

# SHAREHOLDERS' AGREEMENT

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WAIMEA VILLAGE 2013 LIMITED

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# SHAREHOLDERS' AGREEMENT

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DATE

2013

## PARTIES

THE SHAREHOLDERS LISTED IN SCHEDULE A (each a "Shareholder" and together called "the Shareholders") and  
WAIMEA VILLAGE 2013 LIMITED, a duly incorporated company ("the Company")

## BACKGROUND

- A. The Shareholders wish to become shareholders of Waimea Village 2013 Limited ("the Company"), that is to become the owner of Waimea Village, Gladstone Road, Richmond, Nelson ("Waimea Village"), on the terms set out herein.
- B. The Company intends to have 141 issued shares, which will be held in the names of the respective Shareholders as set out in Schedule A.
- C. In consideration and pursuant to the Background, the Shareholders and the Company agree as follows.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1. Definitions

In this Agreement unless the context otherwise requires:

"Constitution" means the Constitution of the Company.

"Business" means the business of the Company and any other business at any time carried on by the Company during the term of this Agreement.

"Shareholders" means the shareholders listed in Schedule A (jointly and severally).

### 2. ESTABLISHMENT AND SCOPE OF AGREEMENT

- 2.1. The Shareholders and the Company agree that this Agreement shall have effect from the date of their respective shareholding in the Company ("the Commencement Date") as referred to in recital A above and shall govern each party's rights and obligations as Shareholders of the Company and the Company at all times unless the Shareholders and Company agree otherwise in writing.

### **3. RELATIONSHIP OF THE SHAREHOLDERS**

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

### **4. CONSTITUTION**

- 4.1. Where there is any inconsistency between the terms of this Agreement and the Constitution of the Company, the provisions of this Agreement shall prevail.

### **5. CAPITAL AND FUNDING**

- 5.1. It is agreed and acknowledged that the capital and funding of the Company shall be as set out in Schedule A hereof.

### **6. DIRECTORS**

- 6.1. Until determined otherwise in terms of this Agreement the Company shall be controlled and managed by a board of five directors, being made up as follows:

- (a) Two of the five directors of the Company shall be shareholders of the Company.
- (b) Three of the five directors of the Company shall be suitably qualified and experienced professional persons from outside of Waimea Village who are not required to be shareholders of the Company and will act as independent directors as set out in the Company's Constitution.

- 6.2. The appointment, removal and term of the directors shall be determined by the rules contained in the Company's Constitution.

### **7. CONDUCT OF THE COMPANY'S AFFAIRS**

- 7.1. The Shareholders shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure that at all times, unless the Shareholders agree otherwise, the following shall occur:

- (a) The business of the Company shall consist of operating Waimea Village and shall initially be conducted based on the costings, cashflows, projections, and strategic plans prepared by Kit Maling on behalf of the Company. The Shareholders agree that the Company shall be managed and operated based on the principles contained therein.
- (b) The Company shall keep proper books of account and each Shareholder shall, upon request to the Company in writing, be supplied with monthly management accounts and operating statistics and such other trading and financial information in such form as the Shareholders agree is required to keep the Shareholders properly informed about

the business of the Company. Should any Shareholder wish to obtain such information in an electronic format, they shall supply an e-mail address to the Company for that purpose.

- (c) The Company shall prepare financial budgets based upon projected revenue and expenditure for each successive twelve-month period. The budgets shall be revised monthly at board meetings and the directors shall endeavour to adhere as closely as possible to those budgets.
- (d) The financial year of the Company shall end on 31 March in each year or such other date as shall be determined by the Shareholders.
- (e) At the end of each financial year a profit and loss account, balance sheet, and cashflow statement in respect of the Company shall be prepared in accordance with generally accepted accounting principles.
- (f) Subject to the provisions in clause 19 of this Agreement relating to Transmission of Shares, each Shareholder shall only be permitted to transfer his, her or their share in the Company to a person who is also a purchaser of or the holder of a life interest in a leasehold interest in a property at Waimea Village, and the transferor shareholder agrees to procure the purchaser shareholder's written agreement to comply with the terms of this Agreement. The provisions of the Constitution of the Company relating to share transfers are hereby restricted.

7.2. The Shareholders shall each make available all such information in their possession as may be reasonably required to enable proper accounts to be prepared for the Company.

## **8. ADVANCE ACCOUNTS**

8.1. The advance accounts referred to in clause 5 shall be repayable by the Company in rateably equal proportions, proportionate to each Shareholder's shareholding together with interest if so resolved on terms to be determined by the Company's directors.

## **9. INITIAL DIRECTORS AND BOARD MEETINGS**

9.1. The initial director of the Company as at the date of this Agreement is Christopher Mulgrave Maling. The parties intend that such director shall resign at settlement of the purchase of Waimea Village and the five directors referred to in clause 6.1 be appointed.

9.2. Should a Director also be a Shareholder of the Company, such Director's appointment shall cease upon him or her ceasing to be a Shareholder of the Company.

9.3. The Board of Directors shall meet on such regular occasions as shall be agreed.

- 9.4. Each Director shall each have one (1) vote. The Chairperson of Directors (if any) shall not have a casting vote. In the event of there not being a majority on any issue the status quo shall be maintained.
- 9.5. The Board of Directors' responsibilities shall include, but are not limited to:
- (a) The operations and overseeing the accounts of the Company;
  - (b) The employment of staff and the terms and conditions on which the Company employs staff; and
  - (c) All other managerial matters pertaining to the Company.
- 9.6. The Directors shall arrange for minutes of all Directors' meetings to be recorded in writing.
- 9.7. The Shareholders of the Company shall decide annually on remuneration for services payable to Directors for the year ahead. The initial Director's fee payable shall be \$500.00 plus GST (if any) per annum per Director. The Directors may claim reimbursement of out-of-pocket expenses by the Company.
- 9.8. The quorum necessary for the transaction of the business of the Directors shall be three directors.

## **10. DISPOSAL OR CHARGING OF SHAREHOLDING IN THE COMPANY**

- 10.1. Except as otherwise expressly permitted by the terms of this Agreement and the Constitution no Shareholder shall, except with the prior written consent of Directors, create or permit to subsist any pledge, lien or charge over, or grant any option or other rights or dispose of any interest in all or any of the Shareholder's shares in the Company and any person in whose favour any such pledge, lien, or charge is created or permitted to subsist or such option or rights granted or such interest is disposed of shall be deemed to be subject to and bound by the same limitations and provisions as are embodied by this Agreement and the Constitution.

## **11. COVENANTS**

- 11.1. Each of the Shareholders, and each of the present Directors of the Company in his or her personal capacity ("the Covenantors"), agree with the Shareholders and the Company that they will not (except with the prior written consent of a Meeting of the Shareholders of the Company) at any time disclose or use any confidential information relating to the Company or its business or affairs of which he or she has become possessed while a Director or Shareholder of the Company.
- 11.2. Nothing in this clause prevents the Covenantors from holding issued share capital of, or any other securities of, any company the shares of which are listed on any recognised stock exchange in New Zealand at the date of this Agreement.

11.3. Each of the Covenantors acknowledges that:

- (a) The initial issue of the shares in the Company to the Shareholders and the value accorded in respect of the same; and
- (b) The provisions of this Shareholders' Agreement

have been entered into or will be made dependent upon each of them giving the covenants contained herein.

11.4. Confidential Information

- (a) All information which may be supplied to or which the parties hereto may become aware from a party's dealings during the term of this Agreement in respect of the said business or its operation or connected with the business of the Company ("the confidential information") is the property of the Company.
- (b) The parties will treat the confidential information as strictly confidential and will not disclose any of the confidential information to any person, firm, company or other body unless previously and expressly authorised by the Board of Directors.
- (c) The parties will not during the term of this Agreement use or attempt to use any of the confidential information in any manner and for any purpose other than the purpose of the Company.

## **12. MANAGEMENT**

12.1. It is agreed that the Board of Directors shall manage the Company.

## **13. ACCOUNTING & GST**

13.1. The Shareholders agree that an independent accountancy firm will be appointed to prepare monthly and annual accounts on behalf of the Company, such appointment to be agreed by the Shareholders (or otherwise determined by arbitration in terms of this Agreement) prior to the commencement of business by the Company.

## **14. TERMINATION**

14.1. This Agreement continues until termination by agreement between the parties or unless earlier terminated by operation of any of the provisions of clause 14.2 provided that any such termination shall not affect any subsisting rights under this Agreement.

14.2. Notwithstanding any delay or previous neglect or waiver of the right to exercise such election and without prejudice to any of the rights of the parties this Agreement will also terminate in respect of the relevant party (but not the remaining parties) at the election of any other party if any of the events set forth below occur respectively in relation to the relevant parties:

- (a) Default is made by the relevant party in performance or observance of any obligation on its part arising under this Agreement and such default is incapable of being remedied, or, if capable of being remedied, such default continues unremedied for ten working days after written notice of such default has been given to the defaulting party by the other party;
- (b) If the relevant party commits an act of bankruptcy or makes any assignment or composition with its creditors;
- (c) If the relevant party's mortgagee or chargeholder becomes a mortgagee or chargeholder in possession of the relevant party's interest in his, her or their leasehold property in Waimea Village;
- (d) Any of the conditions necessary to render the relevant party liable to be wound up exists;
- (e) The relevant party is or becomes unable to pay its debts as they fall due or is deemed or is unable to pay such debts as that term is defined in section 287 of the Companies Act 1993 or suspends payment to its creditors or ceases or threatens to cease to carry on its business or convenes a meeting of its creditors to propose a scheme of arrangement with its creditors;
- (f) If a petition for the winding up of the relevant party is presented or advertised or a resolution is passed or purports to be passed for the winding up of a party;
- (g) The relevant party has a receiver or manager or statutory manager appointed;
- (h) The relevant party transfers or disposes of or threatens to transfer or dispose of a substantial part of its assets for inadequate consideration; or
- (i) If a final judgment for the payment of an amount in excess of \$5,000.00 is obtained against a relevant party and remains unsatisfied for a period of 10 working days.

## **15. CONSEQUENCES OF TERMINATION**

- 15.1. That in the event of this Agreement being terminated in accordance with clause 14.2, the relevant party shall upon receipt of a written notice from the Directors to such effect forthwith transfer its shareholding in the Company to the Company, repay all outstanding Shareholder loans, and appoint the Directors of the Company as its attorney for that purpose. The value of such shares shall (unless agreed otherwise in writing) be determined in accordance with clause 3.13(e) of the Company's' Constitution.

## **16. FORCE MAJEURE**

- 16.1. Conditions of Force Majeure

No Shareholder or the Company is in breach of this Agreement if his, her or their breach is caused by any Act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of that Shareholder.

#### 16.2. Modification of Force Majeure

If any Shareholder is unable to perform his, her or their duties and obligations under this Agreement as a direct result of the effect of one of such reasons such Shareholder must give written notice to the Company of such inability stating the reason.

#### 16.3. Suspension of Agreement

The operation of this Agreement will be suspended during the period (and only during the period) in which the reason continues. Immediately upon the reason ceasing to exist the Shareholder relying upon it must give written advice to the Company of this fact. If the reason continues for a period of more than ninety (90) days and substantially affects the commercial basis of this Agreement the Shareholders agree to consult together for the purpose of agreeing what action should be taken in the circumstances and, if appropriate, must negotiate in good faith to amend and modify appropriately the provisions and terms of this Agreement as necessary to escape the reason in question for the inability to perform but if such negotiations are unsuccessful the party not claiming relief under this clause has the right to terminate this Agreement upon giving thirty (30) days written notice of such termination to the other party.

### 17. SEVERANCE

17.1. If the implementation of this Agreement or any provision or term of this Agreement or any part of it is illegal, invalid or unenforceable for any reason whatsoever including but without limitation legislation or other provisions having the force of law, any decision of any Court or other body or authority having jurisdiction, such terms or provisions will be deemed to be deleted from this Agreement on condition that if any Shareholder considers that any such deletion substantially affects or alters the commercial basis of this Agreement, he, she or they may give notice in writing to the other Shareholders to terminate this Agreement immediately.

### 18. NOTICES

18.1. Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this Agreement must be in writing and may be served personally or sent by security or registered mail to the address of the Shareholder specified below or such other address as that party may notify the other party in writing, from time to time or by facsimile to the facsimile number of that Shareholder specified below or such other facsimile number as that Shareholder may notify to the Company, in writing, from time to time.

18.2. Notices given:



- (a) Personally are served upon delivery;
  - (b) By post (other than airmail) or document exchange are served two (2) business days after posting;
  - (c) By airmail are served 5 business days after posting;
  - (d) By email or facsimile are served upon receipt of the notice.
- 18.3. Any such notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first business day after such day at the place of receipt.
- 18.4. A notice may be given by an authorised officer, employee or agent of the Shareholder giving the notice.
- 18.5. Notice may be given personally to a director, employee or agent of the Shareholder at that Shareholder's address or to a person who appears to be in charge of that place at the time of delivery or, if such delivery is not practicable at that time, in the case of a company, to any person who is named as a director of the company on the New Zealand Register of Companies at that time. If the Shareholder is a natural person, partnership or association delivery may be made by handing the notice to that person or any partner or responsible person or, if acceptance is refused, by bringing the notice to the attention of, and leaving it in a place accessible to, the person, partner or responsible person.
- 18.6. The addresses for service for each Shareholder for notices shall be that listed by the Shareholder's name in Schedule A.

## **19. ASSIGNMENT**

- 19.1. Except as provided in clause 19.2, no Shareholder may sell, transfer, assign or otherwise part with possession of their share, without the prior written consent of the Company and unless such transaction is in conjunction with the transfer of the Shareholder's leasehold interest in a property at Waimea Village or if the transferee is the holder of a life interest in the leasehold interest or part thereof of a property at Waimea Village.
- 19.2. In the event that a Shareholder dies, shares may pass to the deceased Shareholder's personal representatives by operation of law notwithstanding the provisions of this Agreement and the Constitution.

## **20. GENERAL PROVISIONS**

- 20.1. Entire Agreement

The parties acknowledge that this Agreement sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

## 20.2. Amendment

This Agreement cannot be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.

## 20.3. No Waiver

No failure or delay on the part of any party to exercise any right or remedy under this Agreement is a waiver of such right or remedy nor does any single or partial exercise of any right or remedy under this Agreement preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

## 20.4. Public Statements

The parties agree that, subject to the requirements of applicable law, none of them will disclose any of the terms of this Agreement or any aspect of the transactions contemplated by it to any third parties other than their professional advisers and any securities commission, if reasonably deemed necessary, and further none of them will, and will not permit their advisers to, make any public announcement or issue any press release or other publicity relating to this Agreement or the transactions contemplated by it without the prior approval of the other parties.

## 20.5. Further Assurance

Each party agrees with all due diligence to execute all agreements, assignments and documents and to perform all acts and things as the other party may reasonably require to carry out the terms of this Agreement.

## 20.6. Independent Trustees

Should any Shareholder sign this Agreement as an independent trustee of a family trust, the liability of such independent trustee shall be limited to the assets from time to time of such family trust and not be an unlimited personal liability.

## 21. GOVERNING LAW

21.1. This Agreement is governed by and construed in accordance with the laws of New Zealand for the time being in force, and the parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction

## 22. COSTS

22.1. Each of the parties is responsible for its own respective legal and other costs incurred in relation to the execution of this Agreement.

## **23. DISPUTE RESOLUTION**

- 23.1. Any dispute arising out of or relating to this Agreement may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties. Mediation may be initiated by any party by writing to the other parties and identifying the dispute which is being suggested for mediation. The other parties will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as a mediator or ask the Chairperson for the time being of LEADR NZ Inc or his or her nominee. The mediation will be in accordance with the terms of the LEADR NZ Inc's Standard Mediation Agreement.
- 23.2. In the event that a dispute referred in accordance with clause 23.1 is unable to be resolved by mediation the question or dispute shall be referred to a single arbitrator in accordance with the Arbitration Act 1996 or any amendment to that Act. In the event that the parties are unable to agree upon an arbitrator then the arbitrator will be selected by the President of the Nelson Branch of the New Zealand Law Society for the time being or his or her nominee. The arbitrator shall have full power to decide the dispute in any way he or she sees fit and this shall include the power to order that one party transfers his or her or its shares in the Company to the Company for an appropriate consideration, or that the Company be wound up and the assets be distributed to the parties as directed by the arbitrator or arbitrators.
- 23.3. Should any dispute arise over any provision or interpretation of this Agreement such dispute shall be determined by the President for the time being of the Nelson Branch of the New Zealand Law Society or his or her nominee and the parties agree to accept such decision as final and binding as to both matters of law and fact.

**24. NO REPRESENTATIONS OR WARRANTIES**

24.1. The parties specifically acknowledge that they enter this Agreement based upon their own judgement and not on reliance on any representation or warranty made by any party hereto.

**EXECUTION**

**SIGNED** by Waimea Village 2013 Limited  
(as the Company) by Christopher  
Mulgrave Maling as director in the  
presence of:

\_\_\_\_\_  
Christopher Mulgrave Maling

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Witness Address

## SCHEDULE A

### Share Capital

The Company has issued 141 ordinary shares at \$8,200.00 each payable in cash immediately or as consideration is otherwise payable or provided with effect from the Commencement Date of 29 November 2013.

The shares shall be held as detailed in the following list, and each Shareholder shall advance to the Company by way of a Shareholders advance the sums set out against their names above to enable the Company to purchase Waimea Village.

Such sums are to be utilised in terms of the projections prepared by the Company and relied upon by the Shareholders in entering this Agreement.

It is specifically agreed that any further sums necessary to conduct the business shall be contributed in the same proportions as above, and that any repayments of such advances shall only be made on the same basis unless unanimously agreed otherwise.