

FINAL 17 12 2020

**PAHI REGATTA CLUB INCORPORATED**  
(Club)

**KAIPARA DISTRICT COUNCIL**  
(Council)

**AGREEMENT FOR SALE AND  
PURCHASE OF PAHI WHARF**

**BROOKFIELDS**  
LAWYERS

## AGREEMENT FOR SALE AND PURCHASE OF PAHI WHARF

## CONTENTS

PARTIES .....	1
INTRODUCTION .....	1
1. DEFINITIONS AND INTERPRETATION .....	1
2. CONDITIONS PRECEDENT .....	3
3. SALE AND PURCHASE OF ASSETS .....	4
4. PAYMENT OF PURCHASE PRICE .....	4
5. PRE-COMPLETION OBLIGATIONS .....	4
6. RISK .....	4
7. COMPLETION OBLIGATIONS .....	4
8. WARRANTIES .....	5
9. CONFIDENTIALITY .....	7
10. DEFAULT, CANCELLATION .....	7
11. DISPUTE RESOLUTION .....	8
12. FORCE MAJEURE .....	9
13. COUNCIL'S REGULATORY FUNCTIONS .....	9
14. GENERAL .....	9
1. DEFINITIONS AND INTERPRETATION .....	5
2. TERM OF LICENCE .....	6
3. ANNUAL LICENCE FEE .....	6
4. OUTGOINGS .....	7
5. REPAIR MAINTENANCE AND REPLACEMENT .....	7
6. INSURANCES .....	8
7. NATURE OF LICENCE/PUBLIC USE .....	8
8. PERMITTED USE .....	9
9. COMMUNITY BENEFITS AND PERFORMANCE MEASURES .....	10
10. LEGISLATION, BYLAWS AND HEALTH AND SAFETY .....	10
11. INDEMNITY .....	11
12. ASSIGNMENT OR SUBLETTING .....	11
13. SUSPENSION AND TERMINATION .....	11
14. CONSEQUENCES ON TERMINATION .....	12
15. COUNCIL'S RIGHT TO INSPECT AND UNDERTAKE WORK .....	12
16. ALTERATIONS, REPLACEMENTS OR CONSTRUCTION OF IMPROVEMENTS .....	13
17. COMPLIANCE WITH CONSENTS .....	13
18. COUNCIL'S ROLE AS TERRITORIAL AUTHORITY .....	13
19. RESERVES ACT 1977 .....	13

20.	DISPUTES AND MEDIATION.....	13
21	GENERAL .....	13
22.	NOTICES .....	14
21.	COUNCIL POLICIES .....	15

## AGREEMENT FOR SALE AND PURCHASE OF PAHI WHARF

AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_ 2020

### PARTIES

1. PAHI REGATTA CLUB INCORPORATED ("Club")
2. KAIPARA DISTRICT COUNCIL ("Council")

### INTRODUCTION

- A. The Club is an incorporated society registered on the Register of Incorporated Societies under registration number 223837. The Club is also known as the "Pahi Boating and Fishing Club".
- B. Pahi Wharf is situated in the Kaipara District which is administered by Council. The access ramps and supporting piles of the Pahi Wharf are situated on Council Land and extend into the Coastal Marine Area which is controlled by the Northland Regional Council.
- C. The Club owns the structures comprising the Pahi Wharf and is responsible for maintaining the wharf structures and the sea wall adjacent to and connecting to the Pahi Wharf (as required by the 1996 Reserve Management Plan).
- D. The Club has agreed to sell the Pahi Wharf to Council, and Council has agreed to purchase the Pahi Wharf from the Club on the terms and conditions contained in this Agreement.

### AGREEMENT

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

"**Agreement**" means this agreement and includes the schedules and annexures.

"**Completion**" means completion of the sale and purchase of the Pahi Wharf in accordance with clause 7.

"**Completion Date**" means the date which is five (5) Working Days after the date the last of the Conditions is satisfied.

"**Conditions**" means the conditions described in clause 2.

"**Confidential Information**" means any information:

- (a) relating to the terms of this Agreement;
- (b) relating to the business affairs of any party;
- (c) disclosed by any party to the other on the express basis that such information is confidential; or
- (d) which might reasonably be expected by any party to be confidential in nature.

provided that where information relates exclusively to one party, nothing in this Agreement shall require a party to maintain confidentiality in respect of that Information.

**"Consent(s)"** means any consent including land use or regional consent required under the Resource Management Act 1991, Marine and Coastal Area (Takutai Moana) Act 2011 or any other applicable legislation relating to the structures comprising the Pahi Wharf or the Upgrade Works.

**"Encumbrance"** means:

- (a) any mortgage, charge, encumbrance, lien, pledge, option, right of first refusal, right to acquire, right of pre-emption, finance lease, sale and buy-back, sale and lease-back, sale and repurchase, assignment by way of security, equitable interest, retention of title or any other interest or other arrangement of any nature having similar economic effect; and
- (b) any present or future right or interest in personal property that is a security interest for the purposes of the PPSA.

**"Force Majeure Event"** means any unforeseen event or circumstance beyond the reasonable control of the party affected by the event, including (without limitation) any:

- (a) earthquake, storm, landslide, fire, flood, and acts of God;
- (b) strike, lockout or other industrial disturbance by or amongst employees of a person other than the affected party which is national in its scope and effects;
- (c) act of public enemy, or declared or undeclared war or threat of war;
- (d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the affected party); or
- (e) Governmental restraint, legislation or regulation; or
- (f) pandemic or epidemic.

**"GST"** means goods and services tax payable under the GST Act.

**"GST Act"** means the Goods and Services Tax Act 1985.

**"Licence"** means a licence to occupy the Pahi Wharf materially in the form attached at Appendix A subject to such amendments as Council may reasonably require or that are necessary or desirable to give effect to this Agreement and Council's current policy on public access to Council assets.

**"Pahi Wharf"** means the structures which make up the Pahi wharf located at the end of Pahi Road as shown on the plan attached at Appendix B.

**"Purchase Price"** means \$1,000 plus GST.

**"Transaction"** means the transaction recorded in this Agreement.

**"Upgrade Works"** means physical works required to construct upgrades to the Pahi Wharf including a pontoon and gangway as described in the Project Memorandum prepared by WSP dated 31 August 2020.

“**Warranties**” means the warranties given by the Cub described in clause 8.2.

“**Working Day**” has the meaning ascribed to that term in the Property Law Act 2007.

1.2. **Interpretation:** In this agreement:

- (a) where the context permits, the singular includes the plural and vice versa;
- (b) references to any “party” mean a party to this Agreement and include the successors and permitted assignees (as the case may be) of that party;
- (c) references to clauses and schedules are to clauses in, and the schedules to, this Agreement (unless stated otherwise). Each such schedule forms part of this Agreement;
- (d) where the context permits, references to a “person” include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;
- (e) defined words and expressions bear the defined meaning throughout this Agreement including the Background.

## 2. **CONDITIONS PRECEDENT**

2.1 This Agreement is conditional on:

- (a) Council passing a resolution approving its entry into this Agreement;
- (b) the members of the Club approving its entry into this Agreement in accordance with its rules.

2.2 The dates for satisfaction of the conditions in clause 2.1 are as follows:

- (a) clause 3.1(a): [Twenty (20) Working Days] from the date of this Agreement;
- (b) clause 3.1(b): [Twenty (20) Working Days] from the date of this Agreement;

or such later date or dates as the parties may agree.

2.3 If any of the conditions are not satisfied by the due date, this Agreement will be voidable by either party giving notice in writing to the other and, if avoided, neither party shall have any claim against the other provided that nothing in this clause shall affect any provision that is intended to survive termination.

2.4 The condition in clause 2.1(a) has been inserted for the sole benefit of Council by whom it may be waived in whole or in part. The condition in clause 2.1(b) has been inserted for the benefit sole benefit of the Club by whom it may be waived in whole or in part.

2.5 The parties shall use all reasonable endeavours to satisfy the conditions in clause 2.1 by the condition dates in clause 2.2.

### 3. SALE AND PURCHASE OF ASSETS

- 3.1 Subject to the satisfaction of the Conditions, the Club shall sell, and Council shall purchase, the Pahi Wharf free of Encumbrances at the Purchase Price and otherwise on the terms and conditions contained in this Agreement.

### 4. PAYMENT OF PURCHASE PRICE

- 4.1 **Payment:** Subject to the Club meeting its obligations under clause 7.2, Council shall satisfy the Purchase Price by the payment in cleared and immediately available funds to the Club on the Completion Date.

### 5. PRE-COMPLETION OBLIGATIONS

- 5.1 **Positive obligations of the Club:** Pending Completion the Club shall, except to the extent that the Council otherwise agrees in writing or as expressly permitted by this Agreement:
- (a) maintain the Pahi Wharf in as good a state of operating condition and repair as at the date of this Agreement, except for ordinary fair wear and tear;
  - (b) maintain all existing insurances in respect of the Pahi Wharf;
  - (c) immediately notify the Council of any law suits, claims, proceedings or adverse events which may occur, be threatened, brought, asserted or commenced against it, its directors or employees, involving or affecting the Pahi Wharf;
  - (d) refrain from doing or omitting to do any act which would render any of the Warranties materially untrue; and
  - (e) promptly notify the Council in writing of any breach of a Warranty or of any matter which would constitute a breach of Warranty at Completion if all the Warranties were deemed to be repeated at Completion.

### 6. RISK

- 6.1 **Risk until Completion:** The Pahi Wharf shall remain at the risk of the Club until Completion.
- 6.2 **Damage prior to Completion of the Pahi Wharf:** If any of part of the Pahi Wharf is lost, destroyed or damaged prior to Completion and the loss, destruction or damage has not been made good by the Completion Date, the Purchase Price shall be reduced by an amount equal to the amount needed to make good the loss, destruction or damage.

### 7. COMPLETION OBLIGATIONS

- 7.1 **Time for Completion:** Completion shall take place not later than 3.00pm on the Completion Date at the offices of Council's solicitors, or such other place as agreed between Council and Club.
- 7.2 **The Club's obligations on Completion:** At Completion:

- (a) the Club must transfer, or procure the transfer of, the Pahi Wharf to Council, free of all Encumbrances;
- (b) title to the Pahi Wharf shall vest in Council;
- (c) the Club shall give to Council control or possession of the Pahi Wharf;
- (d) the Club shall, except to the extent that Council has otherwise directed in writing prior to Completion, deliver the following to the Council:
  - (i) such copies as the Club possess or control of Consents;
  - (ii) releases and discharges of all Encumbrances over the Pahi Wharf (if any);
  - (iii) all other documents and things necessary to transfer to Council title to and possession of the Pahi Wharf,

in each case in a form satisfactory to the Council (acting reasonably).

7.3 **Assignment of rights:** The Club shall assign to Council, with effect from Completion:

- (a) all of the Club's property and contractual rights in the Pahi Wharf;
- (b) the benefit of all rights of the Club (including any warranty rights) against third parties relating to the Pahi Wharf to the extent that such rights are capable of assignment by the Club.

7.4 **Deemed delivery:** The Club may deliver to Council any item required to be delivered at Completion by placing that item under the effective control of Council.

7.5 **Council's obligations on Completion:** Upon compliance with the foregoing provisions of this clause, Council shall immediately pay or satisfy the Purchase Price in the manner specified in clause 4.1.

7.6 **Mutual obligations on Completion:** The Club and Council will enter into the Licence.

## 8. WARRANTIES

8.1 **Mutual Warranties:** Each of the parties represents and warrants to the other that:

- (a) it has full power and authority to enter into and, subject to satisfaction of the conditions, perform its obligations under this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and, subject to the satisfaction of the conditions, performance of this Agreement in accordance with its terms;
- (c) this Agreement creates obligations which are legally binding on it and are enforceable against it in accordance with the terms of this Agreement.

8.2 **Club Warranties:** In consideration of Council entering into this Agreement, the Club warrants:

- (a) the Pahi Wharf is in good order and repair;



- (b) the Pahi Wharf will on Completion be transferred to Council free of Encumbrances and third party rights (including and leases, licences or berthage rights or agreements);
- (c) the Pahi Wharf is the property of, and under the control of, the Club and is not and will not on Completion be held by the Club on or subject to any lease, licence, hire purchase agreement or other similar arrangement;
- (d) the Pahi Wharf is not subject to any option, mortgage, charge, lien, encumbrance, security interest or other adverse interest of any nature whatsoever; and
- (e) no person other than the Club is entitled to possession of, or any interest in, the Pahi Wharf.

8.3 The Club:

- (a) gives the Warranties to Council at the date of execution of this Agreement by Council; and
- (b) agrees that each of the Warranties shall be deemed to be given again on the Completion Date.

8.4 **Qualifications:** The Warranties are given subject to:

- (a) any exception or qualification fairly disclosed in writing to Council not less than two (2) Working Days prior to execution of this Agreement, or expressly stated in this Agreement;
- (b) any exception or qualification expressly provided for in this Agreement;
- (c) any matter, information or circumstance accurately recorded one (1) Working Day prior to Completion on the following registers:
  - (i) the Companies Office;
  - (ii) the Intellectual Property Office of New Zealand;
  - (iii) Land Information New Zealand; and
  - (iv) the Personal Property Securities Register;
- (d) the qualification that no fact or circumstance will give rise to a claim for breach of Warranty, to the extent that the facts or circumstances are:
  - (i) made good or have been made good without cost or liability to Council; or
  - (ii) the subject of an insurance claim, and then only to the extent that the relevant amount has been recovered by the Council from the net proceeds of such insurance; or
- (e) any matter or thing done, or omitted to be done, in accordance with any provision of this Agreement, or at the written request, or with the prior written approval, of Council.

8.5 **Limitations:** Council shall not be entitled to make any claim whatsoever against the Club in respect of any Warranty unless the Warranty claim is made before the date eighteen (18)

months from the Completion Date.

8.5 **Own investigations:** Each party acknowledges and confirms that, except for the Warranties and the other provisions of this Agreement:

- (a) it has conducted its own investigations in relation to the Transaction and that it has entered into this Agreement and will perform its obligations under this Agreement solely in reliance upon its own investigations and not in reliance on any information provided by any other party prior to the date hereof; and
- (b) in entering into and performing its obligations under this Agreement, it has not relied, and will not rely, on any representation, warranty, promise or statement made by any other party or any person on behalf of any other party.

## 9. CONFIDENTIALITY

9.1 **Confidentiality:** Each party shall maintain as confidential at all times, and shall not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person; or
- (b) use for itself; or
- (c) use to the detriment of the other party,

any Confidential Information except:

- (d) as required by law or any relevant stock exchange rules; or
- (e) as is already or becomes public knowledge, otherwise than as a result of a breach by the party disclosing or using that Confidential Information of any provision of this agreement; or
- (f) as authorised in writing by the other party; or
- (g) to the extent reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information only to such of its officers, employees or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of this Agreement),

provided that where any Confidential Information relates exclusively to the affairs of one party, nothing in this clause shall require that party to maintain confidentiality in respect of that Confidential Information.

## 10. DEFAULT, CANCELLATION

10.1 **Council default:** If Council defaults in any material respect in the performance of any of its obligations under this Agreement prior to or on the Completion Date, the Club may, in the case of a default which is capable of remedy, after giving to Council not less than ten (10) Working Days' written notice of such default requiring Council to remedy the same and such default not having been remedied within that period or, in respect of a default not capable of remedy, immediately, exercise all or any of the following, without prejudice to any other rights which the Club may have:

- (a) cancel this Agreement by written notice to Council.
- (b) sue Council for specific performance.

10.2 **Club default:** If the Club defaults in any material respect in the performance of any of its obligations under this Agreement prior to or on the Completion Date Council may, in the case of a default which is capable of remedy, after giving to the Club not less than ten (10) Working Days' written notice of such default requiring the Club to remedy the same and such default not having been remedied within that period or, in the case of a default not capable of remedy, immediately, exercise all or any of the following, without prejudice to any other rights which Council may have:

- (a) cancel this Agreement by written notice to the Club, in which event the Club shall immediately repay to Council any moneys paid on account of the Purchase Price.
- (b) sue the Club for specific performance.

## 11. DISPUTE RESOLUTION

11.1 If any dispute arises between the parties out of this Agreement then any party may by notice in writing require that the parties' representatives meet and discuss in good faith the dispute within ten (10) Working Days and if such discussions fail within five (5) Working Days of that meeting to resolve the relevant dispute, a party may (by written notice to the other parties) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:

- (a) the mediator shall be deemed to be not acting as an expert or as an arbitrator;
- (b) the mediator shall determine the procedure and timetable for the mediation;
- (c) the cost of the mediation shall be shared equally between the parties.

11.2 No party may require any arbitration, or issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken all reasonable steps to comply with this clause.

11.3 If the parties fail to reach agreement pursuant to clause 11.1 within the time specified by the mediator pursuant to clause 11.1(a)(ii) then the dispute shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment of that Act or any other statutory provision then relating to arbitration.

11.4 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of either party, by the President or Vice President for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall not be subject to appeal. The provisions of article 11 of the First Schedule to the Arbitration Act 1996 are to be read subject to this clause and varied accordingly.

11.5 No dispute arising gives a party the right to suspend their obligations under the terms of this Agreement.

**12. FORCE MAJEURE**

- 12.1 Neither party will be liable to the other for any delays or failure to perform its obligations under this Agreement, provided that each party has taken all reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure Event.
- 12.2 If a Force Majeure Event affects either party, the affected party must immediately inform the other party of the circumstances and make request the other's approval (such approval not to be unreasonably withheld or delayed) to extend the time for the performance of the party's obligations under this Agreement by a period of up to the same duration as the Force Majeure Event.

**13. COUNCIL'S REGULATORY FUNCTIONS**

- 13.1 Council has statutory and regulatory functions in its capacity as a local authority outside of the terms and conditions of this Agreement including without limitation under the Resource Management Act 1991, Building Act 2004, Local Government Act 2002 and any other Act, regulation or by-law. When Council is exercising these regulatory functions it shall be deemed not to be acting in those circumstances as party to this Agreement. Nothing in this Agreement:
  - (a) will override Council's regulatory role which will prevail in the event there is a conflict between that regulatory role and the provisions of this Agreement.
  - (b) implies any approval by Council in its regulatory role.

**14. GENERAL**

- 14.1 **Announcements:** Except as may be required by law, no party may make any announcement or disclosure as to the subject matter or any of the terms of this Agreement except in such form and manner, and at such time, as all parties agree. If any party is required to make an announcement or disclosure as to the subject matter or any of the terms of this Agreement, that party shall first give notice to the other parties, shall consult with the other parties, and shall endeavour to agree with the other parties on the form of disclosure or announcement to be made.
- 14.2 **Notices:** If any party wishes to give to any other party any notice, claim, demand or other communication ("**Notice**") under or in connection with this Agreement, the Notice is sufficiently given or served (but without prejudice to any other mode of service) if addressed to that party and delivered to the address of that party stated below (or to any other address notified by that party for purposes of receiving Notices):

**Club**

Physical address:  
Postal address:  
Facsimile number:  
Email address:  
Attention:

[ 18 Paparoa ] Northland 0571  
[ pahiboatclub@gmail.com ]

**Council**

Physical address: [ ]  
 Postal address: [ ]  
 Facsimile number: [ ]  
 Email address: \_\_\_\_\_@\_\_\_\_\_  
 Attention: [ ]

- 14.3 **Release not to prejudice liability:** Any liability of the Clubs to Council under this Agreement may in whole or in part be released, compounded or compromised, or any time or indulgence may be given, by Council in its absolute discretion, as regards the Club under such liability without in any way prejudicing or affecting the rights of Council against a party with ongoing liability to Council.
- 14.4 **No assignment:** No party may, directly or indirectly, assign, transfer or otherwise dispose of any rights or interests of that party in, or obligations or liabilities under, this Agreement, except with the prior written consent of the other party which shall not be unreasonably withheld or delayed.
- 14.5 **Relationship:** Nothing in this Agreement will create, constitute or evidence any partnership, joint venture, agency relationship between the parties and no party will have any authority to act for, or to incur any obligation on behalf of the other parties, except as expressly provided in this Agreement.
- 14.6 **Variation and waiver:** This Agreement may only be varied in writing signed by the parties. No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by any party will in any way affect, limit or waive that party's right thereafter to enforce and compel strict compliance with the provisions of this Agreement.
- 14.7 **No merger:** The obligations, warranties, undertakings and indemnities set out in this Agreement, to the extent not performed at Completion, will not merge on Completion or on the execution and delivery of any document pursuant to this Agreement, but will remain enforceable to the fullest extent, notwithstanding any rule of law to the contrary.
- 14.8 **Further assurances:** Each party will from time to time on request by the other parties execute and deliver all documents and do all other acts and things, which are necessary or reasonably required to give full force and effect to the provisions of, and arrangements contemplated by, this Agreement.
- 14.9 **Costs:** The parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of this Agreement and any documentation pertaining hereto unless expressly provided otherwise in this Agreement.
- 14.10 **Severability:** If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable such determination will not impair the enforceability of the remaining parts of this Agreement, which will remain in full force, and such provision will be deemed to be modified to the extent necessary to render it legal, valid and enforceable.
- 14.11 **Entire agreement:** This Agreement constitutes the entire agreement and understanding (express and implied) between the parties relating to the subject matter of this Agreement.
- 14.12 **Counterparts:** This Agreement may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable agreement between the parties. Any party may execute this Agreement by signing any such counterpart.

14.13 **Governing law and jurisdiction:** This Agreement is governed by, and will be construed in accordance with, the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

**EXECUTION**

**SIGNED** by )  
**KAIPARA DISTRICT COUNCIL** )  
by its duly authorised )  
signatory acting under delegated )  
authority in the presence of: )

\_\_\_\_\_

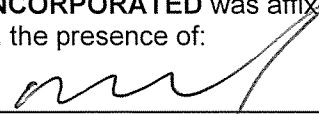
\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Name of Witness)


\_\_\_\_\_  
(Occupation of Witness)

\_\_\_\_\_  
(Address of Witness)

**THE COMMON SEAL** of )  
**PAHI REGATTA CLUB** )  
**INCORPORATED** was affixed )  
in the presence of: )

  
\_\_\_\_\_  
(Signature of Commodore)

**Darren Sheppard**  
\_\_\_\_\_  
(Name of Commodore)

  
\_\_\_\_\_  
(Signature of Board Member)

**Ben Sheppard**  
\_\_\_\_\_  
(Name of Board Member)