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BETWEEN

KERIKERI CRUISING CLUB INCORPORATED

("the Issuer")

AND

TOWER TRUST LIMITED

("the Statutory Supervisor")

**DEED OF VARIATION
TO DEED OF PARTICIPATION**

burke
melrose
Barristers & Solicitors

THIS DEED is dated the: 3rd day of June 2003

BETWEEN

- (1) **KERIKERI CRUISING CLUB INCORPORATED** at Kerikeri ("the Issuer")
- (2) **TOWER TRUST LIMITED** at Wellington ("the Statutory Supervisor")

RECITALS

- A. The Issuer and the Statutory Supervisor (under its former name The Trustees Executors and Agency Company of New Zealand Limited) have entered into a Deed of Participation dated 20 December 1996 ("the Deed of Participation").
- B. By Extraordinary Resolution dated 25 August 1998, the Licence Holders approved:
 - (I) The expansion of the Marina by the construction of new Marina Berths (to a design and in a manner considered appropriate by the Issuer) and to include such new Marina Berths in the existing Scheme; and
 - (II) The amendment of the Deed of Participation so as to reflect the extension of the Marina, including an amendment to the maximum number of Licences that can be offered to the public by the Issuer. To this effect, the Licence Holders approved the Issuer, Statutory Supervisor and the Chairperson of the Issuer's Marina Committee (on behalf of Licence Holders) entering into a Deed of Variation to the Deed of Participation to reflect the construction of the new Berths and the expansion of the Scheme, such Deed of Variation to the Deed of Participation to be on such terms as those parties considered appropriate.
- C. The terms of amendment to the Deed of Participation were accordingly agreed between the Issuer, Statutory Supervisor and the Chairperson of the Issuer's Marina Committee.
- D. Notwithstanding the above, the Issuer, Statutory Supervisor and the Chairperson of the Issuer's Marina Committee, after having regard to the nature and extent of the proposed amendments to the Deed of Participation, the effects of those amendments on the Licence Holders' rights and the time elapsed since the Extraordinary Resolution referred to in Recital B, determined that the Licence Holders should be asked to approve the terms of amendment to the Deed of Participation.
- E. By Notice of Special Meeting of Licence Holders dated 17 April 2003 ("the Notice") the Licence Holders were asked to consider, and if thought fit, pass an Extraordinary Resolution, approving the terms of amendment to the Deed of Participation as set out in that Notice.
- F. By Extraordinary Resolution dated 7 May 2003, the Licence Holders approved the terms of amendment to the Deed of Participation as set out in the Notice.
- G. In accordance with clause 13.1(g) of the Deed of Participation, the Issuer and the Statutory Supervisor now wish to amend the Deed of Participation in accordance with the terms of amendment to the Deed of Participation as set out in the Notice.

THIS DEED WITNESSES**1. INTERPRETATION**

- 1.1 The definition of "Coastal Permit" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Coastal Permit" means:

- (a) Coastal Permit (CPT 1096) issued by the Minister of Conservation on 23 September 1993;
- (b) Coastal Permit (NLD 99 6260-02) issued by the Northland Regional Council on or about 13 August 1999;
- (c) Coastal Permit (Discharge) (NLD 99 6260-03) issued by the Northland Regional Council on or about 13 August 1999;
- (d) Land Use Consent (NLD 99 6260-04) issued by the Northland Regional Council on or about 13 August 1999;
- (e) Resource Consent issued by the Northland Regional Council on 25 June 2002;
- (f) Coastal Permit (RCAN 0509) issued by the Minister of Conservation on 19 March 2003,

together with any variation to the same and any new coastal permits or consents granted in addition to or substitution for the same, authorizing the Issuer to occupy the seabed portion of the Marina for the purposes of the constructing and operating the Marina;

- 1.2 The definition of "Contractors" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Contractors" means that contractor or those contractors appointed by the Issuer to undertake the Project and who are approved by the Statutory Supervisor, such approval not to be unreasonably withheld;

- 1.3 The definition of "Engineer" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Engineer" means that engineer appointed by the Issuer to supervise the Project and who is approved by the Statutory Supervisor, such approval not to be unreasonably withheld;

- 1.4 The definition of "Marina" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Marina" means the marina at Doves Bay, Kerikeri Inlet and includes the floating structures, fingers and jetties, all marina foreshore areas, administration and service areas, car and trailer-boat parking areas, ramps, launching facilities and driveways and all other areas under the control or administration of the Issuer pursuant to the Scheme, together with those parts of the appurtenances and facilities which service the Scheme and such other facilities as may be incorporated from time to time to enable the marina to operate as a fully functional marina, together with any further development of the marina;

- 1.5 The definition of "Practical Completion" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Practical Completion" has that meaning assigned to that term by the Construction Contract;

- 1.6 The definition of "Project" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Project" means the design, construction, marketing and completion of additional Marina Berths or other facilities or services in the Marina including, without limitation, the design, construction, marketing and completion of an additional 78 Marina Berths and certain ancillary facilities (more or less) by the Issuer in accordance with a plan and design/build brief approved by the Statutory Supervisor, such approval not to be unreasonably withheld;

- 1.7 The definition of "Prospectus" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Prospectus" means any prospectus current from time to time relating to the issue of Licences and, where not inconsistent, also includes any investment statement current from time to time relating to the issue of Licences;

- 1.8 The definition of "Scheme" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Scheme" means the scheme for the development, management and ongoing operation of the Marina, including, without limitation, the provision of associated and ancillary services incidental to the operation of the Marina and the issue of Licences to the public;

- 1.9 The definition of "Statutory Supervisor" in clause 1.1 of the Deed of Participation is deleted and replaced with the following:

"Statutory Supervisor", means TOWER Trust Limited (formerly The Trustees Executors and Agency Company of New Zealand Limited) at Wellington, and its successors and assigns, and any replacement thereof;

- 1.10 The definitions "Fletchers Contract" and "McBreen Contract" in clause 1.1 of the Deed of Participation are deleted and a new definition "Construction Contract" is added to clause 1.1 of the Deed of Participation as follows:

"Construction Contract" means a construction contract or contracts entered into by the Issuer with a reputable construction company or companies for the undertaking of a Project, the terms of such construction contract or contracts to be approved by the Statutory Supervisor, such approval not to be unreasonably withheld;

2. APPOINTMENT OF STATUTORY SUPERVISOR AND UNDERTAKING BY THE ISSUER

- 2.1 A new clause 2.4A is included in the Deed of Participation as follows:

2.4A Subject to an authorising resolution of the members of the Club, the Issuer hereby charges all new Charged Property arising out of the Project in favour of the Statutory Supervisor as a first charge for payment of the Moneys Hereby Secured and the performance of the Obligations **AND IT IS HEREBY DECLARED** that the charges hereby created shall be continuing securities which shall subsist until all the Moneys Hereby Secured have been paid or satisfied and all

of the Obligations have been performed by the Club and the Statutory Supervisor has executed a formal release of such charges.

2.2 A new clause 2.4B is included in the Deed of Participation as follows:

2.4B *The Issuer acknowledges that the charges created by clause 2.4 and 2.4A grant to the Statutory Supervisor a security interest in all its present and after-acquired Charged Property insofar as that Charged Property is personal property in terms of the Personal Property Securities Act 1999.*

3. OBJECTS OF THE SCHEME

3.1 Clause 3.2 of the Deed of Participation is deleted and replaced with the following:

3.2 *The Issuer may from time to time enter into a Construction Contract for the undertaking of a Project in respect of the Marina.*

3.2 Clause 3.3 of the Deed of Participation is deleted and replaced with the following:

3.3 *The Issuer will:*

(a) *Ensure that any Project is undertaken in terms of the Construction Contract;*

(b) *During the course of a Project the Issuer will, if required by the Statutory Supervisor, provide the Statutory Supervisor with a report as to the progress of the Project, the form of such report to be agreed by the Issuer and Statutory Supervisor and to be provided by the Issuer with the report to the Statutory Supervisor required by clause 7.2(f); and*

(c) *Will consult with the Statutory Supervisor in the event of any delay or cost overrun in respect of the Project or of any event which may have a material adverse effect on the financial position of the Issuer or the Licence Holders' investment in the Scheme.*

3.3 Clause 3.5 of the Deed of Participation is deleted and replaced with the following:

3.5 *The Scheme commenced on 23 November 1994 and no minimum number of Licences need now be allotted or amount raised and paid in cash from subscriptions for Licences.*

3.4 Clause 3.6 of the Deed of Participation is deleted and replaced with the following:

3.6 *The maximum number of Licences that may be offered and allotted to the public under the Scheme is 186, provided that the Issuer and Statutory Supervisor may from time to time agree to vary the maximum number of Licences to be offered and allotted to the public under the Scheme.*

3.5 Clause 3.8 of the Deed of Participation is deleted and all subsequent clauses and cross-references to those clauses renumbered accordingly.

3.6 Clause 3.9 of the Deed of Participation, being clause 3.8 of the Deed of Participation after making the amendments specified at clause 3.5 of this Deed above, is deleted and replaced with the following:

3.8 *For so long as any Person is and remains a Licence Holder, that Person shall be and remain a full financial member of the Issuer, **PROVIDED THAT** where that Person is:*

- (a) A body corporate or unincorporated body, it shall ensure that at least one individual nominated by it remains a full financial member of the Club at all times; or
- (b) A trustee or one of the trustees for a trust holding the Licence, that Person shall ensure that the individual who has the principal use of the Marina Berth and the named boat the subject of the Licence remains a full financial member of the Club at all times.

4. MARINA TRUST ACCOUNT

4.1 Clause 4.2(a) of the Deed of Participation is deleted and replaced with the following:

4.2(a) Progress payments during the course of construction of the Project will be paid out of the Marina Trust Account (without in any way imposing an obligation on the Statutory Supervisor to otherwise meet such payment) by the Statutory Supervisor to the Contractor on the receipt of certificates from the Engineer certifying that the moneys are due to the Contractor in accordance with the terms of the Construction Contract.

4.2 Clause 4.2(b) of the Deed of Participation is deleted and replaced with the following:

4.2(b) Payments prior to construction commencement and thereafter in respect of the Project will be paid on a monthly basis out of the Marina Trust Account (without in any way imposing an obligation on the Statutory Supervisor to otherwise meet such payment) by the Statutory Supervisor to the Issuer on receipt of invoices (certified or audited to the satisfaction of the Statutory Supervisor) evidencing that expenditure has been incurred by the Issuer in relation to the Project. The Issuer covenants to promptly pay any such invoice upon receipt of the covering moneys from the Statutory Supervisor.

4.3 Clause 4.2(c) of the Deed of Participation is deleted and replaced with the following:

4.2(c) On Practical Completion of the Construction Contract, the amount owed by the Issuer in accordance with the Construction Contract will be paid to the Contractor out of the Marina Trust Account (without in any way imposing an obligation on the Statutory Supervisor to otherwise meet such payment) by the Statutory Supervisor on the receipt of a certificate from the Engineer certifying the amount so owed is due and payable and that Practical Completion has been achieved; and

4.4 Clause 4.2(d) of the Deed of Participation is deleted and replaced with the following:

4.2(d) Payments following Practical Completion will be made from any amounts held on account of building or maintenance retentions under the Construction Contract out of the Marina Trust Account (without in any way imposing an obligation on the Statutory Supervisor to otherwise meet such payment) by the Statutory Supervisor on receipt of certificates from the Engineer certifying that the moneys are due and payable from such amounts.

4.5 Clause 4.2(e) of the Deed of Participation is deleted.

5. CAPITAL OF THE SCHEME

5.1 Clause 5.2 of the Deed of Participation is deleted and replaced with the following:

5.2 *The Scheme commenced on 23 November 1994 and there is now no minimum subscription amount for berths.*

6. MANAGEMENT OF THE SCHEME

6.1 Clause 7.1(f)(iii) of the Deed of Participation is deleted and replaced with the following:

7.1(f)(iii) paying all operating expenses of the Marina;

6.2 Clause 7.2(p) of the Deed of Participation is deleted and replaced with the following:

7.2(p) It will comply with and observe all covenants, obligations, provisions and conditions contained in this Deed and in the Coastal Permit. Further, the Issuer will conduct itself and the operation of the Marina in such a manner so as to ensure that it is able to obtain a renewal or extension of the Coastal Permit, if such a renewal is available or offered to the Issuer. To this end, the Club and Statutory Supervisor shall cause a Meeting to be held on or before 30 June 2015, with a view to obtaining directions from Licence Holders on the following matters:

- (i) Whether the Issuer should obtain a renewal or extension of the Coastal Permit or new coastal permits for the Marina;
- (ii) If the Issuer obtains a renewal or extension of the Coastal Permit or new coastal permit for the Marina, whether the term of the Licences and term of the Scheme be extended to coincide with the term of the renewed or extended Coastal Permit or new coastal permit (as the case may be) less one Working Day and the other terms and conditions of the Licences be amended to coincide with any consequential changes to the terms of the renewed or extended Coastal Permit or new coastal permit;
- (iii) To determine if any additional Licence payments, beyond those incurred by the Club in obtaining the extension or renewal of the Coastal Permits or new coastal permits, as the case may be, should be paid by the Licence Holders upon the extension of the Licences contemplated at paragraph (ii) above; and

the directions of the Licence Holders on the above matters, so long as such directions are passed by Ordinary Resolution at the Meeting, shall be binding on the Issuer and the Issuer must act promptly and with all due diligence to give effect to those directions, including complying with all necessary law. All other provisions of this Deed are to be read subject to this clause.

6.3 Clause 7.7 of the Deed of Participation is deleted and replaced with the following:

7.7 *The Issuer shall hold the Operating Expenses Account as trustee for the respective interests of the Issuer, the Licence Holders and the Statutory Supervisor, to be applied in and towards the operating expenses of the Marina and the management fee referred to in clause 7.4 in accordance with the provisions of the Licence. It shall be a pre-condition of the Operating Expenses Account that the banker with whom it is intended to open that bank account first acknowledge in a form approved by the Statutory Supervisor, that the Operating Expenses Account is a trust account and that the bank has no right of set-off in respect of the moneys standing to the credit of the Operating Expenses Account.*

6.4 A new clause 7.7A is included in the Deed of Participation as follows:

7.7A In addition to the Issuer's obligations under clauses 7.6 and 7.7, the Issuer, in consultation with the Statutory Supervisor, will make an apportionment of the Operating Expenses Account so that all funds held in the Operating Expenses Account as at the date of Practical Completion, other than those funds identified by the Issuer as having been paid by Licence Holders as part of the Operating Fees for the purposes of the Project, are set aside for the payment of operating expenses relating to the Marina as it existed prior to commencement of the Project only and will not be applied to operating expenses relating to the Project. For the avoidance of doubt it is confirmed that all Operating Fees received from Licence Holders for the credit of the Operating Expenses Account following the date of Practical Completion will be attributable to the entire Marina, including the costs associated with the Project and the structures and services developed as part of the Project.

6.5 A new clause 7.8A is included in the Deed of Participation as follows:

7.8A In addition to the Statutory Supervisor's obligations under clause 7.8, the Statutory Supervisor will make an apportionment of the Refurbishment Account so that all funds held in the Refurbishment Account as at the date of Practical Completion are set aside for the major repair, renovation, refurbishment, replacement and maintenance of the Marina structures and services as they existed prior to commencement of the Project only and will not be applied to the major repair, renovation, refurbishment, replacement and maintenance of the structures and services developed as part of the Project. For the avoidance of doubt it is confirmed that all Refurbishment Contribution Charges received from Licence Holders for the credit of the Refurbishment Account following the date of Practical Completion will be attributable to the entire Marina, including the structures and services developed as part of the Project.

7. MISCELLANEOUS

- 7.1 Except as varied in this Deed, the terms defined in this Deed have the same meaning as those terms which are defined in the Deed of Participation.
- 7.2 Except as varied in this Deed, the covenants contained and implied in the Deed of Participation shall continue and remain in full force.
- 7.3 This Deed may be executed in any number of counterparts, all of which being taken together shall constitute one and the same instrument and any of the parties hereto may execute this Deed by signing any such counterpart.

THIS DEED has been executed on the date provided on page 1 of this Deed.

EXECUTED by
KERIKERI CRUISING CLUB INCORPORATED
under its common seal:

[Signature]
Signature of Commodore
FRANCESE GYBARTUS
DE VRIES
Full Name of Commodore

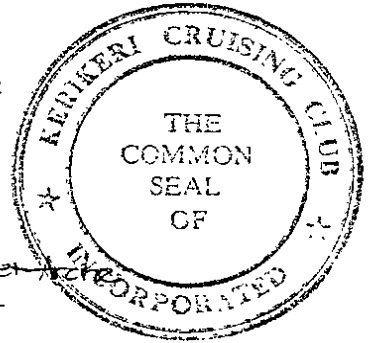
[Signature]
Signature of Authorized Signatory
Helen Louise Johnson
Full Name of Authorized Signatory

Witness to Commodore's signature:

Witness to Authorized Signatory's signature:

[Signature]
Signature of Witness
Full Name of Witness: Joanne Margaret Adams
Occupation: Business Manager
City/Town of Residence: KERIKERI

[Signature]
Signature of Witness
Full Name of Witness: Joanne Margaret Adams
Occupation: Business Manager
City/Town of Residence: KERIKERI



EXECUTED by
TOWER TRUST LIMITED
under its common seal:

[Signature]
Signature of Authorized Signatory
Clynton Neil Hardy
Full Name of Authorized Signatory

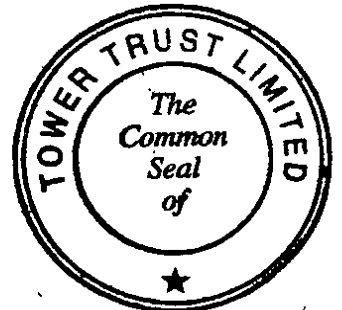
[Signature]
Signature of Authorized Signatory
Claude Sandro Oberto
Full Name of Authorized Signatory

Witness to Authorized Signatory's signature:

Witness to Authorized Signatory's signature:

[Signature]
Signature of Witness
Full Name of Witness: CAROL ANNE COOK
Occupation: BUSINESS MANAGER
City/Town of Residence: AUCKLAND

[Signature]
Signature of Witness
Full Name of Witness:
Occupation:
City/Town of Residence:



2003-090/1



COMPANIES
NEW ZEALAND
OFFICE

CERTIFICATE OF AMENDMENT OF DEED OF PARTICIPATION

(Under 47(4) of the Securities Act 1978)

KERIKERI CRUISING CLUB INCORPORATED

483706

This is to certify that a Deed dated the 3rd day of June 2003 containing amendments to a Deed of Participation dated the 20th day of December 1996 was registered on the 10th day of June 2003.

Sarah Steele
Assistant Registrar of Companies
Dated this 13th day of June 2003

