

UNDERWRITE

CENTRAL PARK PROPERTY INVESTMENT LIMITED

Offeror

MAGSONS INVESTMENTS LIMITED

Underwriter

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DATED

5 February

2019

PARTIES

- 1 **Central Park Property Investment Limited** ("Offeror")
- 2 **Magsons Investments Limited** ("Underwriter")

BACKGROUND

- A The Offeror will raise money pursuant to the Offer.
- B The Offeror will use the money raised under the Offer to subscribe for shares in Everest.
- C The Offeror has requested the Underwriter to underwrite up to the Underwritten Amount of the Offer and the Underwriter has agreed to do so, upon the terms and conditions contained in this Deed.

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

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

Application means an application to subscribe for Shares.

Application Form means the application form attached to or accompanying the Offer Documents.

Business Day means a day (other than a Saturday or Sunday) on which registered banks are customarily open for business in Auckland.

Completion Date means 8 March 2019 or such other date as the Offeror may notify to the Underwriter.

Development Agreement means the agreement dated 31 January 2019 between Everest and the Underwriter in respect of the sale and development of the Property.

Everest means Everest Central Investment Limited.

Offer means the invitation to subscribe for Shares to be made in the Offer Documents.

Offer Documents means the product disclosure statement and any other documents containing the Offer, made in compliance with the Financial Markets Conduct Act 2013.

Offer Price means \$1.00 per Share or any other price per Share at which the Shares are to be offered in the Offer Documents or which Magsons agrees to accept for the Shares on a subsequent Share sale.

Outstanding Shares has the meaning given to this term in clause 3.2(b) and, following the Offeror finding any purchaser of all or any of the Outstanding Shares, means such Shares as shall then still be held by the Underwriter.

Outstanding Share Underwrite Amount has the meaning given to this term in clause 3.3.

Property means the property at 156-160 Central Park Drive, Waitakere City comprised in computer freehold register 61871 (North Auckland Registry), as further defined in the Development Agreement.

Shares means B Shares in the Offeror to be offered for subscription pursuant to the Offer Documents.

Shortfall has the meaning given to this term in clause 3.2.

Termination Date means the date by which the Offeror has received Valid Applications for 30,000,000 of Shares, without recourse to the obligations of the Underwriter under this Deed.

Underwritten Amount means \$4,000,000.

Valid Application means an Application which is received by or on behalf of the Offeror on or prior to the Completion Date and:

- (a) is made on an Application Form which has been properly completed and lodged;
- (b) is accompanied by payment in cleared and immediately available funds;
- (c) is accompanied by such other documents as are necessary and are specified on the Application Form or in an Offer Document as required to accompany an Application;
- (d) if accepted would not prejudice any portfolio investment entity (PIE) status of the Offeror; and
- (e) is not withdrawn prior to its acceptance (in whole or in part) by the Offeror.

1.2 **Interpretation:** In this Deed, unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Deed;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other gender;
- (d) a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;
- (e) a reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (f) a reference to a party, person or entity includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having a separate legal personality;
- (g) written and in writing include any means of reproducing words, figures or symbols in a tangible and visible form;
- (h) a reference to monetary amounts, money or money's worth are to New Zealand dollars;
- (i) a reference to a section, clause, sub-clause, schedule or a party is a reference to that section, clause, sub-clause, schedule or party in this Deed unless stated otherwise; and
- (j) a reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of, the general statement, unless the particular context requires such derogation or limitation.

2 UNDERWRITING

- 2.1 **Offer:** The Offeror shall undertake the Offer of Shares pursuant to the Offer Documents and use its commercially reasonable endeavours to achieve the subscription for 30,000,000 Shares on or before the Completion Date.
- 2.2 **Offeror to keep Underwriter Informed:** Prior to the Completion Date, the Offeror shall keep the Underwriter reasonably informed and updated as to progress in respect of the subscriptions for Shares under the Offer.
- 2.3 **Agreement to Underwrite:** The Underwriter agrees to underwrite the Offer up to the Underwritten Amount, subject to the provisions of this Deed.
- 2.4 **Term:** This Deed shall automatically terminate on the Termination Date.

3 APPLICATIONS, ISSUE OF SHARES AND UNDERWRITER'S OBLIGATION

- 3.1 **Acceptance of Applications:** The Offeror shall accept all Valid Applications received up to the Completion Date.
- 3.2 **Outstanding Shares:** If, by the Completion Date, the Offeror has received Valid Applications for 26,000,000 or more Shares, but less than the maximum 30,000,000 Shares offered under the Offer Documents (the difference between the total number of Shares for which Valid Applications have been received and the total number of 30,000,000 Shares offered being the "**Shortfall**"), the Offeror shall be entitled to give written notice to the Underwriter:
- (a) detailing the extent of the Shortfall in terms of Shares and Offer Price; and
 - (b) requiring the Underwriter to immediately apply for the number of Shares at the Offer Price equivalent to the Shortfall ("**Outstanding Shares**"), to a maximum of the Underwritten Amount.
- 3.3 **Application by Underwriter:** Immediately following receipt of the notice referred to in clause 3.2, the Underwriter shall:
- (a) apply on an Application Form, and at the Offer Price, to the Offeror for the Outstanding Shares; and
 - (b) cause to be paid to the Offeror in immediately cleared funds the Offer Price for each of the Outstanding Shares ("**Outstanding Shares Underwrite Amount**"), and

the Offeror shall accept the Application in this clause 3.3 and shall, on receipt of the Outstanding Shares Underwrite Amount, issue those Outstanding Shares to the Underwriter.

- 3.4 **Payment by Underwriter:** The Underwriter acknowledges and agrees that it will be entitled to certain sale proceeds on the sale of the Property, pursuant to the Development Agreement. To give effect to the Underwriter's payment obligations in clause 3.3(b) of this Deed, the Underwriter covenants that it will irrevocably direct Everest to pay (from the sale proceeds otherwise payable to the Underwriter under the Development Agreement) an amount equal to the Outstanding Share Underwrite Amount directly to the Offeror, such amount to be applied in payment for the Outstanding Shares. To give effect to this direction, the Underwrite will deliver to Everest a signed direction, in the form set out in Schedule One to this Deed, prior to the date on which the settlement of the sale of the Property is to take place pursuant to the Development Agreement.

4 SALE OF UNDERWRITTEN SHARES

- 4.1 **Sale of Shares:** The Offeror will use all reasonable endeavours to secure a purchaser or purchasers for the Outstanding Shares from the Underwriter, until all of the Outstanding Shares have been sold.

- 4.2 **Transfer documents:** The Underwriter shall sign all documentation reasonably required to transfer any Outstanding Share promptly upon request by the Offeror, provided that the Outstanding Share shall only be transferred contemporaneously with payment of the Offer Price for that Outstanding Share.

5 NOTICE

- 5.1 **Methods of giving notice:** Each notice or other communication to be made or delivered to a party under this Deed shall be:

- (a) in writing;
- (b) signed by an authorised officer of the sender;
- (c) delivered to the other party by personal delivery, post, facsimile, or email at the address provided, and marked for the attention of the person (if any), from time to time designated by such party to the other for the purposes of this Deed;
- (d) in respect of the means of service specified above, a notice is deemed to have been served:
 - (i) in the case of personal delivery, when received by the party;
 - (ii) in the case of posting by ordinary mail, on the second Business Day following the date of posting to the address notified below;
 - (iii) in the case of email, when acknowledged by the recipient, except that return emails generated automatically shall not constitute acknowledgement.

- 5.2 **When notice effective:** No notice or communication shall be effective until received. Any notice or communication received after 5.00pm on a Business Day, or on a day which is not a Business Day, shall be deemed not to have been received until the next Business Day.

- 5.3 **Initial address details:** The Initial address, email address and person (if any) so designated by the parties are set out below:

Underwriter:	Magsons Investments Limited
Address:	18 Strathnaver Cres Lynfield Auckland 1042
Offeror:	Central Park Property Investment Limited
Address:	4B, 17 Corinthian Drive Albany Auckland 0652
Attention:	Neil Tuffin
Email:	ntuffin@maat.co.nz

6 POWER OF ATTORNEY

- 6.1 **Appointment:** The Underwriter hereby irrevocably and unconditionally appoints the Offeror and each director of the Offeror, severally, to be the Underwriter's attorney and in its name, as its agent and at its expense to do everything which the Underwriter has undertaken or agreed to do under any of the provisions of this Deed and has failed to do.

7 ASSIGNMENT

- 7.1 **No assignment:** No party may assign or transfer any of its rights or obligations under this Deed.

8 GENERAL

- 8.1 **Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party in respect of any breach of the other party's obligations under this Deed shall:
- (a) operate as a waiver of, or prevent the subsequent enforcement of, that obligation, or
 - (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence, in respect of, or a waiver of, any subsequent or other breach.
- 8.2 **Partial Invalidity:** If any term or provision in this Deed is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall, to that extent, be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall not be affected.
- 8.3 **Entire Agreement:** This Deed constitutes the entire agreement between the parties with respect to the matters dealt with in this Deed, and there are no oral or written understandings, representations or commitments of any kind, express or implied, that are not expressly set out in this Deed.
- 8.4 **Amendments:** All amendments or variations to this Deed shall be in writing signed by each of the parties.
- 8.5 **Counterparts:** This Deed may be executed in any number of counterparts (including facsimile copies) and provided each of the parties has executed a counterpart, the counterparts taken together shall constitute a binding and enforceable agreement between the parties.
- 8.6 **Confidentiality:** Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure or use to be made of:
- (a) the subject matter of this Deed; or
 - (b) any provision of this Deed or of any information relating to any such provision; or
 - (c) any information directly or indirectly obtained from the other party under or in connection with this Deed,
- except:
- (d) to obtain professional advice in respect of the matter, including, but not limited to, legal and accounting advice;
 - (e) as a material contract forming part of the Offer Documents disclosed on the Disclosure Register; or
 - (f) to the extent that the parties otherwise agree in writing.
- 8.7 **Time of the essence:** Time shall be of the essence for the performance of all obligations in respect of which a time period or a date, or both, is specified in this Deed.
- 8.8 **Governing law:** This Deed shall be governed by, and construed in accordance with, the laws of New Zealand, and each of the parties submits to the exclusive jurisdiction of the Courts of New Zealand in respect of any dispute or proceeding arising out of, or in connection with, this Deed.

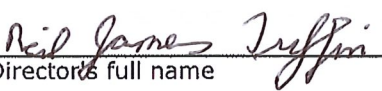
EXECUTION

SIGNED AS A DEED

Signed by **Central Park Property Investment Limited**



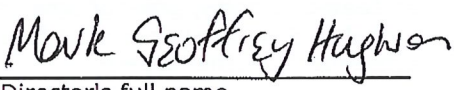
Director's signature



Director's full name

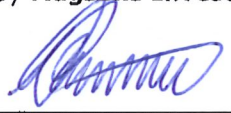


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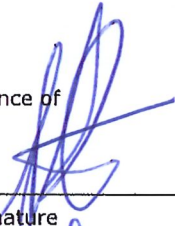
Director's full name

Signed by **Magsons Investment Limited**

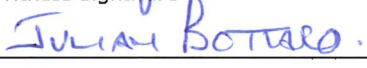


Director's signature

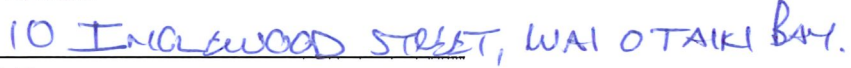
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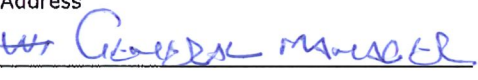
Witness signature



Full Name



Address



Occupation

SCHEDULE ONE

To: **Everest Central Investment Limited**

Magsons Investments Limited hereby irrevocably directs you to pay *[\$Outstanding Share Underwrite Amount]* of the purchase price otherwise payable to it under the Development Agreement directly to Central Park Property Investment Limited, to be applied by Central Park Property Investment Limited as payment for Shares in Central Park Property Investment Limited.

In this irrevocable direction:

- (a) **Development Agreement** means the agreement for the sale and purchase of the property at 156-160 Central Park Drive, Waitakere City dated and entered into between Everest Central Investment Limited and Magsons Investments Limited; and
- (b) **Shares** means B Shares in Central Park Property Investment Limited.

SIGNED for and on behalf of
Magsons Investments Limited

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Vinod Kumar

Dated / / 2019

