**AGREEMENT** dated this                     day of                   2017

**BETWEEN Anne Tixier** of Wellington, Business Intelligence Consultant

(“Anne”)

**A N D Stuart Victor John Knight** of Wellington, Registered Valuer

(“Stuart”)

**RECITALS:**

A. Anne and Stuart are living in a de facto relationship as defined by Section 2D of the Property (Relationships) Act 1976 (“the Act”)

B. Anne and Stuart have reached agreement on the status, ownership and division of all property and debts and wish to record that agreement in writing with the express intention of contracting out of the Act.

C. Anne and Stuart wish to contract out of the Act in relation to the division of all relationship property and relationship debt on death.

**OPERATIVE PART:**

**1. Separate Property**

1.1 The property included in this clause shall be Anne’s separate property of which she shall retain ownership and against which Stuart shall have no claim:

(a) All the property in Schedule A to this Agreement, whether existing or acquired in the future.

(b) Any proceeds from the sale of the property in Schedule A.

(c) Any property purchased in substitution for the property in Schedule A.

(d) Any increases in the value of the property in Schedule A.

(e) Any income earned from the property in Schedule A.

1.2 The property included in this clause shall be Stuart's separate property of which he shall retain ownership and against which Anne shall have no claim:

(a) All the property in Schedule C to this Agreement whether existing or acquired in the future.

(b) Any proceeds from the sale of the property in Schedule C.

(c) Any property purchased in substitution for the property in Schedule C.

(d) Any increases in the value of the property in Schedule C.

(e) Any income earned from the property in Schedule C.

1.3 The status of property as separate property and the ownership of that property pursuant to this Agreement shall not be affected in any way by:

(a) The use to which it is put.

(b) The use to which income or gains from it is put.

(c) The status or ownership of income or gains from it.

(d) Any direct or indirect contribution that either party may make to it.

(e) Any direct or indirect application of relationship property to it.

1.4 If any item of separate property shall become so intermingled with the parties' relationship property so as to make the separate identification of that separate property impracticable, the whole of the intermingled property shall be regarded as relationship property, but the former owner of the intermingled separate property shall have a charge on the whole of the relationship property to secure payment of an appropriate sum of money in compensation for the loss of the intermingled separate property. The sum payable by way of compensation shall be calculated having regard to the last known value of the separate property before it was intermingled and shall be paid out before the relationship property is divided between the parties.

**2.** **Adjustments to Entitlements**

2.1 None of the following factors:

(a) Direct or indirect financial contributions by one party to the other party’s separate property.

(b) Direct or indirect non-financial contributions by one party to the other party’s separate property.

(c) Direct or indirect application of relationship property to separate property.

(d) Unequal division of functions within the relationship.

shall give either party any claims for an entitlement to; an increased share in relationship property, compensation from the other party, an interest in the separate property of the other party, or repayment or reimbursement from the other party.

2.2 Notwithstanding the provisions of clause 2.1 hereof, in the event either party wishes to:

(a) make any direct or indirect financial contribution to the other’s separate property; or

(b) to facilitate the direct or indirect application of relationship property to the other’s separate property;

then the parties may agree in writing in a new supplementary agreement as to any compensation to be paid to the contributing party in the event of the parties’ separation or either of their deaths, in which case such written agreement shall then override the provisions of clauses 2.1 hereof. If no supplementary written agreement is executed by the parties’ clause 2.1 shall apply.

**3. Relationship Property**

3.1 The parties acknowledge that they do not own any relationship property at the date of this Agreement whether separately or jointly.

3.2 Subject to Clauses 1.1 and 1.2 and to the other provisions of this Agreement, any other property acquired by both or either of the parties after the date of this Agreement during their relationship shall be relationship property.

**4. Personal Debts & Relationship Debts**

4.1 Each of the parties shall be responsible for their respective personal debt and each of the parties shall be responsible for a half share of all relationship debt and each indemnifies the other in respect of any claims, costs or expenses against the other arising out of his/her responsibility for any such debt.

4.2 The parties acknowledge that they do not have any relationship debt at the date of this Agreement whether separately or jointly.

4.3 The parties acknowledge that all debts listed in Schedule B (if any) are Anne’s personal debts and all debts listed in Schedule D (if any) are Stuart’s personal debts.

4.4 No party shall pledge, charge or encumber any relationship property, or any share of such property, in any manner whatsoever without the written consent of the other party, and with respect to dealings concerning such property, each party shall at all times act in the utmost good faith towards the other.

4.5 If either party shall with the consent of the other at any time borrow funds on the security of any charge over any relationship property, which funds are not expended on such property but are used for the purposes of that borrower party alone, such loan funds shall be the personal debt of the borrower party and that party shall protect the other’s share in the relationship property and shall indemnify the other party from and against all actions, costs, claims, damages and expenses arising out of such loan and the borrower party shall be solely responsible for meeting all payments due in connection with the loan funds.

**5. Expenses, Contributions & Income**

5.1 Both parties acknowledge and agree that they contribute equally and will continue to contribute equally to the everyday living expenses of the relationship.

5.2 Both parties acknowledge and agree that they contribute equally to the relationship in respect of non monetary contributions to the relationship and will continue to do so.

5.3 Each party’s personal income shall be solely managed by that party without reference to or control by the other party.

**6. Division of Property - Separation**

6.1 In the event that the parties should for not less that three (3) months separate or cease to live together as parties to a de facto relationship or marriage:

(a) Each party shall be entitled to retain their separate property free of any claim by the other.

(b) As soon as practicable thereafter all relationship property subject to any adjustments pursuant to clauses 1.4, 4.1 & 4.5, shall be divided equally between the parties.

**7. Provisions Applicable on Death**

7.1 Each of the parties wishes to preserve their freedom to dispose of their separate property and their individual interest in the parties’ relationship property and relationship debt and all their separate property and personal debt on death by making a Will on terms and conditions which they may from time to time deem appropriate. To this end they hereby specifically contract out of the provisions of Part 8 of the Act which provisions they agree shall not apply to any property or debt the Act may deem to be relationship property or relationship debt.

7.2 In the event that the relationship of the parties ends as a consequence of the death of one of them, or the simultaneous death of both of them, then:

(a) The rights that either of them may have to inherit the property or debt of the other shall be determined as if the Act has not been passed. Specifically neither of them shall have any claim on the property of the other or be liable for the debts of the other except to the extent that may be otherwise provided for in the deceased’s Will or on an intestacy or by written agreement between the parties.

(b) The deceased party’s estate shall receive and retain ownership of the deceased party’s separate property free of any claim by the other.

(c) All relationship property and relationship debt which are jointly held by the parties shall pass to the survivor of them by virtue of survivorship and become that party’s property or debt as the case may be, or, in the event of simultaneous death, shall pass to each party’s estate in equal shares. No adjustment or compensation shall be made to the value of the balance of the parties’ relationship property or relationship debt which may be held in the name of either party individually or both parties as tenants in common in shares.

(d) All relationship property and all relationship debt other than that relationship property and relationship debt referred to in subclause (c) above shall be divided (after any adjustments pursuant to clause 1.4, 4.1 and 4.5 herein have been made) equally between the surviving party and the deceased party’s estate, or, in the event of simultaneous death, equally between each party’s estate.

7.3 Nothing herein is intended to limit the rights of either party to lodge a claim on the deceased party’s estate pursuant to the Family Protection Act 1955 of the Law Reform Testamentary Promises Act 1949.

**8. Legal Effect**

8.1 The parties agree and wish to specifically record that the provisions contained in this Agreement are intended by them to provide the basis upon which all their property is to be divided between them should their relationship end by separation or as a result of the death of either or both of them. The provisions of this Agreement are intended to replace and/or override the provisions set out in the Act, including (by way of example and not limitation) the provisions set out in sections 9A, 15A and 17 of the Act and Part 8 of the Act. Accordingly except as otherwise provided in this Agreement the parties agree that this Agreement shall be in full and final settlement of all claims that each of them may have against the other under any statute whatsoever or at common law or at equity.

8.2 The operation of this Agreement shall not be affected by:

(a) The bankruptcy of either party, or

(b) The taking of assets or property in execution by creditors, or

(c) The separation of the parties (as defined in sub-clause 8.3) or;

(d) The reconciliation of the parties following a separation, or;

(e) The marriage of the parties to each other, or

(f) The death of each party.

8.3 The following terms in this Agreement shall have the meaning given to then in the Act:

(a) De facto relationship;

(b) Marriage;

(c) Owner;

(d) Personal debt

(e) Property;

(f) Relationship debt;

(g) Relationship property; and

(h) Separate property.

8.4 In this Agreement the terms “separation” shall include any occasion upon which the parties cease to live together in a de facto relationship and whether or not by virtue of any oral or written agreement between them or pursuant to a separation order made by any Court or competent jurisdiction.

8.5 This Agreement shall bind the executors, administrators, personal representatives and assigns of each of the parties.

8.6 This Agreement shall be construed and take effect in accordance with the laws of New Zealand. The parties acknowledge that they have had independent legal advice before signing this Agreement and the effects and implications of this Agreement have been explained to them by their respective solicitors. They further acknowledge that they have received a draft of this Agreement for consideration and approval prior to executing it.

**9. Acknowledgements**

9.1 Any notice to be given pursuant to the terms of the Agreement shall be in writing addressed to the parties to whom it is to be given and may be served personally or sent by prepaid registered post to the last known address of such party or such other address as that party may from time to time notify to the other and shall be deemed to be served on the day personally served or on the second day after it is posted to a New Zealand address or on the tenth day after it is posted to an overseas address.

9.2 No failure on the part of either party to enforce at any time any of the provisions of this Agreement shall be construed as a waiver of any of his/her rights under this Agreement nor shall any such failure affect the validity of any provisions of this Agreement or otherwise prejudice that party in any way whatsoever.

9.3 The parties agree that this Agreement will constitute an agreement under section 21 of the Act.

9.4 Each party further acknowledges that he/she is under no legal disability and is of sound mind and of legal capacity, is not under duress or undue influence and voluntarily executes this Agreement of his/her own free act and will.

9.5 The parties acknowledge and record that they have, prior to signing this Agreement, made accurate and complete disclosure to the other of all property and debts which each of them holds or has a beneficial interest in.

**SIGNED** by the said **Anne Tixier** in )

the presence of: )

)

I, of , Solicitor, witness to the signature of **Anne Tixier**,certify that before she signed this Agreement I explained to her the effect and implications of the Agreement and that I explained to her the rights and obligations which she has pursuant to the provisions of the Property (Relationships) Act 1976.

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**SIGNED** by the said **Stuart Victor John** )

**Knight** in the presence of: )

)

I, **Mical Shane Jervis Treadwell** of Wellington, Solicitor, witness to the signature of **Stuart Victor John Knight**,certify that before he signed this Agreement I explained to him the effect and implications of the Agreement and that I explained to him the rights and obligations which he has pursuant to the provisions of the Property (Relationships) Act 1976.

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**SCHEDULE A**

**ANNE’S SEPARATE PROPERTY**

1. Any property acquired by Anne by way of a gift or inheritance from a third party.

2. Property acquired by Anne for inadequate consideration from a third party to the extent of the inadequacy of the consideration.

3. Property acquired by incurring a liability that is subsequently forgiven to the extent that the liability is forgiven.

4. Property acquired by Anne as a beneficiary under a Trust.

5. Personal gifts of chattels acquired by Anne by way of a gift from Stuart.

6. Any loans owed to Anne by any person or entity.

7. Any property that is registered or recorded in Anne’s sole name regardless of the way in which the property was acquired or the way in which the acquisition of the property was funded.

8. Any income earned by Anne after the date of this Agreement or any property wholly acquired by Anne from such income.

9. The property at 101 Hazelwood Avenue, Karori, Wellington, or any substituted property purchased by Anne.

10. Any Kiwisaver account in Anne’s name.

**SCHEDULE B**

**ANNE’S PERSONAL DEBTS**

1. Any debts in the personal name of Anne as at the date of this Agreement.

**SCHEDULE C**

**STUART’S SEPARATE PROPERTY**

1. Any property acquired by Stuart by way of a gift or inheritance from a third party.

2. Property acquired by Stuart for inadequate consideration from a third party to the extent of the inadequacy of the consideration.

3. Property acquired by incurring a liability that is subsequently forgiven to the extent that the liability is forgiven.

4. Property acquired by Stuart as a beneficiary under a Trust, and specifically the Knight Family Trust created by deed dated 27 June 2001.

5. Personal gifts of chattels acquired by Stuart by way of a gift from Anne.

6. Any loans owed to Stuart by any person or entity.

7. Any property that is registered or recorded in Stuart’s sole name regardless of the way in which the property was acquired or the way in which the acquisition of the property was funded.

8. Any income earned by Stuart after the date of this Agreement or any property wholly acquired by Stuart from such income.

9. Stuart’s interest in the projects at a) 2 Khandallah Road, Ngaio, Wellington, being a shareholding in Khandallah Road Holdings Limited; b) development at 26 Robert Street, Newlands, Wellington, being a shareholding in Robert Street Holdings Limited; and c) shareholding in Victor Residential Limited, presently owing the property at 18 Waipapa Terrace, Hataitai, Wellington.

**SCHEDULE D**

**STUART’S PERSONAL DEBTS**

1. Any debts in the personal name of Stuart as at the date of this Agreement.

**SCHEDULE E**

**RELATIONSHIP DEBTS**

1. N/A.