

**PINE HARBOUR LIVING LIMITED
("SUPPLIER")**

WATER SUPPLY AGREEMENT

General Terms

PARTIES

1. **PINE HARBOUR LIVING LIMITED ("SUPPLIER")**
2. The person named as Customer in the Supply Sheet ("**CUSTOMER**")

BACKGROUND

- A. The Supplier is a registered Network Supplier for the purposes of the Health Act and operates a Drinking Water Supply.
- B. The Customer owns the Property and has requested the Supplier to supply Drinking Water to the Property.
- C. The Supplier has agreed to supply Drinking Water to the Property via the Supplier's Network on the terms set out in the Agreement.

AGREEMENT

1. AGREEMENT TO SUPPLY

- 1.1 The Supplier shall supply Drinking Water to the Customer through the Supplier's Network at the price specified in the Price Schedule and in accordance with the terms set out in the Agreement.
- 1.2 If this Agreement is for a Residential Supply, the Supplier shall, except as otherwise agreed in writing, not be required to supply in excess of 525 litres per day to the Property.
- 1.3 The Customer acknowledges and accepts that the Agreement comprises the Supply Sheet and these General Terms.
- 1.4 The Supplier may change these General Terms (including the Price Schedule) from time to time. The most current version of the General Terms will be available on the Supplier's website at www.pineharbourwater.co.nz (or any website in substitution from time to time). The Customer shall be bound by any such changes 20 Business Days following the date a new version of the General Terms are posted to that website.

2. THE SUPPLIER'S CHARGES AND PAYMENTS

The Supplier's Price Schedule

- 2.1 The Supplier's prices and charges are set out in the Supplier's current Price Schedule and may be based on the volume of water supplied to the Customer and/or fixed charges.
- 2.2 From time to time, the Supplier may make changes to the Price Schedule unless the prices are at any time set by statute.

Charges for other goods and services

- 2.3 Other charges that the Supplier may require the Customer to pay include:

- (a) an infrastructure fee for new or existing customers as a capital contribution towards the construction and/or enhancement of the Supplier's Network;
- (b) costs for backflow prevention device(s);
- (c) development and connection fees;
- (d) costs for meter-related work;
- (e) costs that arise because the Customer does not comply with the requirements of the Agreement; and
- (f) administration fees for special water meter readings.

2.4 By using any of the Supplier's Drinking Water (or other services) the Customer agrees to pay the charges that are set out in the Price Schedule (as amended from time to time).

Estimated charges

2.5 The Supplier may estimate how much Drinking Water the Customer uses and charge the Customer based on that estimate.

2.6 Where the Supplier invoices on the basis of an estimate pursuant to clause 2.5 the Supplier shall conduct an actual reading of the water meter in respect of the Customer's Property regularly and at intervals of not more than monthly and shall make whatever adjustment is necessary between the Supplier and the Customer taking into account the total of the payments previously received from the Customer on the basis of estimated usage and the actual usage as determined by the water meter reading. The Customer will pay to the Supplier any shortfall and any overpayments shall be credited to the account of the Customer.

Invoicing

2.7 The Supplier will invoice the Customer regularly for the amounts payable by the Customer pursuant to the Agreement.

Security for payment

2.8 The Supplier may require the Customer to provide a deposit, bond, or procure that the Suppliers standard encumbrance (as a first registered charge) is registered against the Property, or some other form of security for sums payable by the Customer pursuant to the Agreement.

The Customer's payment responsibilities

2.9 The Customer shall pay to the Supplier the sums payable under the Agreement on the 20th of the month following the date of the Supplier's invoice. All payments shall be made without deduction or set-off by direct credit (or direct debit if the Supplier requests) to the Supplier's bank account or as the Supplier may otherwise direct from time to time.

2.10 If the Customer fails to pay the sums owed in accordance with clause 2.9 above, the Supplier may:

- (a) charge the Customer an administration fee for late payment;
- (b) to the extent permitted by law, restrict the flow of water to the Customer;

- (c) charge the Customer for any actual and reasonable collection, dishonoured payment and/or legal fees that the Supplier incurs as a result of the Customer's failure to pay the charges on the due date; and/or
- (d) recover any goods the Supplier has supplied.

3. THE CUSTOMER'S RIGHTS AND OBLIGATIONS

Maintenance of the system

- 3.1 The Supplier is responsible for maintaining the network on the Supplier's side of the Point of Supply.
- 3.2 The Customer is responsible for maintaining all equipment, including the pipes and plumbing fittings on the Customer's side of the Point of Supply, even if the Supplier or its predecessors installed or located them there.

Damage to Supplier's Network

- 3.3 The Customer will not (and will ensure that its invitees or other persons on the Property do not) in anyway:
 - (a) interfere with or disturb the Supplier's Network;
 - (b) use or access the Supplier's Network for any purpose other than for accessing the Drinking Water supplied by the Supplier to the Customer pursuant to this Agreement; or
 - (c) if this Agreement is for a Residential Supply, use the Drinking Water for anything other than usual residential purposes.

Responsibility for leaks

- 3.4 The Customer is responsible for the loss of any Drinking Water or any breakage to or blockage of pipes or other like equipment on the Customer's side of the Point of Supply.

Preventing contamination of the network

- 3.5 The Customer will not allow water or any contaminant to flow back into, or to enter, the Supplier's water supply network from the Customer's Property.
- 3.6 If the Supplier requires, it may conduct backflow audit testing to assess whether or not Drinking Water (or anything else) is flowing back into the Supplier's Network.
- 3.7 The Supplier may charge the Customer the cost of an audit if the Supplier reasonably considers the Customer's Property requires auditing.
- 3.8 The Supplier may require the Customer to have a suitable backflow prevention device installed at the Property's boundary (if a device is not already in place).
- 3.9 The Customer will pay the costs of installation, testing, and maintenance of the backflow prevention device (as determined by the Supplier (acting reasonably)). Notwithstanding the foregoing the device shall be owned by the Supplier. If the backflow prevention device needs to be certified for any reason, it is the Customer's responsibility to maintain this certification.

New connections

- 3.10 The Customer shall not make any new connections to the Supplier's network.
- 3.11 To better protect the Supplier's network, the Customer shall not, without prior written approval from the Supplier, undertake any building activities within 3 metres of the Supplier's Network.

Providing and updating the Customer's information

- 3.12 The Customer shall provide to the Supplier accurate, complete, and up-to-date information as reasonably required by the Supplier.

Other obligations

- 3.13 Without limiting anything else contained herein, the Customer shall:
- (a) make sure all devices (including private drainage features, meters and gully traps) are installed and properly operated and maintained; and
 - (b) not tamper with any part of the Supplier's Network or any associated connections, pipes, meters, valves or hydrants.

4. THE SUPPLIER'S RIGHTS AND OBLIGATIONS TO THE CUSTOMER**Water quality and water pressure**

- 4.1 The Supplier shall ensure that the Drinking Water supplied to the Customer complies with the requirements set out in the Health Act and any other relevant legislation.
- 4.2 The Supplier cannot be required to supply any maximum or minimum pressures or flow rates for the supply of Drinking Water to the Customer or an uninterrupted, continuous or fault free supply of Drinking Water.
- 4.3 The Supplier may interrupt the supply of water or wastewater services at any time without notifying the Customer for so long as the Supplier considers it is necessary to:
- (a) carry out work on, or inspect, any part of the Supplier's Network;
 - (b) ensure the health or safety of any person;
 - (c) avoid or minimise any damage to the Supplier's Network or to any property; or
 - (d) fix any problems caused by unforeseen circumstances or emergencies.
- 4.4 If the Customer is dependent on or needs an uninterrupted water supply, the Customer is responsible for ensuring the Customer has a continuous supply. The Customer may need to obtain consents and approvals to do this. The Supplier will not be liable for any interruption in the goods and services the Supplier provides.

Drought and emergencies

- 4.5 The Supplier may limit the volume of water the Supplier supplies to the Customer if:
- (a) there is a water shortage;
 - (b) there is an unavailability of water for any reason whatsoever;

- (c) the Supplier believes that water consumption should be reduced to avoid future water shortages; or
- (d) the Supplier considers it is necessary to limit supply due to any other unforeseen circumstance or emergency.

4.6 Where clause 4.5(b) applies the Supplier may cease to supply water.

4.7 If there is an emergency the Customer must follow the Supplier's instructions in relation to limitations on supply, including to conserve water. In the event of an emergency the Customer may also receive instructions regarding water use from Civil Defence or the Auckland Council.

Emergency assistance

4.8 The Customer shall contact the Supplier as soon as possible if:

- (a) a pipe bursts or there is a spillage of Drinking Water on or in the immediate facility of the Customer's Property;
- (b) there is an issue with the water quality or pressure of water supply; or
- (c) any similar emergency.

4.9 The Supplier will not be liable for any costs of repairs to the Supplier's Network carried out by anyone other than the Supplier.

Entry onto the Customer's property

4.10 The Supplier may enter the Customer's Property at any time with vehicles, machinery and tools to read meters and to install, replace, inspect, maintain, test, repair, and clean any part of the Supplier's Network or the Supplier's assets (including meters), so that the Supplier's Network can operate safely and effectively. To better secure the foregoing, the Customer grants to the Supplier (in gross) such easements creating a right to convey water (with ancillary rights of access), over those parts of the Customer's Property containing any part of the Supplier's Network or assets, as the Supplier may require to ensure the protection and on-going viability of the Supplier's Network.

4.11 Without limiting the above, the Customer expressly agrees to allow the Supplier's representatives access onto the Customer's Property to deal with an emergency.

4.12 The Supplier's representatives include any employee, subcontractor or agent provided that they shall identify themselves to the Customer on request.

Access to meters

4.13 The meter on the Customer's Property must be able to be easily accessed and read by the Supplier or the Supplier's representatives. If the Supplier cannot safely access the meter on the Customer's Property, the Supplier will send the Customer an estimated account for that billing period. If the Supplier is required to undertake work to make the Customer's meter accessible the Supplier may charge the Customer for this work.

Reading the Customer's meter

4.14 If the Customer requires an extra meter reading outside the Supplier's normal schedule, the Customer should contact the Supplier. Any special readings will be

payable by the Customer as set out in the Pricing Schedule. If this relates to closure of an account, please refer to the Supplier's Website. In any other case, please contact the Supplier to request a special reading three Business Days before the date the Customer needs it. The Supplier will charge the Customer to cover the costs of taking the reading.

5. CLOSING OF THE ACCOUNT

Closing the Customer's account

- 5.1 The Customer can terminate the Agreement by giving one month's notice in writing to the Supplier. As close as is reasonably practicable to expiry of such notice the Supplier shall carry out a final water meter reading and forward a final account to the Customer for charges incurred up to termination of this Agreement. Termination of the Agreement shall not limit the Customer's obligations in relation to charges incurred prior to the date of termination.
- 5.2 The Supplier may terminate the Agreement on one month's notice to the Customer if:
- (a) the Customer shall be in arrears 20 Business Days after the date for payment of any invoice issued by the Supplier;
 - (b) if the Customer shall make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Customer's creditor;
 - (c) in the event of insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Customer;
 - (d) if the Customer shall suffer execution to issue against the Customer's property, goods or effects under any judgment against the Customer in any Court for a sum in excess of \$5,000;
 - (e) an alternate reticulated supply of Drinking Water is available from a third party supplier including without limitation a local territorial authority or council controlled entity.

General limitation on liability

- 5.3 The Supplier will not be liable for any indirect or consequential loss, or for any loss of revenue, profits, goodwill, business or anticipated business, anticipated savings or for any business interruption, or loss of data, regardless of whether or not that loss was, or ought to have been, contemplated by the Supplier.
- 5.4 The Supplier will have no liability to the Customer for any breach of the Supplier's obligations under this Agreement. Where the Supplier is liable to the Customer at law, then to the extent permitted by law, the Supplier's maximum liability for any event or series of related events is \$10,000, up to a maximum total liability of \$50,000 in any consecutive period of 12 months.

Statutory Obligations

- 5.5 Nothing in the Agreement is intended to override or limit any obligations that the Supplier has under any legislation except to the extent permitted by law.

Waiving an obligation

- 5.6 If the Supplier waives any of the Customer's obligations in the Agreement, the Supplier still has the right to enforce the rest of the terms in the Agreement.

Transferring or assigning liabilities

- 5.7 The Customer may not transfer or assign any of the Customer's liabilities or rights under the Agreement.

6. GENERAL

Obligations

- 6.1 Each party's obligations are exclusively set out in the Agreement.

No Warranty

- 6.2 Each party enters into the Agreement entirely in reliance on their own skill and judgment and not in reliance on any representations, warranties, statements, agreements or undertakings of any nature made by:

- (a) any other party;
- (b) any agent of any other party; or
- (c) any other person acting for or on behalf of any other party;

except to the extent that those representations, warranties, statements, agreements or undertakings (or any of them) are expressly set out in the Agreement.

Waiver of Rights

- 6.3 To the extent that any party may have been induced to enter into the Agreement in reliance on any representations, warranties, statements, agreements or undertakings of any nature made by any other party or their agents (apart from those expressly set out in the Agreement), that party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any of those representations, warranties, statements, agreements or undertakings.

Notices

- 6.4 Any notice or document ("Notice") required or authorised to be delivered or served under the Agreement must be in writing and must be delivered or served unless otherwise required by sections 354 to 361 of the Property Law Act 2007:

- (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
- (b) by personal delivery, or by posting by registered post or ordinary mail, or by facsimile, or by email.

Method of Service

- 6.5 Any Notice given in terms of clause 6.4 will be deemed to be delivered or served and received by the other party:

- (a) **Email:** when acknowledged by the addressee by return email or otherwise in writing. For the avoidance of doubt a computer generated automated "Out of

Office” response or such similar response does not constitute a return email for the purposes of this clause;

- (b) **Facsimile:** on completion of an error-free transmission;
- (c) **Personal Delivery:** on personal delivery, and where the other party is a company, then personal delivery in the manner as provided for in section 387 (1) or section 388 of the Companies Act 1993;
- (d) **Ordinary Mail:** four Business Days after being posted by prepaid mail; or
- (e) **Registered Post:** two Business Days after being posted by prepaid registered post; and

any Notice given or served after 5.00 pm on a Business Day, or on a day that is not a Business Day, shall be deemed to have been served on the next succeeding Business Day.

Validity of Notices

- 6.6 Any Notice to be delivered or served under the Agreement may be given by:
- (a) **Attorney, etc:** any attorney, officer, employee or solicitor for the party serving or giving the Notice; or
 - (b) **Authorised person:** the party serving the Notice or any other person authorised by that party.

Other Remedies

- 6.7 The rights and remedies provided in the Agreement are cumulative and not exclusive of any other rights and remedies provided by law.

Governing Law and Jurisdiction

- 6.8 The Agreement will be construed and take effect as an agreement made in New Zealand and will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Counterparts and Facsimile Execution

- 6.9 The Supply Sheet may be executed in any number of counterparts, all of which together shall constitute one and the same instrument, and any of the parties to the Agreement may enter into the Agreement by signing any such counterpart.
- 6.10 The parties agree that a binding agreement may be constituted between them by the following procedure:
- (a) one party (“First Party”) shall execute an original of the Supply Sheet and transmit a copy to the other parties by facsimile or email; and
 - (b) the other parties shall execute the facsimile or email copy transmitted by the First Party and shall transmit by facsimile or email the executed copy to the First Party.
- 6.11 Although a binding Agreement shall exist, the First Party shall forward to the other parties the original copy of the Supply Sheet, in duplicate or triplicate (as the case may be), bearing the original signature of the First Party for execution by the other parties.

Upon receipt the other parties will forthwith execute the same and the final party to execute the same will then forward one original executed Supply Sheet to each of the other parties to retain in their records, and shall retain one original for itself.

Force Majeure

- 6.12 Subject to clause 6.13 but not any other provisions of this agreement neither party is liable for non-performance of any of its obligations (other than to pay money) under the Agreement during the time and to the extent that performance is materially prevented by Force Majeure.
- 6.13 The party claiming the benefit of this clause ("the Party Claiming") must:
- (a) Promptly give written notice to the other party specifying:
 - (i) the cause and extent of its inability to perform any of its obligations;
 - (ii) the likely duration of the non-performance.
 - (b) In the meantime take all reasonable steps to remedy or reduce the Force Majeure.
- 6.14 No party is required against its will to settle any strike, lockout or other industrial disturbances.
- 6.15 Performance of any obligation affected by Force Majeure will be resumed as soon as reasonably possible after the termination or reduction of the Force Majeure. If a Claiming Party is unable to perform any obligation under the Agreement for a period of 50 Business Days because of Force Majeure the Other Party may on giving 50 Business Days' written notice to that party cancel the Agreement.
- 6.16 Cancellation of the Agreement under clause 6.15 does not prejudice the rights of either party arising before cancellation.

7. INTERPRETATION

Definitions

- 7.1 In the Agreement unless the context otherwise requires, the following words shall have the meanings set out opposite them:

"Agreement"	the agreement constituted by the Supply Sheet and the General Terms
"Business Day"	has the same meaning as that given to "working day" in the Property Law Act 2007;
"Customer"	the person(s) named as the customer in the Supply Sheet;
"Drinking Water"	has the meaning given that term in the Health Act.
"Drinking Water Supply"	has the meaning given that term in the Health Act.
"Force Majeure"	means any of: <ul style="list-style-type: none"> (a) act of God, fire, earthquake, storm, flood or landslide;

- (b) a lack of water being available to the Supplier to or through its Supply Network for any reason including without limitation a failure at its bore other than as a direct result of the negligence of the Supplier or breach of its obligations hereunder;
 - (c) strike, lockout, work stoppage or other labour hindrance;
 - (d) explosion, public mains electrical supply failure, or nuclear accident;
 - (e) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
 - (f) requirement of restriction of, or failure to act by, any government semi-governmental or judicial entity;
 - (g) unavoidable accident, or inability to obtain or delay in obtaining adequate labour, contractors, equipment, materials, transport or supplies; and
 - (h) software failure not contributed to by the negligence of the party claiming;
 - (i) any other similar cause beyond the reasonable control of the party claiming and which that party is unable to overcome at reasonable cost;
- but does not include:
- (j) a lack of funds for any reason.

“General Terms”	these general terms as amended from time to time in accordance with clause 1.4;
“Health Act”	the Health Act 1956 and all regulations and standards issued thereunder including the Drinking Water Standards for New Zealand 2005 (revised 2008);
“Point of Supply”	has the meaning given that term in the Health Act;
“Price Schedule”	a copy of the most current Price Schedule which is available on the Supplier’s website www.pineharbourwater.co.nz (or any website in substitution from time to time)The Customer can request a copy from the Supplier;
“Property”	the Customer’s property to which the Supplier supplies Drinking Water hereunder being that property whose address is shown on the Supply Sheet;
“Residential Supply”	an agreement between the Customer and the Supplier pursuant to which the Supplier supplies to the Customer

	Drinking Water for domestic residential use as indicated on the Supply Sheet;
“Supplier’s Network”	the water supply plant and equipment, pumps, bore, pipes and reticulation from the Supply Land to the Point of Supply;
“Supplier”	Pine Harbour Living Limited together with its successors and assigns;
“Supply Land”	Lot 13 Deposited Plan 489019 comprised in Identifier 702608; and includes any land in addition or substitution used by the Supplier from time to time as part of the Supplier’s Network;
“Supply Sheet”	the agreement between the Customer and the Supplier pursuant to which the Supplier agrees to supply Drinking Water to the Customer pursuant to the General Terms such supply sheet to be (for identification purposes only) generally in the form attached as schedule 1 to these General Terms.

Interpretation

7.2 In the Agreement unless the context otherwise requires:

- (a) expressions defined in the main body of the Agreement have the defined meaning in the whole of the Agreement, including the background and the schedules unless the context otherwise requires;
- (b) derivatives of any defined term have a corresponding meaning to that of the defined term;
- (c) section, clause and other headings are for ease of reference only and do not form any part of the context or affect the Agreement’s interpretation;
- (d) where two or more parties are bound by a provision in the Agreement, whether those parties are referred to individually or together, the provision will bind and benefit, as the case may be, those parties jointly and each of them severally;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) references to parties are references to parties to the Agreement and include each party’s executors, administrators, successors and permitted assigns;
- (g) references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- (h) words importing a particular gender include all other genders;
- (i) singular words include the plural and vice versa;
- (j) schedules and their contents have the same effect as if set out in the body of the Agreement;

- (k) references to sections, clauses and schedules are references to sections and clauses of, and schedules to the Agreement;
- (l) references to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise;
- (m) no rule of construction applies to the disadvantage of any party because that party was responsible for the preparation of the Agreement or any part of it;
- (n) month or monthly means calendar month or calendar monthly; and
- (o) all monetary sums referred to are in New Zealand dollars

7.3 If any of the Agreement's terms are held to be illegal, invalid or unenforceable under any applicable law, then:

- (a) that illegality, invalidity or unenforceability will not invalidate the rest of the Agreement or make it unenforceable;
- (b) that illegality, invalidity or unenforceability will not invalidate or affect any document executed in pursuance thereof; and
- (c) each invalid term will be treated as modified as is necessary to make it legal, valid or enforceable.

7.4 If the modification of an invalid term is not possible, then the Agreement will be interpreted and enforced as if not containing the term held to be illegal, invalid or unenforceable, and the parties' rights and obligations will be interpreted and enforced accordingly.

SCHEDULE 1**Supply Sheet**

WATER SUPPLY AGREEMENT		
[INSERT FULL NAME OF CUSTOMER] "the Customer"	Name:	
	Primary Contact person	
	Name: Position: Phone: E-mail:	
PINE HARBOUR LIVING LIMITED ("the Supplier")	PO Box 57 Beachlands AUCKLAND 2147	
	Contact person	
	Name: Position: Phone: E-mail:	
PROPERTY TO BE SUPPLIED		
RESIDENTIAL SUPPLY	Yes / No (please complete) (If neither is completed the Agreement shall be for Residential Supply)	
TERMS OF AGREEMENT	<ol style="list-style-type: none"> 1. The parties agree that the Supplier will provide Drinking Water to the Customer on the terms set out in this supply sheet and the Water Supply General Terms. 2. The Customer acknowledges and agrees that prior to execution of this Supply Sheet it has received a copy of the Water Supply General Terms (which are also available on the Supplier's website www.pineharbourwater.co.nz) understood them and acknowledges that the Water Supply General Terms are subject to amendment from time to time as set out therein. 3. The Customer acknowledges that by signing this Supply Sheet it is agreeing to be bound by the Water Supply General Terms. 4. In consideration for the Supplier providing Drinking Water and other services, the Customer agrees to pay the sums set out in the Price Schedule and in the manner set out in the Water Supply General Terms. 	
SIGNATURES	For the Supplier	For the Customer
	_____ (Signature) Name: Pine Harbour Living Limited	_____ (Signature) _____ (Signature)
	Position: DATE:	Name:

