

Composite Ownership Deed

*(comprising the original Ownership Deed dated 20 September 2017 and
The Deed of Modification dated [] February 2018)*

relating to the proportionate ownership of Riversdalé Beach Holiday Park

Riversdale Beach Holiday Park Limited.

Composite Ownership Deed

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SCHEDULE 1 - REGISTER OF OWNERS

SCHEDULE 2 - RULES FOR CONVENING AND CONDUCTING MEETINGS OF THE SCHEME

**SCHEDULE 3 - (a) Interest Transfer Form
 (b) Deed of Assignment of Licence
 (c) Deed of Accession on Transfer Interest and Licence**

SCHEDULE 4 - PLAN OF THE PROPERTY SHOWING THE COMMON PROPERTY AND SITES TO BE SUBJECT TO OCCUPATION LICENCES

SCHEDULE 5 - RULES FOR CONVENING AND CONDUCTING MEETINGS OF THE MANAGEMENT COMMITTEE

SCHEDULE 6 - OCCUPATION LICENCE

includes Occupation Licence Schedule 3 - Plans of the Site
 Occupation Licence Schedule 4 - Rules of the Property
 Occupation Licence Schedule 5 - Camping Ground
 Regulations 1985

Date:

PARTIES

Riversdale Beach Holiday Park Limited (*Nominee*)

The persons named in Schedule 1 (*Owners*)

BACKGROUND

- A. The Nominee and the Owners wish to enter into this Deed for the purposes of establishing the Scheme in accordance with, among other things, the Exemption Notice.
- B. The Offeror will offer Interests in the Scheme to the Owners under the Offeror's Statement.
- C. The Nominee has agreed to hold the Property as bare trustee on behalf of the Owners.
- D. The Nominee and the Owners have also agreed the terms and conditions on which the Interests in the Scheme are to be offered by the Offeror and administered and managed by the Management Committee, and have recorded such terms and conditions in the Offeror's Statement and this Deed.
- E. The Secretary has been duly authorised by the Owners of Interests in the Scheme to sign this Deed on their behalf.

OPERATIVE PART

1 INTERPRETATION

1.1 Definitions

Agreement for Sale and Purchase means the agreement for sale and purchase in respect of the Property between Ross Brendon Adcock and Donna Isabel Matthews as vendor and the Nominee as purchaser;

Annual Levy means the annual levy and any other levies payable by each Owner in accordance with an Occupation Licence, in their capacity as licensee, and as a contribution towards the Annual Scheme Costs (unless inconsistent with the context this definition includes any additional levies approved by the Owners in accordance with this Deed for payment under the Occupation Licences);

Annual Scheme Costs means the costs incurred each year by the Scheme in relation to the operation and administration of the Scheme and in respect of the Property, and are described in detail in Schedule 1 of each Occupation Licence;

Auditor means such qualified auditor appointed by the Management Committee as the auditor of the Scheme, being a chartered accountant and appointed in accordance with clause 10.5;

Business Day means any day of the week other than:

- (a) Saturday, Sunday, Wellington Anniversary Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day.
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
- (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive;

A *Business Day* shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Commencement Date means the date arrived at under clause 4.1;

Deed means this deed, together with the Schedules and annexures, as amended or supplemented from time to time;

Deed of Accession means the deed of accession in or substantially in the form set out in Schedule 3 of this Deed;

Deed of Assignment means the deed of assignment in or substantially in the form set out in Schedule 3 of this Deed;

Exemption Notice means the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002;

Extraordinary Resolution has the meaning given in paragraph 9.5 of Schedule 2;

Financial Year means the financial year of the Scheme, with each financial year to end on 31 March in each year;

GST means goods and services tax, as imposed under the Goods and Services Tax Act 1985;

Interests means the 80 proportionate ownership interests in the Scheme which are offered to the Owners by the Offeror pursuant to the Offeror's Statement and have attached to them the rights set out in this Deed;

Interested Person means a person who has signed a register kept by the Management Committee indicating its interest in acquiring an Interest if one becomes available after the Commencement Date;

Management Committee means the committee comprising the Secretary plus no less than 3 and not more than 5 Owners appointed by the Owners to manage the Scheme under clause 7.1;

Minimum Amount means \$2,240,000;

Occupation Licence means a licence granted to an Owner in respect of each Interest in the Scheme to occupy a particular site identified in the Licence which shall be in or substantially in the form set out in Schedule 6 of this Deed.

Offer means the offer of Interests, as participatory securities subject to the Exemption Notice, made to Owners pursuant to the Offeror's Statement;

Offeror means Ray White Limited;

a company which holds a licence issued in accordance with Part II of the Real Estate Agents Act 1976;

Offeror's Statement means the statement dated on or about 8 August 2007 issued and signed by the Offeror's directors in respect of the offer of Interests, containing the information required by the Exemption Notice;

Ordinary Resolution has the meaning given in paragraph 9.4 of Schedule 2;

Owners means, at any time, the persons who are entered on the Register as Owners of Interests in the Scheme and include, at the date of this Deed, the persons named in Schedule 1 as the initial Owners of Interests in the Scheme (such initial Owners being those persons who have subscribed to the Scheme in accordance with the requirements of the Offeror's Statement);

Property means the land and buildings comprising the property known as Riversdale Beach Holiday Park, the legal description of which is Lots 1-5 on Deposited Plan 85999 contained in computer freehold register WN53D/140 (Wellington Registry);

Register means the register of Owners and their respective Interests which is required to be maintained by the Management Committee under this Deed;

Related Party means any spouse, de facto partner, child, grandchild or stepchild of an Owner and includes a Trust of which any such person or the Owner is in the opinion of the Management Committee a primary beneficiary, whether discretionary or otherwise;

Scheme means the real property proportionate ownership scheme formed under and in accordance with the terms of the Exemption Notice, the Offeror's Statement and this Deed in relation to the Property;

Secretary means the person or entity initially appointed pursuant to clause 7.2 of the Ownership Deed and subsequently the person or entity appointed by the Management Committee from time to time.

Site Outgoings means all outgoings, costs and expenses arising in relation to the Occupier's own occupation, use, maintenance and, repair of a Site pursuant to an Occupation Licence, which do not form part of the Annual Scheme Costs and are described in detail in Schedule 1 of each Occupation Licence;

Site means a site on the Property that is the subject of an Occupation Licence, and the Sites are approximately outlined on the plan attached as Schedule 4;

Subscription Amount means, in respect of each Interest, \$28,000;

Subscription Contract means the contract made between the Offeror and each Owner, evidenced by the Owner executing and returning the application form attached to each Offeror's Statement along with the Subscription Amount in respect of each Interest;

Trust Account means the interest bearing trust account of the Offeror into which each Owner's Subscription Amount is to be paid in accordance with clause 4.3, and includes, where applicable, any other trust account nominated by the Management Committee which complies with the Exemption Notice's requirements relating to trust accounts.

1.2 Construction of Certain References

In this Deed, unless the context otherwise requires, a reference to:

- (a) a person includes any individual, body corporate, association of persons (whether incorporated or not), a trust and a state and agency of a state (in each case, whether or not having a separate legal personality and whether incorporated or existing in New Zealand or elsewhere);
- (b) a gender includes each other gender;
- (c) the singular includes the plural and vice versa;
- (d) all references to \$ are references to New Zealand currency;
- (e) any legislation includes modification or re-enactment of, legislation enacted in substitution for, or a regulation, Order in Council or other instrument issued or made from time to time, under that legislation;
- (f) a clause or a schedule is a reference to a clause or a schedule in this Deed; and
- (g) a reference to any document, including this Deed, includes a reference to that document as amended or replaced from time to time.

1.3 Headings

Headings and the table of contents are to be disregarded in construing this Deed.

2 OBJECTS

The objects of the Scheme are to:

- (a) provide each Owner with a proportionate 1/80 interest in the Property for each Interest owned by each Owner, an Occupation Licence in respect of an Interest and the other rights attaching to such Interests;
- (b) require the Nominee to acquire and hold the Property on behalf of and as bare trustee for the Owners in proportion to their Interests; and
- (c) authorise the Management Committee to:
 - (i) manage the Property on behalf of the Owners; and
 - (ii) operate and administer the Scheme on behalf of the Owners, in accordance with this Deed,

3 ROLE OF NOMINEE

3.1 Appointment of Nominee

The Owners appoint the Nominee as their bare trustee to take and hold the Property on behalf of all of them and the Nominee accepts such appointment and agrees to act as bare trustee in accordance with the terms of this deed.

3.2 Registered proprietor

The Nominee will be the registered proprietor of the Property and will be issued with a certificate of title in respect of the Property.

3.3 Instructions

The Nominee will take and hold the Property and will otherwise act in relation to the Property only in accordance with written instructions or directions received from the Management Committee from time to time and not from any of the Owners. The Management Committee members in their capacity as directors of the Nominee agree to accept and act on behalf of the Nominee in accordance with each written instruction or direction given by the Management Committee except only where such acceptance or action would result in any non-compliance with their obligations at law as directors of the Nominee.

3.4 Indemnity

- (a) Each Owner irrevocably and unconditionally undertakes to indemnify and keep indemnified the Nominee and its directors and employees (collectively the *Indemnified Person*) against all losses incurred or suffered by or brought or asserted against any of them:
 - (i) in respect of acting on any instruction or direction from the Management Committee;
 - (ii) arising as a result of the Nominee's status as the registered proprietor of the Property and as Licensor under each Occupation Licence or the party to any contract or arrangement in relation to the Property or the Scheme; and
 - (iii) otherwise arising directly or indirectly under or in relation to this Deed, including (without limitation) the reasonable costs of successfully defending itself against any alleged unauthorised act, fraud, dishonesty or wilful default.

This indemnity under this clause 3.4 does not extend to any loss which is procured through, or as a direct result of, unauthorised acts, fraud, dishonesty or wilful default on the part of an Indemnified Person.

(b) Any liability between Owners will be shared pro rata according to the number of Interests held by them.

3.5 Sole purpose

The sole purpose of the Nominee will be to:

- (a) take and hold the Property on behalf of the Owners in accordance with the terms of this Deed;
- (b) act in relation to the Property and the Scheme only in accordance with the instructions and directions of the Management Committee from time to time; and
- (c) to enter into the Occupation Licences as licensor,

provided always that the Nominee will not carry on any business in its own right or other than for or on behalf of the Owners and as authorised by the Management Committee or as permitted under this deed.

3.6 Shareholders of the Nominee

The shares of the Nominee shall be held jointly in the names of the persons who are at any time the members of the Management Committee at that time (but excluding the Secretary) or alternatively in the name/s of such person/s as the Management Committee may nominate in writing at any time to hold the shares as bare trustee for the Management Committee.

3.7 Directors of the Nominee

The Directors of the Nominee shall be the persons who are at any time the members of the Management Committee at that time (but excluding the Secretary).

3.8 Removal of a Management Committee Member

Each person who is a member of the Management Committee shall upon that person's removal from the Management Committee as provided in clause 8.1:

- (a) Immediately transfer the shares held in the Nominee jointly with the remaining Management Committee members to the persons who remain as Management Committee members and any newly appointed Management Committee member or to such person/s as the Management Committee may nominate or have nominated as provided in Clause 3.6. In the event of any member failing to sign the transfer of the shares within 10 Business Days of removal, the remaining Management Committee members acting on behalf of that removed member are authorised to effect a transfer of the shares accordingly and the removed member shall be deemed to have validly effected the transfer.
- (b) Be deemed to have resigned as a director of the Nominee effective from the date of removal from the Management Committee.

4 CONSTITUTION OF SCHEME

4.1 Scheme

The Scheme will commence only if:

- (a) this Deed has been signed by the Nominee and the Secretary, on behalf of every initial Owner who has subscribed under the Offeror's Statement;

- (b) the Nominee holds validly executed application forms from such initial Owners for Interests for an amount not less than the Minimum Amount (being applications for all 80 Interests); and
- (c) the Nominee obtains registrable title to the Property on behalf of all Owners.

4.2 **Subscription**

Each person named in Schedule 1 will be registered on the Register as an Owner once the Scheme has commenced in accordance with clause 4.1.

4.3 **Trust Account**

All money paid on application by Owners for any Interests will be paid into the Trust Account and held on behalf of the Owners. On satisfaction of the requirements set out in clause 4.1, the Management Committee will direct the Nominee to:

- (a) use the subscription money in the Trust Account to:
 - (i) purchase the Property for and on behalf of the Scheme in accordance with the Agreement for Sale and Purchase; and
 - (ii) pay all costs incurred in relation to such purchase, including in relation to the establishment of the Scheme; and
- (b) grant each Owner an Occupation Licence in respect of a camping site within the Park, commencing with effect from 1 October 2007.

If the Scheme does not commence in terms of clause 4.1 or the offer of Interests is withdrawn, the subscription money and interest (if any) will be repaid to each Owner.

4.4 **Name**

The Scheme will be formed under the name "Riversdale Beach Holiday Park Proportionate Ownership Scheme". The Management Committee may change the name of the Scheme upon giving three months prior written notice to the Owners.

4.5 **Terms of Scheme in this Deed**

The terms and conditions of the Scheme and the contractual relationship between each of the Owners and the Nominee are as set out in this Deed.

4.6 **Legal relationship**

Under this Deed:

- (a) the Scheme comprises an unincorporated Ownership Deed between the Owners;
- (b) the relationship of each Owner to the other Owners is of that independent co-venturers, and not of partners, agents, or tenants in common;
- (c) the Nominee is the bare trustee of the Owners as to their respective shares in the Property;
- (d) the Management Committee will provide certain management and administration services to the Owners in respect of the Scheme on behalf of the Owners and in accordance with this Deed; and
- (e) no Owner has the power or authority (whether express or implied) to bind any other Owner or to act as the agent or employee of the Scheme or of any other Owner or to incur any obligation or otherwise pledge the credit of the Nominee or of any other Owner, except as is expressly provided in this Deed. For the avoidance of doubt, this

clause does not apply to members of the Management Committee, but only to the extent that they are acting within their capacity as members of the Management Committee and as permitted under this Deed.

4.7 **Business of the Scheme**

The business of the Scheme is the ownership and management of its interests in the Property, the management of Occupation Licences along with such other associated business or activities (if any) as are authorised by an Extraordinary Resolution.

4.8 **Place of business**

The principal place of business of the Scheme will be at the Property.

5 **SCHEME - NATURE OF INVESTMENT, CAPITAL AND INCOME**

5.1 **Proportionate entitlements and nature of Interests**

- (a) The Scheme is to comprise 80 Interests, Each Interest evidences the registered Owner's entitlement to:
 - (i) an equal, undivided 1/80 Interest in and ownership of the Property; and
 - (ii) an Occupation Licence to an identified site on the Property.
- (b) Each Interest confers equal rights and obligations on the Owner in respect of entitlement to any income and capital belonging to the Scheme and voting at meetings convened pursuant to clause 11.

5.2 **No withdrawal of capital**

During the term, and prior to dissolution of the Scheme, no Owner will be entitled to withdraw or receive back all or any of the capital of the Scheme (such capital comprising all Interests on issue).

5.3 **Treatment of losses**

The Owners are to bear all losses in respect of the business of the Scheme including losses of capital (on dissolution or otherwise) in proportion to their respective holdings of Interests.

5.4 **Unclaimed payments**

- (a) If any payment made to any Owner at his or her address recorded in, the Register or in accordance with his or her payment instructions is returned or otherwise unclaimed, the amount paid will be retained by the Management Committee and held for such Owner without liability to invest the same or pay interest on the sum held. The retained amount will not for any purposes of this Deed comprise part of the Scheme's assets:
- (b) Any amount unclaimed for five years or longer will be forfeited to the Management Committee for the benefit of the Scheme. After forfeiture of any amount pursuant to this clause, the person who would have been entitled to payment of the amount had it not been forfeited will be entitled to payment from the Management Committee of any amount equal to such forfeited amount, upon producing sufficient evidence to satisfy the Management Committee that he or she would have been entitled to such amount had it not been forfeited.

6 **DURATION AND DISSOLUTION**

6.1 **Further Term**

By no later than the date being thirty-four years and six months after the Commencement Date, (if the Scheme has not been dissolved earlier), the Management Committee will convene a

meeting of Owners in accordance with clause 11 to decide whether to resolve by Extraordinary Resolution that:

- (a) the Scheme should continue for another term of 35 years or such shorter period on such terms (including the inclusion of this clause 6.1 with all necessary modifications in respect of time period and relevant dates); and
- (b) new occupation licences in respect of the Property should be allocated among Owners on such:
 - terms, conditions and new rules; and
 - allocation of Sites amongst Owners,

as the Owners by Extraordinary Resolution resolve at such meeting.

6.2 Continuation of Scheme

If at a meeting the Owners pass the Extraordinary Resolution referred to in clause 6.1, then:

- (a) the Scheme will continue on such terms; and
- (b) new occupation licences will be granted on such terms,

as the Owners so resolve until such time as the Owners resolve to wind up the Scheme at a subsequent meeting convened pursuant to clause 11.

6.3 Winding Up

If the Owners do not pass the Extraordinary Resolution in clause 6.1 at the meeting referred to in clause 6.1 or, at any other meeting convened at the request of the Owners pursuant to clause 11.1(a)(1), the Owners pass an Extraordinary Resolution to approve the sale of the Property and winding up the Scheme then:

- (a) the Management Committee will (in the name of the Nominee) market the sale of the Property and use all reasonable endeavours to sell the Property for the best price reasonably obtainable in the open market, provided that the Management Committee will otherwise have a complete discretion regarding the marketing and disposal of the Property;
- (b) any sale proceeds received in respect of the sale of the Property will be paid into the Trust Account;
- (c) after deducting any allowable costs, fees and expenses from the Trust Account (including, but not limited to, the sale expenses), the net balance will be distributed to Owners pro rata according to the number of Interests held by each of them;
- (d) following distribution to Owners of all money pursuant to this clause 6.3 the Scheme will be at an end and neither the Management Committee nor the Nominee will have any further liability to the Owners or to each other under the terms of this deed or the Offeror's Statement except in respect of any antecedent breach.

7 MANAGEMENT COMMITTEE

7.1 Appointment of Management Committee Members

- 7.1.1 The Scheme's business shall be conducted and arranged by the Management Committee and its agents and delegates in accordance with this Deed and the Owners jointly and severally appoint the Secretary and Gerald Moore, Paul Blumenthal, Peta Walker, Stephen Clareburt and Ainsley Davies as the Scheme's initial Management Committee for a term of 1 year from the Commencement Date.