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**From:** Justin Arthur  
**Sent:** Friday, 29 November 2019 8:50 AM  
**To:** [REDACTED]  
**Cc:** Aaron Marsh; Mary Hewett  
**Subject:** FW: Official Information Act request [#49F6AS]  
**Attachments:** Lease of Reserve Land - Maungaraki Tennis Club, BARBERRY GROVE.PDF; LEASE, DEED OF - Maungaraki Tennis Club Inc and Hutt City Council, 10A Barberrry Grove, Maungaraki.TIF

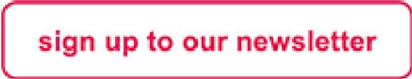
Morning [REDACTED]

Please see attached leases for the Maungaraki Tennis Club as requested.

Kind Regards  
Justin

**Justin Arthur**  
Technical Officer Parks

Hutt City Council, 30 Laings Road, Private Bag 31912, Lower Hutt 5040, New Zealand  
T , M 027 602 9702, W [www.huttcity.govt.nz](http://www.huttcity.govt.nz)



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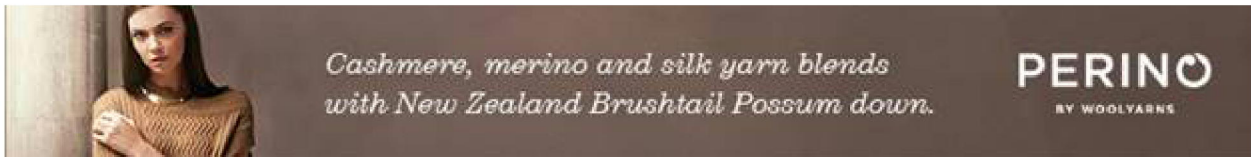
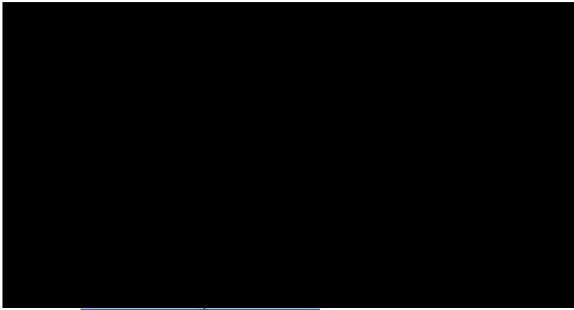
-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, 19 November 2019 4:52 PM  
**To:** "Contact" <[Contact@huttcity.govt.nz](mailto:Contact@huttcity.govt.nz)>  
**Subject:** Official Information Act request

Could you please supply me with a copy of the lease the Hutt City Council has entered into with the Maungaraki Tennis club for the land in Barberrry Grove, Maungaraki.

Many thanks,

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This email is confidential and may contain legally privileged information.

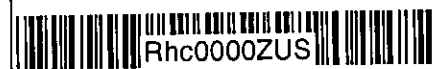
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If you have received this email in error, please notify us immediately by return email and delete the document.

DEED OF LEASE

1/27/1954

L97/1857



Rhc0000ZUS

Maungaraki Tennis Club Inc.

497/1857  
(1773)  
old numbering system

**DEED OF LEASE OF COUNCIL LAND**

Dated 14 May 1996

**PARTIES:**

- 1. **THE HUTT CITY COUNCIL** ("the Lessor")
- 2. **MAUNGARAKI TENNIS CLUB INC** ("the Lessee")

**BACKGROUND:**

- A. The Council is the administering body under Public Bodies Leases Act 1969 of the land described in the First Schedule ("the land").
- B. The Council agrees to grant a Lease under section 7(1)(d) of the Public Bodies Leases Act 1969.

**THIS DEED RECORDS:**

- 1. The Lessor Leases to the Lessee and the Lessee takes on Lease the land described in the First Schedule for the term from the commencement date and at the annual rent (subject to review as provided in this Lease) as set out in the First Schedule.
- 2. The Lessor and the Lessee covenant as set out in the Second Schedule.

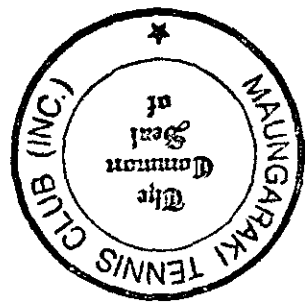
**THE COMMON SEAL of THE HUTT CITY COUNCIL** was hereto affixed pursuant to a resolution of Council in the presence of:



*[Signature]*.....MAYOR

*[Signature]*.....STAFF SOLICITOR

**SIGNED** by the Lessee  
**MAUNGARAKI TENNIS CLUB INC**  
(by affixing its Common Seal)  
the presence of:



*[Signature]*  
*[Signature]*  
*[Signature]*

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**FIRST SCHEDULE**

<b><u>THE LAND:</u></b> (as appended)	3006m <sup>2</sup> being all of the land described as Lot 1 on Deposit Plan 43394 contained in Certificate of Title Volume 17C Folio 174.
<b><u>THE BUILDINGS:</u></b>	The clubrooms sited on the land.
<b><u>USE:</u></b>	Solely in connection with the affairs of the club and for no other purpose.
<b><u>TERM:</u></b>	Nine (9) years
<b><u>RIGHT OF RENEWAL:</u></b>	One (1) of Nine (9) years
<b><u>COMMENCEMENT DATE:</u></b>	1 April 1995
<b><u>ANNUAL RENT:</u></b>	\$435.21 plus GST
<b><u>RENT PAYMENT DATES:</u></b>	1 July yearly
<b><u>FINAL EXPIRY DATE:</u></b> (provided lease is renewed in accordance with Clause 35 of this document)	31 March 2013
<b><u>THE PRESCRIBED RATE:</u></b>	12%

DND

## SECOND SCHEDULE

### COVENANTS IN THIS LEASE

#### Definitions

1. IN this Lease unless a contrary intention appears:

- 1.1 "The Lessor" and "the Lessee" shall be deemed to include where appropriate the executors administrators successors and assigns of the Lessor and the executors administrators successors and permitted assigns of the Lessee.
- 1.2 "The Land" means the land described in the First Schedule and shown on the attached Plan. Where appropriate it includes any building or other improvements owned by the Lessor which are on the land and any fixtures, fittings, machinery owned by the Lessor in those buildings or other improvements.
- 1.3 "The Common Property" means any part of the land or buildings including all extensions, variations and amendments thereto now or hereafter designated by the Lessor for common use and enjoyment in relation to the land and/or buildings and (without limiting the generality of the foregoing) includes forecourts, entrances, lobbies, vestibules, passages, stairways, landings, escalators and lifts, grounds, appurtenances and conveniences of and in relation to the land and/or buildings which are not the subject of this or any other Lease.
- 1.4 "The Building" or "The Buildings" means any building on the land whether owned by the Lessor or the Lessee.
- 1.5 "Lessee's Improvements" means any buildings or other improvements of the Lessee erected on the land and includes fixtures, fittings, machinery and chattels in any of those improvements.
- 1.6 "Working Day" means any day of the week other than:
  - (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day and Wellington Anniversary Day; and
  - (b) A day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year.

A working day shall be deemed to commence at 9am and terminate at 5pm.

- 1.7 **"Month"** or **"Monthly"** shall mean calendar month and calendar monthly.
- 1.8 **"Goods & Services Tax"** means all tax payable under the Goods & Services Tax Act 1985.
- 1.9 **"The Prescribed Rate"** means the interest rate set out as the prescribed rate in the First Schedule to this Lease.
- 1.10 Where two or more persons are to perform any of the obligations under this Lease those persons are bound jointly and severally.
- 1.11 **"Persons"** includes company body corporate and incorporated or unincorporated societies or any other entity where the context requires.
- 1.12 Clause headings and the index to this Lease have been inserted for convenience only and shall not affect the interpretation of this Lease in any way.

### Interpretation

2. IN this Lease unless the context otherwise requires:

- 2.1 words referring to the singular number include the plural number and vice versa
- 2.2 words referring to one gender include every other gender
- 2.3 words appearing in the Second Schedule of this Lease that also appear in the First Schedule shall mean and include the details supplies after them in the First Schedule
- 2.4 any reference to any of the parties by their defined terms includes that party's executors, administrators and/or permitted assigns, or being a company, its successor and/or permitted assigns
- 2.5 every agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation and/or derive any benefit under this deed binds and is for the benefit of such persons jointly and each of them severally
- 2.6 clause headings are for reference purposes only
- 2.7 where any word or phrase is given a defined meaning in this deed, any other part of the speech or other grammatical form in respect of such word or phrase has a corresponding meaning



- 2.8 a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
- 2.9 the calculation of all periods of time or notice exclude the day on which the period or the notice is given and the day on which the period or notice expires.

**Rent and Rent Reviews.**

- 3.1 The Lessee will pay the annual rent annually in advance on the rent payment dates. The first annual payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date which shall be 1 July in each year. All rent shall be paid without any deductions by direct payment to the Lessor or as the Lessor may direct and the Lessee shall not advance as a reason for non-payment of rental any right of set-off.
- 3.2 The annual rent for the time being payable may be reviewed by the Lessor on the dates stated in the First Schedule (each date called "a date of review") in the way now set out;
- 3.3 At any time the Lessor may give notice in writing to the Lessee specifying the new annual rent proposed by the Lessor which the Lessor considers is or will be the current market rent of the land and/or buildings as at the date of review specified in the notice:
- 3.4 The Lessee may by notice in writing to the Lessor within twenty-one (21) days after receipt of the Lessor's notice dispute that the proposed new rent is the current market rent and require the new rent to be determined by two arbitrators being registered valuers, one appointed by each party and the Lessee shall in such notice name the Arbitrator appointed by the Lessee for such determination of rent;
- 3.5 On receipt of the notice the Lessor shall within a reasonable time appoint its Arbitrator and the two Arbitrators shall determine the full market rent for the premises with an umpire if necessary appointed by the two Arbitrators;
- 3.6 In the event of the Lessee failing to give notice to the Lessor in accordance with the provisions of sub-clause 3.4, the Lessee shall be deemed to have accepted the proposed new annual rent specified in the Lessor's notice;
- 3.7 The new annual rent determined pursuant to the last sub-clause or by way of arbitration as being the current market rent shall be the rent

payable by the Lessee as from the date of review specified in the Lessor's notice;

- 3.8 In no circumstances whatsoever shall the amount of any new annual rent so determined be less than the annual rent payable by the Lessee during the period of twelve (12) months immediately prior to the date of review specified in the Lessor's notice.
- 3.9 The costs of determining the new rent shall be borne equally by the Lessor and the Lessee except if the new rent for the premises as determined under this clause is equal to or greater than the rent notified to the Lessee by the Lessor as aforesaid in which event all of the costs of the determination shall be borne by the Lessee;
- 3.10 Any variation in the rent on a review pursuant to this clause shall take effect from the particular review date whether or not the Lessor has given notice to the Lessee under sub-clause 2.3 of this Lease before or after the commencement date of the review period so that a review of rent will take place on a review date regardless of the actual date on which the notice is given by the Lessor to the Lessee;
- 3.11 Until the new rent is determined pursuant to this clause the Lessee shall pay the rental notified by the Lessor pursuant to sub-clause 2.3 of this clause as an interim rent until such time as the actual rent has been determined; immediately the actual rent has been determined an appropriate adjustment shall be made between the Lessor and the Lessee and the Lessor and the Lessee will complete a deed recording such rent at the expense of the Lessee.
- 3.12 If the Lessor requires the Lessee shall enter into a Deed recording the new rent such a Deed to be prepared by the Lessor at the cost of the Lessee.

#### **Lessee to Pay Rates**

4. **THE** Lessee will in addition to the rent pay all rates or levies levied either by the Lessor or any other rating authority in respect of the land as and when the rates or levies are demanded **PROVIDED THAT** the rates payable at the start and end of the term of this Lease shall be apportioned between the Lessor and the Lessee.

#### **Other Lessee's Payments**

5. **THE** Lessee will:

- 5.1 At its own cost provide sewerage and such other essential services as the Lessor in its sole discretion requires for the buildings on the land or any future buildings to be erected on the land and will pay all

*DMS*

annual service charges levied by the Lessor in respect of the land and buildings; and

- 5.2 Ensure that the land is reinstated at its own cost to the condition it was before the work was commenced in accordance with normal engineering practice as applicable to such works; and
- 5.3 Pay all charges for electricity, gas and telephone used on the land or in the buildings on the land.

### **Insurance**

6. **THE** Lessee will keep all buildings, fixtures and fittings now or hereafter to be erected on the land insured against any loss or damage by fire, earthquake, fire resulting from earthquake, flood, tempest, Act of God or other insurable cause to their full insurable value in an insurance office approved by the Lessor; but
  - 6.1 If a building owned by the Lessor is attached to or is adjacent to the building erected by the Lessee such policy shall be with an insurance company nominated by the Lessor; and
  - 6.2 The Lessee will have the interest of the Lessor noted on every such policy of insurance and will deposit with the Lessor such policy and will produce to the Lessor the receipts for the annual or other premiums payable on account of the insurance policies if required by the Lessor; and
  - 6.3 All monies received by the Lessee pursuant to every such policy of insurance shall be expended in or towards the repair, reinstatement or re-erection of the buildings erected on the land; **PROVIDED HOWEVER THAT**
  - 6.4 The liability of the Lessee shall be limited to the extent of the insurance monies available unless such insurance monies are irrecoverable by reason of the act or default of the Lessee or any of its members; and **PROVIDED FURTHER HOWEVER** that
  - 6.5 Should the buildings owned by the Lessee on the land be destroyed by fire or by any other cause the Lessee may elect to take the net insurance monies received in lieu of reinstatement or re-erection of the buildings and on such election having been made the Lessee will advise the Lessor in writing accordingly and on receipt of such notice by the Lessor the rights hereby created shall absolutely cease and determine but without prejudice to any antecedent right or action which the Lessor may have against the Lessee for non payment of rental or breach of covenant or otherwise howsoever arising hereunder; and **PROVIDED FURTHER HOWEVER THAT**

- 6.6 On such cessation and determination under this clause the Lessee shall clear the land on which the said buildings were erected and restore the land to its former state and condition to the satisfaction of the Lessor.

### **Use of the Buildings and Land**

- 7.0 **THE** Lessee will use the buildings and land solely for the purposes of the Lessee and its general activities as set out in the First Schedule and for no other purposes;
- 7.1 The Lessee will not permit or provide sleeping or overnight accommodation.
- 7.2 If the Lessor, after making such enquires as it thinks fit and giving the Lessee an opportunity of explaining the usage of the land and buildings, and if satisfied that the land and buildings are not used or are not being sufficiently used for the purposes of the Lessee and its general activities, then the Lessor may terminate this Lease on such terms as it thinks fit but without prejudice to any antecedent right or action which the Lessor may have against the Lessee however it arose.
- 7.3 **THE** Lessee shall at all times during the term hereof permit any person not being a member of the Lessee to use any one of the courts/greens to be set aside by the Committee of the Lessee for the purpose at a charge to be fixed by the Committee and approved by the Lessor and notified upon the premises of the Lessee **PROVIDED THAT** any courts/greens so set aside may at the discretion of the Lessee be changed from time to time.

### **Lessee to Occupy Peaceably**

8. **THE** Lessee will not permit the land or buildings or any part of them to be used for any illegal or immoral purposes or so as to cause a nuisance annoyance or inconvenience to the Lessor, neighbours or other users of the reserve nor for gaming or gambling purposes or allow any breach of the provisions of the Sale of Liquor Act 1989 or the Gaming and Lotteries Act 1977 or any statute passed in substitution of any of them.

### **Assignment or Transfer**

9. **THE** Lessee will not without the prior consent in writing of the Lessor during the term of this Lease hire-out, assign, transfer, sublet, charge, mortgage, encumber or part with the possession or use of the said land or buildings or any part of them. Consent may be refused by the Lessor or may be granted subject to compliance by the Lessee with such terms and conditions as the Lessor may in its discretion require.

**Fees Charged by Lessee**

- 10.1 Any fee charged for admission must have the prior written approval of the Lessor.
- 10.2 The Lessee will not without the prior consent in writing of the Lessor charge a fee other than a membership fee for admission to the land or buildings on more than 40 days in any one year or more than 6 consecutive days in any one year.

**Lessee to Maintain**

**11.** **THE** Lessee shall at its cost in a proper manner and to the reasonable requirements and satisfaction of the Lessor:

- 11.1 Keep cleanse maintain and repair the interior of the buildings and other improvements including all water gas electrical and drainage or sewage pipes or conductors in the buildings or connected to them and all fixtures fittings and floor coverings belonging to the Lessor which at any time during this Lease shall have been erected or placed therein by the Lessor in the same clear order repair and condition as they were in at the commencement of this Lease or at the time of installation reasonable wear and tear arising from reasonable use and damage by fire earthquake earth subsidence flood tempest or inevitable accident (save where insurance monies are rendered irrecoverable in consequence of the act or default of the Lessee) alone excepted and will at the expiration or sooner determination of this Lease quietly yield them up the same in the like clear order repair and condition;
- 11.2 Keep maintain and repair any car parks paving and other sealed or surfaced areas of the land in good order repair and condition and in particular immediately repair any damage caused by vehicular use subject to the same exceptions specified in the preceding paragraph and the Lessee shall not spill or permit to be spilt oil or other harmful or noxious substances on the car park pavings or other sealed or surfaced areas of the land;
- 11.3 Repair any actual damage caused by the Lessee its members customers employees workers or invitees to the common property and/or land and buildings;
- 11.4 Keep and maintain clean at its own expense in every respect the buildings and all interior and exterior window surfaces of the buildings;
- 11.5 Keep clean and clear of obstruction all guttering down pipes and gully traps connected to the exterior of the buildings;

11.6 Whenever reasonably needed repaint and redecorate the interior of the buildings

### Maintenance

12.1 THE Lessee shall not without prior written consent of the Lessor renovate or alter the Lessor's building.

12.2 THE Lessee shall consult with the Lessor on any proposed maintenance, and at the expense of the Lessee will take all reasonable steps to keep cleanse and maintain the exterior of the buildings weatherproof and all water sewage and drainage and electrical systems connected hereto in good order and shall whenever necessary repaint the exterior of the buildings to colour scheme approved by the Lessor; PROVIDED HOWEVER THAT

12.3 UNDER no circumstances shall the Lessor be liable in respect of want of repair or defect caused by non-observance of any of the Lessee's obligations or by improper careless or abnormal use by the Lessee or those for whom the Lessee is responsible and any such want of repair or defect shall be made good by the Lessee at the expense of the Lessee; PROVIDED FURTHER

12.4 THAT in the event of any dispute or difference as to the liability of the Lessor under this clause the same shall be referred to arbitration in the manner hereinafter provided.

### Lessee's Improvements

13.1 THE Lessee will not without the prior consent in writing of the Lessor build or allow to be built or erected upon the land any buildings, erections, structures, water courses, ditches, drains or any other thing whatsoever except in accordance with plans and specifications approved in writing by the Lessor before any work is started. Any consent given under this clause shall not constitute a resource consent pursuant to the provisions of the Resource Management Act 1991.

13.2 THE Lessee shall carry out the proposed works in a proper manner and in accordance with any condition imposed under the Building Consent and any permit and other approval:

13.3 THE Lessee is liable for any professional fees incurred by the Lessor in perusing the Lessee's plans and specifications and assessing the proposed works.

**Lessee may make Rules**

**14.1** THE Lessee may make rules for the management and control of the land and buildings and for the conduct of persons using them which are necessary and not inconsistent with this Lease.

**14.2** BEFORE any rules come into force they must have the written consent of the Lessor. Any dispute will be referred to the Minister of Conservation whose decision will be final and binding on all parties.

**14.3** ALL such rules when approved and adopted shall be displayed in a conspicuous place in the buildings for the information and guidance of all persons entering upon and using the land and buildings.

**Repair of Minor Breakage's**

**15.** THE Lessee shall notwithstanding any other provision in this Lease repair all glass breakage's and breakage or damage to all light fittings and power points at the Lessee cost.

**Toilets**

**16.** THE toilets sinks and drains of the buildings will be used by the Lessee only for their designed purposes and no substance or matter will be deposited therein which could damage or block the same.

**Rubbish Removal**

**17.** THE Lessee will regularly on the usual days cause all rubbish and garbage to be removed from the land and buildings and the Lessee will at the Lessee's expense cause to be removed any and all trade waste cartons boxes produce containers and other goods or rubbish not removable in the ordinary course by the Local Authority and will keep any rubbish bins or containers in a tidy condition.

**No Noxious Use**

**18.** THE Lessee will not permit to be brought in or upon or stored within the land or buildings any machinery or goods or things of an offensive noxious illegal or dangerous nature or of such weight size or shape as is likely to cause damage to the buildings nor will the Lessee use or permit to be used the land or buildings for any noxious illegal or offensive trade or business nor allow anything to be done which may be or grow to be a nuisance disturbance or annoyance to the Lessor or other tenants of the Lessor and generally the Lessee shall conduct the Lessee's business upon the land and buildings in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such person provided that the permitted use herein before mentioned shall not per se be in breach of this clause.

**Lessee Not to Void Insurance's**

19. THE Lessee shall not carry on or permit or suffer upon the land or buildings any trade or occupation or wilfully allow to be done any act or thing which shall make void or voidable any policy or policies of insurance on the buildings against loss or damage by fire or which may render any increased premium payable for such insurance UNLESS in circumstances where any increased premium is payable the Lessee shall have first obtained in writing the consent of the insurer of the premises and the Lessor and made payment to the insurer of the amount of any such increased or extra premium as may be payable AND in any case where in breach of this clause the Lessee has rendered any insurance void and the Lessor has suffered loss or damage thereby the Lessee shall forthwith compensate and reimburse the Lessor in full for such loss or damage.

**Notification of Defects.**

20. THE Lessee shall give to the Lessor or any agent of the Lessor prompt notice of any accident to or defect in or about the land and/or buildings and in particular in relation to any pipes or fittings used in connection with the water or electrical or gas services. The Lessee's obligation under this clause shall be in addition to and without prejudice to the Lessee's obligation to repair under this Lease.

**Lessor's Right of Inspection**

21. THE Lessor and its agents and employees may at all reasonable times during business hours enter upon the land and buildings with or without valuers, insurers, appraisers and prospective purchasers to view the condition thereof and may give notice in writing to the Lessee of all defects and wants of reparation and the Lessee will with all reasonable dispatch after receipt of such notice repair and make good the same according to such notice so far as the Lessee is liable so to do.

**Lessor may repair**

22.1 IF default is made by the Lessee in the due and punctual compliance with any notice given by the Lessor relating to repair the Lessor without prejudice to the Lessor's other rights and remedies shall at the Lessor's option without suit or further notice be entitled by its agents and employees with all necessary equipment and material at all reasonable times to enter upon the land and buildings to execute such works as may be specified in such notice and all monies expended by the Lessor by reason of the default of the Lessee hereunder shall be payable by the Lessee to the Lessor upon demand together with interest thereon at the prescribed rate from the date of expenditure down to the date of payment thereof.



22.2 THE Lessee will permit the Lessor by its agents employees and contractors at all reasonable times to enter into and upon the land and buildings to carry out repairs to the buildings and to install inspect repair renew or replace any services.

### Lessee Liable to Strangers

23. THE Lessor will not be liable for and the Lessee will indemnify the Lessor against claims in respect of any accident injury or damage suffered by any person or property arising out of or by reason of the use of the land and/or buildings by the Lessee and its members, licensees, invitees, employees or other persons whatsoever;

23.1 The Lessee will take and keep in force a public risk policy of an amount approved by the Lessor against such eventualities and produce to the Lessor the receipt for the premium payable in respect of such policy if required by the Lessor.

### Lessee's Risk

24. THE Lessee occupies and uses the land and buildings at the Lessee's own risk and releases to the full extent permitted by law the Lessor and its agents and employees from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the land and buildings.

### Suitability

25. NO warranty or representation expressed or implied has been or is made by the Lessor that the land and/or buildings are now suitable or will remain suitable or adequate for all or any of the purposes permitted by the Lessor under this Lease.

### Lessee to Comply with Bylaws

26. THE Lessee will at all times comply with the Bylaws and its District Rules of the relevant local authority and also all requirements of the Fire Service Commission having jurisdiction in respect of the buildings and amenities.

### Signs and Painting

27.1 THE Lessee will not without the Lessor's approval erect or display or permit to be erected or displayed either on the outside of the buildings on the land or upon any part of the reserve any hoarding or advertising matter of any description PROVIDED HOWEVER that the Lessee may with the prior consent in writing of the Lessor and subject to such conditions as the Lessor may impose affix a sign or hoarding displaying the name of the Lessee to any part of the buildings on the land.

27.2 **THE** Lessee will not paint the exterior of the buildings or other improvements in any colours or colour scheme that has not been previously approved in writing by the Lessor and the Lessee will not affix to the exterior of the buildings or improvements any lights, fittings or structures of any kind without the prior written consent of the Lessor.

27.3 **ANY** consent under this clause shall not constitute a resource consent or building consent pursuant to the provisions of the Resource Management Act 1991 and the Building Act 1991.

### Fencing

28. **THE** Lessee will erect and maintain at its own expense such fences as the Lessor may require as being necessary for the use of the land and buildings by the Lessee, such fences to be of a design and to a specification approved in writing by the Lessor before any work is started.

### Access to the Land and Building

29.1 **IF** the Lessee at any time requires any pedestrian or vehicular access to the land and the Lessor is of the opinion that such access may be made available without harm to the land the Lessor may authorise the construction of such access in a position and to a specification approved in writing by the Lessor before any work is started, all such work is to be at the Lessee's cost.

29.2 **IT** shall be lawful for persons not being members of the Lessee to enter and for any reasonable space of time to remain upon the demised premises at all times when the courts are open for play not being times when admission thereto is chargeable so long as any such person shall conduct and behave himself or herself in an orderly and seemly manner and shall refrain from hindering or obstructing the play upon the courts or in any way interfering with the courts or any other property of the Lessee **PROVIDED THAT** nothing in this clause shall be deemed to authorise any such person to enter upon any of the buildings used by the Lessee without the previous consent of the Committee of the Lessee.

29.3 **THE** Lessee shall comply at all times with the spirit and obligations of the Disabled Persons Community Welfare Act 1975 and shall whenever the Lessor requires and immediately such requirement is made the Lessee shall install wheelchair/paraplegic access to the buildings and toilet facilities within the buildings.

### Right of Way

30.1 **INSOFAR** as the Lessee may have the right to use any Right of Way attached to the premises of the Lessor it will not break any of the conditions imposed by law for the use of such Right of Way or obstruct it or the access to it or use

it for any purpose other than ingress and egress and in particular will not leave or deposit in it anything which may interfere with free access to it or the use of it by any other person or persons entitled to use it.

**30.2** THE Lessee shall be responsible for the maintenance and repair of the right of way.

**Protection of Natural and other Features**

**31.1** THE Lessee agrees to preserve, protect and provide adequate safeguards to prevent the destruction or damage to any natural, scenic, historic, cultural, archaeological, biological, geological, or other scientific features, or indigenous flora or fauna.

**31.2** THE Lessee shall not plant any trees or shrubs on the Land without prior permission of the Lessor and shall not allow any noxious weeds to grow on the Land.

**Default and Re-entry**

**32.** IF the Lessee makes default in payment of the rent or any other payments to be paid and if such default continues for a period of 10 working days; or

32.1 If the Lessee fails for any reason to meet fully any of the covenants conditions or restrictions of this Lease and such failure or omission continues for a space of 10 working days; or

32.2 If the Lessee ceases to conduct its affairs as an incorporated society or is struck off the register or is wound up in accordance with the rules of the Lessee; or

32.3 If the Lessee shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of its creditors or in the event of the insolvency bankruptcy or liquidation of the Lessee; or

32.4 If the Lessee shall suffer distress or execution to issue against the Lessee's property goods or effects under any judgement against the Lessee in any Court for a sum in excess of FIVE THOUSAND DOLLARS (\$5,000.00); then it shall be lawful for the Lessor without notice to re-enter upon the land or any part thereof and the Lessor shall again repossess and re-enjoy the land as in the former estate of the Lessor and thereupon the rights of the Lessee shall absolutely cease and determine but without prejudice to any antecedent right or action which the Lessor may have against the Lessee for non-payment of rental or for breach of covenant or however else arising.

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**End of Lease and new Lease**

**36. UPON** termination or determination of this Lease by effluxion of time, surrender, default in payment, breach of conditions or otherwise:

- 36.1 the land together with all buildings and the Lessee's improvements shall revert to the Lessor without any compensation payable to the Lessee; or
- 36.2 the Lessor may require or may agree to the removal of the Lessee's improvements by the Lessee subject to the reinstatement of the land to its former condition; or
- 36.3 if:
  - (a) the Lessor is satisfied that the Lessee has at all times during the term of this Lease duly and punctually observed, performed and fulfilled every one of the covenants, conditions and stipulation's of this Lease and has given to the Lessor not less than 6 months written notice prior to the expiration of the term (which notice shall be irrevocable); and
  - (b) in the opinion of the Lessor there is sufficient need for the recreational activity specified in the Lease, and that in the public interest some other recreational activity should not have priority; and
  - (c) the Lessee has obtained the appropriate resource management consent to renewal in terms of Section 218 of the Resource Management Act 1991.

the Lessor will grant to the Lessee a new Lease from the date of expiration of the term of this Lease containing such terms, covenants, conditions and stipulation's as are required at that time by the Lessor.

- 36.4 Or if:
  - (a) the Lessor is satisfied that the Lessee has at all times during the term of this Lease duly and punctually observed, performed and fulfilled every one of the covenants, conditions and stipulation's in this Lease and has given to the Lessor not less than 6 months written notice prior to the expiration of the term (which notice shall be irrevocable); and
  - (b) in the opinion of the Minister of Conservation the land in this Lease is not required for other purposes of public recreation; and
  - (c) the Lessee has obtained the appropriate resource management consent to the renewal in terms of Section 218 of the Resource Management Act 1991.

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the Lessor will grant to the Lessee a new Lease from the date of expiration of the term of this Lease containing such terms, covenants, conditions and stipulation's as are required at that time by the Lessor.

35.4 Or if:

- (a) the Lessor is satisfied that the Lessee has at all times during the term of this Lease duly and punctually observed, performed and fulfilled every one of the covenants, conditions and stipulation's in this Lease and has given to the Lessor not less than 6 months written notice prior to the expiration of the term (which notice shall be irrevocable); and
- (b) in the opinion of the Minister of Conservation the land in this Lease is not required for other purposes of public recreation; and
- (c) the Lessee has obtained the appropriate resource management consent to the renewal in terms of Section 218 of the Resource Management Act 1991.

the Lessor will grant to the Lessee a new Lease from the date of expiration of the term of this Lease containing such terms, covenants, conditions and stipulation's as are required at that time by the Lessor.

Waiver

36. NO waiver or failure to act by the Lessor in respect of any one or more breaches by the Lessee of any covenant obligation or provision contained or implied in this Lease shall operate as a waiver of another breach of the same or of any other covenant obligation or provision contained or implied in this Lease.

Notice

37. ANY notice to be given to the Lessor or the Lessee shall be deemed sufficiently served if sent by registered post to the addressee to its registered office and any notice so posted or placed shall be deemed to have been served on the day following the posting or placing thereof. Any notice or other document or writing served or given by the Lessor hereunder shall be valid and effectual if served or given under the hand of any authorised representative for the time being of the Lessor.

Interest on Unpaid Monies.

38. WITHOUT prejudice to the Lessor's other rights and remedies under this Lease if any rent or other monies owing by the Lessee to the Lessor are in arrears for seven (7) days after having been demanded then the lessee will

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pay interest from the date of such demand until the date of payment in full at the prescribed rate. The interest payable shall be recoverable in the same way as rent in arrears.

### **Not to Register**

39. **THE** Lessee will not without the prior written consent of the Lessor be entitled to register this Lease and the Lessee will not register a caveat in respect of the Lessee's interest under this Lease.

### **The Building Act**

40. **THE** Lessee will at all times comply with the provisions of the Building Act and agrees to indemnify the Lessor for any claims made against the Lessor arising under the Building Act by virtue of the Lessee's failure to comply with Act. In addition to the above:

- 40.1 (a) The Lessee agrees to pay upon demand all costs and expenses incurred by the Lessor in providing an annual Building Warrant of Fitness to the Territorial Authority for the buildings including all costs paid to an independent qualified person for any report establishing compliance with any applicable Compliance Schedule;
- (b) If the Lessee does not occupy the whole of the building then the proportion of the costs and expenses specified in Clause (a) above which shall be payable by the Lessee, if not separately assessed or levied in respect of the buildings, shall be the proportion that the area of the buildings bear to the total area of the buildings on the land on which the buildings are situate, or if the buildings form part of a unit title development then the proportion shall be calculated in accordance with the unit entitlement assessed on the unit plan.
- 40.2 The Lessee agrees to comply with the Building Act 1991, the Code of Compliance Schedule and all licences, notices to rectify, requisitions or other notices issued, made or given by the Territorial Authority or any other competent authority in respect to the buildings or their use by the Lessee and to supply a copy of such notice or requisition immediately after receipt to the Lessor.
- 40.3 If the buildings are damaged by fire or other event (but not to the extent that it is untenable) and as a condition of issuing a Building Consent the Territorial Authority requires additional works to ensure compliance with the Building Code, the Lessor may by notice in writing to the Lessee cancel the Lease.
- 40.4 The rights and obligations of the parties under this Clause are in addition to and not by way limitation of all other rights and obligations of the parties under the Lease.

**Costs**

**41. THE** Lessee will pay the costs of and incidental to the preparation of this Lease and the stamp duty payable thereon and any variations thereof including deeds recording reviewed rentals and any costs and expenses which the Lessor may incur in the exercise or enforcement of any power right or remedy conferred upon the Lessor by law or by this Lease or which the Lessor may in any other way reasonable incur in connection with or arising out of this Lease as a result of any default by the Lessee pursuant to its provisions and in particular as a result if suing for the rent or any other moneys payable to the Lessor or any other person or any Body and until paid the same shall bear interest at the prescribed rate computed from the time the same were incurred until the date of payment.

**Goods & Services Tax**

**42. THE** Lessee will at the time it falls due for payment pay to the Lessor or as the Lessor shall direct all goods and services tax payable on the rent and any other amounts payable to the Lessee and on any of the payments required to be made by the Lessee so that all such rent and other payments are paid as net amounts clear of goods and services tax.

**Alternative Dispute Resolution**

**43.1 IF** any dispute or difference arises between the Lessor and Lessee touching upon the construction of any clause or aspect of this Lease then the matter in dispute shall be submitted to the process of Alternative Dispute Resolution (as usually conducted within the Wellington Region) with the intent that the matter be resolved as expeditiously as possible and to the mutual benefit of both parties.

**43.2 In** the event Alternative Dispute Resolution is unsuccessful such difference or dispute shall be referred to arbitration in New Zealand of a single arbitrator agreed upon by the parties or failing agreement, of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before their entering upon the reference) in accordance with the Arbitration Act 1908 or any amendment thereto or re-enactment thereof for the time being in force.

**43.3 In** the event of a difference or dispute being referred to Alternative Dispute Resolution or arbitration the parties agree to share the costs of arbitration subject to any award or order which may be made as a result of arbitration.

### **Redevelopment of Reserve**

#### **44. Application of this Clause**

This clause shall apply in the event of the Lessor electing to redevelop the Reserve or any part thereof.

### **Surrender of Lease**

**45.1** IF in the reasonable opinion of the Lessor any proposed redevelopment requires the demolition or alteration of the Buildings or any part thereof the Buildings will not in the reasonable opinion of the Lessor be suitable or in a suitable location for the permitted use to be carried on the Lessor may give notice in writing ("the Surrender Notice") to the lessee that it requires this Lease to be surrendered on a date ("the date of surrender") to be specified in such notice and in no event being less than three months from the service of the Surrender Notice.

**45.2** On the date of surrender the Lessee shall:

- (a) yield up vacant possession of the Clubrooms as if this Lease had expired by effluxion of time; and
- (b) deliver to the Lessor its copy of this Lease and do all such acts and things and sign all such documents as are reasonably required of it by the Lessor.

**45.3** Each party shall pay its own costs of and incidental to the preparation and execution of such surrender.

### **Offer of Alternative Premises**

**46.1** WHERE the Lessor requires this Lease to be surrendered as aforesaid the Lessor shall use its best endeavours to offer the Lessee a Lease ("the New Lease") of alternative premises ("Alternative Premises") such Alternative Premises to be of a leasable area and a location suitable in the reasonable opinion of the Lessor for the conduct of the Lessee's activities.

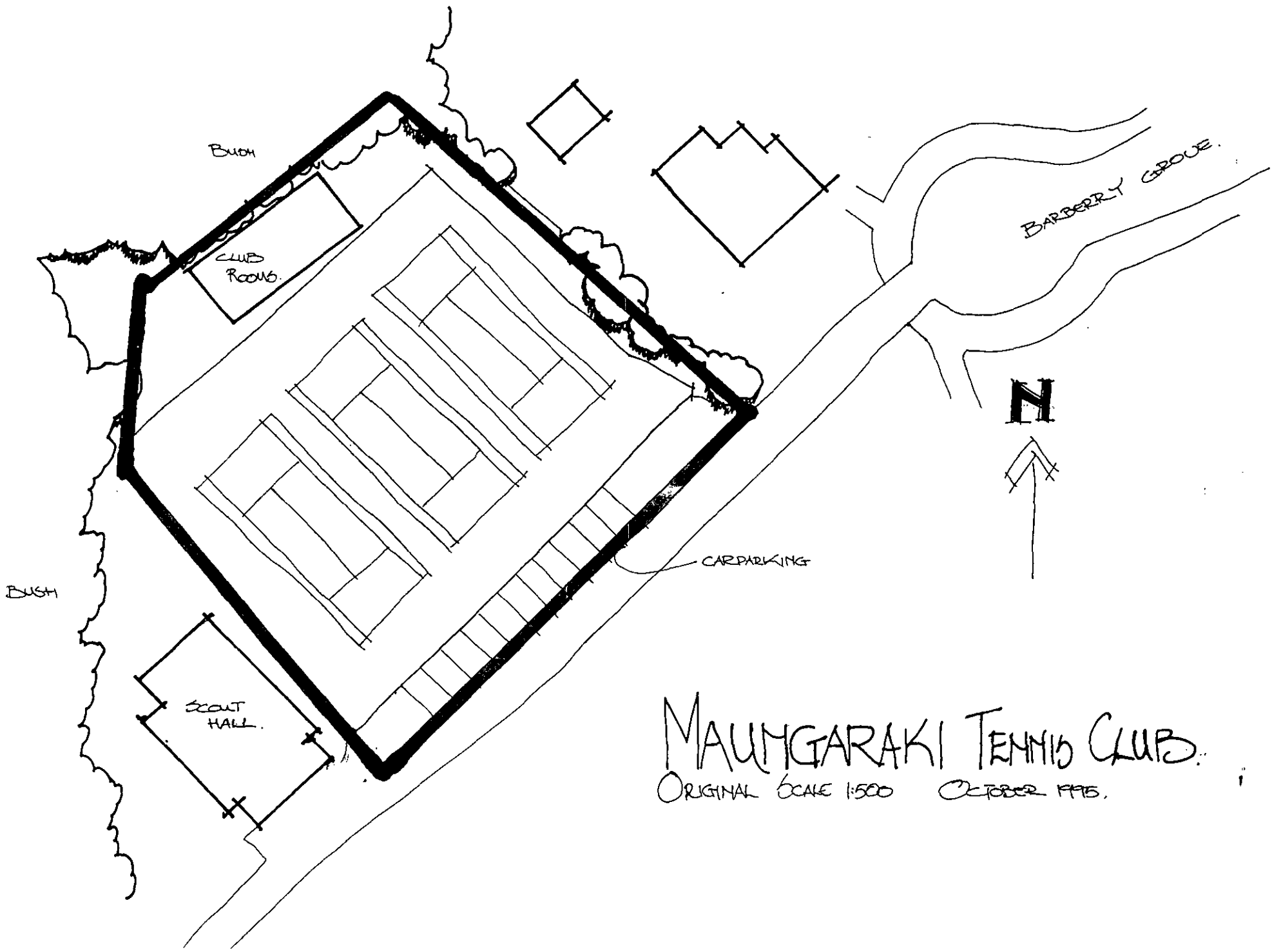
**46.2** The New Lease will be for a term commencing on the day following the date of surrender for a term to be determined by the Lessor on such terms and conditions as are required at that time by the Lessor.

**46.3** The offer of Alternative Premises shall be submitted to the Lessee concurrently with the Surrender Notice. The offer shall be accompanied by a plan showing the approximate location of the Alternative Premises the approximate dimensions and layout thereof and the fixtures (if any), finishes and services to be provided by the Lessor. If the Lessee wishes to accept the offer it shall notify the Lessor in writing of its unconditional acceptance

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within 14 days of the offer and otherwise the offer shall be deemed to have been rejected. If the offer is rejected or deemed to have been rejected the surrender of this Lease shall be effected on the date of surrender without compensation by either party to the other but without prejudice to any rights or obligations hereunder prior to the date of surrender.



MAUNGARAKI TENNIS CLUB.  
ORIGINAL SCALE 1:500 OCTOBER 1975.

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**DEED OF LEASE**

**MAUNGARAKI**  
**TENNIS CLUB**  
**INC**

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**Lease of Reserve Land – Barberry Grove  
Reserve**

Hutt City Council  
Maungaraki Tennis Club

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## **Parties**

**Hutt City Council (Landlord)**

**Maungaraki Tennis Club (Tenant)**

## **Background**

- A The Landlord has agreed to lease to the Tenant, and the Tenant has agreed to take on lease, the Premises which are part of the Land.
- B The Tenant acknowledges that the Land is either a reserve under the Reserves Act 1977, or is managed by the Landlord as a reserve, or both. Accordingly it is of paramount importance to the Landlord that the Tenant's use of the Land under this Lease is consistent with the Landlord's objectives of providing public recreation on the Land and protecting the natural environment.
- C This Lease is granted by the Landlord in accordance with the Local Government Act 2002 or the Reserves Act 1977 as set out in the Reference Schedule in Schedule 1.

## **Grant**

- 1 The Landlord grants to the Tenant, and the Tenant accepts the lease of the Premises for the Term and at the Rent, subject to the covenants, conditions, agreements and restrictions set out in this Lease.
- 2 The Landlord enters this Lease as landowner, or as administering body of the Land if this Lease is granted pursuant to the Reserves Act 1977, or both. This Lease does not bind Hutt City Council in any other regulatory or any other capacity of Hutt City Council. Hutt City Council, acting in a regulatory capacity (or any other capacity), is not bound to grant any approval, consent or permission which the Landlord, the Tenant, or any one else needs to give effect to this Lease. The Tenant will not be entitled to any damages or other payment if Hutt City Council, acting in Hutt City Council's regulatory capacity (or any other capacity), either declines any approval, consent or permission, or issues them on terms that are unsatisfactory to the Tenant. For clarity, this provision will have effect as an operative provision of this Lease.



Executed as a deed this

day of

2016

Executed by

**HUTT CITY COUNCIL**

\_\_\_\_\_ as attorney

as Lessor by its duly appointed attorney:

In the presence of:

Witness signature:

Witness name:

Witness occupation:

Witness address:

Executed as a deed by **Maungaraki  
Tennis Club** as Tenant

\_\_\_\_\_ Authorized signatory

In the presence of:

Witness signature:

\_\_\_\_\_ Authorized signatory

Witness name:

Occupation:

Address:

Witness signature:

\_\_\_\_\_ Authorized signatory

Witness name:

Occupation:

Address:

## Schedule 1

### Reference Schedule

<b>Land:</b>	Being more or less being part of Lot 1 on Deposited Plan Hutt District 44394 comprised and described in Certificate of Title Volume WN17C Folio 174, known as Barberry Grove Reserve.
<b>Premises:</b>	That part of the Land on which the Tenant's Improvements are situated, as outlined in red on the plan attached as Schedule 3, and comprising approximately 2249m <sup>2</sup> of the Land.
<b>Term:</b>	13 years
<b>Commencement Date:</b>	1 October 2016
<b>Expiry Date:</b>	30 September 2029
<b>Rights of Renewal:</b>	2 rights of renewal of 10 years each
<b>Renewal Dates:</b>	1 October 2029 & 1 October 2039
<b>Final Expiry Date:</b>	30 September 2049
<b>Rent (subject to review under clause 4):</b>	\$502.18 per annum, plus Goods and Services Tax
<b>Rent Payment Date:</b>	The Commencement Date and each anniversary of the Commencement Date during the Term of this Lease and any Renewed Term
<b>Rent Review Dates:</b>	3 yearly from the Commencement Date during the term of this Lease and any Renewed Term
<b>Penalty Interest Rate:</b>	12% per annum
<b>Permitted Use:</b>	To only be used for the activities associated with the tennis club, all other activities must have permission in writing by the Reserves Asset Manager.
<b>Tenant's Improvements</b>	Tenants own building
<b>Landlord's Improvements</b>	None
<b>Improvements Rent Percentage (clause 10.6)</b>	12%
<b>Minimum Public Risk</b>	\$5,000,000

**Insurance:**

**Minimum Forest and Rural  
Fires Act 1977 Insurance:** Not required

**Landlord's Contact Details:**

Hutt City Council  
Private Bag 31912, 531 High Street,  
Lower Hutt  
Phone 04 570 6666  
Fax 04 570 6871

Attention: Divisional Manager, Parks & Gardens Division

**Tenant's Contact Details:**

Maungaraki Tennis Club  
10 Barberry Grove  
Maungaraki  
Lower Hutt 5010  
Email: info@mtc.co.nz

Attention: President

**Lease granted pursuant to  
(refer Paragraph C):**

Section 12 of the Local Government Act 2002 (not  
reserve under the Reserves Act 1977)

**Common Areas**

Not applicable

## Schedule 2

### Operative provisions

#### 1 Definitions and interpretation

##### Definitions

1.1 In this Lease, unless inconsistent with the context:

**Access Plan** means the plan attached as Schedule 4 showing that part of the Land outlined in yellow which is designated as the initial route for access to the Premises.

**Building** means the building situated on the Land, where the Premises comprise all or any part of the building on the Land.

**Building Work** means work carried out from time to time by the Tenant under the provisions of clause 9, for or in connection with the construction, installation, replacement, renewal, alteration, addition, upgrade, demolition or removal of a building or any fixtures or improvements on the Premises (including but not limited to any water courses, ditches or drains), and includes earthworks preparatory to or associated with that construction, replacement, renewal, alteration, addition, demolition or removal and any work of a structural or retaining nature, and services and utilities associated with any work.

**Business Day** will be deemed to commence at 9am and end at 5pm, and means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Wellington Anniversary Day, and
- (b) a day in the period which starts on 24 December in any year and ends on 5 January in the following year.

**Commencement Date** means the commencement date set out in the Reference Schedule.

**Common Areas** means those areas of the Building or Land which are available for shared use by any tenants or other occupiers or users of the Building or Land, as the Landlord allocates from time to time, including those designated common areas as at the Commencement Date set out in the Reference Schedule (if any).

**District Plan** means any operative district plan and any proposed district plan for Hutt City Council's district, from time to time.

**Divisional Manager** means the Landlord's Divisional Manager, Parks & Gardens Division, or the equivalent officer of the Landlord from time to time.

**Expiry Date** means the expiry date set out in the Reference Schedule.

**Final Expiry Date** means the final expiry date set out in the Reference Schedule.

**GST** means Goods and Services Tax under the Goods and Services Tax Act 1985.

**Landlord** means the Landlord as owner of the Land, or as administering body of the Land if this Lease is granted pursuant to the Reserves Act 1977, or both, and the

Landlord's successors. The Landlord expressly excludes Hutt City Council in any other regulatory or other capacity of Hutt City Council.

**Landlord's Improvements** means those improvements of the Landlord situated on the Land as at the Commencement Date, set out on the Reference Schedule (if any), together with any further building or other improvements made by the Landlord during the Term and any Renewed Term of this Lease.

**Landlord's Invitees** means each and every servant, employee, agent, contractor or sub-contractor of the Landlord and includes, where the context requires, tenants, licensees, and other invitees of the Landlord, and includes the public.

**Lease** means this Lease and includes all schedules, appendices, plans and annexures to this Lease.

**Outgoings** includes:

- (a) all general and special rates, targeted rates, and uniform annual general charges, water rates, sewage, rubbish collection, and any other charges by any regional council or territorial authority for the Premises,
- (b) all charges for electricity, telephones, gas and any other service or utility supplied to or consumed on the Premises,
- (c) grounds maintenance charges levied by the Landlord in respect of the Premises and Land, as the Landlord thinks fit,
- (d) exterior maintenance charges (including painting) levied by the Landlord in respect of the Building or the Land (if any), where the Premises comprise all or any part of any building on the Land the exterior of which is being maintained by the Landlord,
- (e) New Zealand Fire Service charges for all fire detection and fire fighting equipment, and related maintenance for the Premises,
- (f) insurance premiums and related fees and excesses,
- (g) all costs associated with cleaning, maintenance, repair and redecoration of the Premises,
- (h) security costs, including charges for security monitoring services,
- (i) the costs of maintenance, repair and renewal of accessways on the Land (where these are not the responsibility of the Tenant),
- (j) any other outgoing reasonably incurred in respect of the Premises or the Land,
- (k) the Landlord's costs and expenses (including officers' time, transport and other related expenses) incurred by the Landlord in carrying out the administration and monitoring of compliance by the Tenant with the terms of this Lease,
- (l) costs and expenses related to providing an annual building warrant of fitness to the territorial authority for any buildings and improvements on the Premises (including the costs of obtaining any reports required for compliance with any relevant compliance schedule),

- (m) any costs relating to Common Areas, including the costs of keeping the Common Areas lit at night, and keeping the Common Areas safe, clean and tidy.

**Permitted Use** means the specific permitted use set out in the Reference Schedule, and no other use.

**Plan** means the plan of the Premises attached as Schedule 3.

**Policy** means the Policy on Private Use of Hutt City Council Land, and any other policy of Hutt City Council or guideline of the Landlord affecting the Land from time to time, and includes (but not by way of limitation) any reserves management plan (whether made under section 41 of the Reserves Act 1977, or otherwise).

**Premises** means the premises set out in the Reference Schedule.

**Renewed Term** means a renewed term of this Lease if a Right of Renewal set out in the Reference Schedule is exercised.

**Renewal Date** means the renewal date or dates set out in the Reference Schedule.

**Rent** means the rent set out in the Reference Schedule as varied from time to time pursuant to the provisions of clause 4.

**Rent Payment Date** means the Commencement Date and the Rent Payment Dates set out in the Reference Schedule, occurring during the Term and any Renewed Term (if any) of this Lease.

**Reserves Rental Formula** means the formula, from time to time, under the Policy on Private Use of Hutt City Council Land and any replacement Policy, for rent levels for reserves vested in, or administered and managed by, the Landlord.

**Review Date** means the rent review date or dates set out in the Reference Schedule.

**Telecommunications** means the conveyance, transmission, emission or reception of signs, signals, impulses, writing, images, sounds, instructions, information or intelligence of any nature, whether by electromagnetic waves or not, at any frequency, and whether for the information of any person or not, and includes an electronic power supply whether underground or overground incidental to Telecommunication.

**Tenant** means the party named as the Tenant at the beginning of this Lease, and the Tenant's permitted assigns.

**Tenant's Improvements** means any building or other improvements made by the Tenant on the Premises as at the Commencement Date set out in the Reference Schedule (if any), together with any further building or other improvements made by the Tenant during the Term and any Renewed Term of this Lease.

**Tenant's Invitees** means each and every servant, employee, agent, contractor or sub-contractor, or any other invitee of the Tenant.

**Term** means the term of this Lease set out in the Reference Schedule.

## Interpretation

- 1.2 In the interpretation of this Lease, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Lease.
- 1.2.2 If the day on which any act, matter or thing is to be done under this Lease is not a Business Day, the act, matter or thing must be done on the next Business Day.
- 1.2.3 A reference to any law, statute, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that statute, legislation or legislative provision.
- 1.2.4 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 1.2.5 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Lease.
- 1.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.7 A reference to a party is a reference to a party to this Lease, and includes that party's executors, administrators, and successors.
- 1.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.9 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
- 1.2.10 A reference to the word 'include' or 'including' is to be construed without limitation.
- 1.2.11 A reference to this Lease includes the agreement recorded in this Lease.
- 1.2.12 Any schedules and attachments form part of this Lease.
- 1.3 Where obligations bind more than one person under this Lease, those obligations will bind those persons jointly and severally.

## **2 Lease term**

- 2.1 This Lease will commence on the Commencement Date and will continue in force until the Expiry Date unless otherwise determined or renewed in accordance with the express provisions of this Lease.

### **Right of Renewal**

- 2.2 The Landlord will, at the cost of the Tenant, renew the Term for the next Renewed Term, as set out in the Reference Schedule, if:
  - 2.2.1 the Reference Schedule provides for Rights of Renewal,

2.2.2 the Tenant has given to the Landlord written notice to renew this Lease at least 6 months before the end of the Term (in which respect time will be of the essence), and

2.2.3 in the opinion of the Landlord:

- (a) the Tenant has not been in breach of any of the terms and conditions of this Lease,
- (b) there is sufficient continuing need for the Permitted Use on the Premises,
- (c) the Tenant has been using the Premises sufficiently for the Permitted Use,
- (d) the Premises (or part of the Premises) would not, in the public interest, be better used for another purpose,
- (e) the grant of the Renewed Term continues to accord with the Landlord's strategic direction for the Land.

2.2.4 the Landlord is satisfied that the Tenant has properly constructed, developed, managed and controlled any facilities for public recreation and enjoyment required by the Landlord to be built by the Tenant under clause 26.8 where this Lease is granted pursuant to section 54(1)(a) of the Reserves Act 1977.

2.3 During any Renewed Term the Tenant will pay the Rent (payable annually in advance) to the Landlord which will be determined by the Landlord in accordance with the Reserves Rental Formula and the Policy. The renewed Lease will otherwise be on and subject to the covenants, terms and conditions expressed or implied in this Lease, except that the Term of the Lease plus all Renewed Terms must expire no later than the Final Expiry Date.

2.4 If required by the Landlord, the Tenant will execute a deed of renewal in the form prepared by the Landlord, at the cost of the Tenant.

### **Holding Over**

2.5 If the Landlord has not granted the Tenant a new lease of the Premises or renewed this Lease but agrees to the Tenant continuing to occupy the Premises after the Expiry Date or the Final Expiry Date (as the case may be), then the Tenant will occupy the Premises from that date under a tenancy which either party may terminate on 20 Business Days' notice, ending on any day.

2.6 The tenancy under clause 2.5 will be on the terms, and at the rent, the Landlord specifies, but if the Landlord does not specify the terms or the rent, the tenancy will be on the same terms as apply immediately before the Expiry Date or the Final Expiry Date (as the case may be) so far as those terms are applicable to a tenancy terminable on 20 Business Days' notice, with a monthly rent that is one twelfth of the Rent payable immediately before the Expiry Date or the Final Expiry Date (as the case may be).

### **Variation of Term**

2.7 The Tenant acknowledges that any variation of or extension to the Term or any Renewed Term of this Lease will be at the Landlord's sole discretion. If a variation of



or extension to the Term or a Renewed Term is granted, that variation or extension may be subject to conditions. If as a result of the extension or variation this Lease would be a subdivision of land (as defined in section 218 of the Resource Management Act 1991) then those conditions may include a requirement that the Tenant, at the Tenant's cost, obtains and complies with any subdivision consent required under the Resource Management Act 1991.

### **3 Payment of Rent and other charges**

#### **Rent**

- 3.1 The Tenant must pay the Rent to the Landlord by direct payment or as the Landlord may otherwise direct, without set-off or deduction, on the Commencement Date and on each succeeding Rent Payment Date during the Term and any Renewed Terms of this Lease.
- 3.2 The Landlord will issue a GST invoice to the Tenant in respect of the first payment of the Rent which becomes payable in respect of the Premises under this Lease on the Commencement Date, which will be calculated on a pro-rata basis (to the nearest month) based on the time until the next Rent Payment Date. The Landlord will issue GST invoices to the Tenant for all successive Rent Payment Dates.

#### **Outgoings**

- 3.3 The Tenant will pay on demand to the Landlord or the authority or person from whom any Outgoings are demanded, in addition to the Rent referred to in clause 3.1, any Outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Premises or the Tenant's occupation, operation, use or carrying on of the Permitted Use or any related activity on the Premises, whether those Outgoings are addressed to the Landlord or the Tenant.
- 3.4 Where any Outgoing is not assessed solely for the Premises, then the Tenant must pay a fair proportion of that Outgoing, determined by the Landlord based on the area for which the Outgoing is assessed.
- 3.5 Where any of the Outgoings are not charged or assessed in respect of a period coincident with a period of the Term or any Renewed Term of this Lease, then the Tenant must pay a fair proportion of that Outgoing determined by the Landlord based on the period during which that Outgoing is assessed.
- 3.6 The Landlord may require that the Tenant pays the Outgoings payable to the Landlord under clause 3.3 annually on the Rent Payment Date, on the basis of the annual amount of those Outgoings determined by the Landlord based on the proportion the area of the Premises bears to the area of the Land.
- 3.7 Any rates, taxes, charges or other outgoings which have not been taken into account in assessing the annual amount of Outgoings payable under clause 3.6 will be payable by the Tenant to the Landlord, on demand.
- 3.8 Following the relevant Rent Payment Date, the Landlord will provide the Tenant with reasonable details of the actual Outgoings for the relevant year or period, and any overpayment will be applied to the next year's Outgoings payable by the Tenant, or any underpayment will be payable by the Tenant to the Landlord immediately on demand.

## **GST**

- 3.9 The Tenant must pay all GST on the Rent and any other amounts payable by the Tenant under this Lease, either to the Landlord or as the Landlord may direct, as well as any additional GST the Landlord may be required to pay as a result of the Tenant's failure to pay when required.

## **Penalty interest**

- 3.10 If the Rent or any other amount payable by the Tenant to the Landlord under this Lease (including costs pursuant to clause 35) is unpaid for 5 Business Days after the due date or the date of the Landlord's demand (if there is no due date), the Tenant must pay interest to the Landlord on the unpaid money at the Penalty Interest Rate, calculated from the due date or the date of the Landlord's demand (as the case may be) to the date of payment to the Landlord.

## **4 Review of Rent**

### **Notice of Rent Review**

- 4.1 At each Review Date, the Landlord may review the Rent by giving written notice to the Tenant specifying the Landlord's assessment of the Rent at the Review Date in accordance with the Reserves Rental Formula and the Policy (subject to clauses 4.2, 4.5 and 4.7).
- 4.2 The Tenant acknowledges that any application of the Reserves Rental Formula and the Policy will be at the sole discretion of the Landlord, and that different rent levels may be set under any Reserves Rental Formula and the Policy. The Landlord may take into account the type of reserve, the Permitted Use, and any other factors the Landlord considers relevant in connection with the application of the Reserves Rental Formula and the Policy in reviewing the Rent.
- 4.3 The Landlord may give the notice under clause 4.1 no earlier than 3 months before the relevant Review Date and at any time up to the next Review Date.
- 4.4 Despite any other provisions of this Lease, the Rent after the relevant Review Date will not be less than the Rent immediately before the Review Date.

### **If Rent Review other than Market Rent Review Applies under Reserves Rental Formula or Policy**

- 4.5 If the Rent is reviewed under clause 4.1 on a basis other than the current market rent for the Premises (under the terms of the Reserves Rental Formula or the Policy) the following will apply:
- 4.5.1 the Tenant may by written notice to the Landlord, within 15 Business Days of receipt of the Landlord's notice under clause 4.1, specify any concerns that the Tenant has regarding the reviewed Rent,
  - 4.5.2 the Landlord will, on receipt of the Tenant's notice under clause 4.5.1, have due regard to and consideration of any points raised in the Tenant's notice,
  - 4.5.3 the Landlord, after such consideration, may at the Landlord's sole discretion (but without being bound to) adjust the reviewed Rent, and the Landlord will advise the Tenant accordingly,

- 4.5.4 the decision of the Landlord as to the reviewed Rent will, following the process under this clause 4.5, be final and binding on the Tenant.
- 4.6 If the Tenant does not give notice under clause 4.5 (time being of the essence), the Tenant will be deemed to have accepted the reviewed Rent specified in the Landlord's notice under clause 4.1.

**If Market Rent Review Applies under Reserves Rental Formula or Policy**

- 4.7 If the Rent is reviewed under clause 4.1 to the current market rent for the Premises (under the terms of the Reserves Rental Formula or the Policy) the following will apply:
  - 4.7.1 the Tenant may by written notice to the Landlord, within 15 Business Days of receipt of the Landlord's notice under clause 4.1, dispute that the reviewed Rent is the current market rent for the Premises, and specify the annual rent proposed by the Tenant as the current market rent,
  - 4.7.2 the new Rent will then be determined in accordance with clause 4.9.
- 4.8 If the Tenant does not give notice under clause 4.7 (time being of the essence), the Tenant will be deemed to have accepted the reviewed Rent specified in the Landlord's notice under clause 4.1.
- 4.9 Immediately after the Landlord receives the Tenant's notice under clause 4.7, the parties will endeavour to agree on the current market rent for the Premises. If the parties do not reach agreement within 10 Business Days, then the current market rent may be decided by either:
  - 4.9.1 one party giving written notice to the other requiring the current market rent to be decided by arbitration, or
  - 4.9.2 if the parties agree, by registered valuers acting as experts (and not as arbitrators) as follows:
    - (a) each party will appoint a valuer, and give written notice of the appointment to the other party within 10 Business Days of the parties agreeing to determine the rent under clause 4.9.2,
    - (b) if the party receiving a notice fails to appoint a valuer within the 10 Business Day period, then the valuer appointed by the other party will determine the current market rent, and that determination will be binding on both parties,
    - (c) as soon as the valuers are appointed, the valuers must appoint a third expert (who need not be a registered valuer),
    - (d) the valuers will then decide the current market rent of the Premises, but if the valuers fail to agree, then the current market rent will be decided by the third expert,
    - (e) each party will be given the opportunity to make written or verbal representations to the valuers or the third expert, subject to any reasonable time and other limits as the valuers or the third expert may require, and the valuers or the third expert will have regard to those representations, but not be bound by those representations.

- 4.10 When the reviewed Rent for the Premises has been decided under clause 4.9.1 or clause 4.9.2, the person or persons deciding the same will give written notice of the decision to the parties. The notice will provide how the costs of the decision will be borne, and that provision will be binding on the parties.

#### **Interim Rent**

- 4.11 The Rent, from and including the relevant Review Date, will be the amount specified in the Landlord's notice under clause 4.1.

#### **Adjustment of Rent**

- 4.12 On notification under clause 4.1 or determination under clause 4.5 or 4.9 of the new Rent (as the case may be), the parties will make any necessary adjustments so that the adjusted Rent has been paid from and including the relevant Review Date. For the sake of clarity, the reviewed Rent under this clause 4 will apply from and including the relevant Review Date, regardless of the date of the Landlord's notice under clause 4.1.
- 4.13 The Tenant will, if required by the Landlord, enter into a deed of variation of lease to record the reviewed Rent under this clause 4. The Tenant will pay the Landlord's costs of preparation, negotiation and execution of any variation under this clause 4.13.

### **5 Premises to be used only for Permitted Use**

- 5.1 The Tenant must not use the Premises for any purpose other than the Permitted Use, and in accordance with the terms of this Lease. A change of Permitted Use is absolutely prohibited.

### **6 Tenant's Obligations**

#### **Conduct on the Premises**

- 6.1 The Tenant must, at the Tenant's own cost:
- 6.1.1 repair any damage or vandalism to the Premises or the Tenant's Improvements as soon as practicable within 24 hours of the damage, and must advise the Landlord as soon as possible if any damage is blocking any access on the Premises or Land.
  - 6.1.2 ensure that no part of the Premises or the Tenant's Improvements becomes a danger to the safety of members of the public or to the Landlord's Invitees or other occupants or users in the vicinity of the Premises, including, where appropriate, erecting safety barriers as may be required.
  - 6.1.3 advise the Landlord immediately of any hazards the Tenant is aware of on the Premises, the Land, or any land adjacent to the Premises.
- 6.2 The Tenant must not, without the Landlord's prior written consent, erect or store anything on the Premises, and must at all times ensure that materials are not piled or stored on the Premises or in any place where the materials may obstruct the public or other users of the Land or create a nuisance.
- 6.3 The Tenant must not store or permit to be stored fuels or other combustible materials on the Premises or the Land.

- 6.4 The Tenant must take all precautions to ensure no fire hazards arise from the Tenant's occupation of or operations carried out on the Premises, or from any act or neglect of the Tenant or the Tenant's Invitees.
- 6.5 The Tenant will not permit the Premises or any part of the Premises to be used for any activity that is or may become dangerous, offensive, noxious, noisy, illegal or immoral, or which is or may become a nuisance or annoyance to the Landlord or other users of the Land, or to the owner or occupier of any neighbouring property.
- 6.6 The Tenant will not permit the Premises or any part of the Premises to be used in a way that causes interference with the Landlord's utilities or assets on the Premises or the Land, or adjacent to the Premises or the Land.
- 6.7 The Tenant must not use the Premises for gaming or gambling purposes, or allow any breach of the provisions of the Sale of Liquor Act 1989 or the Gaming and Lotteries Act 1977 or any other statute or bylaw.
- 6.8 The Tenant must not allow any person to sleep on the Premises, or provide any overnight accommodation.
- 6.9 The Tenant must not allow any animals to live in or remain on the Premises.
- 6.10 The Tenant will not leave rubbish or rubbish bins on or about the Premises or the Land, except at the times for collection of rubbish, and will regularly cause all rubbish to be removed from the Premises.

#### **Planting and Landscaping**

- 6.11 The Tenant must, at the Tenant's own cost, if required by the Landlord, at any time during the Term or any Renewed Term, landscape the Premises and plant and maintain trees and shrubs on the Premises (as required by the Landlord and from sources approved by the Divisional Manager) to provide visual screening of any buildings or improvements on the Premises.
- 6.12 The Tenant must not plant any trees or shrubs on the Premises or the Land without the prior written approval of the Divisional Manager.

#### **Tenant not to remove vegetation**

- 6.13 The Tenant must not remove or trim any trees or shrubs from the Land or the Premises without the prior approval of the Divisional Manager (which may be withheld in the Divisional Manager's sole discretion or, if given, may be subject to conditions).
- 6.14 If the Tenant removes vegetation from the Land or the Premises in breach of the provisions of clause 6.13, the Tenant must as soon as possible consult with the Divisional Manager and revegetate to the Divisional Manager's reasonable requirements (including regarding landscaping and the type and source of the trees and shrubs to be planted).
- 6.15 If the Tenant does not comply with the Tenant's obligations in relation to landscaping and planting under clause 6.11 or clause 6.12, or replanting under clause 6.14, to the satisfaction of the Divisional Manager or within a reasonable time, the Landlord may carry out the landscaping and planting and/or replanting and the Tenant must pay the Landlord's costs immediately on demand.

### **Preservation of natural environment**

- 6.16 The Tenant must ensure that the Tenant's use and occupation of the Premises and Land preserves as far as possible the natural environment and landscape amenity of the Premises and the Land, and in particular the survival and health of any native flora and fauna on the Land and on the Premises, and will, in particular, comply with the Tenant's obligations under clause 26.1.

### **Noise**

- 6.17 The Tenant must limit noise levels on the Premises to a moderate level, and in particular must keep the noise level to within the requirements of the District Plan.

### **Rules**

- 6.18 The Tenant may make rules for the management and control of the Premises, and for the conduct of persons using the Premises. Those rules must not be inconsistent with the terms of this Lease, the provisions of the Reserves Act 1977 or any Policy.
- 6.19 The Tenant must obtain the prior written approval of the Landlord before any rules made under clause 6.18 come into effect.
- 6.20 The Tenant must display any rules made under clause 6.18 in a conspicuous place in the Premises, for the information and guidance of persons entering and using the Premises.

### **Admission charges and public access to the Premises**

- 6.21 The Tenant may make charges for admission to and use of the Premises, provided that such charges (where applicable) comply with the Reserves Act 1977, and the Tenant has first obtained the written approval of the Landlord to those charges. The Landlord's approval may be withheld at the Landlord's sole discretion, and if given, may be subject to conditions.
- 6.22 If this Lease has been granted pursuant to section 54(1)(b) or section 54(1)(c) of the Reserves Act 1977 then the Tenant will not, without the prior written consent of the Landlord, charge a fee (other than a membership fee) for admission to the Premises on more than 40 days in any one year (but not more than 6 days consecutively).
- 6.23 If this Lease has been granted pursuant to section 54(1)(b) or section 54(1)(c) of the Reserves Act 1977 then the Tenant will comply with any requirements of the Landlord under clause 26.7 in relation to allowing use of and access to the Premises.

### **Liquor licences**

- 6.24 The Tenant must not apply for a liquor licence or renew or vary any existing liquor licence for the Premises without the prior written approval of the Landlord, which the Landlord may withhold in the Landlord's sole discretion, and if given may be subject to conditions.

### **Common Areas**

- 6.25 If there are any Common Areas on the Land that are used by the Tenant, the Tenant is jointly and severally responsible with other users of the Land, to keep those Common Areas clean and tidy.

## **Utilities**

- 6.26 The Tenant will, at the Tenant's cost, provide sewerage, drainage and any other services the Tenant requires for any buildings or improvements on the Premises, and the Tenant's works under this clause 6.26 must otherwise be in accordance with the provisions of clause 9.
- 6.27 The Tenant will, if required by the Landlord, install an electricity or any other utility service check meter in the Premises, at the cost of the Tenant.

## **7 Maintenance of Buildings and Improvements**

### **If the Building is a Tenant's Improvement**

- 7.1 If the Premises comprise the Building which is a Tenant's Improvement then:
- 7.1.1 the Tenant must, at the Tenant's cost, put and keep, and maintain to the satisfaction of the Landlord the interior and exterior of the Building and any improvements on the Premises and all services and improvements (including any Tenant's Improvements) in good, clean and substantial order, repair and condition, including keeping the Tenant's Improvements weatherproof and watertight, and all utilities and services on the Premises in good order,
  - 7.1.2 the Tenant will be responsible, at the Tenant's cost, for all and any repairs, replacement or maintenance which are associated with and may be required on any building, services or improvements on the Premises from time to time,
  - 7.1.3 the Tenant must, at the Tenant's cost, whenever considered necessary by the Landlord, repaint the exterior of the Tenant's Improvements, to a standard and colour scheme approved in writing by the Landlord, and subject to clause 7.11,
  - 7.1.4 the Tenant will, at the Tenant's cost, keep the interior and exterior of the Building (including the interior and exterior of all windows) clean,
  - 7.1.5 the Tenant will, at the Tenant's cost, provide an annual building warrant of fitness to the territorial authority for the Building or any Tenant's Improvements, including paying the costs of obtaining any reports required for compliance with any relevant compliance schedule,
  - 7.1.6 the Landlord will have no obligations in relation to the repair and maintenance of the Building or any improvements or services on the Premises,
  - 7.1.7 the Tenant acknowledges the Landlord's rights under clause 11 to remedy any failure by the Tenant to comply with the Tenant's obligations, at the Tenant's cost.

### **If the Building is a Landlord's Improvement**

- 7.2 If the Premises comprise all or any part of the Building which is a Landlord's Improvement then:

- 7.2.1 The Landlord will keep and maintain the exterior of the Building and all building services in the same order and repair as at Commencement Date, but the Landlord will not be liable for any:
- (a) repair or maintenance which the Tenant is responsible to undertake,
  - (b) want of repair or defect in respect of building services so long as the Landlord is maintaining a service maintenance contract covering the work to be done,
  - (c) repair or maintenance which in the Landlord's opinion is not reasonably necessary for the Tenant's use and enjoyment of the Premises, or
  - (d) loss suffered by the Tenant arising from any want of repair or defect, where it is the Landlord's responsibility to repair under this Lease, unless the Landlord has received written notice of that want of repair or defect from the Tenant and has not within a reasonable time after that notice taken appropriate steps to remedy the same.
- 7.2.2 The Tenant must, at the Tenant's cost, put and keep, and maintain, to the satisfaction of the Landlord, the interior of the Building and any improvements on the Premises in good, clean, substantial order, repair and condition (but excluding reasonable wear and tear from reasonable use). The Tenant's obligation to repair and maintain under this clause 7.2.2 includes repairing and replacing as reasonably necessary any windows, doors, light fittings, light bulbs, electrical wiring, stoves and other Landlord's chattels, carpets and other floor coverings, and plumbing.
- 7.2.3 The Tenant will, at the Tenant's cost, keep the interior of the Premises clean and keep the interior and exterior of the windows in the Premises clean.
- 7.2.4 At the end or earlier termination of the Term or any Renewed Term, the Tenant will:
- (a) yield up the Premises in good, clean substantial order and repair and condition in full compliance with the Tenant's obligations under clause 7.2, and
  - (b) at the Tenant's cost, remove any fixtures and fittings, additions or alterations installed in or made to the Premises by the Tenant, and make good any resulting damage (subject to the provisions of clause 17).

### **General maintenance obligations**

- 7.3 For clarity, the provisions of clauses 7.4 to 7.11 regarding maintenance obligations will apply the same and irrespective of whether the Premises comprise the Tenant's Improvements or the Landlord's Improvements.
- 7.4 The Tenant must give the Landlord prompt notice of any accident to or defect in the Premises or on the Land, and in particular in relation to any pipes or fittings used in connection with the water, electrical, gas or drainage services. The Tenant's



obligation under this clause is in addition, and without prejudice, to any obligation of the Tenant to repair any accidental damage or defect.

- 7.5 The Landlord will not be liable, in any circumstances, for any want of repair or defect caused by non-observance of the Tenant's obligations under this Lease, or by the improper, careless or abnormal use by the Tenant or the Tenant's Invitees. The Tenant must, at the Tenant's cost, promptly make good any such damage or defect caused by any act or omission of the Tenant or the Tenant's Invitees.
- 7.6 The Tenant will, at the Tenant's cost, repaint and redecorate the interior of the Premises to a standard required by the Landlord, where repainting and redecoration is reasonably required by the Landlord.
- 7.7 The Tenant will, at the Tenant's cost, ensure that the toilets, sinks and drains on the Premises are solely for their designated purposes, and that no substance is deposited in them that may cause damage or blockage.
- 7.8 The Tenant will, at the Tenant's cost, keep clean, and clear of any obstruction, all guttering, downpipes and gully traps on the exterior of the Building.
- 7.9 The Tenant must not affix to the exterior of the Building or any improvements on the Premises any lights, fitting or structures of any kind, without the prior written approval of the Landlord, which the Landlord may withhold in the Landlord's sole discretion, or, if given, may be subject to conditions.
- 7.10 The Tenant must, at the Tenant's cost, repair any damage to the Premises, the Common Areas or the Land caused by the Tenant or the Tenant's Invitees.
- 7.11 The Tenant must not paint the exterior of the Building or any improvements on the Premises in any colours, or colour scheme, unless the Tenant has received the Landlord's prior written approval (which the Landlord may withhold in the Landlord's sole discretion).

## **8 Maintenance of Grounds**

- 8.1 The Tenant must keep the grounds and sealed areas (where these are included in the Premises) in a clean, tidy and attractive condition to the satisfaction of the Landlord, including:
  - 8.1.1 keeping the Premises free from rubbish, stones and broken glass,
  - 8.1.2 if required by the Landlord, mowing any lawns within the Premises regularly, and keeping any gardens and planted areas weeded and watered,
  - 8.1.3 taking effective measures to prevent any noxious weeds and recognised environmental plant pests growing on the Land, and complying with the provisions of the Biosecurity Act 1993,
  - 8.1.4 keeping the sealed areas in good order and repair, including re-sealing where required,
  - 8.1.5 ensuring no oil or other harmful substances are spilled on the Premises.

## **9 Building Work**

- 9.1 For clarity, the provisions of this clause 9 regarding Building Work will apply the same and irrespective of whether the Premises comprises the Tenant's Improvements or the Landlord's Improvements.
- 9.2 Subject to clauses 9.3 to 9.15, the Tenant must not, without the prior written approval of the Divisional Manager (for the Landlord as landowner and administering body of the Premises), and in addition to any consents required from Hutt City Council as regulatory authority, from time to time carry out Building Work on the Premises.
- 9.3 The approval of the Landlord under clause 9.2 may be withheld in the sole discretion of the Landlord or, if given, may be subject to conditions. By way of example, but not limitation, the Landlord will be entitled, in the Landlord's capacity as a local authority, to have regard to the views of the community (if any) where any Building Work is significant or controversial in any way.
- 9.4 On seeking the Landlord's approval under clause 9.2, the Tenant must, at the Tenant's cost, provide to the Landlord by written notice, with copies where relevant, of:
- 9.4.1 full scaled plans and details of the building, fixtures, improvements or services to be constructed, installed, replaced, renewed, altered, demolished or removed, and what effect that proposed work will have,
  - 9.4.2 details of size and location of the building, fixtures, improvements, services or other works,
  - 9.4.3 construction methods,
  - 9.4.4 details of types and quantities of any excavation,
  - 9.4.5 details of any vegetation removal requested by the Tenant, including area of the Premises from which vegetation is proposed to be removed,
  - 9.4.6 the Tenant's access requirements and proposed access routes, and the extent to which these may impact on use of the Land by the public (where applicable),
  - 9.4.7 the proposed dates and times of entry and length of time the Tenant expects the Building Work to require,
  - 9.4.8 the extent the Building Work will impact on any improvements or vegetation on the Land and/or the Premises and the visual amenity of the Premises, and how any adverse impact will be mitigated by screening, colour, or any other thing,
  - 9.4.9 details of any proposed safety barriers and safety signs to be in place on the Premises or the Land for the duration of the Building Work,
  - 9.4.10 any written communications the Tenant may have received from any community groups or representatives (if any) regarding the Building Work.
- 9.5 The Tenant must arrange for any Building Work to be carried out, at the Tenant's cost, in accordance with any conditions imposed by the Landlord under clause 9.3, and under the supervision of an architect, project manager, engineer or other suitably qualified person approved by the Landlord in a proper and workmanlike manner in accordance with the approved plans and specifications and all approvals, permits and

- consents. The Tenant will meet all costs of the Landlord relating to supervision under this clause.
- 9.6 The Tenant must not, during any Building Work interfere with the use of the Land by the Landlord or the Landlord's Invitees. In particular, if the Tenant is carrying out any excavation or digging on the Land, the Tenant must ensure that the Tenant takes all adequate and appropriate precautions before commencing, and during that excavation or digging.
- 9.7 In addition to obtaining the Landlord's approval to any Building Work, the Tenant must:
- 9.7.1 obtain the Landlord's prior written approval for access to the Land to carry out the Building Work, and comply with any terms required by the Landlord for such access,
- 9.7.2 arrange for any Building Work to be carried out within a restricted area on the Premises or the Land, if required by the Divisional Manager.
- 9.8 The Tenant must, at the Tenant's cost, obtain and comply with all relevant consents required under the Building Act 2004 and the Resource Management Act 1991 and provide the Landlord with a copy of those consents. The Tenant must not commence any Building Work until the Tenant has first obtained any necessary building and resource consents. For clarity, any approval granted by the Landlord under this clause 9 for Building Work, is not a consent of Hutt City Council in its regulatory capacity for that Building Work.
- 9.9 In granting approval under clause 9.2, the Landlord will not be deemed to have warranted that the plans or specifications are suitable for the Tenant's purposes or that any person involved in the Building Work is suitable or adequately qualified.
- 9.10 During any Building Work, the Tenant must ensure that the Tenant maintains adequate builders' risk and public liability insurance, and will provide the Landlord with a copy of policies if requested. All Building Work on the Premises and the Land is at the sole risk of the Tenant.
- 9.11 If, during the course of any Building Work the Tenant is failing to adhere to the approved plans and specifications, or the Building Work is not being properly managed, the Landlord may by notice in writing to the Tenant require that any Building Work on the Premises stops immediately, or require the Tenant to take other action as necessary to ensure that the Tenant adheres to the approved plans and specifications, or the Building Work is properly managed, as the case may be, to the Landlord's reasonable satisfaction.
- 9.12 On completion of the Building Work, the Tenant must, at the Tenant's cost, obtain and provide the Landlord with a copy of, the code compliance certificate under the Building Act 2004, and a complete set of drawings accurately showing the as built building, fixtures, fittings and any improvements on the Premises as constructed or altered.
- 9.13 On completion of any Building Work, the Tenant must, at the Tenant's sole cost, within 20 Business Days make good any damage to the Premises or the Land caused during that Building Work, including restoring the Premises and the Land to as close as reasonably possible the same condition in which the Premises or the Land would have been had the damage not occurred. This will include revegetation (in

accordance with clause 6.11) or reurfing if required, and restoration of any access on the Premises or the Land or the surface of the Premises or the Land (including repairing any potholes or uneven surfaces), to the satisfaction of the Divisional Manager.

- 9.14 If the Tenant does not comply with the Tenant's obligations under clause 9.13 to the satisfaction of the Divisional Manager and within a reasonable time, the Landlord may carry out the necessary works and the Tenant must pay the Landlord's costs incurred in doing so, immediately on demand.
- 9.15 The Landlord may following any Building Work review the Rent in accordance with clause 4 (with necessary amendments). Such reviewed rent will have effect from the date of the completion of the Building Work.
- 9.16 The Landlord may require the Tenant to enter into a deed of variation of lease to record any necessary changes or reviewed Rent following any Building Work under this clause 9. The Tenant will pay the Landlord's costs of preparation, negotiation and execution of any variation under this clause 9.16.
- 9.17 The Tenant acknowledges that if this Lease has been granted pursuant to section 54(1)(a) of the Reserves Act 1977, then the Landlord reserves the right, pursuant to the provisions of section 54(1)(a) of the Reserves Act 1977, to require the Tenant to carry out certain Building Work, as set out in clause 26.8.

## **10 Compliance with Statutes**

### **Compliance with Statutes**

- 10.1 The Tenant must comply, at the Tenant's cost, with the provisions of all statutes, regulations, and bylaws, the District Plan, and any Policy or trusts affecting the Land and relating to the use of the Premises by the Tenant and the Tenant's Invitees.
- 10.2 Subject to clause 10.5, the Tenant must comply, at the Tenant's cost, with the requirements of any licences, requisitions and notices served by any competent authority in respect of the Premises.

### **Compliance with Building Act 2004**

- 10.3 The Tenant must, at the Tenant's cost, comply with the Building Act 2004, the compliance schedule and all licences, notices to rectify, requisitions or other notices issued, made or given by any competent authority in respect of the Premises or the use of the Premises by the Tenant and the Tenant's Invitees. The Tenant must immediately provide the Landlord with a copy of any notices or requisitions received by the Tenant.

### **If the Building is a Tenant's Improvement**

- 10.4 If the Premises comprise the whole or part of the Building that is a Tenant's Improvement the Tenant will, at the Tenant's cost, obtain any reports required for compliance with any relevant compliance schedule and provide to the territorial authority an annual building warrant of fitness for the Building.

### **If the Building is a Landlord's Improvement**

- 10.5 If the Building comprises a Landlord's Improvement:

- 10.5.1 the Tenant will not be required to make any structural repairs or alterations other than those required by reason of the particular nature of the use of the Premises by the Tenant or the Tenant's Invitees,
- 10.5.2 the Tenant will not be liable to discharge the Landlord's obligations as owner of the Building under the Building Act 2004, unless any particular obligation is the responsibility of the Tenant as occupier of the Premises.

### **Improvements Rent**

- 10.6 If the Landlord is obliged by any legislation or requirement to spend money on any improvement, addition or alteration to the Premises or the Land, then the Landlord will be entitled to charge, up to the next Review Date, in addition to the Rent, an annual sum equal to the Improvements Rent Percentage of the amount spent by the Landlord. The Tenant will pay a pro-rata portion of the increased Rent on demand to the Landlord on the completion of the improvement, addition or alteration, up to the next Rent Payment Date, and will pay the increased Rent on subsequent Rent Payment Dates.
- 10.7 If the Landlord is obliged to expend an unreasonable sum under clause 10.6, then the Landlord may cancel this Lease by giving written notice of cancellation to the Tenant, and the Tenant will have no claim for compensation or damages against the Landlord.
- 10.8 If there are a number of tenancies in the Building, then the sum payable by the Tenant under clause 10.6 will be based on a fair proportion of the amount spent as assessed by the Landlord.

## **11 Landlord's Rights of Inspection and to Remedy Tenant's Breach**

- 11.1 The Tenant will permit the Landlord and the Landlord's Invitees, at all reasonable times and on reasonable notice (or at any time, without notice, in the case of an emergency), to enter the Premises (including any Tenant's Improvements) to view the condition of the Premises (including any Tenant's Improvements).
- 11.2 If the Landlord gives the Tenant written notice of any failure of the Tenant to comply with any of the requirements of this Lease, the Tenant must carry out any required work as soon as possible and in a good and workmanlike manner.
- 11.3 The Landlord or the Landlord's Invitees may (without being under any obligation to do so) enter the Premises on giving the Tenant reasonable notice (or at any time without notice in case of an emergency), with all necessary equipment and materials, and carry out any necessary works or other obligations, if:
  - 11.3.1 the Tenant fails to comply with a notice given under clause 11.2, or any of the Tenant's obligations under this Lease within a reasonable period, or
  - 11.3.2 any repairs or maintenance for which the Tenant is responsible need to be undertaken as a matter of urgency.
- 11.4 The Tenant must pay to the Landlord on demand, the cost of any work carried out by the Landlord under clause 11.3.
- 11.5 If the Landlord exercises the Landlord's rights under clause 11.3, the Landlord will not be liable to the Tenant for any loss or cost, and the Tenant will not be entitled to any reduction or abatement of Rent or Outgoings.

## **12 Landlord's Rights of Access for Landlord's Repairs**

- 12.1 The Tenant will permit the Landlord and the Landlord's Invitees, at all reasonable times and on reasonable notice (or at any time, without notice, in the case of an emergency), to enter the Premises to carry out the Landlord's repairs to the Premises (including any reinstatement work under clause 14), the Land or adjacent land, and to install, inspect, repair, renew or replace any services, where the same are not the responsibility of the Tenant.
- 12.2 In exercising the Landlord's rights under clause 12.1, the Landlord will take reasonable steps to:
- 12.2.1 minimise the impact of the Landlord's works on the Tenant's use of the Premises,
  - 12.2.2 ensure that the Landlord's works do not materially diminish the Tenant's access to the Premises.
- 12.3 If the Landlord exercises the Landlord's rights under clause 12.1, the Landlord will not be liable to the Tenant for any loss or cost, and the Tenant will not be entitled to any reduction or abatement of Rent or Outgoings.

## **13 Insurance**

- 13.1 The Tenant will insure the Tenant's Improvements for full replacement, including all professional and consent fees, and costs of demolition, site clearance and for any works required by statute. The insurance policy must note the Landlord's interest, and if the Tenant's Improvements are attached to or adjacent to any building owned by the Landlord, including any Landlord's Improvements, then any policy under this clause must be with an insurance company nominated by the Landlord.
- 13.2 The Tenant will be responsible for arranging the Tenant's own contents insurance.

### **If the Building is a Tenant's Improvement**

- 13.3 The Tenant acknowledges and agrees if the Premises comprise the whole or part of the Building that is a Tenant's Improvement that:
- 13.3.1 the Landlord has not insured the Premises or the Land against destruction or damage arising from fire, flood, explosion, lightning, storm, earthquake, volcanic activity, or any other risks,
  - 13.3.2 the Tenant will meet the cost of making good destruction or damage to the Premises, or indemnify the Landlord against the cost of making good the destruction or damage to the Premises to the extent that:
    - (a) the destruction or damage arises from a risk referred to in clause 13.3.1,
    - (b) at the time of damage or destruction, the Landlord was not in fact entitled to be indemnified under a policy of insurance in whole or in part of the destruction or damage.
- 13.4 The Tenant will not be entitled to any compensation, or reduction or abatement of Rent or Outgoings due to the provisions of clause 13.3.

### **If the Building is a Landlord's Improvement**

- 13.5 If the Premises comprise the whole or part of the Building that is a Landlord's Improvement then the Landlord will insure the Landlord's Improvements on the Premises against damage arising from destruction or damage arising from fire, flood, explosion, lightning, storm, earthquake, volcanic activity, or any other risks that the Landlord considers necessary or desirable.

### **Tenant's other insurance**

- 13.6 The Tenant must keep in full force and effect policies for public liability, and Forest and Rural Fires Act 1977 insurance (if required under the Reference Schedule) with an insurance company approved by the Landlord, to cover the Landlord and the Tenant for any claims arising on or from the Tenant's use of the Land or the Premises.
- 13.7 The amount of cover under the policies under clause 13.6 must be (for any one claim) no less than the Minimum Public Risk Insurance amount set out in the Reference Schedule and the Minimum Forest and Rural Fires Act 1977 Insurance amount set out in the Reference Schedule (if required under the Reference Schedule), increased from time to time to maintain the real value of the insurance cover, to the reasonable satisfaction of the Landlord, and with a maximum deductible for each policy of \$100,000 for each claim.
- 13.8 For clarity, if the Reference Schedule records that Forest and Rural Fires Act insurance is not required, clauses 13.6 and 13.7 will not apply in respect of Forest and Rural Fires Act insurance.

### **Proof of Insurance**

- 13.9 The Tenant must, on request, provide the Landlord with a copy of the insurance policies and evidence that the Tenant has paid the premiums for the policies effected by the Tenant under clauses 13.1 and 13.6.

### **Tenant not to void insurances**

- 13.10 The Tenant must not do or allow any act or thing to be done which may make void or voidable any policy of insurance for the Premises (whether insurance of the Landlord or the Tenant), or which may result in any increased premium becoming payable, or the policy becoming void or voidable.

## **14 Damage or Destruction**

### **If the Building is a Tenant's Improvement**

- 14.1 If the Premises comprise the whole or part of the Building that is a Tenant's Improvement and the Lease is of the Landlord's land only with no Landlord's Improvements, and any Tenant's Improvements are destroyed or damaged, the Tenant will, subject to clauses 14.2 and 14.3, with all reasonable speed, apply all money received by the Tenant under any policies of insurance under clause 13.1 in or toward the repair, reinstatement or rebuilding of all Tenant's Improvements on the Land and reinstate the Premises to the state the Premises were in before the destruction or damage.
- 14.2 If the Tenant has fully complied with its insurance obligations under this Lease, the Tenant's liability to repair, reinstate under clause 14.1 will be limited to the extent of

the insurance money received, unless the Tenant's insurance was irrecoverable due to the act or default of the Tenant or the Tenant's Invitees. For clarity, the Tenant's liability will not be limited under this clause where the Tenant has not fully and properly complied with its insurance obligations under this Lease.

- 14.3 If the Tenant's Improvements are destroyed, the Tenant may elect to take the net insurance money received by the Tenant, and the Tenant will give the Landlord written notice of the Tenant's election under this clause not to reinstate, and this Lease will be at an end from the date the Tenant has complied with the Tenant's obligations under clause 14.4, but without prejudice to any rights for any prior breach the Landlord may have against the Tenant.
- 14.4 On termination under clause 14.3, the Tenant must comply with the Tenant's obligations set out in clause 17, including removal of the Tenant's Improvements.
- 14.5 The Tenant acknowledges the Landlord's rights under clause 11 to remedy any failure by the Tenant to comply with the Tenant's obligations, at the cost of the Tenant.

#### **If the Building is a Landlord's Improvement**

- 14.6 If the Premises comprise the whole or part of the Building that is a Landlord's Improvement then:
  - 14.6.1 If the Premises are destroyed or damaged so as to make them untenable, or in the Landlord's opinion so as to require demolition or reconstruction, then the Landlord may cancel this Lease by giving notice to the Tenant, with effect from the date of the damage or destruction, but without prejudice to any rights for any prior breach the Landlord may have against the Tenant.
  - 14.6.2 If the Premises are damaged, but that damage does not result in a termination by the Landlord under clause 14.6.1, the Landlord may at the Landlord's option, elect to:
    - (a) reinstate the Premises using such materials and design as the Landlord elects, provided the reinstated Premises are, in the Landlord's opinion, reasonably adequate for the Permitted Use, or
    - (b) not reinstate the Premises and may (in the Landlord's sole discretion) cancel this Lease by giving notice to the Tenant, with effect from the date of the damage, but without prejudice to any rights for any prior breach the Landlord may have against the Tenant.
- 14.7 If this Lease is cancelled under clause 14.6.1 or clause 14.6.2(b):
  - 14.7.1 The Tenant must comply with its obligations under clause 17.
  - 14.7.2 No compensation or damages will be payable by the Landlord to the Tenant in relation to the cancellation.



## **15 Assignment and subletting**

- 15.1 The Tenant must not assign or sublet the whole or any part of Tenant's interest under this Lease without first obtaining the prior written approval of the Landlord. The Landlord may withhold the Landlord's approval if the following conditions are not met:
- 15.1.1 The Tenant proves to the satisfaction of the Landlord that the proposed assignee or subtenant is respectable, responsible and has the financial resources to meet the Tenant's commitments under this Lease, and the proposed assignee or subtenant will carry on the Permitted Use.
  - 15.1.2 All rent and other amounts payable by the Tenant have been paid, and there is no existing breach of the Tenant's obligations under this Lease.
  - 15.1.3 In the case of an assignment, the Tenant procures execution by the assignee of a deed with the Landlord (in a form acceptable to the Landlord) covenanting that the assignee will at all times pay the Rent and observe the terms and conditions contained or implied in this Lease (but without releasing the Tenant from the Tenant's obligations under this Lease).
  - 15.1.4 In the case of a sublease, the Tenant procures execution by the subtenant of a deed of sublease (in a form acceptable to the Landlord), and obtains the execution of that deed of sublease by the Landlord.
  - 15.1.5 The Landlord has approved (in the Landlord's sole discretion) the terms and conditions of any sale agreement between the Tenant and the assignee for the Tenant's Improvements on the Premises. The Tenant must provide a copy of the agreement for sale and purchase at least 10 Business Days before the proposed date of assignment.
  - 15.1.6 The Tenant proves to the satisfaction of the Landlord that the proposed assignee or subtenant will meet the requirements of any applicable Policy.
- 15.2 Despite anything else contained in this clause 15, if this Lease is granted pursuant to section 54(1)(b) or section 54(1)(c) of the Reserves Act 1977, then the Landlord will not approve an assignment or sublease of this Lease unless the assignee or transferee is a voluntary organisation whose aims and objects are similar to those of the Tenant.
- 15.3 Despite anything else contained in this clause 15, if this Lease is granted pursuant to the Reserves Act 1977, then the Landlord will at all times have the power, in the public interest, and in the Landlord's discretion, to:
- 15.3.1 refuse any application for approval to an assignment or sublease of this Lease, or
  - 15.3.2 grant the Landlord's approval, subject to such conditions as the Landlord thinks fit.
- 15.4 The Tenant must meet all the Landlord's costs in relation to any approval and any documentation relating to any approval under this clause 15, and including all costs of the Landlord in respect of inquiries made by the Landlord concerning any proposed assignee or subtenant. The costs under this clause will be payable whether or not the proposed assignment or sublease proceeds.
- 15.5 If the Landlord approves any subletting under this clause, the consent will only extend to that subletting, and despite anything else contained or implied in the sublease, the

Landlord's consent will not permit the subtenant to deal with the sublease in any way that the Tenant is restrained from dealing without approval under this Lease.

- 15.6 Except as provided under clause 15.1, the Tenant must not otherwise part with possession of all or part of the Premises or the Tenant's interest under this Lease, by mortgaging, charging, encumbering, hiring out or otherwise, without the prior written approval of the Landlord (which may be withheld at the sole discretion of the Landlord, and if given, may be subject to conditions).

## **16 Cancellation of this Lease**

### **Cancellation by the Landlord for breach**

- 16.1 The Landlord may cancel this Lease by re-entering the Premises or by obtaining an order for possession from a Court, and the Term will terminate on such cancellation, but without prejudice to the rights of either party against the other, if:
- 16.1.1 the Rent or any part is in arrears and unpaid for 1 month after any of the Payment Dates, and the Tenant has failed to remedy that breach within 20 Business Days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007,
  - 16.1.2 the Tenant neglects or fails to perform and observe any of the covenants, conditions or agreements contained in this Lease which are to be performed or observed by the Tenant, and after the Tenant has failed to remedy that breach within a period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
- 16.2 It will be a breach of this Lease for the purposes of clause 16.1.2 (but not by way of limitation) if the Tenant:
- 16.2.1 makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of the Tenant's creditors,
  - 16.2.2 becomes insolvent or bankrupt,
  - 16.2.3 is subject to an execution process against the Tenant's property, goods or effects under any judgment against the Tenant in any Court for a sum in excess of \$5,000.

### **Cancellation if insufficient use**

- 16.3 The Tenant acknowledges that the Landlord has granted this Lease pursuant to the Policy and that it is essential to the Landlord that the Tenant continues to carry on the Permitted Use on the Premises.
- 16.4 If, after making any enquiries as the Landlord considers fit, and by written notice to the Tenant giving the Tenant an opportunity of explaining the use of the Premises and 3 months from the date of the Landlord's notice under this clause in which to demonstrate that the Tenant is using or sufficiently using the Premises for the Permitted Use, the Landlord is of the opinion that the Premises are not being used or are not being sufficiently used for the Permitted Use, then the Landlord may cancel this Lease on giving the Tenant a further 3 months' written notice.

### **Cancellation on other grounds and Offer of Alternative Premises**

- 16.5 Without limiting the Landlord's rights to cancel this Lease under clause 16.1, the Landlord may cancel this Lease at any time by giving the Tenant 6 months' written notice (or shorter notice by mutual agreement), if any one or more of the following occurs:
- 16.5.1 the Landlord wishes to re-develop or sell the Premises,
  - 16.5.2 a change in any Policy or a decision by the Landlord as to the use and/or future suitability of the Premises for the Permitted Use which is inconsistent with this Lease,
  - 16.5.3 the Premises are required for a public work or another public work, or for any Treaty of Waitangi land settlement.
- 16.6 If this Lease is cancelled under clause 16.5, this Lease will terminate on the expiry of the Landlord's notice under clause 16.5, but without prejudice to the rights of either party against the other for any prior breach.
- 16.7 If this Lease is cancelled under clause 16.5.1 because the Landlord wishes to redevelop or sell the Premises, then the Landlord may, in the Landlord's sole discretion, offer the Tenant a lease of alternative premises (**Alternative Premises**) that, in the Landlord's reasonable opinion, are of a lettable area and in a location suitable for the Permitted Use, and will comply with any applicable Policy.
- 16.8 Any lease of Alternative Premises granted under clause 16.6 will be for a term commencing the day after the date of cancellation of this Lease under clause 16.5, and otherwise on the then prevailing terms and conditions of lease of land held by the Landlord for the purposes for which the Landlord holds the Alternative Premises.
- 16.9 If the Landlord makes an offer of a lease of Alternative Premises under clause 16.6, the Landlord will give the Tenant written notice of the offer at the time of the Landlord's notice under clause 16.5, and the Tenant must give the Landlord written notice within 10 Business Days of the Landlord's notice under this clause if the Tenant wishes to accept the offer, otherwise the offer will be deemed to be rejected.

### **Lease granted under section 73(3) of the Reserves Act 1977**

- 16.10 If this Lease is granted pursuant to section 73(3) of the Reserves Act 1977 then, in addition to the provisions of clause 16.4, if the Landlord considers that the Premises are required for the purpose of public recreation, then the Landlord may cancel this Lease on giving the Tenant 6 months' written notice.

### **Tenant's obligations on cancellation, and no compensation**

- 16.11 If this Lease is cancelled under this clause 16:
- 16.11.1 the Tenant must comply with its obligations set out in clause 17,
  - 16.11.2 no compensation or damages will be payable by the Landlord to the Tenant in relation to the cancellation.

## **17 Tenant's obligations on expiry or cancellation**

- 17.1 Subject to clause 17.2, on the expiry of the Term or any Renewed Term of this Lease, or on any cancellation, termination or surrender of this Lease as the case may

require, the Tenant must at the Tenant's sole cost within 20 Business Days remove the Tenant's Improvements and any other improvements or works installed by the Tenant on the Premises or the Land (including fences and utilities or services) from the Premises and the Land, and restore the Premises and the Land to as close as reasonably possible to the same condition in which the Land would have been had the Tenant's Improvements or any other works not been installed at the Premises (including, but not limited to, replanting, revegetation and returfing), to the satisfaction of the Divisional Manager.

- 17.2 Despite clause 17.1, the Landlord may, in the Landlord's sole discretion, give the Tenant written notice that the Landlord requires the Tenant to leave any of the Tenant's Improvements on the Premises, and the Tenant must not remove from the Premises or damage any of the Tenant's Improvements that have been specified in the Landlord's notice under this clause 17.2, and the Landlord may, in the Landlord's sole discretion:
- 17.2.1 require the Tenant's Improvements or specified Tenant's Improvements (as the case may be) to revert to the Landlord, and no compensation will be payable to the Tenant by the Landlord,
  - 17.2.2 pay the Tenant the value, as determined by the Landlord, of the Tenant's Improvements or specified Tenant's Improvements (as the case may be), if the Tenant's Improvements or specified Tenant's Improvements are of value to the Landlord, or
  - 17.2.3 require any incoming tenant of the Premises to pay the Tenant the value, as determined by the Landlord, of the Tenant's Improvements or specified Tenant's Improvements (as the case may be).
- 17.3 If the Tenant removes or damages any Tenant's Improvements specified in the Landlord's notice under clause 17.2, then the Tenant must pay to the Landlord, immediately on demand, all costs of reinstating or repairing (as the case may be) such Tenant's Improvements that have been removed or damaged in breach of clause 17.2.
- 17.4 For the sake of clarity, if the Landlord gives notice to the Tenant under clause 17.2 that the Landlord requires specified Tenant's Improvements to be left on the Premises, the Tenant must comply with its obligations under clause 17.1 to remove any of the Tenant's Improvements that have not been specified in the Landlord's notice.
- 17.5 On the expiry of the Term or Renewed Term, or on any cancellation, termination or surrender of this Lease as the case may require the Tenant must remove all the Tenant's chattels from the Premises and the Land. The Landlord may deal with any chattels in the apparent possession of the Tenant, which have not been removed by the Tenant, as the Landlord determines, in the Landlord's sole discretion, including disposing of the chattels or storing those chattels. The Landlord will not be liable for any loss to the Tenant resulting from the exercise of the Landlord's rights under this clause, and the Tenant must, in addition pay to the Landlord, on demand, any costs incurred by the Landlord in disposal or storage of the Tenant's chattels under this clause.
- 17.6 The Tenant must continue to pay to the Landlord the Rent calculated on a daily basis for the period starting on the date up to which the Rent has actually been paid and

ending on date on which the Tenant's obligations under this Lease have been fully complied with to the satisfaction of the Divisional Manager.

- 17.7 The Tenant acknowledges the Landlord's rights under clause 11 to remedy any failure of the Tenant to comply with the Tenant's obligations, at the Tenant's cost.

## **18 Indemnity**

- 18.1 The Tenant indemnifies the Landlord against all costs, damages, claims, demands or losses and expenses of any nature resulting from any act or omission of the Tenant or the Tenant's Invitees, on or about the Premises or the Land, or from the exercise of any of the Tenant's rights or complying with any of the Tenant's obligations under this Lease.
- 18.2 Without limiting clause 18.1, the Tenant indemnifies the Landlord against all fines, penalties, costs, actions, demands, losses, damages and expenses for which the Landlord becomes or may become liable for arising from the Tenant's or the Tenant's Invitees' failure to comply with any statutes or regulations, including, but not by way of limitation, the Health and Safety in Employment Act 1992 (to the extent permitted under that Act), the Building Act 2004, and the Resource Management Act 1991.
- 18.3 The Landlord will not be liable for, and the Tenant will indemnify the Landlord against, any claims in respect of any accident, injury, damage or interference suffered by any person or to any property (including the Tenant's Improvements), arising out of or by reason of the use of the Land or the Premises by the Tenant, the Tenant's Invitees or any other person (including members of the public).

## **19 Health and Safety**

- 19.1 The Tenant must comply, at the Tenant's cost, with all obligations imposed on the Tenant at law as the person in charge of a place of work and will be responsible for the health and safety of any person who enters on the Premises or the Land at the request or invitation of the Tenant.
- 19.2 The Tenant must comply, at the Tenant's cost, with any obligations imposed by the Landlord regarding the identification and mitigation of hazards, and health and safety of persons on the Premises and the Land.
- 19.3 Despite the provisions of clause 19.2 the Tenant remains liable in respect of the health and safety requirements under clause 19.1.

## **20 Signs**

- 20.1 The Tenant must not erect or place any signs (including advertising) on the Premises, other than signs required under any consent or for which the Tenant has obtained the prior written approval of the Landlord (which may be withheld at the sole discretion of the Landlord, and if given, may be subject to conditions, including requirements as to location and size) to any sign installed under this clause.

## **21 Access**

- 21.1 The Tenant will have the right, in common or with others including the public, to pass over those parts of the Land as shown outlined in yellow on the Access Plan for access to and from the Premises as is necessary for the Tenant and the Tenant's Invitees to exercise the rights granted to the Tenant in this Lease.
- 21.2 The Tenant may only take vehicles onto the Land that are necessary for the express purpose of exercising the Tenant's rights or complying with the Tenant's obligations under this Lease.
- 21.3 If the Tenant wishes to take vehicles onto the Land, the Tenant must liaise with and obtain the prior written approval of the Divisional Manager (which may be withheld at the sole discretion of the Landlord) provided that this requirement may be waived in the case of an emergency. The Landlord's approval, if given, may be given subject to conditions, including times of entry, notices to users of the Land, and appropriate signage on the Land.
- 21.4 The Tenant may access the Land without the Landlord's prior approval under this clause 21 only:
- 21.4.1 during daylight hours,
  - 21.4.2 on weekdays (no vehicular access is permitted on weekends or public holidays),
  - 21.4.3 in an emergency (provided that the Tenant must immediately notify the Divisional Manager of such emergency access).
- 21.5 The Tenant will not access the Land (by vehicle or otherwise) at any time other than as provided under clause 21.4 without the Landlord's prior written approval (which may be withheld at the sole discretion of the Landlord, and if given, may be subject to conditions).
- 21.6 The Tenant acknowledges that the access routes to the Premises will be those as shown in the Access Plan and as existing at the Commencement Date. For the sake of clarity the Landlord will not be required to upgrade any accessways on the Land or the Premises, despite the fact the Landlord may choose to do so.
- 21.7 If the Tenant wishes to upgrade any access over the Land and the Premises, the Tenant must first obtain the prior written approval of the Divisional Manager (which, if given, may be subject to any conditions the Landlord in the Landlord's sole discretion considers necessary), and the Tenant must otherwise comply with the provisions of this Lease, and in particular the provisions of clause 9, and the Tenant must meet all costs of any upgrade works under this clause.
- 21.8 The Tenant must immediately advise the Divisional Manager of any damage or obstruction to any access on the Premises or the Land of which the Tenant is aware or which is caused by the Tenant or the Tenant's Invitees.

## **22 Fences**

- 22.1 The Tenant may, on obtaining the prior written approval of the Divisional Manager under clause 9, or must if required by the Landlord, erect and maintain a fence on the

Premises at the Tenant's cost, and otherwise in compliance with approvals by the Divisional Manager under clause 9.

- 22.2 If the Tenant erects a fence under clause 22.1, the Tenant must keep and maintain the fence at the Tenant's cost, and if required by the Landlord remove the fence at the Expiry Date or other termination of the Term in accordance with the provisions of this Lease (including making good resulting damage and reinstating the Premises to the satisfaction of the Divisional Manager in accordance with the provisions of clause 17).
- 22.3 Any fence built by the Tenant under this clause 22 must:
- 22.3.1 be in accordance with plans as approved by the Divisional Manager,
  - 22.3.2 in a location approved by the Divisional Manager,
  - 22.3.3 not contain any barbed wire or similar materials,
  - 22.3.4 where required, be constructed in accordance with an appropriate building consent.
- 22.4 For the sake of clarity, the Tenant must not build any fence on the Premises otherwise than in accordance with this clause 22.

## **23 Security**

- 23.1 The Tenant must comply with any reasonable security requirements of the Landlord in relation to the Land and/or the Premises.
- 23.2 The Tenant must ensure that the Premises are kept properly secured at all times, and will ensure that all doors and windows are securely closed when the Premises are not occupied.
- 23.3 If access to the Land or the Premises is through locked gates, the Tenant must ensure that the gates are locked at all times, and do all things reasonable to ensure that third parties do not gain access through the locked gates. The Landlord will provide the Tenant with one key for the lock, at the Tenant's cost. The Tenant will pay the costs of any replacement of keys and/or locks and the costs of making good any damage to gates or fences, due to the Tenant's or the Tenant's Invitees' acts or omissions.

## **24 Telecommunications Equipment**

- 24.1 The Tenant acknowledges that:
- 24.1.1 this Lease is subject to any rights that the Landlord may have granted to a third party for the installation and operation of equipment for Telecommunications purposes on or over the Land or the Premises before the grant of this Lease,
  - 24.1.2 the Landlord may grant further rights over the Premises or Land to third parties for Telecommunications purposes during the term of this Lease.
- 24.2 The Landlord will not be liable for any injury, damage or loss that the Tenant may suffer (including but not limited to that arising from any interference) which arises from any Telecommunications equipment on the Land or the Premises.

## **25 Interference**

- 25.1 The Tenant must ensure that at all times the Tenant's use of the Premises does not interfere with the operation of any utilities or services, or any other equipment or transmitting or receiving systems on the Premises or the Land (including equipment for the purposes of Telecommunications). If in the Landlord's reasonable opinion interference is occurring, then the Tenant must remedy the interference promptly after the Tenant receives notice from the Landlord.

## **26 Reserve status**

### **Tenant's obligations in respect of reserve values**

- 26.1 The Tenant acknowledges that the Land is either a reserve under the Reserves Act 1977 or managed by the Landlord as a reserve. Accordingly, it is of paramount importance to the Landlord that the Tenant's use of the Premises and the Land, including the Permitted Use under this Lease, must be carried out in a way that is consistent with any Policy of the Landlord, and the Landlord's objectives for the Land which include the following:
- 26.1.1 providing areas for public recreation and the physical welfare and enjoyment of the public (including freedom of public access),
  - 26.1.2 protection and preservation of, preventing damage to or destruction of, and providing adequate safeguards for the natural environment (including scenic, historic, cultural, archaeological, biological, geological or other scientific features, or native flora or fauna),
  - 26.1.3 conserving the qualities of the Land which contribute to the pleasantness, harmony and cohesion of the natural environment, and to the better use and enjoyment of the Land.
- 26.2 The provisions of this Lease are at all times subject to any applicable Policy of the Landlord.

### **Declaration and classification as reserve**

- 26.3 If this Lease is not stated in the Reference Schedule to be granted under the Reserves Act 1977, the Tenant acknowledges that:
- 26.3.1 the Land is not at the Commencement Date held by the Landlord subject to the Reserves Act 1977, and
  - 26.3.2 the Landlord may during the Term or any Renewed Term declare the Land to be reserve, and classify the Land under the Reserves Act 1977.
- 26.4 The Tenant agrees that if the Landlord declares the Land to be reserve under clause 26.3.1 and classifies the Land under the Reserves Act 1977 under clause 26.3.2, the Tenant will enter into a deed to vary the terms of the Lease so that the Lease will:
- 26.4.1 be on the then prevailing terms and conditions of leases of land held by the Landlord as reserve for the purposes for which the Land has been classified under the Reserves Act 1977, and
  - 26.4.2 comply with any applicable Policy.



### **Ministerial consent**

- 26.5 The Tenant acknowledges that, if this Lease has been granted pursuant to the Reserves Act 1977, under the provisions of the Reserves Act 1977 the consent of the Minister of Conservation may be required in addition to the Landlord's consent to matters under this Lease.
- 26.6 Where the consent of the Minister of Conservation is required, the Landlord and the Tenant agree to use reasonable endeavours to obtain that consent, at the Tenant's cost.

### **Tenant to allow use of the Premises**

- 26.7 If this Lease is granted pursuant to section 54(1)(b) or section 54(1)(c) of the Reserves Act 1977, then the Landlord may:
- 26.7.1 require an allocation of the use of a portion of the Premises (to be specified from time to time by the Landlord), for the playing of specified sports, games, or other recreational activity, and that allocation may be for a whole year, part of a year, or for certain days in a year,
  - 26.7.2 require the Tenant to allow the use of playing facilities on the Premises by non-members, on the payment of reasonable charges (pursuant to clause 6.21), on any occasion when the playing facilities are open for play and the Tenant is not exercising any right of exclusive use of the Premises,
  - 26.7.3 require the Tenant to make the whole or part of any stands, pavilions, gymnasiums, or other buildings or structures on the Premises available from time to time at reasonable charges (pursuant to clause 6.21) to such other voluntary organisation using the Land or part of the Land for outdoor sports, games, or recreational activities, or (in special circumstances) for recreation not directly associated with outdoor recreation.

### **Facilities for public recreation and enjoyment to be constructed by the Tenant**

- 26.8 If this Lease is granted pursuant to section 54(1)(a) of the Reserves Act 1977, the Landlord in accordance with the provisions of section 54(1)(a) of the Reserves Act 1977 may require the Tenant, at the Tenant's cost and otherwise in compliance with the provisions of clause 9, to construct and develop facilities for public recreation and enjoyment.

## **27 Registered Interests**

- 27.1 The Tenant acknowledges that this Lease is subject to any easements, restrictions, covenants or conditions registered on any certificate of title for the Land as at the Commencement Date.
- 27.2 The Tenant and the Tenant's Invitees must fully comply with all the easements, restrictions, covenants and conditions referred to in clause 27.1, and Tenant must not do anything or allow anything to be done that may put the Landlord in breach of any of those easements, restrictions covenants and conditions.

## **28 Suitability**

- 28.1 The Landlord makes no warranty or representation that the Premises are or will remain suitable or adequate for the Permitted Use, or that the use of the Premises by the Tenant will comply with any statutes, regulations or bylaws.
- 28.2 The Landlord gives no warranty as to the suitability or availability of any services or utilities on the Premises.
- 28.3 The Tenant will use the Premises at the Tenant's own risk and the Landlord will not be responsible for any loss arising out of the Tenant's use of the Premises or the Land.
- 28.4 The Tenant will not have any right of action, claim for compensation or damages, or claim for suspension, reduction or abatement of Rent or Outgoings against the Landlord in any of the following circumstances:
- 28.4.1 any non-supply, failure of or interruption to the electricity supply or any other services or utilities to the Premises or the Land, due to any cause,
  - 28.4.2 the Landlord has entered onto the Premises to exercise any of the Landlord's rights or comply with any of the Landlord's obligations.

## **29 Lease of Premises only**

- 29.1 This Lease will relate only to the Premises, and the Landlord will at all times be entitled to use, occupy and deal with the remainder of the Land and any property owned or under the possession or control of the Landlord without reference to the Tenant, and the Tenant will have no rights in relation to the Premises and the Land other than the rights of use provided in this Lease.
- 29.2 The Landlord will not be liable to the Tenant for any act of default or neglect of any other tenant, occupier or user (including members of the public) of the Land.

## **30 Local Government Official Information and Meetings Act 1987**

- 30.1 The Tenant acknowledges that the Landlord is subject to the Local Government Official Information and Meetings Act 1987, and the Landlord may be required to release information in relation to this Lease.

## **31 Statutory provisions**

- 31.1 The rights granted under this Lease are subject to the Reserves Act 1977 (if applicable), and any other statutory or regulatory provisions, bylaws, the District Plan or Policy or trusts affecting the Land from time to time.
- 31.2 The covenants and provisions required to be included in this lease by the Reserves Act 1977 will apply to the extent that those covenants and provisions are not expressly included in this Lease.
- 31.3 The covenants and provisions implied into Leases under the Land Transfer Act 1952 will apply to this Lease except to the extent that those covenants and provisions are inconsistent with the terms of this Lease and the Reserves Act 1977.

- 31.4 The covenants and powers in clauses 4, 5, 9, 10 and 12 of Part 2, and clause 13 of Part 3 of Schedule 3 to the Property Law Act 2007 are not implied in this Lease and are expressly excluded. The provisions of the Property Law Act 2007 will apply to this Lease to the extent those provisions are consistent with the Reserves Act 1977.

## **32 No registration and no caveat**

- 32.1 The Landlord will not be required to do any act or any thing to enable this Lease to be registered, or be required to obtain the consent of any mortgagee of the Lease.
- 32.2 Despite clause 32.1, if the Landlord agrees to register this Lease (which agreement may or may not be given at the Landlord's sole discretion, and if given may be given subject to conditions), the Tenant must first pay to the Landlord the sum the Landlord reasonably requires to cover all expenses of any nature for which the Landlord may become liable, before the Landlord is required to execute a lease of the Premises in a registrable form.
- 32.3 The Tenant will pay all costs associated with the preparation and registration of this Lease under clause 32.2, including but not limited to, the costs of any survey plan, and the Landlord's solicitors costs of preparing and registering this Lease.
- 32.4 The Tenant must not lodge a caveat in respect of the Tenant's interest in this Lease.
- 32.5 The Tenant will have no right under this Lease to acquire the fee simple in the Land.

## **33 Disputes**

- 33.1 If a dispute arises between the parties about anything in relation to this Lease, then a party may notify the other in writing stating that there is a dispute and giving details of it. The parties must then attempt in good faith to settle the dispute. These attempts may include using alternative dispute resolution techniques.
- 33.2 If such attempts do not result in a resolution within 20 Business Days, then the dispute will be referred to the arbitration in New Zealand of a single arbitrator if the parties can agree on one or otherwise to 2 arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before entering on their reference) in accordance with the Arbitration Act 1996 or any replacement or amendment legislation.
- 33.3 If a difference or dispute is referred to alternative dispute resolution or arbitration, under this clause 33, each party will bear that party's own costs of the alternative dispute resolution or the arbitration, subject to any award or order which may result from that alternative dispute resolution or arbitration.

## **34 Notices**

### **Giving notices**

- 34.1 Any notice or communication given to a party under this Lease is only given if it is in writing and sent in one of the following ways:
- 34.1.1 if the notice is under section 245 or section 246 of the Property Law Act 2007 (Landlord's notice of intention to cancel this Lease for breach) or under section 261 of the Property Law Act 2007 (Landlord's notice of

refusal to renew), in the manner prescribed in section 353 of the Property Law Act 2007,

34.1.2 in all other cases, unless otherwise required by sections 252 to 361 of the Property Law Act 2007:

- (a) in the manner authorised by sections 352 to 361 of the Property Law Act 2007,
- (b) personal delivery,
- (c) delivered or posted to that party at that party's address and marked for the attention of the relevant department or officer (if any) set out in the Reference Schedule, or
- (d) faxed to that party at that party's fax number and marked for the attention of the relevant department or officer (if any) set out in the Reference Schedule.

34.2 Notices by email are not permitted.

#### **Change of address or fax number**

34.3 If a party gives the other party three Business Days' notice of a change of that party's address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

#### **Time notice is given**

34.4 Any notice or communication is to be treated as given at the following time:

34.4.1 if by personal delivery, when received by the addressee,

34.4.2 if it is delivered, when the notice or communication is left at the relevant address,

34.4.3 if it is sent by post, two Business Days after the notice or communication is posted,

34.4.4 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

34.5 However, if any notice or communication is given on a day that is not a Business Day or after 5pm on a Business Day, in the place of the party to whom the notice is sent it is to be treated as having been given at the beginning of the next Business Day.

### **35 Costs and expenses**

35.1 The Tenant will pay the Landlord's costs in connection with the preparation, perusal, negotiation and execution of this Lease, and any document related to this Lease or variation to this Lease.

35.2 The Tenant will pay the Landlord's reasonable costs incurred in connection with considering any request by the Tenant for the Landlord's approval or consent to any matter under this Lease (whether or not the approval or consent is granted).

35.3 The Tenant will pay the Landlord's costs of and incidental to the enforcement or attempted enforcement of the Landlord's rights, remedies and powers under this Lease.

## **36 Miscellaneous**

### **Approvals and consents**

- 36.1 Unless this Lease expressly provides otherwise, the Landlord may give or withhold an approval or consent in the Landlord's absolute discretion, and subject to any conditions determined by the Landlord. The Landlord is not obliged to give the Landlord's reasons for giving or withholding a consent or approval, or for giving a consent or approval subject to conditions.
- 36.2 Where this Lease refers to a matter being to the 'satisfaction' of the Divisional Manager, this means to the satisfaction of the Divisional Manager in his or her absolute discretion.

### **Severability**

- 36.3 Each provision of this Lease is individually severable. If any provision is or becomes illegal, unenforceable or invalid it is to be treated as being severed from this Lease, but the rest of this Lease will not be affected.

### **Variation**

- 36.4 No variation of this Lease will be of any force or effect unless it is in writing and signed by each party to this Lease.

### **Waivers**

- 36.5 A waiver of any right, power or remedy under this Lease must be in writing, signed by the party granting that waiver. A waiver is only effective in relation to the particular obligation or breach in respect of which that waiver is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach, in relation to any other occasion.
- 36.6 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Lease does not amount to a waiver.

### Schedule 3

### Plan of Premises

Refer attached plan showing the Premises outlined in red.



**Schedule 4**

**Access Plan**

Refer attached plan showing the initial access routes over the Land outlined in yellow.

