

ENFORCEABLE UNDERTAKING

1. Introduction

- 1.1 This undertaking is offered to the Securities Commission for acceptance under section 69J of the Securities Act 1978 by:

MONACO VILLAGE HOLDINGS LIMITED (1312124) ("Company"), a company incorporated on 29 May 2003 whose registered office is at: C/- Richards Woodhouse, 105 Trafalgar Street, Nelson.

And by the directors of the Company:

ROBERT MICHAEL GEPP whose address is 8 Point Road, Monaco, Nelson and **RODERICK HUGH DUKE** whose address is 33 Enner Glynn Road, Enner Glynn, Nelson ("the Directors").

2. Background

- 2.1 The Company is developing a tourist accommodation facility in Nelson referred to as Monaco Hotel and Resort (also known as Monaco Village) ("the Development"). The tourist accommodation development, when complete, will comprise approximately 109 accommodation units within the complex (comprising villas, studios and apartments) plus a further 21 accommodation units already completed and operating as Hotel Monaco. In addition to these tourist accommodation units, the completed Monaco Hotel and Resort complex will contain a conference facility, health spa and gymnasium area, a boutique pub/tavern, a café restaurant and three shops.
- 2.2 The Company intends to offer to sell each accommodation unit within the Development to the public as a unit title under the Unit Titles Act 1972.
- 2.3 Some of the accommodation units have already been sold, with settlement pending on the issue of title for those units, on a stage by stage basis, under the Unit Titles Act 1972 following completion of the construction of the relevant block of villas/studios. Hotel Monaco, comprising 21 units, and Orchard Villas, comprising 9 units, are now

held in investor ownership following settlement of the sale of those units in May/June 2004 and February 2005 after, following the issue of title for those units under the Unit Titles Act 1972. They are already operating under managed lease arrangements with the hotel and resort management operator **MONACO VILLAGE MANAGEMENT LIMITED** as the lessee of the units.

- 2.4 The Company proposes that each accommodation unit sold within the development will be subject to a lease granted to **MONACO VILLAGE MANAGEMENT LIMITED** ("Monaco Management"). Monaco Management will operate and manage the tourist accommodation complex. The Company and Monaco Management are controlled by the same interests. Monaco Management will administer the rent for each unit on a block by block basis.
- 2.5 The Company and Monaco Management wish to administer the rental income payable to each unit owner on a pooled income basis, with income/expenses derived from guests occupying all accommodation units pooled together within each relevant block of units, on a block by block basis. The Company and Monaco Management believe that income pooling is more efficient allowing cost savings, provides a fairer return to unit owners, and has a measure of support within the tourist accommodation industry. The rental income for some units is already being administered on a pooled income basis for each block.

Contravention of Securities Act 1978 and Securities Regulations 1983

- 2.6 The Company and Monaco Management accept that the offer or allotment of securities in the form of an interest in the income pooling scheme to existing or prospective unit holders, constitutes the offer of a participatory security to the public for the purposes of the Securities Act 1978. Such participatory securities have been offered to the public for subscription, and in some cases allotted, without a registered prospectus or an investment statement, or an applicable exemption, in contravention of the requirements of the Securities Act 1978 and the Securities Regulations 1983.
- 2.7 The Company and its Directors were, at the time of the offer and allotment of the interests in the income pooling scheme arrangements ("the Securities"), unaware that such offers and allotment were made in contravention of the Securities Act 1978. In the

context of applying for an exemption, the Company and its Directors have advised the Commission of the breach, and have acknowledged the Commission's concerns regarding this. In the interests of achieving longer term certainty for the Development, the Company and its Directors wish to remedy the situation, and to ensure that no further breaches occur. They have offered the undertakings set out below.

3. **Future Offers of Securities**

3.1 The Company has applied to the Commission for an exemption regarding the accommodation units and commercial components of the proposed Monaco Village development in the interests of achieving longer term certainty for the Development. The Company has applied for exemptions from sections 33(3), 37, 37A, and 51 to 54 of the Securities Act 1978 in respect of future offers of Securities.

4. **Undertakings**

4.1 The Company and its Directors will not offer further Securities to the public for subscription, other than in accordance with any applicable exemption granted by the Commission, or in an investment statement, registered prospectus, or authorised advertisement which complies with the Securities Act 1978 and the Securities Regulations 1983.

4.2 In relation to the Securities already offered to persons who have entered into sale and purchase agreements to purchase property in the Development, whether settled or unsettled, the Company:

- (a) Will give written notice to each such person in accordance with the notice provision in the agreement entered into with the purchaser of the contravention or possible contravention of the Securities Act 1978 and provide each such person with all documentation required to be provided before subscription or allotment (as the case may be) as set out in the specific exemption granted by the Commission.
- (b) Will re-offer to each such person the "lease back" arrangements of all accommodation units to Monaco Management on the basis of the income pooling

scheme whereby net pooled income will be distributed to unit owners, on a block by block basis.

- (c) Will request that each such person approve their willingness to participate in such income pooling scheme.
- (d) In circumstances where such persons do not request to participate under the re-offer proposal in an income pooling scheme regarding net rental, administered on a block by block basis, the Company will take appropriate steps to administer and account for the rental income derived from the relevant person's unit on a per unit basis and take appropriate steps to separately account for income and expenditure regarding the relevant unit.

5. Acknowledgements

5.1 The Company and its Directors acknowledge that the Commission:

- (a) May issue a media release referring to the undertaking and to the concerns of the Commission which led to the undertaking being executed;
- (b) May from time to time publicly refer to the undertaking; and
- (c) Will make this undertaking available for public inspection.


5.2 The Company and its Directors acknowledge that this undertaking does not derogate from the rights and remedies available to the Commission or to any other person or entity arising from the conduct described in this undertaking.

5.3 The Company and its Directors acknowledge that the Commission's acceptance of an enforceable undertaking under section 69J of the Securities Act 1978 does not affect the Commission's power to investigate future conduct of any person, to take any action or to exercise any power under the Securities Act 1978 or any other legislation, or to refer any matter for criminal prosecution or seek any civil penalty.

SIGNED for and on behalf **MONACO VILLAGE HOLDINGS LIMITED** by its duly authorised officers:

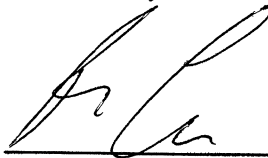


ROBERT MICHAEL GEPP



RODERICK HUGH DUKE

SIGNED by **ROBERT MICHAEL GEPP**:



ROBERT MICHAEL GEPP

SIGNED by **RODERICK HUGH DUKE**:



RODERICK HUGH DUKE

ACCEPTED by the **SECURITIES COMMISSION** pursuant to section 69J of the Securities Act 1978 by its authorised delegate:



Liam Mason

DATED this 4th day of July 2005