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**AGREEMENT BETWEEN THE MEMBERS OF WAITAKERE  
ECO-NEIGHBOURHOOD COHOUSING PROJECT  
AND COHOUSING NEW ZEALAND LIMITED**

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**HESKETH · HENRY**  
BARRISTERS, SOLICITORS & NOTARY PUBLIC  
*A u c k l a n d · N e w Z e a l a n d*

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**THIS AGREEMENT** is made the

day of

1999

**PARTIES:**

**1. COHOUSING NEW ZEALAND LIMITED**

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**BACKGROUND:**

- A. The parties (other than Cohousing New Zealand Limited) are all Members of Waitakere Eco-Neighbourhood Cohousing Project (“Group”).
- B. The Group has, for approximately the last four years, been planning to set up an eco-cohousing project in Waitakere City, Auckland (“Project”), broadly in line with the information referred to in the Third Schedule (“Project Information”).
- C. On 15 March 1999 some of the parties to this agreement conditionally agreed to purchase land at ....., Ranui (“Land”) on behalf of a company to be formed.

- D. On 22 March 1999 a company, Cohousing New Zealand Limited (“Company”) was incorporated.
- E. On 22 March 1999 the Company declared the agreement to purchase the Land unconditional.
- F. The Land is to be used for the development of the Project.
- G. The Group, including Associate Members who are not parties to this agreement, through its consensus decision making procedures has now resolved issues relating to structure and how it wishes the Project to proceed. This agreement sets out the steps that need to be taken to complete the Project and the relationship and obligations of the parties.

## 1. DEFINITIONS AND INTERPRETATION

### Definitions

#### 1.1 In this agreement unless the context requires otherwise:

“Agreement for Sale and Purchase” means an agreement to purchase one or more units in the Project which agreement shall be made between the Company as vendor and a Member as purchaser a draft form of which is attached as the Fifth Schedule.

“Associate Member” means a member of the Group who does participate in the Group Decision Making Process but is not a Member of the Group.

“Company” means Cohousing New Zealand Limited.

“Contribution” means any contribution required to be made by each party, as specified in the First Schedule, whether such contribution is made by way of an advance to the Company or payment pursuant to an Agreement for Sale and Purchase, or by a guarantee which is called up by the Company.

“Development Lender” means any outside person, bank or institution (not being a party to this Agreement) that lends funds to the Company for the purpose of completing the Project.

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

“Earliest Date” means the earliest date on which a party is required to make a Contribution and in respect of each party, shall mean the earliest date specified by their name in the First Schedule, provided that such earliest date must be approved in each case by the directors of the Company.

“Group” means the members from time to time of the Waitakere Eco-Neighbourhood Cohousing Project.

“Group Decision Making Process” means the process at the date of signing this agreement and as described in the Project Information or as changed from time to time by the Group for decisions to be made by the Group.

“Guarantor” means those people who are listed as guarantors in the First Schedule, each of whom will be required to make their Contribution only in the event their guarantee is called upon by the Company.

“Land” means .....m<sup>2</sup> more or less being Lot ... Deposited Plan ....., Certificate of Title ..... (North Auckland Registry) and .....m<sup>2</sup> more or less being Lot ..... Deposited Plan ....., Certificate of Title ..... (North Auckland Registry) being ..... Ranui

“Latest Date” means the latest date on which a party may make a Contribution and, in respect of each party shall mean the latest date specified by their name in the First Schedule.

“Listed Contribution” means each listed contribution in the First Schedule. For the avoidance of doubt parties to this agreement may be obliged to make more than one listed contribution, as listed in the First Schedule.

"Listed Contributor" means each party listed as a contributor in the First Schedule.

“Loan Contributor” means a party to this agreement who is contributing to the Project by loan to the company in accordance with clause 4.4.

“Member” means any full member from time to time of the Waitakere Eco-Neighbourhood Cohousing Project, and who intends to purchase and/or reside in one of the units in the development to be completed by the Company on the Land.

“Member Contribution” means the sum of \$2,000 (or such other sum as is agreed) paid by each Member to the Group as seed money for commencement of the Project, and forms part of each party’s minimum Contribution.

“Maximum Amount” means the maximum Contribution payable by each party and in respect of each party shall mean the maximum amount specified by their name in the First Schedule.

“Project” means the eco-cohousing project in Waitakere City, Auckland being undertaken by the Group.

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

“Shareholder” means those people who will (if a Loan Contributor) or may (if a Guarantor) be required to make a Contribution in accordance with this agreement.

“Unit Purchaser” means those people who are listed as unit purchasers in the First Schedule each of whom is a Member and will be required to make a Contribution in accordance with an Agreement for Sale and Purchase, whether or not the Unit Purchaser will make a Further Contribution by means of an advance to the Company.

“Uptake” means, in relation to any particular Listed Contributor, the amount requested by the Company to date pursuant to clause 4.3.

## **Interpretation**

### **1.2 In this agreement:**

- a. a reference to a person includes any other entity or association recognised by law and the reverse;
- b. words referring to the singular include the plural and the reverse;
- c. any reference to any of the parties includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both;
- d. every thing expressed or implied in this **agreement** which involves more than one person binds and benefits those people jointly and severally;
- e. clause headings are for reference purposes only;
- f. principles stated at the beginning of clauses are for reference purposes only;
- g. a reference to a statute includes:
  - all regulations under that statute; and
  - all amendments to that statute; and
  - any statute substituting for it which incorporates any of its provisions
- h. the parties do not intend this document to create any benefits under the Contracts (Privity) Act 1982;

## **2. ANTICIPATED PROJECT TIME FRAME**

### **Principle**

The parties wish to participate in an ecologically friendly cohousing project to be developed by the Company on the Land and broadly in accordance with the Project Information.

### **Project Time Frame**

- 2.1 The parties anticipate that the following steps will be taken to complete the Project and that each step will be taken by the dates specified:
- a. 1 July 1999 – A further progress payment on the purchase of the Land of \$60,000.00 was paid to the vendor of the Land;
  - b. The Company's constitution is to be amended within 60 days of the date of this agreement.
  - c. 26 November 1999 – The Company will settle the purchase of the Land;
  - d. 31 January 2000 – Resource consent is to have been applied for;
  - e. October 2000 - Construction will commence;
  - f. 31 December 2001 – All units forming part of the Project to be settled.
- 2.2 The parties shall each co-operate and use their best endeavours to ensure the Project is completed in accordance with the time frames specified, the Project Information and this agreement.

### **Project Information**

- 2.3 Each party to this agreement acknowledges that it has received a copy of the Project Information.

## **3. COMPANY CONSTITUTION**

### **Principle**

The Company has been incorporated with a constitution that does not fully reflect the intentions of the parties to this agreement. The constitution needs to be altered to reflect the terms of this agreement.

### **Time frame**

- 3.1 The parties shall undertake such activities as are needed to ensure the constitution of the Company is altered within 60 days of the date of this agreement to reflect the terms of this agreement. All costs incurred in the alteration of the constitution shall be met by the Group.

### **Company Directors**

- 3.2 The directors of the Company shall be the directors as at the date of incorporation of the company together with ....., or such other persons as shall be appointed in accordance with the Company constitution.



## 4. FINANCIAL CONTRIBUTIONS

### Principle

The named equity capital of \$1.6 million will be required by October 2000 at the latest to complete the Project. Some parties will make their contribution by way of loans to the company entitling them to hold shares in the Company and some will make their Contribution by way of progress payments pursuant to an agreement for sale and purchase of a unit. Others will provide guarantees entitling them to hold shares in the Company.

### Membership Fees to be paid

4.1 Funds will not be considered contributions in accordance with this agreement until the full Member Contribution of the Group (currently \$2,000) has been paid, but each party's Member Contribution will form part of that party's contribution.

### 4.2 Company not obliged to accept contributions

- a. The Company will not be obliged to accept all offers of contributions.
- b. The parties to this agreement (all being members of the Group) shall procure that the Group shall do all things necessary to assign any membership fees paid to the Group to the Company to enable them to form part of the Contributions.

### Commitment to contribution

4.3

4.3 Each party agrees to make contributions on the following basis:

- a. The Company shall be entitled to request any amount or amounts from each party ("Company Requests"), in accordance with this clause.
- b. Each party shall make contributions in accordance with the Company Requests provided that:
  - i. no party shall be obliged to contribute more than the Maximum Amount in relation to each Listed Contribution; and
  - ii. the Company must make the Company Requests between the Earliest and the Latest Dates as specified in the First Schedule in relation to each Listed Contribution.
- c. The amount and frequency of the Company Requests shall be determined pursuant to the Group Decision Making Process.
- d. The Company shall use its best endeavours to equalise the Company Requests between the parties listed in the First Schedule so that the Uptake is as equal

as is possible between all the Listed Contributions in relation to which the Earliest Date has passed.

### **Loan Contributions**

4.4 Loan contributions shall be calculated and paid as follows:

- a. Each party who has made loans to the Company or is obliged to make loans to the Company as set out in the First Schedule shall be obliged to purchase one share in the Company for \$1.00 (fully paid up) for every \$1,000 of loans to be made. Each share shall attract one vote in the Company.
- b. Within 10 working days of the date of this agreement the parties to this agreement who are already shareholders in the Company shall:
  - i. resolve by the unanimous consent procedure in s107 Companies Act 1993 that the Company will repurchase and cancel all existing shares in the Company; and
  - ii. resolve by the unanimous consent procedure in s107 Companies Act 1993 that the Company will issue new shares as allocated in accordance with (a) above.
- c. Contemporaneously with the actions set out in (b) above the Company shall allocate shares to all Loan Contributors as set out in (a) above, at which time the Loan Contributors become Shareholders for the purposes of this agreement.
- d. All loans to the Company are to be on the form as attached as the Fourth Schedule, together with any changes decided upon by the Group using the Group Decision Making Process, either in relation to the form generally or in relation to any particular Loan Contributor.
- e. All loans are to rank equally with those by other Loan Contributors.

### **Unit purchasers' contributions**

4.5 Unit purchasers' Contributions shall be calculated and paid as follows:

- a. each Unit Purchaser shall execute an Agreement for Sale and Purchase in respect of their Unit;
- b. each Unit Purchaser shall pay the deposit pursuant to their Agreement for Sale and Purchase which deposit shall not be more than the Maximum Amount and payable at the Earliest Date each specified in the First Schedule beside the Unit Purchaser's name. If the Unit Purchaser is also a Loan Contributor for a sum equal to at least 15% of the purchase price, the Deposit will be nil;

- c. the Agreement for Sale and Purchase shall specify that, if required by the Company, each Unit Purchaser shall also pay the Company the GST on the full purchase price within 5 working days of being called on to do so in writing by the Company.

- 4.6 Unit Purchasers who are not also Loan Contributors shall not be entitled to hold shares in the Company.

#### **Size of contributions**

- 4.7 If any Member is a property developer for the purposes of the Income Tax Act 1994, that Member shall advise the Group of such status before becoming a signatory to the agreement. Such Member shall be prohibited from owning a sufficiently large share in the Company that would deem any other Member to be a property developer by virtue of the definition of 'associated persons' given in the Income Tax Act 1994.

#### **Guarantors Contributions**

- 4.8 Any party listed in the First Schedule as a Guarantor shall be obliged to purchase one share in the Company for \$1:00 (fully paid up) for every \$5,000 guaranteed.

- 4.9 In the event that a Guarantor is required to make a contribution by the Development Lender, then the Guarantor shall be obliged to purchase shares in the Company in accordance with clause 4.4(a) and sufficient new shares shall be issued and allocated by the Company in accordance with whatever procedure the Company is lawfully entitled to use and prefers at the time of such shares being issued. Once a Guarantor has been issued shares in accordance with this clause, the Guarantor becomes a Loan Contributor for the purposes of this agreement.

#### **Subsequent loan contributions**

- 4.10 The Company may, but shall not be obliged, to accept further Loan Contributions, other than those specified in the First Schedule. If the Company does accept any further Loan Contribution, the procedure shall be as set out in clause 4.4.

#### **Other Subsequent Contribution**

- 4.11 Any Contributions to the Company other than those listed in the First Schedule, or accepted by the Company under clause 4.10 shall be made by way of deposits under Agreements for Sale and Purchase.
- 4.12 The Company shall determine the amount and frequency of any such deposit payments in accordance with the Group Decision Making Process. The Company shall enter into an Agreement for Sale and Purchase with the purchaser, such agreement to be in the form attached unless otherwise agreed by the Group.

- 4.13 The Agreement for Sale and Purchase shall require the purchaser to sign either a cohousing agreement in the same form as this agreement or a deed of covenant embodying its terms.
- 4.14 Each party appoints the Company as their attorney to execute a cohousing agreement or a deed of covenant embodying its terms with purchasers who are not yet parties to this agreement but have signed an Agreement for Sale and Purchase or are making further Loan Contributions in accordance with clause 4.10 provided such cohousing agreement;
- a. is in the same form as this agreement unless changes are agreed by the parties to this agreement;
  - b. provides for payments of the deposit and progress payments by the purchaser in accordance with this clause.

## 5. WITHDRAWAL OF CONTRIBUTIONS

### Principle

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

### Withdrawal of shareholder

- 5.1 If a Shareholder being either a Loan Contributor or a Guarantor wishes to withdraw either in whole or in part from the Project prior to the Company being wound up, the procedure shall be as follows:
- a. The withdrawing Shareholder must offer its shares to other Shareholders in accordance with the pre-emptive rights provisions of the constitution of the Company;
  - b. If none of the existing Shareholders is willing or able to purchase the withdrawing Shareholder's shares and make the withdrawing Shareholder's Loan Contributions (including those still to be requested by the Company) within one month of the date of offer, the withdrawing Shareholder must offer the shares to any Members who are not parties to this Agreement who shall have one further month from the date of the offer to respond;
  - c. If a withdrawing shareholder is unable to find a replacement under either (a) or (b) to purchase the shares and make the withdrawing shareholder's Loan Contributions (including those still to be requested by the Company), they shall have 6 further months to seek a replacement Shareholder from outside the existing Members, provided that such replacement Shareholder shall first become a Member in accordance with the Project Information;

- d. If a withdrawing Shareholder is unable to find a replacement under either (a), (b) or (c) to purchase the shares and make the withdrawing shareholder's Loan Contributions (including those still to be requested by the Company), then the Company may pay out the withdrawing Shareholder, but shall be under no obligation to do so. If the Company does not choose to pay out the withdrawing Shareholder, the Shareholder shall not be entitled to a refund of that Shareholder's Contributions until the wind up of the Project, or in the case of a Guarantor Shareholder the Guarantor's guarantee shall remain in force until the wind up of the Project unless it is sooner called up.

- 5.2 The withdrawing Shareholder shall not be entitled to a refund of that Shareholder's Member Contribution of \$2,000 unless all reasonable costs incurred by the Group in locating a replacement Shareholder have first been paid by the withdrawing Shareholder. In any event the Shareholder shall not be entitled to a refund of the Membership Fee until all units in the Project have been sold and settlement of the sales has taken place and sufficient funds remain (as determined by the Group) to make such payment.

#### **Withdrawal of a unit purchaser**

- 5.3 If a Unit Purchaser wishes to withdraw from the Project, the procedure shall be as follows:
  - a. The Unit Purchaser shall not be entitled to terminate the Agreement for Sale and Purchase;
  - b. The Unit Purchaser must offer to assign its interest in the Agreement for Sale and Purchase to each of the Shareholders;
  - c. If none of the Shareholders is willing or able to take an assignment of the withdrawing Unit Purchaser's interest in the Agreement for Sale and Purchase within one month of the offer, the withdrawing Unit Purchaser must offer to assign its interest in the Agreement for Sale and Purchase to those members of the Group who are not Shareholders, who shall have one further month in which to respond;
  - d. If a withdrawing Unit Purchaser is unable to find an assignee under either (a) or (b), they shall have a further 6 months to seek to assign their interest in the Agreement for Sale and Purchase to someone from outside the existing Members provided such assignee first becomes a Member in accordance with the Project Information;
  - e. If the withdrawing Unit Purchaser is unable to find an assignee under either (a), (b) or (c), the Company as vendor may agree to terminate the Agreement for Sale and Purchase on terms acceptable to the Company and may refund the payments made to date to the Unit Purchaser. If the Company does not agree to terminate the Agreement for Sale and Purchase the Agreement for Sale and Purchase shall remain in full force and effect, and the Purchaser shall not be released from any of its obligations.

- f. In the case of any assignment, the provisions of clause 29.1, 29.2 and 29.3 of the Agreement for Sale and Purchase shall apply.

5.4 The withdrawing Unit Purchaser shall not be entitled to a refund of that Unit Purchaser's Member Contribution of \$2,000 unless all reasonable costs incurred by the Group in locating an assignee have first been paid by the withdrawing Unit Purchaser. In any event the withdrawing Unit Purchaser shall not be entitled to a refund of the Membership Fee until all units in the Project have been sold and settlement of the sales has taken place and sufficient funds remain (as determined by the Group) to make such payment.

## 6. EXPULSION OF CONTRIBUTORS

### Principle

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

### Decision making process to be followed

6.1 If the parties to this agreement, or any one of them, become concerned about the behaviour of any of the other parties to this agreement, they shall be entitled to refer the matter to the Group for discussion and resolution in accordance with the Group Decision Making Process.

### Expulsion

6.2 If the Group Decision Making Process fails to resolve the matter, then the members of the Group shall refer the matter to mediation in accordance with clause 26. If it is decided that mediation would not be helpful, pursuant to clause 26.2(c) then the members of the Group may agree in accordance with the provisions of clause 8.3 to expel a party to this agreement ("Expelled Party").

### Expulsion of a shareholder

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

### Expulsion of unit purchaser prior to settlement

6.4 If the Expelled Party is a Unit Purchaser, the Company shall terminate the Agreement for Sale and Purchase and shall refund all payments made to the Unit Purchaser. The parties shall ensure that each Agreement for Sale and Purchase includes terms enabling such a procedure to be adopted.

### **Expulsion of unit purchaser after settlement**

- 6.5 The parties acknowledge that once a Unit Purchaser has settled the purchase of their unit, the only method of expulsion of such a Unit Purchaser will be in accordance with the body corporate rules. The parties agree that the body corporate rules will contain expulsion procedures in line with those in this agreement.

## **7. COMPANY TO COMPLETE DEVELOPMENT**

### **Principle**

A company called Cohousing New Zealand has been incorporated to the purpose of undertaking the development of the Project. The Company is expected to operate as a vehicle to fulfil the requirements of the Members in completing the Project.

### **Completion of Development**

- 7.1 The Company shall complete a unit title development on the Land. The development will comprise approximately 30 units and shall be completed in accordance with the Project Information and such other terms as are agreed by the Group in accordance with the Group Decision Making Process.
- 7.2 The body corporate rules will be determined by the Group in accordance with the Group Decision Making Process and will reflect both the principles and vision of the Group as set out in the Project Information, and, where relevant, the matters set out in this agreement.

## **8. DECISION MAKING**

### **Principle**

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

### **Directors' powers**

- 8.1 The directors shall have the following powers in relation to the Project:
- a. to pay any money which the Company is legally obliged to pay
  - b. to make other decisions in the day to day management of the Company provided that they:
    - i. do not involve changes to the agreed design;
    - ii. do not involve changes to the project time frame outlined in this agreement;

- iii. do not involve expenditure above \$1,000 on any one item
- c. to make such emergency decisions as they deem necessary in their reasonable discretion, provided that in this case the directors shall be obliged to certify to the Shareholders of the Company that the action was taken in the best interests of the Company.

### **Shareholder's powers**

- 8.2 All decisions other than directors' decisions as set out in clause 8.1 above shall be made by Shareholders. The procedure for making Shareholders decisions shall be as follows:
- a. The Shareholders in each case shall consult with the Group using the Group Decision Making Process.
  - b. If a decision is not reached using the Group Decision Making Process within the shorter time of 10 days or two meetings then the voting procedure set out in clause 8.3 shall at the request of any one Shareholder be followed.

### **Voting procedure**

- 8.3 In the event of no decision having been reached in accordance with clause 8.2 the procedure shall be as follows:
- a. the directors shall give 5 days notice of a meeting to resolve the issue to all Shareholders who have paid up shares.
  - b. Every person entitled to vote shall be entitled to one vote per share held.
  - c. The number of votes to be allocated to each person entitled to vote shall be calculated as at the date of the meeting. The contributions as recorded against each persons name in the Company Share Register shall be irrefutable evidence of each party's contributions for the purpose of the vote.
  - d. The voting rights of each individual shall be capped so that no individual shall control more than 24% of the vote, regardless of the percentage of their contribution. Any decisions shall be required to be made by a 75% majority of shareholding votes present.
  - e. The quorum in a meeting shall comprise shareholders who:
    - i. comprise 25% of those persons entitled to vote; and
    - ii. hold not less than 50% of the total shares in the Company.



- f. Those entitled to vote shall be entitled to vote by proxy, provided that no shareholder shall hold more than one proxy.

## 9. CONSTRUCTION LOAN

### Principle

It is intended that the Company enter into a construction loan with a development lender, and that Members will be required to indemnify those who guarantee the loan.

### Loan Terms

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

### Obligation on shareholders to execute loan documentation

- 9.2 The Shareholders, and directors of the Company shall execute or shall procure the execution of such loan documentation as is reasonably required by the Development Lender. The parties acknowledge the Development Lender may reasonably require the following as its security:
  - a. a debenture over the assets of the Company;
  - b. a registered first mortgage over the Land;
  - c. an assignment by way of mortgage of the Agreements for Sale and Purchase;
  - d. an assignment of any construction contract entered into by the Company for completion of the Project;
  - e. guarantees.

### Extent of guarantees

- 9.3 The parties agree to use their best endeavours to ensure that any guarantees required to be given in favour of the Lender are limited. Each party agrees that in the event guarantees are required each party shall enter into an indemnity agreement whereby each party indemnifies the other. The parties shall enter into such indemnity agreement irrespective of whether the Lender requires guarantees to be given by each party. The indemnity agreement shall provide such apportionment of the liability attaching to each party as is determined by the shareholders in accordance with clause 8.3.

## 10. SALE OF UNITS

### Principle

It is intended that all units in the Project will be sold by the Company, as soon as practicable with settlement immediately following completion and the issue of separate titles.

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

### Form of agreement for sale and purchase

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

### Unit preference

- 10.3 The parties acknowledge that as at the date of signing this agreement no particular units in the development to be completed by the Company on the Land have been allocated to particular Unit Purchasers. The allocation of particular Units to Unit Purchasers will be determined by the Group Decision Making Process but shall be generally as follows:
- a. the Group shall prepare a list setting out the order in which Unit Purchasers shall be offered the chance to select a unit of their choice (“Unit Preference List”);
  - b. Unit Purchasers shall be offered the chance to select their unit in the order set out in the Unit Preference List.
  - c. the parties agree to work in good faith to finalise the Unit Preference List, and the signing of the Agreements for Sale and Purchase.
  - d. all the Unit Purchasers shall have 4 weeks from the date of finalisation of the Unit Preference List by the Group within which to offer to purchase a particular unit. The parties agree to work in good faith to the intent that the allocation of units is completely finalised within 4 weeks from the date of finalisation of the Unit Preference List by the Group.

## 11. SETTLEMENT AND DISTRIBUTION

### Principle

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

### **Settlement of sale of units**

- 11.1** Each Unit Purchaser shall settle the purchase of their unit in accordance with their Agreement for Sale and Purchase. Funds received by the Company on settlement of the sales shall be applied in the following manner:
- a. in payment of any funds due by the Company as vendor to the Inland Revenue Department;
  - b. in payment of such funds as shall be required to be paid to the Development Lender;
  - c. in payment of other debts owed by the Company other than loans from Loan Contributors;
  - d. in repayment of loans by Loan Contributors unless such repayment of loans shall have already occurred upon purchase by a Loan Contributor of that Loan Contributor's Unit;
  - e. in payment of such returns as shall be required to be paid to the Shareholders, whether they be Loan Contributors or Guarantors;
  - f. in repayment of Member Contribution to parties that have withdrawn from the Project;
  - g. any balance shall be held by the Company pending its winding up and on winding up shall be paid to the body corporate established as a result of the Project in the manner deemed fit so as to limit any taxation liability that may arise.

### **Return of contribution by Loan Contributor**

- 11.2** Each Loan Contributor shall be entitled to a repayment of the Contribution made by that Loan Contributor on settlement of the sale of the unit/units purchased by the Loan Contributor if allowed by the Development Lender. If the Loan Contributor has contracted to purchase more than one unit, the repayment shall be made (if allowed by the Development Lender) on a pro rata basis on settlement of each unit.
- 11.3** The parties agree the constitution of the Company shall be amended to provide for such repayments to be made.

- 11.4 Each Loan Contributor shall be entitled to a return on the Contributions made by that Loan Contributor, subject to the provisions in clause 24 of the Agreement for Sale and Purchase.
- 11.5 The return shall be calculated in accordance with the Second Schedule attached and shall be paid to the Loan Contributor following settlement of the sale of all units in the Project.

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

### Principle

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

### Mental Disorder or Bankruptcy

- 12.1 If a Shareholder becomes bankrupt, or is mentally disordered the assignee or personal representative of the Shareholder must, as soon as possible and in any event not later than 3 months after the adjudication of the Shareholder as bankrupt, or the Shareholder becoming mentally disordered, give a transfer notice in accordance with the constitution of the Company in respect of all of the shares held by the assignee or personal representative of the Shareholder. The provisions of the constitution of the Company relating to pre-emptive rights on transfer will then apply.

### Death

- 12.2 If a Shareholder dies before signing an Agreement for Sale and Purchase, the heirs of that Shareholder will be entitled to go through the process of becoming members of the Group in accordance with the Project Information, but shall not automatically become Members of the Group. If the heirs of the Shareholder do not become Members of the Group within 3 months of the date of death of the Shareholder, the provision of clause 12.1 shall apply. If the heirs of the Shareholder do become members they shall inherit the place of the Shareholder in the list formed in accordance with clause 10.3.

## 13. WIND UP OF COMPANY PRIOR TO COMPLETION OF PROJECT

- 13.1 Unless the members agree, the Shareholders shall not be entitled to wind up the Company until completion of the Project and settlement of the sale of each of the units has been completed.

#### 14. **DEFAULT INTEREST**

- 14.1 Any party who fails on due date to pay any payment due to the other under this **agreement** will pay interest on the amount in arrears at the rate of 12% pa above the Westpac Trust Domestic Lending rate at the time of default.
- 14.2 Payment of arrears interest shall be made to the Company which shall retain the funds on behalf of the Group. Any interest received will be credited to the Project costs.
- 14.3 This clause does not prejudice any other rights or remedies of either party.
- 14.4 a. If judgment is given for any amount payable under this **agreement** the amount (including legal costs) will be deemed a payment due under this clause on the date of the judgment.
- b. The interest payable accordingly forms part of the judgment.

#### 15. **FORCE MAJEURE**

- 15.1 No party breaches this **agreement** if its breach is caused by any reason beyond the control of that party. ("force majeure"), but force majeure does not include any event which that party could have prevented, or overcome by reasonable care, or lack of funds for any reason.
- 15.2 If any party cannot perform its duties and obligations under this **agreement** because of such reason, that party must give full details of the reason to the other parties in writing. On receipt of such details the Group shall use the Group Decision Making Process to determine:
- a. whether the agreement as a whole shall be suspended while the force majeure continues; or
- b. whether the obligations of the party having given notice shall be suspended while the force majeure continues.
- 15.3 As soon as force majeure ceases, the party relying upon it must give written advice to each other party.
- 15.4 If force majeure continues for more than 7 days and substantially affects the commercial basis of the Project, the parties agree to use the Group Decision Making Process to determine what action is to be taken in the circumstances. The parties must use good faith in the Group Decision Making Process and if appropriate must negotiate to modify the agreement to enable it to proceed.
- 15.5 If no decision is reached pursuant to clause 15.4 the party claiming relief under this clause can withdraw from the **agreement** in accordance with the provisions of clause 5. In such event the agreement between the remaining parties shall remain intact.

## 16. SEVERANCE

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

## 17. ASSIGNMENT

17.1 A party must have written consent of all other parties before:

- a. assigning, selling or otherwise disposing of any right or obligation under this **agreement**;
- b. performing any obligation under this **agreement** on behalf of a third party;
- c. mortgaging, charging or encumbering any right or obligation under this **agreement**,

other than in accordance with clause 12.

17.2 The other parties may require that:

- a. the party assigning or dealing with the **agreement** ("the assigning party") pays all fees and expenses (including legal fees) the other parties incur in connection with the proposed assignment or dealing, including investigating the proposed assignee or other third party; and
- b. the assignee or other third party agrees in writing to comply with the assigning party's obligations under this **agreement** as if they were an original contracting party to the **agreement**.

17.3 Any decision as to whether consent will be given to the assignment shall be made using the Group Decision Making Process.

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

## 18. ENTIRE AGREEMENT

18.1 The parties have been given legal advice about section 4 of the Contractual Remedies Act 1979 (Statements during negotiation for a contract). They acknowledge that this **agreement** (including the information contained or referred to in the schedules) contains their entire understanding and supersedes all their prior oral or written representations agreements or understandings. Should any discrepancy arise between

the terms of the body of the agreement and the Project Information, the terms of the body of the agreement shall take precedence.

18.2 Each party acknowledges is has either:

- a. taken independent legal advice as to the nature and effect of this agreement; or
- b. has been offered the opportunity to take independent legal advice as to the nature and effect of this agreement and has chosen not to do so.

## 19. AMENDMENT

19.1 This **agreement** cannot be altered except in writing signed by the parties or their authorised representatives.

## 20. WAIVER

20.1 If either party delays or does not exercise any right or remedy under this **agreement**, it is not a waiver of that right or remedy.

20.2 The single or partial exercise of any right or remedy under this **agreement** does not preclude the exercise of any other right or remedy or its further exercise.

20.3 The rights and remedies provided in this **agreement** are cumulative. They do not exclude any rights or remedies provided by law.

20.4 Any waiver or consent given by a party must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

## 21. PUBLIC STATEMENTS

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

## 22. FURTHER ASSURANCE

22.1 Each party agrees to promptly do everything that is reasonable and necessary to carry out this **agreement**.

## 23. COSTS

23.1 The Group shall be responsible for the legal and other costs in preparing this agreement. The Group may seek reimbursement from individuals of any costs arising through negotiations and explanation of issues pertaining to that individual. The Group shall determine whether such reimbursement shall be sought.

23.2 Each of the parties is responsible for its own independent legal advice and other associated costs in executing this **agreement**.

#### 24. **NO PARTNERSHIP**

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

#### 25. **DISPUTE RESOLUTION**

25.1 A party must use the Group Decision Making Process to attempt to resolve a dispute relating to this agreement before commencing legal proceedings.

#### 26. **DISPUTE RESOLUTION - MEDIATION**

26.1 If a dispute is not resolved pursuant to clause 25 a party must use the mediation procedure to resolve a dispute before commencing legal proceedings.

26.2 The mediation procedure is:

- a. The party who wishes to resolve a dispute must give a notice of dispute to the other party.
- b. The notice must state that the dispute has arisen, and state the matters in dispute.
- c. The other party will either agree to proceed with the mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. If it is decided that mediation would not be helpful, then the provisions of clause 27 shall apply. If it is decided that mediation would be helpful then the parties will agree on a mediator within 7 days of the written notice being received or will ask the Arbitration & Alternative Dispute Resolution Centre NZ Ltd to appoint a mediator. If this service is not available, the parties will ask the President of the Arbitrators & Mediators Institute of NZ to appoint a mediator.
- d. The parties must co-operate with the mediator in an effort to resolve the dispute.



- e. The mediator may engage an appropriately qualified expert to give an opinion on technical matters. The cost will be a mediation cost.
  - f. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - g. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - h. Each party must pay a half share of the mediator's fee and costs including travel, room hire, refreshments etc.
- 26.3 The terms of settlement bind the parties and override the contract if there is any conflict.
- 26.4 The terms of settlement may be used as evidence in any arbitration or other legal proceedings.
- 26.5 The parties agree that written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any legal proceedings. This protects the confidentiality of the mediation.
- 26.6 This clause will not apply if either party seeks urgent interlocutory relief from any court.
- 26.7 Pending resolution of any dispute the parties will perform this **agreement** in all respects including performance of the matter which is the subject of dispute.

## 27. **DISPUTE RESOLUTION - ARBITRATION**

- 27.1 If a party has any dispute with any other party in connection with this **agreement and the dispute is unable to be resolved pursuant to clauses 25 or 26** the dispute will be referred to arbitration.
- 27.2 The arbitration will be conducted by one arbitrator appointed by the parties. If the parties cannot agree on an arbitrator within 7 days of the cessation of mediation, the appointment will be made by the Arbitration & Alternative Dispute Resolution Centre NZ Ltd. Should this service not be available, the parties will ask the President of the Arbitrators & Mediators Institute of NZ to appoint an arbitrator.
- 27.3 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 27.4 No party will unreasonably delay the dispute resolution procedures in this clause.
- 27.5 This clause does not apply to:

- a. any dispute arising in connection with any attempted renegotiation of this agreement; or
- b. an application by either party for urgent interlocutory relief.

**28. GOVERNING LAW**

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

**29. CLOSE BUSINESS ASSOCIATES**

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

**SIGNED** by the parties.

**SIGNED** by **COHOUSING NEW ZEALAND LIMITED** by:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name (please print)

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name (please print)

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_ )

**FIRST SCHEDULE  
(Contributions Schedule)**

Party	Maximum Contribution	When to be contributed		Type of Contribution (Loan Guarantee or Unit Purchase or Loan or Guarantor)
		Earliest Date	Latest Date	
				Loan Loan Loan Guarantee
				Loan
				Loan
				Loan
				Loan Guarantee
				Loan
				Loan
				Loan
				Loan
				Loan
				Loan
				Loan Guarantee

**SECOND SCHEDULE**  
**(Returns Schedule)**

<b>Contribution</b>	<b>Return</b>
<ul style="list-style-type: none"> <li>• Full member contributions of \$2,000 made prior to 22 March 1999 being the date the agreement to purchase the Land was made unconditional, provided that the \$2,000 is not drawn from the Project prior to completion.</li> </ul>	100% of the payment made
<ul style="list-style-type: none"> <li>• Full member contributions of \$2,000 made subsequent to 22 March 1999.</li> </ul>	6% per annum above the Westpac Trust domestic lending rate
<ul style="list-style-type: none"> <li>• Loans of up to \$30,000</li> </ul>	6% per annum above the Westpac Trust domestic lending rate, until all resource consents for the project have been obtained, thereafter 4% per annum above the Westpac Trust domestic lending rate until 31 May 2000 being the date at which AGSAPs are expected to be first offered for sale, thereafter 0%.
<ul style="list-style-type: none"> <li>• Any loan balance in excess of \$30,000</li> </ul>	6% per annum above the Westpac Trust domestic lending rate, until all resource consents for the project have been obtained, thereafter 4% per annum above the Westpac Trust domestic lending rate.

Interest shall be calculated at a daily rate and shall be non-compounding.

**THIRD SCHEDULE  
(Project Information)**

1. Waitakere Eco Neighbourhood Cohousing Project printed Information Booklet
2. Four page supplement to Project Information Booklet titled "Land Supplement"
3. Initial Organising Agreement which has been signed by every member when they become an Associate Member.
4. Waitakere Eco Neighbourhood Cohousing Project Membership Role Definitions approved by the Group on 22<sup>nd</sup> July 1999
5. Waitakere Eco-Neighbourhood Cohousing Project Design Brief dated 6 August 1999
6. List of Full Membership as at 14<sup>th</sup> October 1999
7. Minutes of all full group meetings

A copy of each of these documents as amended from time to time by the Group Decision Making Process is held in the Waitakere Eco Neighbourhood Cohousing Project Library Resources for reference purposes.

**FOURTH SCHEDULE  
(Loan Agreement)**

**FIFTH SCHEDULE**  
**(Agreement for Sale and Purchase)**