either clause 10.6 or clause 10.8, that person:

- (a) shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination; and
- (b) may make an order that one party must meet the reasonable legal costs of the other party.

11. GST

11.1 If this agreement provides for the Purchaser to pay any GST which is payable in respect of the supply made under this agreement then:

- (a) The Purchaser shall pay to the Vendor the GST which is so payable in one sum on the Settlement Date.
- (b) Where any GST is not so paid to the Vendor the Purchaser shall pay to the Vendor:
 - (i) interest at the Interest Rate for Late Settlement on the amount of GST unpaid from the Settlement Date until payment; and
 - (ii) any default GST.
- (c) 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 Goods and Services Tax Act 1985 ("the Act").
- (d) Any sum referred to in this clause is included in the Purchase Price, interest and other moneys, if any, referred to in subclause 7.1.
- (e) If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the Act then on or before the Settlement Date the Purchaser will provide the Vendor with the recipient's name, address and registration number.

11.2 If the supply under this agreement is a taxable supply the Vendor will deliver a tax invoice to the Purchaser on or before the Settlement Date or such earlier date as the Purchaser is entitled to delivery of an invoice under the Act.

11.3 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 Act applies.

11.4 "Default GST" means any interest, or late payment penalty, or shortfall penalty, or other sum imposed on the Vendor under the Tax Administration Act 1994 by reason of non-payment of the GST payable in respect of the supply made under this agreement but does not include any such sum levied against the Vendor by reason of a default by the Vendor after payment of the GST to the Vendor by the Purchaser.

- 11.5 Without prejudice to the Vendor's rights and remedies under clause 11, where any GST is not paid to the Vendor on or within one month of the Settlement Date, then whether or not the Purchaser is on 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. The date of service of the notice under this clause shall be deemed the Settlement Date for the purposes of clause 11.1. The Vendor may give a settlement notice under clause 9 with a notice under this clause.

12. Warranties

- 12.1 The Vendor warrants and undertakes to the Purchaser that:

- (a) The Vendor is the beneficial owner of the Shares;
- (b) The Shares will, on the Settlement Date, be transferred to the Purchaser free of any mortgage, encumbrance or other charge;
- (c) All calls or other consideration payable in respect of the Shares has been paid on the due date;
- (d) The Shares will be transferred to the Purchaser on the Settlement Date with all rights attached to them;
- (e) The Vendor is not, and has not been, in breach of the terms of the Vendor's licence to occupy in respect of the Property;
- (f) The Vendor has not received any notice of forfeiture in relation to the Shares.
- (g) The Vendor warrants and undertakes that at the date of this agreement the Vendor has not:
 - (i) 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
 - (ii) given any consent or waiver,

which directly or indirectly affects the Property and which has not been disclosed in writing to the Purchaser.

- (h) The Vendor warrants and undertakes that at the date of this agreement the Vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the Vendor or the Purchaser in respect of the Property.
- (i) The Vendor warrants and undertakes that at settlement:
 - A. The chattels included in the sale listed in Schedule 1 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).
 - B. All electrical and other installations on the Property are free of any charge whatsoever and all chattels included in the sale are the unencumbered Property of the Vendor.
 - C. There are no arrears of rates, water rates or charges outstanding on the Property and where the Property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.
 - D. 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.
 - E. Where the Vendor has done or caused or permitted to be done on the Property any works:

- (i) any permit, resource consent, or building consent required by law was obtained; and
 - (ii) to the Vendor's knowledge, the works were completed in compliance with those permits or consents; and
 - (iii) where appropriate, a code compliance certificate was issued for those works.
- (j) Since the date of this agreement, the Vendor has not given any consent or waiver which directly or indirectly affects the Property.
- (k) Any notice or demand received by the Vendor, which directly or indirectly affects the Property, after the date of this agreement:
- (i) from any local or government authority or other statutory body; or
 - (ii) under the Resource Management Act 1991; or
 - (iii) from any tenant of the Property; or
 - (iv) 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.

- (l) The Vendor warrants and undertakes that on or immediately after settlement:
- (i) 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.
 - (ii) 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.

13. Risk and Insurance

- 13.1 The Property and chattels shall remain at the risk of the Vendor until possession is given and taken.

14. Notices

- 14.1 All notices and other communications required or permitted under this agreement shall be in writing and shall be delivered personally, sent by post or by email. Any such notice shall be deemed given when so delivered:

- (a) personally;
- (b) or two days after sending by post to the last known address of the person to whom the notice or other communication is given or, in the case of company, to its registered office;
- (c) or in the case of email:
 - (i) when sent to the email address provided for the party or the party's lawyer on the back page; or
 - (ii) any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
 - (iii) in no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website.

- 14.2 Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

15. Arbitration

- 15.1 Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment thereof or any statutory provision then relating to arbitration.
- 15.2 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president for the time being of the Wellington District Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.

16. Non-Waiver

- 16.1 The failure of any party to insist in any one or more instances on strict performance of any of the terms of this agreement or the waiver by any party of any term or right under this agreement or of any default by any other party shall not be taken as a waiver by such party of any such term, right or default in the future.

17. Non-Merger

- 17.1 The obligations of the parties contained in this agreement shall not merge on settlement and shall remain fully effective after settlement has occurred.

18. Lowest Price Clause

- 18.1 The parties agree:
- (a) That they are independent parties dealing at arm's length with each other in relation to the sale and purchase contemplated by this agreement; and
 - (b) For the purposes of Subpart EW and particularly section EW32(3) of the Income Tax Act 2004, the parties confirm that the Purchase Price does not include any capitalised interest and it is the lowest price the parties would have agreed, on the date the agreement was entered into, if payment had been required in full at the time the first right in the property was transferred.

19. Limitation of Liability

- 19.1 If a person enters into this agreement as trustee of a trust and is not a beneficiary of the trust, then that person will be known as an "independent trustee" and clauses 19.2 and 19.3 will apply.
- 19.2 The liability of an independent trustee under this agreement is limited to the extent of the indemnity from the assets of the trust available to the independent trustee at the time of enforcement of that indemnity.
- 19.3 However, if the entitlement of the independent trustee to be indemnified from the trust assets has been lost or impaired (whether fully or in part) by reason of the independent trustee's act or omission (whether in breach of trust or otherwise), then the limitation of liability in clause 19.2 does not apply, and the independent trustee will be personally liable up to the amount that would have been indemnified from the assets of the trust had the indemnity not been lost.

20. Agency

- 20.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the Vendor has appointed as the Vendor's agent according to an executed agency agreement.
- 20.2 The scope of the authority of the agent under clause 20.1 does not extend to making an offer, counteroffer, or acceptance of a Purchaser's offer or counteroffer on the Vendor's behalf without the express authority of the Vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 20.3 The Vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

21. Collection of Sale Information

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

22. Covid-19/Pandemic Provisions

- 22.1 The parties acknowledge that the Government of New Zealand or a Minister of that Government may, as a result of public health risks arising from a Pandemic, order restrictions on personal movement pursuant to the COVID-19 Public Health Response Act 2020 (or other legislation), and the effect of such restrictions may be that personal movement within or between particular regions is unlawful for the general population of those regions.

Where such a legal restriction on personal movement exists either nationally or in the region or district where the property is located:

- (a) The date for satisfaction of any condition that has not yet been satisfied or waived will be the later of:
 - (i) the date that is 10 working days after the restriction on personal movement in the region or district in which the property is located is removed; or
 - (ii) the date for satisfaction of the condition as stated elsewhere in this agreement.
- (b) The settlement date will be the later of:
 - (i) the date that is 10 working days after all conditions are satisfied or waived; or
 - (ii) the date that is 10 working days after the date on which the restriction on personal movement in the region or district in which the property is located is removed; or
 - (iii) the settlement date as stated elsewhere in this agreement.
- (c) Nothing in the previous provisions of this clause is to have the effect of bringing forward a date specified in this agreement.

22.2 Clause 22.2 applies whether such legal restriction on personal movement exists at, or is imposed after, the date of this agreement, and on each occasion such restriction is imposed.

22.3 Neither party will have any claim against the other for a deferral of a condition date or the settlement date under this clause 22.

22.4 For the purposes of this clause 22, "Pandemic" means the COVID-19 pandemic, or such other pandemic or epidemic that gives rise to Government orders restricting personal movement

23. Counterparts

23.1 This agreement may be executed in any number of 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 counterparty copy and sending it to the other parties, including by facsimile or email.

Execution

Signed by _____)
 David Mark O'byrne & Judith O'byrne as Vendor)

Signed by _____)
 [_____])
 as Purchaser)

Schedule 1 - Chattels

List all chattels included in the sale

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

Stove	()	Rangehood	(Y)	Wall Oven	(Y)
Dishwasher	(Y)	Kitchen waste disposal	()	Light fittings	(Y)
Burglar alarm	()	Heated towel rail	()	Heat pump	(Y)
Blinds	(Y)	Curtains	(Y)	Fixed floor coverings	(Y)
Cooktop	(Y)	Smoke detectors	(Y)	Garage door remote control	()

Both parties should check that Schedule 1 (list of chattels) includes an accurate list of all items which are included with the sale and purchase (in addition to, or as part of any building).

Schedule 2 – Tenancies

Residential Tenancies

Name of Tenant(s):

Rent:

Term:

Bond:

AGREEMENT FOR SALE AND PURCHASE OF SHARES

DATE:

VENDOR:

David O'Byrne & Judith O'Byrne

Contact Details:

VENDOR'S LAWYERS:

Firm:

The Law Connection Limited

Individual Acting:

Jeannine Muir

Email:

Jeannine@lawconnect.co.nz

Contact Details:

042993192

Email address for service of notices

PURCHASER:

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Email:

Contact Details:

Email address for service of notices

SALE BY LICENSED REAL ESTATE AGENT: Professionals, Redcoats Limited

Manager: Morgan Phillips

Salesperson:

Second Salesperson:

Contact Details:

Ph: (04) 566 2233 (Lower Hutt)

(04) 564 5151 (Wainuiomata)

Email: info@redcoats.co.nz

Minutes from Somes Flats Ltd general meeting

Held by Zoom link

6:00pm, 27 April 2022

Present:

David O'Byrne
Glen O'Toole
Robert Barlow
Jackie Te Whata
Andrew Jack
Brian Pike

1. **Apologies:** None received

2. **Meeting Chair:** Brian Pike

The meeting was called to discuss some recent events including:

Water leak from Flat 6 into Flat 3

Graffiti incident

General Levy

Grounds maintenance

Ground Vapour Barrier

Deck repairs

Front Fence repairs and building

Water leak This was more of an issue as the insurer has removed the risk of internal water leaks from their cover, due to multiple past claims. Discussion focused on how the current and future events will be paid for. Previous email discussion included an offer from Andrew Jack to pay for the costs (the current cause was from an overflowing washing machine in Flat 6). Previous leaks have been from overflowing sink in Flat 6, rain water ingress from under-repair deck, and unidentified water leaking from Flat 6 living room area. At the Flat 4 / Flat 1 end of the building in 2021 there were two leaks, one from a burst pipe and one from an overflowing sink. There was general discussion on identifying and proving responsibility for water leak events, and there was some discussion that in the absence of evidential proof of negligence, the costs may be shared by all shareholders. Availability of individual Landlord's insurance was suggested – Shareholders to individually enquire and report. We agreed to wait for all the costs of the current water leak to be totalled and brought to another meeting for further decision.

Graffiti This seemed to be a domestic problem between the tenant in Flat 4 and an ex partner. Police informed and Glen would have his painter to quote for a repair.

General Levy There were some arrears at financial year end (31/3/2022) noted.

Grounds maintenance Quotes are being sought to replace the work previously done by David O'Byrne. – Brian Pike actioning this – there is a shortage of this type of service currently.

Ground Vapour Barrier As a result of the recent Healthy Homes rules, a Ground Vapour Barrier needs to be laid under the building on the ground. Brian seeking quotes.

Deck repairs Brian has sought quotes for needed deck repairs, but progress has not moved beyond a visit by potential contractors.

Front Fence repairs and building Progress on this will happen but Del (the contractor) has had delays on his current job with timber supply, and the start date for the Somes Flats work will be delayed.

Next meeting date set for 6pm Wednesday 11 May by Zoom – Rob Barlow to arrange the Zoom hosting

Minutes from Somes Flats Ltd AGM.

Held by Zoom

7:00pm, 5th July 2023

Present:

Glen O'Toole
Robert Barlow
Jackie Te Whata
David O'Byrne
Andrew Jack (?)

1. **Apologies:** None received
Need to make contact with Jacks to keep them up to date
2. **Meeting Chair:** Brian Pike (by phone – unable to join Zoom)
3. **Previous Minutes:** Approved
4. **2023 Accounts:** Approved unanimously
Moved Chair / Seconded Dave O'Byrne / Carried
5. **Election of Officers:** Chairman of shareholders: Brian Pike agreed to take this role again.
Carried unanimously to continue with Brian in this role
6. **Non-audit resolution:** Approved unanimously
7. **Repairs and maintenance:**
Lawns now contracted to Mr Green (Dave Harvey)
Front block wall replacement –quote obtained from Property with Love. Get work done – front block wall first.
Storm water drain to The Esplanade Hawkins Plumbing to be contacted. Rusting roof flashing – apply rust-stop and repaint.
Balustrades rusting – Glen O'Toole to look for suitable contractor to replace..
Deck / walkway surface and joints. Brian unable to find a suitable contractor to repair western half.
8. **Levy & Budget** the annual budget was presented and a suggested quarterly levy of \$1900 – up from \$1650.00. It was agreed to compromise at **\$1850.00** per quarter from the quarter ended 30 September 2023.
Moved Chair / Carried with abstention from Rob Barlow
9. **General business**
Ownership of carport raised. Jointly owned by shareholders of Flats 4 and 5 (Flat 5 tenant currently has no car)
Dave suggested paving the carpark accessed from The Esplanade. Quote to be obtained.
Request for re-email of quote for block wall replacement.
Rubbish bins in carport along with un-binned rubbish. Request to move the bins to west boundary fence adjacent to Flat 3 with signs asking that no rubbish be left in carport.
Sheds – Glen to get rid of one broken shed – company owns 2 sheds and Flat 2 owns one shed. Dave to check and report.
There was a dog in Flat 6 – no permission had been sought or given.



Chairman

Minutes from Somes Flats Ltd AGM.
Held at Peak Electrical's premises 3 Regent St Petone
6:30pm, 7th November 2024

Present:

Glen O'Toole
Robert Barlow
Jackie Te Whata
Andrew Jack (by phone)
Brian Pike

1. **Apologies:** None received
2. **Meeting Chair:** Brian Pike
3. **Previous Minutes:** Approved – Moved Glen / Seconded Jackie / Carried
There were no matters arising.
4. **2024 Accounts:** Presented for adoption by Brian.
No questions or comments.
Moved Chair / Seconded Dave O'Byrne / Carried
5. **Election of Officers:** Chairman of Shareholders: Brian Pike agreed to take this role again.
Carried unanimously to continue with Brian in this role
6. **Non-audit resolution:** In accordance with section 196(2) of the Companies Act 1993
Approved unanimously
7. **Repairs and maintenance:**
Lawns now contracted to Mr Green (Dave Harvey) – request for weed spraying to be done
Comment that deck may still be an ongoing issue. No current action requested.
8. **Levy & Budget** the annual budget was presented and a suggested quarterly levy of \$2011 – up from \$1850.00. It was agreed to compromise at **\$1950.00** per quarter from the quarter ended 31 December 2024.
Moved Glen / Seconded Rob / Carried
There was discussion on levy arrears which are a burden on shareholders keeping their accounts up to date. A penalty should be made on those shareholders in arrears.

A quarterly email reminder was requested, and that 5% p.a. interest to be charged on levies more than a quarter (3 months) in arrears.
Moved Glen / Seconded Rob / Carried
9. **General business**
There was no general business.

The meeting closed at 7:07pm

Chairman

CONSTITUTION OF
SOMES FLATS LIMITED

1. Constitution and the Companies Act

1.1 Registration

The company is to be re-registered under the Companies Act 1993 and is regulated by the Act and this constitution.

1.2 Definitions

The defined words and expressions in clause 15 shall, where used in this constitution, have the meaning given to them in clause 15.

2. Issue of shares

2.1 Board may issue shares

The board may issue shares with preferred, deferred or other special rights or restrictions, whether in regard to distributions, voting, return of capital or otherwise.

2.2 Rights of shares

Unless the terms of issue of any shares specifically otherwise provide, the board may issue shares that rank as to distributions, voting, return of capital or otherwise, equally with, or prior to, existing shares without any requirement that the shares be offered to shareholders.

2.3 In accordance with section 37(1) the shares of the company are divided into the several groups set out in the first column of Appendix A attached to this constitution and the holding of each such group of shares gives the right to occupy the flat and/or carport the number of which is opposite the group number in the fourth column of Appendix A.

2.4 The holder of each group of shares shall prior to his or her registration as a member of the company holding such group, execute a lease (registerable under the Land Transfer Act if approved by the District Land Registrar) with the company in the form set out in Appendix B attached and the company shall on registration of any person, firm or corporation as a member of shareholder, be bound to enter into and execute such lease. Each lease shall be for the relevant flat (and carport if appropriate) as shown on the plan marked Appendix C, provided that no lease or renewal shall determine later than 2 September 2066.

Certified as Somes Flats Limited Constitution on reregistration.

.....*C. Bygott*.....



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Conreg

3. Purchase by company of its shares

3.1 Purchase of shares

The company may make an offer to all shareholders or to one or more shareholders to purchase or otherwise acquire shares issued by the company.

4. Right to refuse registration to transfer

4.1 The transfer of shares shall be subject to the consent of the board which may decline to register the transfer of any shares to a person of whom they do not approve, provided that such consent shall not be arbitrarily or unreasonably withheld without good cause touching the responsibility, solvency or respectability of the proposed transferee or the proposed use of the premises which the transferee is entitled to lease pursuant to paragraph 2.4.

4.2 The board may refuse or delay the registration of a duly completed transfer of any share if the board (subject only to its duty to act in good faith) considers that:

- (a) to effect the transfer would result in a breach of the law or this constitution; or
- (b) the shareholder has failed to pay to the company any amount due in respect of that share; or
- (c) the transferee is a person without legal capacity to contract; or
- (d) the transfer has not been properly executed; or
- (e) where a share certificate has been issued, the transfer is not accompanied by the relevant share certificate, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board; or
- (f) where the transfer is not accompanied by the lease between the transferor and the company duly surrendered by the transferor plus a new occupation contract executed by the transferee.
- (g) it is not in the best interests of the company to register the transfer.
- (h) the sale is of less than a group of shares set out in Appendix A.

5. Trusts not recognised

Except as required by law, no person will be recognised by the company as holding any share upon trust and the company shall not be bound by or be compelled in any way to recognise (even when having notice of it) any equitable, contingent, future or partial interest in any share or any interest in a fractional part except the absolute legal right to the entirety of the share vested in the registered shareholder.

6. Calls on shares

6.1 Board may make calls

6.1.1 The board may make calls for the payment of any amounts unpaid on shares which are not payable at a fixed time or times by the terms of issue of those shares.

6.1.2 Failure to give notice to a shareholder will not invalidate a call but the call will not be payable by a shareholder until a notice has been served on that shareholder.

6.1.3 The board may, in making any call, differentiate between the shareholders as to the amount to be paid and the time of payment.

6.2 Timing of calls

A call may be made payable at the times and in the amounts which the directors decide.

6.3 Liability of joint holders

Joint shareholders of a share are jointly and severally liable to pay all calls in respect of the share.

6.4 Interest and expenses

If a sum called in respect of a share is not paid before or on the time payment is due, the person from whom the sum is due shall pay:

- (a) interest on that sum from the day payment was due to the day of actual payment, at the rate which the board determines either at or after the time of the call; and
- (b) all expenses which the company may incur by reason of non-payment of the sum called in respect of a share.

The board may waive payment of all or part of that interest or expense.

6.5 Instalments

Any sum which by the terms of issue of a share becomes payable on issue or at any fixed time shall, for all purposes, be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable. In the case of non-payment all the relevant provisions of this constitution relating to payment of interest and expenses, or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified and the terms of issue shall be deemed to be written notice specifying the time and place of payment.

7. Suspension of right to dividends and lien

7.1 Notice of suspension of right to dividends

If a shareholder fails to pay any call on the day appointed for payment, the board may, at any time after that date, while any part of the call remains unpaid, suspend payment of any distributions payable to the shareholder until so much of the call as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the company by reason of the non-payment have been paid to the company in full.

7.2 Application of suspended dividends

7.2.1 All distributions which would have been payable in respect of shares which are subject to a suspension of the right to distributions must be withheld and

applied by the company to reduce the amount owing under the call, including amounts owing under clause 7.3.

- 7.2.2 The amount owing under the call may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder under the call.

7.3 Lifting of suspension of right to dividends

When the total distributions withheld and applied under clause 7.2.1 equal the total amount owing under the call, including amounts owing under clause 7.2.2, the suspension of the right to distributions will be lifted, and all rights to be paid distributions on the shares will resume.

7.4 Lien

The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, and upon any distributions from time to time payable in respect of the shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder and for all other money presently payable by the shareholder to the company on any account whatever and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder (whether the period for the payment, fulfilment or discharge respectively has actually arrived or not).

7.5 Sale on exercise of lien

- 7.5.1 If any sum remains unpaid in respect of which a lien on a share held by the shareholder presently exists, the board may at any time thereafter serve notice ("sale notice") on the shareholder requiring payment of that sum.

- 7.5.2 The sale notice shall name a day (not earlier than the expiration of 14 days from the date of service of the sale notice) on or before which the payment required by the sale notice is to be made, and shall state that, in the event of non-payment on or before the time appointed, the shares in respect of which the sale notice was given will be liable to be sold by the company including a sale to itself.

- 7.5.3 If the requirements of any sale notice are not complied with, any share in respect of which the sale notice was given may be sold on whatever terms and in whatever manner the board decides. At any time before sale the sale may be cancelled on whatever terms the board decides. If any share is sold the residue, if any, of the proceeds of the sale after payment of all costs and expenses of the sale and all moneys owing in respect of the shares sold and interest thereon and costs and expenses of any prior attempted sale in respect of that share shall be paid to the shareholder whose share has been sold or to the shareholder's executors, administrators or assigns.

7.5.4 A shareholder whose share has been sold pursuant to clause 7.5.3 shall cease to be a shareholder in respect of that share, but shall, nevertheless, remain liable to pay to the company all money which, at the time of sale, was payable by the shareholder to the company in respect of that share, but that liability shall cease if and when the company receives payment in full of all the money in respect of that share.

7.5.5 A statutory declaration in writing made by a director declaring that a share has been duly disposed of on a date stated in the declaration shall be conclusive evidence of the facts stated in the declaration as against all persons claiming to be entitled to that share.

7.5.6 The company may receive the consideration, if any, given for a share on any sale of the share and may authorise any person to execute a transfer of the share in favour of the person to whom the share is sold, and that person shall be registered as the shareholder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall that person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the sale of the share.

7.6 Special Powers of Forfeiture for Breach of Covenant under Lease

7.6.1 If and whenever any lease obtained by any shareholder pursuant to Clause 2.4 shall be determined by the lessor pursuant to Clause 27 of the form of lease set out in Appendix B hereto the directors shall at the same time as giving the written notice under the said Clause 27 or as soon as reasonably possible thereafter cause to be served upon such holder of a group of shares notice in writing of their intention at the expiration of thirty days to forfeit the shares held by such shareholder and at the expiration of the said period or at any time thereafter the directors at their discretion may forfeit the shares held by the said shareholder.

7.6.2 Upon the forfeiture and determination referred to in the last preceding subclause hereof the directors may in their absolute discretion as provided by Clause 28 of the form of lease set out in Appendix B dispose of the shares so forfeited with or without reserve by public auction or by private contract at the fair marketable value as hereafter determined as they think fit.

7.6.3 The directors shall apply the proceeds of the sale of the said shares made pursuant to the provisions of the last preceding subclause hereof first in payment of the costs charges and expenses incidental to the sale; secondly in payment of all moneys (if any) owing by the said shareholder to the Company and thirdly in payment of the balance (if any) to the said shareholder.

7.6.4 As from the date of any such forfeiture all interest of such shareholder in the Company theretofore existing shall absolutely cease and determine.

- 7.6.5** The fair marketable value of shares in the Company for the purpose of this clause shall be the actual marketable value at the date of service of the notice referred to in paragraph (a) of this clause either to be agreed upon by the shareholder and the Company or in default of agreement the value shall be fixed by arbitration in accordance with the provisions of the Arbitration Act 1908 or any statutory modification or amendment thereof for the time being in force.

8. Management by shareholders

8.1 Shareholders' management resolution is binding

The shareholders may pass a resolution relating to or for the purpose of managing or directing or supervising the management or supervision of the business or affairs of the company. Any such resolution shall be a resolution of the company and shall be binding on the board.

8.2 Resolution may not be binding

The shareholders may pass a resolution regarding the management of the company, expressed as a non-binding resolution, and any such resolution shall not be binding on the company or the board.

8.3 Resolution of the company

The board has the express power to refer any matter arising out of the business or affairs of the company to the shareholders and any resolution passed by the shareholders at a general meeting directing, requiring or affirming a proposed course of conduct shall be a resolution of the company and shall be binding on the board.

9. Meetings of shareholders

9.1 Annual meeting

9.1.1 The board must, in accordance with section 120 of the Act (annual meeting of shareholders), call an annual meeting of shareholders to be held:

- (a) once in each calendar year other than in the calendar year of the company's incorporation;
- (b) not later than six months after the balance date of the company; and
- (c) not later than fifteen months after the previous annual meeting or, in respect of its first annual meeting, not later than eighteen months after the company's date of incorporation.

9.1.2 The company must hold the annual meeting on the date on which it is called to be held.

9.2 Special meetings

A special meeting of shareholders entitled to vote on an issue:

- (a) may be called at any time by the board or a person who is authorised by this constitution to call the meeting; and

- (b) must be called by the board on the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

9.3 Resolution in lieu of meeting

- 9.3.1** Subject to clause 9.3.2 a resolution in writing signed by not less than 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75 percent 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.
- 9.3.2** A resolution pursuant to section 196(2) of the Act to not appoint an auditor may be passed as provided in clause 9.3.1 provided that the resolution must be unanimous and be signed by all the shareholders entitled to vote on the resolution.
- 9.3.3** Within 5 working days of a resolution being passed under this clause 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.

9.4 Proceedings at meetings of shareholders

- 9.4.1** The provisions of the First Schedule to the Act shall apply to meetings of shareholders, including the right of shareholders to cast a postal vote.

10. Appointment and removal of directors

10.1 Number of directors

The number of directors may not be fewer than 2 or more than 6.

10.2 Appointment and removal by notice

- 10.2.1** The holder or holders of any share group (1-6 inclusive) shall have the right to appoint one (1) director.
- 10.2.2** The appointment of such directors by holders of share groups shall be effected by notice in writing to the Company duly signed by the holder or holders of the groups of shares concerned and may be cancelled or revoked by such holder or holders at any time and such directors so appointed shall hold office until their resignation or removal by the holder or holders at any time and such directors so appointed shall hold office until their resignation or removal by the holder or holders of the group of shares concerned or their disqualification or removal pursuant to the provisions of this Constitution; no person shall be eligible to be a director unless he is the holder or nominee of one of the groups of shares number 1 - 6 (inclusive) and no director need hold any shares in the capital of the Company.

10.2.3 A notice given under clause 10.2.2 takes effect upon receipt of it at the registered office of the company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by shareholders giving the notice.

10.2.4 A director holds office until his or her retirement, disqualification or removal in accordance with this constitution.

10.3 Disqualification and removal

A person will be disqualified from holding the office of director if he or she:

- (a) is removed under clause 10.2; or
- (b) resigns in writing; or
- (c) becomes disqualified from being a director pursuant to sections 151, 382 or 385 of the Act;
- (d) dies;
- (e) becomes a protected person under the Protection of Personal and Property Rights Act 1988;
- (f) is under 18 years of age;
- (g) is an undischarged bankrupt;
- (h) is prohibited by the Companies Act 1995 from being a director or would be so prohibited but for the repeal of that Act.

10.4 Alternate directors

10.4.1 Every director may by notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place either generally or in respect of a specified meeting or meetings during the director's absence or inability to act as a director and at the director's discretion by notice in writing to the company, to remove the director's alternate director. On any such appointment being made the alternate director, may while acting in the place of the director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson and signing board resolutions) of the director appoint the alternate director and is subject in all respects to the same terms and provisions as that director except as regards remuneration and except as regards the power to appoint an alternate director under this constitution. For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.

10.4.2 The notice of appointment of an alternate director should include an address for service of notice of meetings of directors. Failure to give an address will not invalidate the appointment but notice of meetings of the board need not be given to the alternate director until an address is provided to the company.

11. Powers and duties of the board**11.1 Powers of the board**

11.1.1 Subject to clause 8 the business and affairs of the company must be managed by or under the direction or supervision of the board.

11.1.2 Subject to clause 8 the board has, and may exercise, all the powers necessary for managing, directing and supervising the management, business and affairs of the company except to the extent that this constitution or the Act expressly require those powers to be exercised by the shareholders or any other person.

11.2 Directors to act in good faith

11.2.1 Subject to the subclauses set out below in this clause 11.2 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.

11.2.2 If the company is incorporated to carry out a joint venture between its shareholders the 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.

11.2.3 Nothing in this clause 11.2 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.

12. Proceedings of the board**12.1 Third Schedule to apply**

The provisions of the Third Schedule to the Act apply to meetings of the board.

12.2 Alternate directors

It is not necessary to give notice of a meeting of the board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand, and the director has appointed an alternate director under this constitution, notice must (subject to clause 1(3) of the Third Schedule to the Act and to clause 10.4.2 of this constitution) be given to the alternate director.

13. Dividends

13.1 Dividends proportionate to paid up capital

Subject to the rights of persons, if any entitled to shares with special rights as to dividends, all dividends are to be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share, in advance of calls, is to be treated for the purpose of this clause 13.1 as paid on the share. All dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it is to rank for dividend as from a particular date, that share will rank for dividend accordingly.

13.2 Deductions from dividends

The board may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by that member to the company on account of calls, instalments, premiums or otherwise.

14. Notices

14.1 Service

A notice may be served by the company upon any director or shareholder either personally or by posting it by fast post in a prepaid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such director or shareholder.

14.2 Time of service by facsimile

A notice served by facsimile shall be deemed to have been served on the day following completion of transmission of the notice.

14.3 Time of service by post

A notice sent by post or delivered to a document exchange shall be deemed to have been served:

- (a) in the case of a person whose last known address is in New Zealand, at the expiration of 48 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and
- (b) in the case of a person whose last known address is outside New Zealand, at the expiration of four days after the envelope or package containing the same was duly posted by fastpost in New Zealand.

14.4 Proof of service

In proving service by post or delivery to a document exchange it shall be sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it shall be sufficient to prove that the document was properly addressed and sent by facsimile.

14.5 Service on joint holders

A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

15. Definitions

In this constitution the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993.

"alternate director" means a director appointed pursuant to clause 10.4.1.

"annual meeting" means a meeting of shareholders held pursuant to clause 9.1.1.

"board" means the directors numbering not less than the required quorum acting as the board of directors of the company and where one director is a quorum it means that director so acting alone.

"call" means a resolution of the board pursuant to clause 6.1.1 requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares and where the context requires means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"company" means *Somes Flats Limited*.

"constitution" means this constitution of the company and all amendments to it from time to time.

"director" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"distribution" means:

- (a) the direct or indirect transfer of money or property, other than shares, by the company to or for the benefit of a shareholder; and
- (b) the incurring of a debt by the company to or for the benefit of a shareholder,

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means.

"dividend" means a distribution by the company other than a distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance in acquisition of company's shares) of the Act applies.

"ordinary resolution" means a resolution of shareholders approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

"share" means a share issued by the company.

"shareholder" means a person:

- (a) registered in the share register as the owner of one or more shares;
- (b) until such time as his, her or its name is entered in the share register, a person named as a shareholder in the application for registration of the constitution of the company at the time of the incorporation of the company; and
- (c) until the person's name is entered in the share register, a person who is entitled to have that person's name entered in the register under a registered amalgamation proposal as a shareholder in an amalgamated company.

"special meeting" means any meeting (other than an annual meeting) of shareholders entitled to vote on an issue, called at any time by the board or by any other person who by this constitution is entitled to call meetings of shareholders.

"special resolution" means a resolution of shareholders approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question.

- 15.2 Words importing the singular number only include the plural number and vice versa.
- 15.3 A reference to a person includes any firm, company or other body corporate.
- 15.4 Subject to the above, expressions contained in this constitution bear the same meaning as in the Act, at the date on which this constitution becomes binding on the company.
- 15.5 A reference to a clause means a clause of this constitution.
- 15.6 The clause headings and footnotes are included for the purposes of convenience and do not affect the construction of this constitution.

APPENDIX A

Group	Number of Shares	Share Numbers	Flat/Carport	
1	10800	1 - 10800	1	1
2	10500	10801 - 21300	2	2
3	10800	21301 - 32100	3	3
4	10800	32101 - 42900	4	4
5	10800	42901 - 53700	5	5
6	10800	53701 - 64500	6	6

SOMES FLATS LIMITED

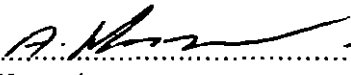
MEMBERS' CONSENT

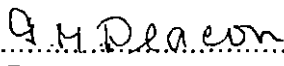
We, the undersigned, being all the members of the company, hereby consent to the making of the application for reregistration under the Companies Act 1993 in accordance with the attached application for reregistration and the Constitution annexed thereto.


Dated this 3rd day of APRIL 1997

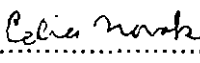
SIGNED by the Shareholders:

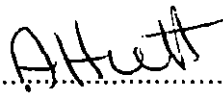

B A Iles


A C Haszard


G M Deacon


A M Bygate


C T Novak


A M Hutt