

**CHINAMANS TERRACE SERVICES COMPANY LIMITED**

and

**TKO PROPERTIES LIMITED**

**WATER SUPPLY AND SERVICES AGREEMENT**

GALLAWAY  
COOK  
ALLAN 

DATED this 1st day of DECEMBER 2022

**PARTIES:**

**CHINAMANS TERRACE SERVICES COMPANY LIMITED** ("the Company")

**TKO PROPERTIES LIMITED** (Company No. 5757287) ("the Owner")

**BACKGROUND**

- A. The Company is the owner of the Chinamans Terrace Water Supply Scheme ("the Scheme")
- B. The Owner owns the land described in the schedule hereto ("the Land") and owns the shares described in the schedule ("the Shares") in the Company which entitle the holder to a supply of water from the Scheme.
- C. The Company has agreed to supply water to the Land and to manage operate and maintain the Scheme and the Owners have agreed to meet its share of the Scheme expenses associated with the supply of water and the management operation and maintenance of the Scheme on the terms and conditions hereinafter provided.
- D. The Owners will upon transfer of title to the Land procure any transferee to enter into with the Company a like agreement on such terms extant between the Owners and the Company as at the date of transfer of the Land and will transfer to the transferee the Shares in the Company.

**DEFINITIONS**

"Operating Expenses" means all costs and expenses incurred in the operation of the Scheme and includes (without limiting the generality of the foregoing) all charges for water rights and electricity or other means used to operate or fuel the operation of the Scheme.

**TERMS OF THIS DEED**

**1. Supply of Water**

- 1.1 Subject to the terms of this Agreement and in consideration of these presents and payment of the Scheme Expenses by the Owners to the Company the Company shall supply water to the Owners in the amount prescribed in the Schedule ("the Water Quota").
- 1.2 To ensure the efficient and orderly operation and maintenance of the Scheme the Company will:
  - a) Arrange all necessary maintenance, servicing, repairs and replacement of the components of the Scheme to ensure the continuous operation of the Scheme.
  - b) Arrange receipt and payment of all electricity and water charges and other payments necessary to ensure the continuous operation of the Scheme.
  - c) Arrange for the owners of the Scheme to contribute their respective share to the Operating Expenses of the Scheme. The Company shall determine the

amount and frequency of such contributions. Such contributions may include advance payments to provide a fund to meet future expenditure.

- d) Maintain a separate bank account for all of the receipts and payments relating to the operating expenses of the Scheme and the Owners contribution on account thereof and keep full and proper records thereof which shall be available for inspection at any reasonable time by any user upon written request being made.
- 1.3 The Operating Expenses of the Scheme shall be borne by the owners of the Scheme proportionately on the basis of actual volume of water consumed. The Owners shall be liable for their share of the Operating Expenses of the Scheme from the date of connection to the Scheme
- 1.4 For the purposes of sub-clause 1.2, the Company may require all of those owners of the Scheme to pay by bank automatic payment or otherwise into the said bank account a regular payment on account of maintenance and Operating Expenses to be incurred by those owners, all such monies to be applied in payment of such costs and being non-refundable to any owner except in the case of mistake being made. Any such requirement made pursuant to the sub-clause shall be a binding obligation of such owner for the purposes of this Agreement.
- 1.5 The Company may charge a fee for carrying out the Company's duties pursuant to this Agreement such fee to be based upon time spent at a reasonable hourly rate and to be charged to reimburse the Company for such time spent. The Company may also engage other persons to act as its agent in the carrying out of all or part of such duties. The fee charge by the Company and/or the person carrying out such duties shall be deemed to be an Operating Expense.
- 1.6 The Company shall comply with the conditions of resource consent attaching to water permit number 2001.928 issued by the Otago Regional Council in the exercise of the same on behalf of all the owners and without in anyway limiting the foregoing will take all necessary steps to ensure all applications for renewal of the water permit are prepared and lodged with the Otago Regional Council prior to its expiry.
- 1.7 The Company may carry out any other function which the Company determines is in the best interests of the users of the Scheme.
- 1.8 The Company shall supply water to the legal boundary of the Land or to such other location as is mutually agreed by the Company and the Owners.
- 1.9 Water shall be supplied to the Land through a metering device ("the water meter") to be installed and maintained by the Company. The Owners shall not allow any person to alter or interfere with the water meter.
- 1.10 The Owners shall be responsible for the distribution of water from the water meter to and within the Land.
- 2. Payment of Connection Fee**
- 2.1 Prior to the Company supplying water to the Land pursuant to clause 1.1 hereof the Owners shall make payment to the Company of the Connection Fee specified in the Schedule. For the avoidance of doubt such fee shall include (but not be limited to) the costs incurred by the Company in purchasing and installing the water meter.

### **3. Payment of Scheme Expenses**

- 3.1 The Company will render an account to the Owners for the Owners' share of the Operating of the Scheme and the Owners will within 28 days of receipt of the account make payment of the amount due.

### **4. Failure of Supply and Water Shortage**

- 4.1 If for any reason including the fault of the Company the Company cannot supply the full Water Quota or the Scheme shall fail then:

- (i) No person shall by reason of a diminished supply or failure have any claim or right of action against the Company; and
- (ii) The available water shall be divided amongst those owners connected to the Scheme on a pro rata basis in accordance with each owners Water Quota and in such circumstances the Owners shall not be entitled to a reduction in or refund of the Operating Expenses.

- 4.2 If the water supply to the Owners is permanently disconnected other than due to the default of the Owners then the Owners shall not be liable for any further payment of Scheme Expenses other than from all money due and owing up to the time of permanent discontinuation of supply.

### **5. Owners' Default**

- 5.1 In the event of the Owners being in breach of any of the terms under this Agreement and such breach continues for a period of not less than 21 days after notice by the Company ("the default notice period") to the Owners in default the Company may without payment of any compensation to the Owners or any other person and without prejudice to its other rights and remedies cease water supply to the Land and may remove the water meter and thereafter no person shall be entitled to be supplied with any further water to the Land from the Scheme until the default has been made good.

- 5.2 All reasonable costs (including legal costs on a Solicitor own client basis) incurred by the Company pursuant to clause 5.1 and in reconnecting the water supply and water meter and in seeking to recover money due and unpaid together with interest (at a rate determined by the Directors of the Company from time to time) thereon shall be added to the debt owing by the Owners to the Company and shall be paid by the Owners.

### **6. Subdivision and Transfer**

- 6.1 In the event of the Owners subdividing their land:

- (a) With the prior written consent of the Company (which consent shall not be unreasonably withheld) the Owners shall determine the division of the Water Quota between the subdivided allotments and shall notify the Company of such apportionment.
- (b) Unless otherwise agreed by the Company, the following terms shall apply to the water supply to the subdivided allotments:
  - (i) The Company shall only be required to supply water to the water meter pursuant to the terms of this Agreement.

(ii) The following clause 6.2 shall apply.

6.2 An owner may transfer all or any part of that owners Water Quota under this Agreement to any person subject to the following terms and conditions being complied with:

- (a) The Owners shall at the time of transfer of the Water Quota transfer to the transferee all or part of the Shares as the case may require.
- (b) The Company's consent to the transfer of Water Quota must be obtained, provided that such consent shall not be unreasonably withheld with respect to a responsible and solvent transferee.
- (c) There must be no existing breach of the Owners' obligations under this Agreement and all Operating Expenses and other monies payable howsoever must be paid.
- (d) The transferee must sign and return to the Company a new water supply and services agreement to be prepared by the Company, provided however if the transfer is in relation to part of the Water Quota pursuant to a subdivision of the Owners' land and the Owners are retaining part of the Water Quota then the Owners as transferor must also sign and return to the Company a new water supply and services agreement recording the Owner/Transferors reduced Water Quota.
- (e) The Owners shall pay the Company's reasonable costs incurred with respect to the approval preparation and execution of documents pursuant to clause 6.2(a) and (c).
- (f) Reference to "transferee" is a reference to any party receiving a transfer of all or part of the Owners land and Water Quota pursuant to this Agreement.

6.3 In the case of a transfer to a company the Company may require as a condition of its consent to the transfer that the principal shareholders and directors of that company give a personal guarantee of that company's obligations pursuant to the water supply and service agreement.

## **7. Use of Water**

7.1 The Owners shall ensure that water taken by them from the Scheme is used only on the Land and is used in an efficient manner without waste.

7.2 The Company makes no representation or gives no warranty as to the condition or quality of the water and the Owners hereby acknowledge and agree that the Owners use the water at their own risk.

7.3 The Owners shall indemnify the Company against any actions claims damages and proceedings whatsoever arising out of the Owners' use of the water.

## **8. Review of Operating Expenses**

8.1 The Company shall have the right to annually review the Operating Expenses.

**9. Arbitration**

9.1 All differences and disputes between the parties to this agreement touching or concerning the subject matter of this agreement shall be referred to arbitration in accordance with the Arbitration Act 1996.

**10. Counterparts**

10.1 This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

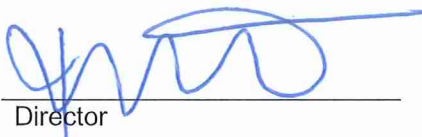
10.2 The Parties acknowledge that this Agreement may be executed on the basis of an exchange of facsimile or electronically generated copies and confirm that their respective execution of this Agreement by such means will be a valid and sufficient execution.

**EXECUTION**

**EXECUTED by CHINAMANS  
TERRACE SERVICES COMPANY  
LIMITED**

} \_\_\_\_\_  
Director

**EXECUTED by TKO  
PROPERTIES LIMITED**

}   
Director

}   
Director

## SCHEDULE

1. Description of the Land owned by the Owner to be supplied with water:

Lot 1 Deposited Plan 561457 held in Record of Title 993471

Lot 2 Deposited Plan 561457 held in Record of Title 993472

2. Number of Shares in the Company:

18

3. Water quota:

500,000 litres per day

Connection fee: \$5,000.00 plus GST

Address for services of notices:

Chinamans Terrace Services Company Limited  
c/- Findex  
Accountants  
21 Brownston Street  
Wanaka 9305

Owners:

TKO Properties Limited  
c/- Turner Hopkins  
400 Lake Road  
Takapuna  
Auckland 0740

