

HUTT CITY COUNCIL10 AUGUST 2021**ITEM 13) Further Information on Agreement to Lease Events Centre and Develop a Hotel****RESOLVED:** (UNANIMOUS) (Mayor Barry/Cr Briggs)*"That Council:*

- (1) notes that officers were directed to deal with USAR to negotiate a new agreement for the continued operation of the Events Centre;*
- (2) notes that a position was reached between the parties and brought back to Council for approval in principle in July 2020. Whilst Council approved the proposed variation USAR did not;*
- (3) notes that a revised arrangement has been negotiated as outlined in this report and the consultant report attached as Appendix 1 to the report and documented in the Deed of Variation attached as Appendix 2 to the report;*
- (4) notes that USAR and Raman Sarin (as guarantor) have agreed to the revised arrangement and signed the Deed of Variation attached as Appendix 2 to Report No. ARSC2021/3/148;*
- (5) notes that Council's Significance and Engagement Policy has been referenced in determining that the Events Centre is not a Strategic Asset and the decision does not reach the significance threshold;*
- (6) notes that Council can either (a) accept the revised arrangement or (b) reject the revised arrangement;*
- (7) notes the immediate budget impact of the revised arrangement as outlined in paragraph 44 of the report and that in the event Council agrees to the revised arrangement any budget shortfall will be addressed in the Annual Plan 2022/23;*
- (8) accepts the revised arrangement as outlined in this report and consultant report attached as Appendix 1 to Report No. ARSC2021/3/148;*
- (9) grants authorisation for the Chief Executive to execute the attached Deed of Variation attached as Appendix 2 to Report No. ARSC2021/3/148; and*
- (10) agrees to release the 'Further Information on Agreement to Lease Events Centre and Develop a Hotel (21/941)' report, accompanying information, and resolution to the public."*

For the reasons that USAR will continue to operate the Events centre fully resourced through to at least 30 June 2027 (30 June 2023 under the original variation); USAR will complete the Hotel by 31 December 2021 and operate it in conjunction with the Events Centre through to at least 30 June 2027 (30 June 2023 under the original variation); and USAR is more likely to continue to lease and operate the Events Centre after 30 June 2027 on the varied terms.

Audit and Risk Subcommittee Meeting

16 June 2021

File: (21/941)

Report no: ARSC2021/3/148

Further Information on Agreement to Lease Events Centre and Develop a Hotel

Purpose of Report

1. To report back on commercial negotiations between Council and USAR Commercial Assets Limited (USAR) regarding the ongoing arrangements for the operation of the Lower Hutt Events Centre (Events Centre) and development of a Hotel.
2. To seek approval for the Chief Executive to execute a variation to the current arrangements between Council, USAR and Raman Sarin, as outlined in the report along with the report from Council's consultant Kevin Podmore (attached as Appendix 1) and as documented in the attached Deed of Variation (attached as Appendix 2).
3. This report is being considered in public excluded to enable the Subcommittee and Council to carry out, without prejudice or disadvantage commercial activities and carry on, without prejudice or disadvantage commercial negotiations.
4. It is intended once Council has made its decision in accord with the recommendations in this paper it will move into public business to release the information and decision to the public.

Recommendations

That the Subcommittee recommends that Council:

- (1) notes that officers were directed to deal with USAR to negotiate a new agreement for the continued operation of the Events Centre; and
- (2) notes that a position was reached between the parties and brought back to Council for approval in principal in July 2020. Whilst Council approved the proposed variation USAR did not; and
- (3) notes that a revised arrangement has been negotiated as outlined in this report and the consultant report (Appendix 1) and documented in the Deed of Variation (Appendix 2); and
- (4) notes that USAR and Raman Sarin (as guarantor) have agreed to the revised arrangement and signed the Deed of Variation (Appendix 2);
- (5) notes that Council's Significance and Engagement Policy has been referenced in determining that the Events Centre is not a Strategic Asset and the decision does not reach the significance threshold; and
- (6) notes that Council can either (a) accept the revised arrangement or (b) reject the revised arrangement; and
- (7) notes the immediate budget impact of the revised arrangement as outlined in paragraph 44 of the report and that in the event Council agrees to the revised arrangement any budget shortfall will be addressed in the Annual Plan 2022/23; and
- (8) accepts the revised arrangement as outlined in this report and consultant report (Appendix 1); and
- (9) grants authorisation for the Chief Executive to execute the attached Deed of Variation (Appendix 2).

For the reasons that USAR will continue to operate the Events centre fully resourced through to at least 30 June 2027 (*30 June 2023 under the original variation*); USAR will complete the Hotel by 31 December 2021 and operate it in conjunction with the Events Centre through to at least 30 June 2027 (*30 June 2023 under the original variation*); and USAR is more likely to continue to lease and operate the Events Centre after 30 June 2027 on the varied terms.

Background

5. Council and USAR are parties to an Agreement to Lease Events Centre and Develop Hotel which became unconditional in late 2015.
6. Council completed development of the Events Centre in 2018 and USAR have been operating it pursuant to a Lease since July 2018. USAR has yet to complete the associated Hotel development, currently scheduled to be completed in last quarter 2021.

7. Following approaches by USAR in early 2020 regarding the ongoing viability of the current arrangements this Subcommittee and Council directed officers to deal with the Lessee (USAR) to negotiate a new agreement for the continued operation of the Events Centre and development of the Hotel, subject to Council approval. (Minutes ARC 20407 & C20405(2)).
8. COVID-19 further impacted on the operation of the Events Centre.
9. A position was reached between the parties and brought back to Council for approval in principal in July 2020. Whilst Council approved the proposed variation USAR did not.
10. Consequently officers and our consultant have been in ongoing negotiations with USAR and have now reached agreement on a revised arrangement as outlined in this report and the consultant report (attached as Appendix 1 to the report) and documented in the attached Deed of Variation (attached as Appendix 2 to the report).
11. USAR and Raman Sarin (as guarantor) have agreed to the revised arrangements and signed the Deed of Variation (attached as Appendix 2 to the report).
12. Council's consultant Kevin Podmore and officers will be in attendance to go through the detail of the revised arrangement with the subcommittee and answer any questions.

Discussion

13. The terms of the revised arrangement are as follows:

Events Centre

14. The initial term of the lease will no longer be shortened from 20 years to 5 years to expire on 30 June 2023. It will remain the same and USAR will instead have a right to surrender the lease on 30 June 2027 and on each third anniversary of that date during the initial terms and at the mid-point (5 years) of each renewal term.
15. The tenant must give the Landlord at least 6 months written notice of its intention to Surrender the lease which is the same notice period as previously agreed in respect to the right of renewal.
16. USAR has agreed to pay Council a Surrender Fee should it elect to surrender the lease during the initial term. The Surrender Fee is based on 90% of the Accelerated Base Rent which equates to \$752,408 in 2027.
17. The Annual Rent for the period 1 July 2020 to 30 June 2024 is fixed at \$40,000 plus GST per annum, with \$3,000 plus GST per annum (being \$12,000 plus GST in total) being deferred and payable on 30 June 2024. From 1 July 2024 the Annual Rent will include the Base Rent (\$100,000 plus GST per annum) and the Percentage Rent. The Percentage Rent payable under the lease will be 3% of Total Revenue for the first \$6 million of Total Revenue earned during the relevant lease year and will be 5% of Total Revenue earned above

\$6 million, provided that in any event the Percentage Rent payable will not be less than \$45,000 plus GST per annum.

18. As from 1 July 2024 and on each anniversary of that date USAR can elect to prepay the Base Rent on giving one month's notice, by paying an amount equivalent to 90% of the Accelerated Base Rent. The amount to be paid on 1 July 2024 is \$886,741.
19. Transition services to be provided on expiry and non-renewal of the lease were to be provided by USAR to HCC at a cost of \$15,000 plus GST. They are now to be provided on any lease surrender at no cost.

Hotel

20. USAR will commit to operate a hotel of 4-star rating Hotel comprising of not less than 40 apartments at the Hotel site for 9 years until 30 June 2030.
21. USAR shall be entitled to unit title and sell up to 20 of the Hotel apartments. No change.
22. The Deed of Variation no longer provides USAR the right to request Council to release it from its obligation to run a Hotel.
23. The attached report from Council's consultant, Kevin Podmore (Appendix 1) provides additional commentary on the previous variation proposal and the revised arrangement.

Significance:

24. Council's Significance and Engagement Policy has been referenced to determine whether the Events Centre is a Strategic Asset or the decision reaches the significance threshold.
25. In accordance with section 76AA(3) of the Local Government Act 2002 Council considers the following assets to be strategic:
 - Roading Network
 - Wastewater Network and Treatment
 - Stormwater Network
 - Water Supply Network
 - Landfills
 - Network of Parks and reserves
 - Dowse and Settlers collections
 - Library Network

26. The Events Centre is not considered a Strategic Asset.

27. In considering the significance of the decision the following matters should be considered;

- a) The extent to which the matter flows logically and consequently from a significant decision already made or from a decision in the LTP or the Annual Plan.

Relevant as not signalled as yet in the LTP or Annual Plan

- b) The extent the matter in terms of its net cost to the Council. Where a decision has not been highlighted in the LTP or Annual Plan, a decision involving a change in spending of more than 10% of the planned capital expenditure for capital items or 5% of the planned operating expenditure for operating decisions will be considered significant.

Not relevant as thresholds not met.

- c) The transfer of ownership, or disposal of a Strategic Asset

Not relevant as no change of ownership or disposal of a Strategic Asset

- d) The matter includes a large increase in user fee or introduces a user fee for a service that was previously free

Not relevant, as not related to an increase or introduction of user charges.

- e) The matter includes consideration of an alteration to intended level of service for any core Council activity.

Not relevant as no change to intended level of service.

- f) Reversibility and intergenerational equity

Not relevant – the decision does not change the irreversible nature of the current arrangements in place

- g) Practicality of engagement

The matter is related to a confidential commercial negotiation, so impractical that wide engagement on the matter is undertaken. Information will be made public subsequent to the Council decision if this concludes negotiations.

- h) The extent to which the matter under consideration is of public interest or controversial within the community

Relevant. The matter of the development of the hotel and operation of the Events Centre is of public interest and has been controversial within the community in the past.

28. When considering the significance of a proposal, decision or other matter it is the cumulative effect of all these criteria that determines the overall significance of a matter. Consequently the matter is not considered significant in terms of Council's Significance and Engagement Policy.

Options

29. The Deed of Variation, as negotiated between the parties, has been signed by USAR and Raman Sarin.
30. Effectively there are only two options:
- a. Accept the revised arrangement to the existing contract; or
 - b. Reject the revised arrangement to the existing contract.
31. At a high level accepting the revised arrangement has the following benefits over rejection
- USAR will continue to operate the Events Centre fully resourced and professionally managed through to at least 30 June 2027, at its own risk *(30 June 2023 under the original variation)*;
 - USAR will complete the Hotel by 31 December 2021 at its own cost and operate it in conjunction with the Events Centre through to at least 30 June 2027 *(30 June 2023 under the original variation)*;
 - USAR is more likely to continue to lease and operate the Events Centre after 30 June 2027 on the varied terms.
32. Again at a high level these benefits are achieved by Council agreeing to:
- A right of surrender (subject to a Surrender payment) exercisable on 30 June 2027 and on each 3 year anniversary of that date during the initial term and at 5 yearly intervals through each renewal term
(One early right of renewal at 30 June 2023 in original variation).
 - A fixed annual rental through to 30 June 2024, followed by a reduced Percentage Rental from 1 July 2024, subject to a minimum annual rental. *(A fixed annual rental through to 30 June 2023. Existing terms after, if renewed, in original variation, but highly likely to have been subject to a renewal renegotiation).*
 - A right to prepay the Base Rent to Council as from 1 July 2024 and each anniversary of that date.
33. The attached report from consultant Kevin Podmore (Appendix 1) notes the proposed terms of the revised arrangement allows Council to still achieve its objectives.
34. The risks to Council of rejecting the revised arrangement have been reappraised and are considered the same as those previously reported (July 2020):
- USAR engineering for the existing arrangements to be terminated. This risk was confirmed by Gerard Dewar (Thomas Dewar Sziranyi Letts) in the paper to Council (July 2020) commenting that while Council has no obligation to vary the lease, an insistence on contractual performance

may inevitably lead to breach/termination and return Council to the limited remedies the original contract provides for – namely the guarantee of payment of the accelerated base rent by Mr Sarin; and

- The Council losing any future control of the Hotel development, and in the event USAR considered the Hotel not to be viable then changing it to apartments as a possible higher value use; and
- In the event of a premature end to the current arrangement the risk associated with the time and cost of finding a suitable operator on acceptable terms. Our consultant's view is that the likelihood of a replacement tenant being found who will pay a percentage rent of 5% is considered very low. A new tenant if one could be found would require significant lease incentives. If Council did not want to hibernate the Events Centre it would have to be willing to enter into a management agreement and in doing so would be taking over all the operating risk.

Climate Change Impact and Considerations

35. The matters addressed in this report have been considered in accordance with the process set out in Council's Climate Change Considerations Guide.
36. There are no additional climate change impacts from those already associated with the operation of the Events Centre and development and operation of the Hotel.

Consultation

37. Following approaches by USAR in early 2020 regarding the ongoing viability of the current arrangements this Committee and Council directed officers to deal with the Lessee (USAR) to negotiate a new agreement for the continued operation of the Events Centre and development of the Hotel, subject to Council approval.
38. A position was reached between the parties and brought back to Council for approval in principal in July 2020. Whilst Council approved the proposed variation USAR did not.
39. This revised arrangement is the consequence of further negotiations and meetings between the parties since that time up to date.

Legal Considerations

40. The Deed of Variation (Appendix 2) documenting the revised arrangement has been prepared by Council's lawyers Thomas Dewar Sziranyi Letts and signed by USAR and Raman Sarin.
41. If Council approves the revised arrangement the Deed of Variation will be signed by Council and be in effect.

Financial Considerations

42. The immediate budget impact of the proposed changes has been considered against the current budget figures in LTP2021-2031.

43. The current budget figures were based on existing contractual arrangements and assumptions, prior to the renegotiated position which anticipates a post Covid-19 recovery over a number of years.
44. The fixed rental over Years 1-3 is compared with the current budget below:
- | | |
|---------------------------|----------------|
| Budgeted income Years 1-3 | \$0.94M |
| As per Variation | <u>\$0.12M</u> |
| Difference | (\$0.82M) |
45. In the event that Council approves the revised arrangement any budget shortfalls will need to be addressed in the Annual Plan 2022/23.
46. As the Events Centre revenue returns to a more certain normalised trading pattern, subsequent to Covid-19 recovery and operation of the hotel, a full review of the future revenue and rental stream will be undertaken.

Appendices

No.	Title	Page
1	Appendix 1: Revised Variation Arrangement June 2021 Report by Kevin Podmore	9
2	Appendix 2: 706973 - Deed of Variation - final execution version June 2021	14

Author: Gary Craig
Head of City Growth

Reviewed By: Jenny Livschitz
Group Chief Financial Officer

Reviewed By: Kara Puketapu-Dentice
Director Economy and Development

Approved By: Jo Miller
Chief Executive

PROPOSED VARIATION OF AGREEMENT to LEASE EVENTS CENTRE and DEVELOP HOTEL**Background**

Hutt City Council (Council) and USAR Commercial Assets Limited (USAR) are parties to an Agreement to Lease Events Centre and Develop Hotel (Agreement).

Council expected to achieve the following objectives from the arrangement:

1. Professional management and marketing of the Events Centre;
2. Development of a new hotel in the Lower Hutt CBD of 4 star standard or better;
3. Facilitating the redevelopment of the Hotel Land in a way which revitalises the Lower Hutt CBD and enhances the urban values of the area for the benefit of the public of Lower Hutt; and
4. The Events Centre and the Hotel officially opening as soon as possible on the same date.

USAR expected the opportunity would provide it with a successful commercial enterprise.

The agreement became unconditional on or about 14 October 2015.

Council completed development of the Events Centre in 2018 and USAR has been operating it pursuant to the terms of the lease since 1 July 2018. Council underwrote the Events Centre operations for the first two years. In year 1 the underwrite was \$726,000 and in year 2 \$657,000. The underwrite ceased on 30 June 2020.

Council's objective of the Events Centre and the Hotel opening as soon as possible on the same date has not been achieved. Due to unforeseen site remediation issues construction of the Hotel is significantly behind schedule and over budget. The Hotel is now scheduled to be completed in last quarter 2021.

USAR, in early 2020, formed the view that the terms of the Agreement made it impossible to achieve a commercial profit from operating the Events Centre and Hotel over the initial term of the lease. They believed the assumptions both parties relied upon when entering the agreement no longer held especially given the advent of Covid-19.

It forecast that it will incur losses of about \$650,000 per annum from operating the Events Centre as a 4 star rated facility, due to profitability being dependent upon attracting and running large scale events which is unlikely to happen in the short term.

USAR sought Council assistance to mitigate the quantum of its forecast losses to a level it can sustain. Council officers together with the writer met with USAR representatives (Mr Raman

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Sarin and his consultant, [REDACTED] on 30 June 2020 to discuss the solutions it had put forward and to negotiate a satisfactory outcome for both parties.

The parties agreed to seek approval from their respective authorities for the Agreement to be varied as follows;

1. The initial lease term to be reduced from 20 to 5 years with the first renewal date now being 30 June 2023. The rights of renewals being changed to 1 x 5 years and 3 x 10 years with the final expiry date of the lease remaining 30 June 2058;
2. The tenant must give the Landlord at least 6 months written notice of its wish to renew the lease.
3. The rent payable for the remainder of the initial lease term is varied so no percentage rent will be payable and instead a fixed gross rent of \$40,000 per annum will be payable to 30 June 2023.
4. Provide USAR ability to supplement Hotel room/night revenue with apartment long stay revenue by agreeing to reduce the minimum number of apartments in the hotel pool from 60 to 40 apartments.
5. Should USAR not exercise its right to renew the lease of the Events Centre for a further 5 years in 2023 USAR shall still be required to run a 4-star rating Hotel of not less than 40 apartments to 30 June 2038.
6. USAR shall be entitled to unit title and sell up to 20 of the Hotel apartments.
7. Should USAR request Council to release it from its obligation to run a Hotel to 2038 then Council will, should it agree to the request, be entitled to share in any value created by a potential change in use, say to residential.

Council Approval

1. Due to concerns that USAR may engineer termination of the agreement if it did not receive Council assistance to mitigate the quantum of its expected losses, Council agreed to the proposed variations.
2. It was recognised that termination of the Agreement in 2020 could result in Council not achieving its objectives of having a new Hotel developed in the Lower Hutt CBD of 4 star standard and of the Events Centre being professionally managed or marketed in the short term; and
3. The costs Council would incur in finding a replacement tenant for the Events Centre would most likely exceed the quantum of compensation paid by USAR and its guarantor, Mr Raman Sarin.

Current Situation

Whilst Council approved the proposed variation, USAR did not as it was not willing to commit to operate a 4-star rating Hotel for 18 years to 30 June 2038. It believed such a commitment would impact on its ability to raise funds and/or sell the property in the future.

Consequently, Council officers have been involved in ongoing negotiations and have now reached agreement on a “revised deal” which reduces the term of USAR’s commitment but provides Council with favourable offsetting benefits.

The terms of the revised deal are as follows:

Events Centre

1. The initial term of the lease will no longer be shortened from 20 years to 5 years to expire on 30 June 2023. It will remain the same and USAR will instead have a right to surrender the lease on 30 June 2027 and on each third anniversary of that date during the initial term and at the mid-point (5 years) of each renewal term.
2. USAR must give Council at least 6 months written notice of its intention to Surrender the lease which is the same notice period it previously agreed in respect to the right of renewal.
3. USAR has agreed to pay Council a Surrender Fee should it elect to surrender the lease during the initial term. The Surrender Fee is based on 90% of the Accelerated Base Rent which equates to \$752,408 in 2027.
4. The Annual Rent for the period 1 July 2020 to 30 June 2024 is fixed at \$40,000 plus GST per annum, with \$3,000 plus GST per annum (being \$12,000 plus GST in total) being deferred and payable on 30 June 2024. From 1 July 2024 the Annual Rent will include the Base Rent (\$100,000 plus GST per annum) and the Percentage Rent. The Percentage Rent payable under the lease will be 3% of Total Revenue for the first \$6 million of Total Revenue earned during the relevant lease year and will be 5% of Total Revenue earned above \$6 million, provided that in any event the Percentage Rent payable will not be less than \$45,000 plus GST per annum.
5. As from 1 July 2024 and on each anniversary of that date USAR can elect to prepay the Base Rent on giving one month’s notice, by paying an amount equivalent to 90% of the Accelerated Base Rent. The amount to be paid on 1 July 2024 is \$886,741.
6. Transition services to be provided on expiry and non-renewal of the lease was to be provided by USAR to HCC at a cost of \$15,000 plus GST. They are now to be provided on any lease surrender at no cost.

Hotel

1. USAR will commit to operate a hotel of 4-star rating Hotel comprising of not less than 40 apartments for 9 years until 30 June 2030.
2. USAR shall be entitled to unit title and sell up to 20 of the Hotel apartments. No change.
3. The Deed of Variation no longer provides USAR the right to request Council to release it from its obligation to run a Hotel.

Comment

In the writer's opinion the terms achieved by officers in the recent round of negotiations has resulted in a more favourable outcome for Council. The proposed terms allows Council to still achieve its objectives and;

1. Ensures it will receive some payment for the land it has transferred to USAR. Under the previous terms of the Deed of Variation Council risked forgoing Base Rent should the lease not be renewed by USAR, which would result in it receiving nil compensation for the land. Whereas the right to Surrender the lease and the requirement to pay a Surrender Fee ensures Council receives some compensation. If USAR exercises its right to surrender the lease in 2027 it will pay a Surrender Fee of \$752,408 plus GST. In addition to this lumpsum payment, Council would have received 3 Base Rent payments of \$100,000 plus GST during the intervening period from 1 July 2024 to 30 June 2027 resulting in total payments for the land of \$1,052,408 plus GST;
2. Provides it with greater certainty around the future operation of the Events Centre. USAR has increased its commitment to lease and operate the Events Centre from 3 years to 7 years; and
3. The agreement to reduce the Percentage Rent from 5% to 3% of Total Revenue for the first \$6 million of Total Revenue minimises likelihood of the lease being surrendered. USAR believes an operator should be able to achieve a profit on this level of rent once "normal" trading conditions return.

In obtaining these benefits Council is agreeing to;

1. Accept a reduction in commitment from USAR to operate the Hotel as a 4-star rated hotel from 17 years to 9 years. However, nine years is still a reasonably long-term commitment and should be sufficient time to establish whether, or not there is a demand for a 4-star rated hotel in Hutt City.
2. Forgo some Percentage Rent. Assuming either USAR renewed its lease of the Events Centre in June 2023 and agreed to pay a Percentage Rent of 5%, or if it did not a replacement tenant agreed to pay a Percentage Rent of 5%, then Council would be forgoing 2% per annum of Total Turnover. Based on the Events Centre's current level of turnover of \$2.3million this would result in Council forgoing \$46,000 per annum or potentially \$1,200,000 in total assuming Total Turnover averaged \$4.0million over the 15 years from 1 July 2023 to 30 June 2038.

In the writer's opinion the benefits Council receives from the revised Deed of Variation outweighs the costs. The net present value of the Base Rent it will receive is expected to exceed the net present value of the Percentage Rent it is agreeing to forgo, especially as the likelihood of USAR renewing on the existing lease terms in 2023 or a replacement tenant being found who will pay a Percentage Rent of 5% is considered very low.

Summary and Recommendation

1. Council agreed in July 2020 to vary the Agreement to ensure it achieved its objectives of having a new Hotel developed in the Lower Hutt CBD of 4 star standard and of the Events Centre being professionally managed or marketed in the short term;
2. USAR did not agree to the terms negotiated by its representatives and has sought to reduce the term of its commitment to operate the Hotel as a 4-star rated hotel;
3. Council officers have used this opportunity to negotiate an overall better deal for Council;
4. The new variations to be made to the Agreement ensure Council is compensated for the land it has transferred to USAR and increases certainty around the future operations of the Events Centre;
5. The value of the benefits obtained by Council in the writer's opinion outweighs their costs.
6. Officers have advised USAR that they are willing to recommend to Council that it should agree to the proposed revised Deed of Variation but will only do so on the condition that USAR has unconditionally agreed to the terms.
7. Attached is a Deed of Variation that has been prepared by Council's external legal advisors, Thomas Dewar Sziranyi Letts, and executed by USAR that Council can either accept or reject.

Agree:

8. Council authorise the appropriate signatories to execute the Deed of Variation on its behalf.

Kevin Podmore
28 June 2021

DEED OF VARIATION

BETWEEN HUTT CITY COUNCIL

A N D USAR COMMERCIAL ASSETS LIMITED

A N D RAMAN KUMAR SARIN

Background

- A. The abovenamed parties are the parties to an Agreement to lease an Events Centre and develop a Hotel dated 14 May 2015 ("the Agreement").
- B. Pursuant to the terms of the Agreement:
- (i) Hutt City Council ("HCC") transferred to Usar Commercial Assets Limited ("Usar") land comprising 1823 m² and being Lots 1 and 2 on Deposited Plan 495172 in the City of Lower Hutt and being the land comprised in records of title 726082 and 726083.
 - (ii) Usar covenanted to erect and operate a four-star hotel on the land in record of title 726082 in accordance with terms and conditions set out in the Agreement ("the Hotel").
 - (iii) Usar entered into a Deed of Lease, dated 21 February 2019 ("the Lease") of the premises and facility known as the Lower Hutt Events Centre ("the Events Centre") located at 32 Laings Road, Lower Hutt, which was then to be constructed, and since has been completed, by the Council pursuant to which Usar was (and is) to occupy and manage the Events Centre and its facilities, including its café, to standards set out within the Agreement and the Lease for a period of twenty (20) years at a Base Rent of \$100,000.00 per annum plus GST plus a Percentage Rent.
- C. The parties acknowledge a mutual intention to establish the Hotel and the Events Centre as complementary to each other and that the Hotel is to provide an accommodation facility to those using the Events Centre and to the Hutt Valley's commercial community. For these reasons, HCC agreed to transfer the land referred to in B(i) above without payment other than the lease base rent provided for in B(iii) above.
- D. Usar commenced occupancy and management of the Events Centre on 26 June 2018.
- E. The terms of the Agreement were varied as to the construction commencement and completion dates on three occasions and the current long-stop completion date, as

defined within the Agreement, is 30 June 2021. The parties have agreed to further extend this long-stop date to 31 December 2021 by this Deed.

- F. Despite the Events Centre being operated to a high standard by Usar (5 stars Qualmark), Usar reports that it has run at a trading loss and believes it is not profitable under the current Lease arrangements in the present and foreseeable economic conditions.
- G. HCC, Usar and Raman Kumar Sarin ("RKS") have agreed to vary the terms and conditions applicable to the Agreement and the Lease, in accordance with this Deed.

Now the parties agree as follows:

- 1. The Agreement and the Lease are varied as set out in this Deed. Where there is any inconsistency between the Agreement or the Lease and this Deed, this Deed will prevail. All other provisions of the Agreement (but only to the extent they remain current) and the Lease, which are not varied by this Deed, or which have not been previously varied in accordance with the requirements of the Agreement and the Lease, will continue in full force and effect.
- 2. This Deed is supplemental to the Agreement and the Lease. Expressions and definitions used in this Deed bear the same meaning given to them in the Lease.

Surrender right

- 3. Usar has the right to surrender the Lease on 30 June 2027 and on each third anniversary of that date during the initial term, being 30 June 2030, 30 June 2033 and 30 June 2036, by giving not less than six (6) months prior written notice to HCC of such surrender. On surrender of the Lease during the initial term, Usar will pay the Surrender Fee in accordance with clause 17, unless that has already been paid by Usar in accordance with clauses 8 and 9. Furthermore, Usar has the right to surrender the Lease at the mid-point of each renewal term, on 30 June 2043 and 30 June 2053, by giving not less than six (6) months prior written notice to HCC of such surrender.

Annual Rent during Interim Period

- 4. The Annual Rent payable from 1 July 2020 to 30 June 2024 (the "Interim Period") is fixed at \$40,000 plus GST per annum, to be payable monthly in advance. During the Interim Period, neither the Percentage Rent nor the Base Rent is payable. Outgoings are not varied and remain payable in addition to Annual Rent in accordance with the Lease.
- 5. Part of the Annual Rent payable during the Interim Period is to be deferred. During the Interim Period, the sum of \$37,000.00 plus GST per annum is to be paid monthly in advance in equal installments of \$3,083.33 plus GST, with the first installment

payable on 1 July 2020. The sum of \$12,000.00 plus GST (\$3,000.00 plus GST per annum) is to be deferred and is payable on 30 June 2024. No interest is payable on the deferred Annual Rent in the meantime.

6. Usar will not be required to produce an annual business or marketing plan, nor will it be audited by HCC during the Interim Period. Nonetheless, Usar will be open in communications with HCC and will share plans and management accounts. During the Interim Period the parties will meet annually to review progress with, and financial performance of, the Events Centre.

Annual Rent following Interim Period

7. From 1 July 2024 until the expiry of the Lease (including any renewal terms), the Annual Rent will include the Base Rent and the Percentage Rent. The Percentage Rent payable under the Lease will be 3% of Total Revenue for the first \$6,000,000 of Total Revenue earned during the relevant lease year, and will be 5% of Total Revenue earned above \$6,000,000, provided that in any event the Percentage Rent payable will be not less than \$45,000 per annum. All amounts in this clause are exclusive of GST.

Option of Prepayment of Base Rent During Term of the Lease

8. Usar has the right by giving no less than one (1) months' notice prior to pre-pay the Base Rent with effect from 1 July 2024 or on each following anniversary of that date during the initial term of the Lease (the "Early Payment Date"). Once pre-payment of the Base Rent has been made on the Early Payment Date, neither the Base Rent nor the Accelerated Base Rent will be payable under the Lease and those obligations will have been fully satisfied.
9. If Usar gives notice pursuant to clause 8, HCC will promptly provide Usar with a GST invoice in respect of the Surrender Fee in the relevant amount as detailed in clause 17, as at the Early Payment Date. Provided the Surrender Fee has been paid, then with effect from the Early Payment Date the Base Rent payable under the Lease will be reduced to nil.

Assistance by Usar

10. In the event that Usar elects to surrender the Lease, it undertakes that it will in good faith assist HCC in the recruitment, appointment and training/introduction of an individual or entity to lease or manage the Events Centre for the period commencing 1 July 2027, or any other surrender date, and Usar will provide the services set out in clause 12 below. Usar's assistance to HCC will cease on the applicable surrender date.
11. HCC will appoint (at its cost in all respects) a transition manager not less than one month prior to the applicable surrender date.

12. Usar will facilitate the transmission of the Events Centre business to any operator appointed by HCC and, in particular, will:
- (i) Permit a new operator to employ any and all Events Centre staff (below manager level) at its discretion.
 - (ii) Provide access to all relevant proprietary information applicable to the Events Centre business, including:
 - (a) All relevant client/customer information;
 - (b) All booking and reservation systems;
 - (c) All relevant supply and service contracting details applicable to the business;
 - (d) Assignment to the new operator of all or any trade or service supply contracts.

All of the above are collectively referred to as the "transition services".

13. Upon notice of surrender of the Lease, Usar undertakes to submit to HCC within twenty-one days a list of all existing Usar service contracts, booking and reservation systems, forward bookings of the Events Centre and all third party contracts entered into in respect of the Events Centre. Upon receipt of notice and the information referred to, HCC will within twenty-one days respond to Usar confirming which of the contracts, agreements or forward bookings it is prepared to accept assignment of (acting reasonably). Despite the foregoing, HCC agrees to take an assignment of, or to procure that any new operator takes an assignment of, all forward bookings of the Events Centre, and all equipment leases and software contracts (provided they expire or can be terminated within 18 months of the Lease surrender date) that have been entered into on normal commercial terms. Usar will not enter any contracts for the supply of goods and services to the Events Centre after giving notice of surrender without the express written permission of HCC, unless those contracts expire or can be (and are) terminated prior to the surrender date.

Obligation to continue Hotel Operation

14. Usar and RKS acknowledge the commitment to construct the Hotel with no less than sixty (60) apartments, as described in the Agreement. The Hotel Long Stop Completion Date in the Agreement is hereby extended to 31 December 2021. HCC acknowledges Usar's ability to operate the Hotel in its sole discretion including having a mix of short and long stay accommodation.
15. Usar and RKS covenant that in consideration of the surrender right granted pursuant to clause 3 of this Deed, Usar, or any successor owner(s) of the Hotel, must continue to operate a hotel of four-star rating comprising not less than forty (40) apartments at the Hotel site until 30 June 2030. Usar and RKS covenant that no disposition of interest has occurred prior to entry of this agreement that affects this covenant and that in

making any future disposition it will give notice of this requirement to any successor owner and procure undertakings for the benefit of HCC to continue to operate the hotel of 4-star rating accordingly (but without any requirement on Usar or any successor owner to register covenants against the title(s) to the Hotel). It is acknowledged that there may be multiple owners of units within the Hotel who are committed by way of lease or management agreement to have their units used as a hotel for the purposes of this clause.

16. Usar will be free to deal with the remaining twenty (20) apartments in the Hotel in its own best interests which may include unit titling and selling those apartments in Usar's absolute discretion.

Surrender Fee

17. Should Usar elect to surrender the Lease between 30 June 2027 and 30 June 2036 (both dates inclusive), or should Usar elect to pay the Base Rent early in accordance with clauses 8 and 9, then Usar agrees to pay HCC the Surrender Fee per the agreed table below.

Year	1 July	Surrender Fee
1	2018	
2	2019	
3	2020	
4	2021	
5	2022	
6	2023	
7	2024	886,741
8	2025	844,546
9	2026	799,818
10	2027	752,408
11	2028	702,152
12	2029	648,881
13	2030	592,414
14	2031	532,559
15	2032	469,112
16	2033	401,860
17	2034	330,571
18	2035	255,005
19	2036	174,906
20	2037	90,000

Surrender Fee payment for Applicable Year in the event of Lease Surrender

18. The Surrender Fee payment (if any) by Usar will be payable in full within twenty (20) working days after the relevant surrender date of the Lease. Upon full payment of the Surrender Fee, Usar and RKS will be released in full from all obligations to HCC under the Lease and the Agreement (subject to antecedent liabilities), and neither party will have any claim against the other (except the obligation in clause 15 above continues should the Lease surrender occur prior to 30 June 2030). Payment of the Surrender Fee payment will be guaranteed by Raman Sarin.
19. After 30 June 2030, Usar has no liability to HCC for anything other than the Events Centre, if still operated by Usar under the Lease.

Miscellaneous

20. Neither party will be entitled to register any interests or covenants against any of the titles to land referred to in this Deed, or to lodge a caveat against any titles.
21. The parties acknowledge that nothing in the Agreement or the Lease (as amended by this Deed) restricts Usar from utilising the land in record of title 726083 in its own absolute discretion.
22. This Deed may be executed in any number of counterparts and all the counterparts when taken together will constitute one deed. Each party may enter into this Deed by executing a counterpart. The parties acknowledge that this Deed may be executed by an exchange of scanned and emailed PDF copies and execution of this Deed by that means is valid and sufficient execution.

7

Dated this _____ day of _____ 2021

EXECUTED AS A DEED

Signed by

Hutt City Council
By its Chief Executive Johanna Elizabeth Miller

In the presence of:

(Signature of witness)

(Name of witness)

(Occupation of witness)

(Address of witness)

Signed by

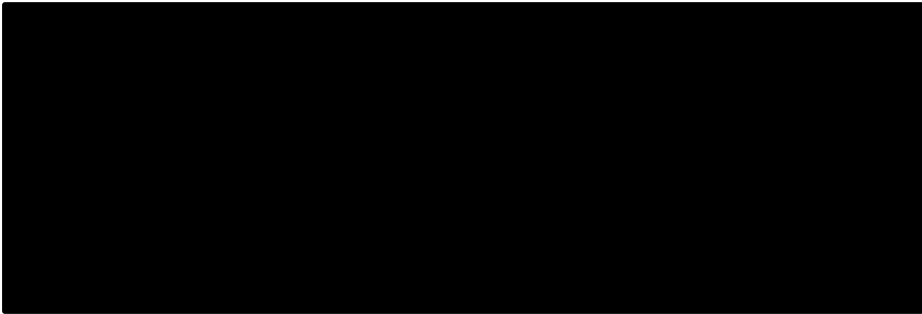
Raman Sarin

Usar Commercial Assets Limited
By its Director

In the presence of:

[Handwritten signature]

(Signature of witness)



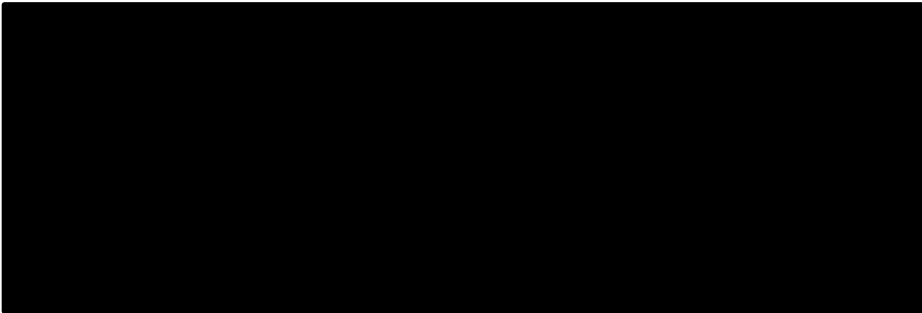
656021

Signed by

Raman Sarin
Raman Kumar Sarin

In the presence of:

[Signature]
(Signature of witness)



Released under