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**10. LEASES FOR LEASEBACK PROPERTIES**

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10.1 LEASE WITH MINISTRY OF EDUCATION

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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

10.1: LEASE WITH MINISTRY OF EDUCATION

MINISTRY OF EDUCATION  
TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 91 Land Transfer Act 2017)

BARCODE

Land registration district

[ ]

Affected instrument Identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

[ ]

[ ]

[ ]

Lessor

[ ]

Lessee

**HER MAJESTY THE QUEEN** for education purposes

Estate or Interest

*Insert "fee simple", "leasehold in lease number " etc.*

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

*If required, set out the terms of lease in Annexure Schedules*

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected record of title(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.1: LEASE WITH MINISTRY OF EDUCATION

Form F *continued*

Attestation

Signature of the Lessor	Signed in my presence by the Lessor
<hr/> [                      ]	<hr/> <i>Signature of witness</i>  <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name:  Occupation:  Address:
<hr/> [                      ]	<hr/> <i>Signature of witness</i>  <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name:  Occupation:  Address:
<hr/> [                      ]	<hr/> <i>Signature of witness</i>  <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name:  Occupation:  Address:
<hr/> [                      ]	<hr/> <i>Signature of witness</i>  <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name:  Occupation:  Address:



TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

10.1: LEASE WITH MINISTRY OF EDUCATION

Form F *continued*

<p>_____</p> <p>[                      ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[                      ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[                      ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[                      ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>



TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.1: LEASE WITH MINISTRY OF EDUCATION

Form F *continued*

<p><b>Signature of the Lessee</b></p>     <p>Signed for and on behalf of <b>HER MAJESTY THE QUEEN</b> as Lessee by [                      ] (acting pursuant to a written delegation given to him/her by the Secretary for Education) in the presence of:</p>	
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Certified correct for the purposes of the Land Transfer Act 2017

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Solicitor for the Lessee

\* The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased.

TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.1: LEASE WITH MINISTRY OF EDUCATION

Form F *continued*

Annexure Schedule

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Pages

Insert instrument type

Lease Instrument

**BACKGROUND**

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between **Whakatōhea** and the Crown, under which the parties agreed to transfer the Land to **[insert name of post-settlement governance entity]** and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

**SCHEDULE A**

**ITEM 1 THE LAND**

**[insert full legal description - note that improvements are excluded].**

**ITEM 2 START DATE**

**[insert start date].**

**ITEM 3 ANNUAL RENT**

**[\$[insert agreed rent]** plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.

**ITEM 4 TERM OF LEASE**

21 Years.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.1: LEASE WITH MINISTRY OF EDUCATION

Form F *continued*

Annexure Schedule

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Insert instrument type

Lease Instrument

ITEM 5 LESSEE OUTGOINGS

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

ITEM 6 PERMITTED USE

The Permitted Use referred to in clause 9.

ITEM 7 RIGHT OF RENEWAL

Perpetual rights of renewal of 21 years each with the first renewal date being the 21<sup>st</sup> anniversary of the Start Date, and then each subsequent renewal date being each 21<sup>st</sup> anniversary after that date.

ITEM 8 RENT REVIEW DATES

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

ITEM 9 LESSEE'S IMPROVEMENTS

As defined in clause 1.9 and including the following existing improvements: ***[List here all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].***

[ ]

The above information is taken from the Lessee's records as at [ ] A site inspection was not undertaken to compile this information.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



## 10.1: LEASE WITH MINISTRY OF EDUCATION

### Annexure Schedule

*Insert instrument type*

Lease Instrument

To: *[Post-Settlement Governance Entity]* ("the Lessor")

And to: *The Secretary, Ministry of Education, National Office,*

PO Box 1666, WELLINGTON 6140 ("the Lessee")

From: [Name of Mortgagee/Chargeholder] ("the Lender")

*The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit:*

- (i) *It has notice of the provisions of clause 16.5 of the Lease; and*
- (ii) *It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and*
- (iii) *It will not claim any interest in any Lessee's Improvements under the security of its loan during the relevant period no matter how any Lessee's Improvement may be fixed to the Land and regardless of any rule of law or equity to the contrary or any provisions of its security to the contrary; and*
- (iv) *It agrees that this acknowledgement is irrevocable.*

## SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

### 10.1: LEASE WITH MINISTRY OF EDUCATION

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*Insert instrument type*

## Lease Instrument

**ITEM 11      CLAUSE 16.6 NOTICE**

To: [Post-Settlement Governance Entity] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office,  
PO Box 1666, WELLINGTON 6140 ("the Lessee")

From [Name of Mortgagee/Chargeholder] ("the Lender")

*The Lender acknowledges that before it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the Land described in the Schedule to the Lease attached to this Notice) it had notice of and agreed to be bound by the provisions of clause 16.6 of the Lease and that in particular it agrees that despite any provision of the Security to the contrary and regardless of how any Lessee's Improvement is fixed to the Land it:*

- (i) *will not claim any security interest in any Lessee's Improvement (as defined in the Lease) at any time; and*
- (ii) *acknowledges that any Lessee's Improvements remain the Lessee's property at all times.*

## SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**10.1: LEASE WITH MINISTRY OF EDUCATION**

**Form F** *continued*

**Annexure Schedule**

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*Insert instrument type*

Lease Instrument

**SCHEDULE B**

**1 Definitions**

1.1 The term "Lessor" includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term "Lessee" includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 "Business Day" means a day that is not:

- (a) a Saturday or Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; or
- (d) the days observed as the anniversaries of the provinces of [Auckland] [and] Wellington; or
- (e) the days observed as Waitangi Day or Anzac Day under section 45A of the Holidays Act 2003.

1.4 "Crown" has the meaning given in section 2(1) of the Public Finance Act 1989.

1.5 "Crown Body" means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



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**Form F** *continued*

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Lease Instrument

- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
  - (c) the New Zealand Railways Corporation; and
  - (d) a company or body that is wholly owned or controlled by one or more of the following:
    - (i) the Crown;
    - (ii) a Crown entity;
    - (iii) a State enterprise; and
  - (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).
- 1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.
- 1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 "Maintenance" includes repair.
- 1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.
- 2 Payment of Annual Rent**
- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- 2.2 The initial Annual Rent payable at the Start Date will be set at **6%** of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.
- 3 Rent Review**
- When a party initiates the rent review process as set out in clause 3.5:
- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of **6%** of the lesser of:
- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
  - (b) the Nominal Value being:
    - (i) during the initial Term: a value based on **3.5%** growth per annum of the Transfer Value of the Land; or
    - (ii) for subsequent Terms: a value based on **3.5%** growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the Current Market Value of the Land as a School Site for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the Current Market Value of the Land as a School Site for the three consecutive Rent Review Dates or Lease renewal dates.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



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Lease Instrument

**3.5 The rent review process will be as follows:**

- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
- (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
- (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.
- (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
- (e) The parties must try to agree on a new Annual Rent.
- (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
  - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
  - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. 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 new Annual Rent and that determination will be binding on both parties.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

**4 Payment of Lessee Outgoings**

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

**5 Valuation Roll**

Where this Lease is registered under section 91 of the Land Transfer Act 2017 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

**6 Utility Charges**

- 6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.
- 6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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**10.1: LEASE WITH MINISTRY OF EDUCATION**

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- 6.3 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.
- 6.4 If required to do so by the Lessor or any local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

**7 Goods and Services Tax**

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

**8 Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

**9 Permitted Use of Land**

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

**10 Designation**

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease.

**11 Compliance with Law**

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

**12 Hazards**

- 12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**10.1: LEASE WITH MINISTRY OF EDUCATION**

**Form F** *continued*

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Lease Instrument

- 12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

**13 Damage or Destruction**

**13.1 Total Destruction**

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

**13.2 Partial Destruction**

- (a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.
- (b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:
  - (i) the repair and reinstatement of the Land have been completed; and
  - (ii) the Lessee can lawfully occupy the Land.
- (c) If:
  - (i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or
  - (ii) any necessary council consents shall not be obtainable,

then the term will terminate with effect from the date that either such fact is established.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.





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Lease Instrument

**13.3 Natural Disaster or Civil Defence Emergency**

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
- (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
- (i) the relevant clause has applied for a period of 6 months or more; or
  - (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

**13.4** Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

**13.5** Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

**14 Contamination**

**14.1** When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.





**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**10.1: LEASE WITH MINISTRY OF EDUCATION**

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Lease Instrument

14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.

14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.

**15 Easements**

15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.

15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.

15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

**16 Lessee's Improvements**

16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.

16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.

16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.

16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**10.1: LEASE WITH MINISTRY OF EDUCATION**

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*Insert instrument type*

Lease Instrument

- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.
- 17 Rubbish Removal**
- The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.
- 18 Signs**
- The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.
- 19 Insurance**
- 19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.
- 19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

**10.1: LEASE WITH MINISTRY OF EDUCATION**

**Form F** *continued*

**Annexure Schedule**

Page **15** of **19** Pages

*Insert instrument type*

Lease Instrument

**20 Fencing**

- 20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.
- 20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

**21 Quiet Enjoyment**

- 21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.
- 21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

**22 Assignment**

- 22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:
- (a) any Department or Crown Body; or
  - (b) any other party provided that the assignment complies with the Education and Training Act 2020 and the Public Works Act 1981 (if applicable).
- 22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).
- 22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.
- 22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

The Lessee may without the Lessor's consent sublet to:

- (a) any Department or Crown Body; or

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**10.1: LEASE WITH MINISTRY OF EDUCATION**

**Form F** *continued*

**Annexure Schedule**

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*Insert instrument type*

Lease Instrument

- (b) any other party provided that the sublease complies with the Education and Training Act 2020 and the Public Works Act 1981 (if applicable).

**24 Occupancy by School Board of Trustees**

- 24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education and Training Act 2020 and otherwise consistent with this Lease.
- 24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.
- 24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education and Training Act 2020 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

**25 Lessee Break Option**

The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.

**26 Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

**27 Notice of Breach**

- 27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:
- (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**10.1: LEASE WITH MINISTRY OF EDUCATION**

**Form F** *continued*

**Annexure Schedule**

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*Insert instrument type*

Lease Instrument

- (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or
- (c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.

**28 Renewal**

28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed on the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the Lease Term that it does not wish the Lease to be renewed.

28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of perpetual renewal, provided that either party may initiate the rent review process in accordance with clause 3.

**29 Right of First Refusal for Lessor's Interest**

If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice ("Lessor's Notice") to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.

29.1 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor ("Lessee's Notice") accepting the offer contained in the Lessor's Notice.

29.2 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

29.3 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

signing witnesses or solicitors must either sign or initial in this box. either their All parties and

TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.1: LEASE WITH MINISTRY OF EDUCATION

Form F *continued*

**Annexure Schedule**

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Lease Instrument

- 29.4 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

**30 Exclusion of Implied Provisions**

- 30.1 For the avoidance of doubt, the following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

(a) Clause 11 – Power to inspect premises.

**31 Entire Agreement**

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

**32 Disputes**

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

**33 Service of Notices**

- 33.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education  
Ministry of Education  
PO Box 1666  
WELLINGTON 6140

- 33.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

*[insert contact details]*

- 33.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

- 33.4 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

*[insert contact details]*

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.1: LEASE WITH MINISTRY OF EDUCATION

Form F *continued*

**Annexure Schedule**

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Lease Instrument

33.5 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

**34 Registration of Lease**

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 2017. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

**35 Costs**

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.

**36 Limitation of Liability**

36.1 If any person enters into this lease as trustee of a trust, then that person warrants that:

- (a) that person has power to enter into this lease under the terms of the trust; and
- (b) that person has properly signed this lease in accordance with the terms of the trust; and
- (c) that person has the right to be indemnified from the assets of the trust
- (d) and that right has not been lost or impaired by any action of that person including entry into this lease; and
- (e) all of the persons who are trustees of the trust have approved entry into this lease.

36.2 If that person has no right to or interest in any assets of the trust, except in that person's capacity as a trustee of the trust, then that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount").

36.3 If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



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10.2 LEASE WITH MINISTRY OF JUSTICE

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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

10.2: LEASE WITH MINISTRY OF JUSTICE

(MINISTRY OF JUSTICE)

LESSOR:

[IWI GOVERNANCE ENTITY]

I **certify** that I am aware of the circumstances of the dealing set out in this instrument and do not know of any reason, in fact or in law, why the instrument should be registered or noted.

.....  
Certified by (Practitioner or Lessee) or (Lessee)

LESSEE:

HER MAJESTY THE QUEEN

acting by and through the Chief  
Executive of the Ministry of Justice

Particulars entered in the  
Register as shown herein  
on the date and at the  
time endorsed below

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MEMORANDUM OF LEASE

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THE CHIEF EXECUTIVE  
MINISTRY OF JUSTICE  
WELLINGTON

TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.2: LEASE WITH MINISTRY OF JUSTICE

MINISTRY OF JUSTICE

LONG TERM LEASE OF BARE GROUND

FOR COURTHOUSE PURPOSES

**[IWI GOVERNANCE ENTITY]** (hereafter called "**the Lessor**") being registered as proprietor of an estate in fee simple subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed in Record of Title [ ] Gisborne Land Registration District for a fee simple estate in that piece of land containing 721 square metres more or less, situated at the corner of Church Street and Elliot Street, Opotiki being the Opotiki District Court land and being comprised and described therein.

does hereby lease to **HER MAJESTY THE QUEEN** acting through the Chief Executive of the Ministry of Justice (hereafter called "**the Lessee**") all the said land (hereafter called "**the Land**") to be held by the Lessee as tenant for a term of five (5) years at the yearly rental of [ \$----- ] plus GST payable annually in advance on the first day of [ ] 20[ ] in each year during the continuance of this Lease subject to the covenants, conditions and restrictions set forth in Schedules A and B following.

The Lessee doth hereby accept the lease of the above described land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants set forth in Schedules A and B following.

Dated this [ ] day of [ ] 20[ ]

**SIGNED** by **[IWI GOVERNANCE ENTITY]** )  
as Lessor )

TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.2: LEASE WITH MINISTRY OF JUSTICE

SIGNED for and on behalf of HER )  
MAJESTY THE QUEEN as Lessee )  
by Fraser Gibbs )  
(acting by and through the Chief )  
Executive of the Ministry of Justice)



TE MĀKEOTANGA – DEED OF SETTLEMENT  
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10.2: LEASE WITH MINISTRY OF JUSTICE

SCHEDULE A

**ITEM 1 THE LAND**

All that parcel of land being the Land previously specified.

**ITEM 2 THE COMMENCEMENT DATE**

The commencement date of this Lease shall be the [ ] day of [ ] 20[--].

**ITEM 3 ANNUAL RENTAL**

[Value in words (\$0.00)]  
per annum plus GST payable annually in advance on the first day of each year during the  
continuance of this lease with a first payment due on the [ ] day of [ ] 20[--].

**ITEM 4 TERM OF LEASE**

**4.1 Initial term**

Five (5) years from the Commencement Date to determination on the [ ] day of  
[ ] 20[ ].

**4.2 Subsequent terms**

Perpetual rights of renewal of five (5) years each from the the [ ] day of  
[ ] 20[ ] and each 5th anniversary after that date.

**ITEM 5 LESSEE OUTGOINGS**

- 5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority excluding only taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 Charges for water, gas, electricity, telephones and other utilities or services.
- 5.3 Rubbish collection charges.
- 5.4 All costs associated with the repair, maintenance or replacement of any fencing on the land.



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**10.2: LEASE WITH MINISTRY OF JUSTICE**

**ITEM 6        PERMITTED USE**

- 6.1     For any Justice Sector related purposes including (but not limited to) a courthouse and such other reasonable ancillary uses deemed necessary from time to time by the Lessee for the operation of a courthouse on the Land, or any other use which conforms with the local Code of Ordinances or District Plan applying to the premises.
- 6.2     Any secondary use for government works under the Public Works Act 1981 if a part of the land but not a significant part being more than half of the Land, is not required for Courthouse purposes. or
- 6.3     Any use of the Land or any part of the Land consented to by the Lessee as sub Lessor under clause 4.01 of this Lease where both the sub lease and the use of the Land comply with the requirements of clause 4.01.

**ITEM 7        RIGHTS OF RENEWAL**

Renewable as provided in Item 4.2 above.

**ITEM 8        RENT REVIEW DATES**

Five (5) yearly from the Commencement Date of this Lease.

**ITEM 9        LESSOR'S PROPERTY**

Nil.

**ITEM 10       LESSEE'S IMPROVEMENTS**

All buildings and other improvements together with foundations, sub-soil works and services now or hereafter constructed on the Land by the Lessee or any agent or permitted occupier of the Lessee including, without limitation, the court house building, paving areas and courtyards and asphalted carpark and all fixtures, fittings and chattels therein contained.

**ITEM 11       CLAUSE 3.04(b) CHARGEHOLDER'S NOTICE**

To:            [The Lessor]  
                  (hereafter called "**the Lessor**")

And to: [The Lessee]  
                  (hereafter called "**the Lessee**")

From:        [Mortgagee / Chargeholder]



## 10.2: LEASE WITH MINISTRY OF JUSTICE

In consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("**the Land**") which the Lender acknowledges will be for its benefit, the Lender acknowledges that:

It agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the Lease, shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease (hereafter collectively called "**the relevant period**");

It agrees that this acknowledgement is irrevocable.

[That parcel of land containing \_\_\_\_\_]

/ / 20

From: [Mortgagee/Chargeholder]  
(hereafter called "**the Lender**")



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**10.2: LEASE WITH MINISTRY OF JUSTICE**

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of clause 3.04(c) of the Lease of the Land and that in particular it agrees that notwithstanding any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;

Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease.

**ITEM 13      ADDRESS FOR SERVICE**

Lessor:      **[IWI GOVERNANCE ENTITY]**

[City/Town]

Attn:      General Manager

Facsimile:

Lessee:      Chief Executive  
Ministry of Justice  
Level 3  
Justice Centre  
Aitken Street  
WELLINGTON (SX 10088, WELLINGTON)

Facsimile:      (04) 918 8820

10.2: LEASE WITH MINISTRY OF JUSTICE

SCHEDULE B

PART I - PRELIMINARY

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Lease:

- (a) The expression "**the Lessor**" shall include and bind:
  - (i) the persons executing this lease as Lessor; and
  - (ii) any Lessor for the time being under it; and
  - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.
- (b) The expression "**the Lessee**" shall include and bind:
  - (i) the person executing this lease as Lessee;
  - (ii) all the Lessees for the time being under it; and
  - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;and the expression "**the Lessee**" shall include the Lessee's agents, employees, contractors and invitees and any person on the Land under the control or direction of the Lessee.
- (c) Words importing the singular or plural number shall include the plural or singular number respectively.

1.02 "**Goods and Services Tax**" or "**GST**" means tax levied in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a Goods and Services Tax.

1.03 "**Government Work**" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.

1.04 "**Lease**" means, unless the context otherwise requires, this lease and any further or renewal term thereof.

1.05 "**Lessee's Improvements**" shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease but shall exclude "Lessor's Property".

1.06 "**Lessee's Outgoings**" means all outgoings the Lessee is obliged to pay under the provisions of this Lease.



**10.2: LEASE WITH MINISTRY OF JUSTICE**

- 1.07** “**Lessor’s Property**” means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are placed on the Land by the Lessor after the commencement of this Lease.
- 1.08** “**Value of the Land**” means the market value of the freehold interest in the Land as at the relevant rent review date, as vacant land in an unsubdivided state assessed in accordance with its then current underlying zoning or a courthouse, whichever is the greater, LESS a discount of twenty percent (20%) to reflect the terms and conditions of this Lease while the Ministry of Justice remains the Lessee.
- 1.09** “**The Land**”, “**The Commencement Date**”, “**Annual Rental**”, “**Term of the Lease**” and “**Permitted Use**” shall have the meanings ascribed to them in Schedule A.
- 1.10** The term “**to sublet**” shall include the granting of a licence to occupy the Land or part thereof and “subletting” and “sublease” shall be construed accordingly.
- 1.11** References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.12** A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.13** Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.

**PART II - LESSEE’S COVENANTS**

**2.00 LESSEE’S COVENANTS**

**2.01 ANNUAL RENT**

- (a) Throughout the term of this Lease, including following the exercise of any rights of renewal by the Lessee, the Lessee shall pay rental as assessed in accordance with Schedule C for the Land which shall be adjusted on each rent review date and shall be assessed in accordance with clause 4.05 and Schedule C noting that for so long as the Lessee is Her Majesty the Queen acting by and through the Chief Executive of the Ministry of Justice and for so long as the Lessee is using the land for the purpose of a Courthouse, the rent payable shall reflect the terms of this Lease and the use to which the Lessee is putting the Land, as a Courthouse.
- (b) The Lessee shall pay the annual rent without deduction or set off in the manner and at the times provided in Item 3 of Schedule A. All payments of rent shall be paid by direct bank payment or as the Lessor may direct.



**10.2: LEASE WITH MINISTRY OF JUSTICE**

**2.02 PAYMENT OF LESSEE OUTGOINGS**

- (a) The Lessee shall pay the Lessee Outgoings in respect of the land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) The Lessee shall pay all other outgoings it is required to pay under this Lease.

**2.03 USE OF LAND**

The Lessee shall not, without the prior written consent of the Lessor first had and obtained, use the Land for any purpose other than the Permitted Use described in Item 6 of Schedule A which consent may be given or withheld at the absolute discretion in all things of the Lessor. The Lessee acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor.

**2.04 COMPLIANCE WITH LAW**

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

**2.05 AVOIDANCE OF DANGER**

The Lessee shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- (b) Promptly remedy any danger or hazard that may arise on the Land;
- (c) At all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with.

10.2: LEASE WITH MINISTRY OF JUSTICE

**2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS**

The Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

**2.07 NO LESSOR MAINTENANCE**

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

**2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS**

The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.

**2.09 SIGNAGE**

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name-plate, signboard or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage occasioned thereby.

**2.10 INSURANCE**

- (a) The Lessee shall insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease. The amount of this insurance shall be adjusted at any rent review or renewal of this Lease by any increase in the consumer price index (all groups) in the preceding five years measured against that index at the Commencement Date of the original term of this Lease. If there is no consumer price index (all groups) then the adjustment will be made by reference to the next most appropriate index or any index published in place of the CPI (all groups).
- (b) The provisions of this clause shall be of no application whilst the Lessee is **HER MAJESTY THE QUEEN**.

**2.11 SUNDRY LESSEE ACKNOWLEDGEMENTS**

The Lessee acknowledges:

- (a) That the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion



**10.2: LEASE WITH MINISTRY OF JUSTICE**

thereof between the Land and any adjoining land which is the property of the Lessor;

- (b) That the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

**2.12 GST**

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable on demand.

**2.13 LESSEE'S ACKNOWLEDGEMENT**

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any inherent defect in the Land or any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

**PART III**

**3.00 LESSOR'S COVENANTS**

**3.01 QUIET ENJOYMENT**

Should the Lessee pay the rent and observe and perform all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

**3.02 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS**

The Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor where this is necessary or incidental to the Permitted Use of the Land. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary or incidental to the Permitted Use of the Land and such consent shall not be unreasonably or arbitrarily withheld.

**3.03 LESSOR'S PROPERTY**

The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in Schedule A Item 9 and that the Lessor shall not during the continuance of this Lease place any further Lessor's Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction or



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placement. The Lessor further acknowledges that the Lessee may at its absolute discretion in all things decline consent to the construction or placement of any Lessor's Property on the Land and that all improvements on the Land at the Commencement Date of this Lease which are not listed as Lessor's Property are Lessee's Improvements.

**3.04 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS**

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
  - (i) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how such property is annexed to the Land;
  - (ii) Lessee's Improvements are to be fully insured by the Lessee in its own name; and
  - (iii) when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee.
- (b) Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing mortgagees or chargeholders of the Land prescribed in Schedule A Item 11 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;
- (c) Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within five (5) working days from the date of their receipt by the Lessor. If the Lessor fails to comply with the requirements of this clause 3.04(c) (time being of the essence) the Lessor shall procure the release and discharge of any mortgage or charge registered over the Land within ten (10) working days of receipt by the Lessor of a notice from the Lessee requiring such release and discharge;
- (d) That the Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.



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3.05 LESSOR CONSENT TO GROUND WORKS

(a) Notwithstanding anything to the contrary in clauses 3.02 or 3.04(d), the Lessee shall not:

- (i) Make any excavation of the Land; or
- (ii) Conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
- (iii) Remove any boundary-fence or retaining works except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed alteration or interference;
- (iv) Make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed installation, alteration or interference;

without, in each case, the Lessor's prior written approval, such approval not to be unreasonably or arbitrarily withheld and not to be withheld where the works are necessary or conducive to the conduct of the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions;

- (b) Should the Lessor either fail to give an approval within 14 days of being requested to do so or give an approval which is subject to conditions the Lessee considers unreasonable, then the matter shall be referred to a registered civil engineer agreed upon by the parties for his or her expert determination. Should the parties be unable to agree upon the appointment of an engineer, then either party shall be at liberty to make written application to the President for the time being of the Institute of Professional Engineers of New Zealand to appoint an engineer and any appointment so made shall be final and binding on the parties. The engineer shall act as an expert in determining the issue(s) and not as an arbitrator and the engineer's decision shall be final and binding on the parties. The engineer's costs shall be met in equal shares by the parties unless the engineer otherwise so determines.

3.06 DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for courthouse purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the expiration of this Lease or its sooner determination, the Lessee shall promptly uplift any designation.



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**3.07 PROVISION OF CERTAIN NOTICES TO THE LESSEES**

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

**3.08 FIRST RIGHT OF REFUSAL TO PURCHASE**

- 3.08.1 If, at any time during the term of this Lease or any renewal thereof the Lessor shall desire to sell the Land or the Lessor is required to sell the Land by a Mortgagee or Chargeholder the Lessor and/or the Mortgagee or Chargeholder as the case may be shall give to the Lessee notice in writing of the Lessor's intention to sell the Land, the price fixed by the Lessor for such purchase, and other terms and conditions proposed by the Lessor ("the Lessor's Notice").
- 3.08.2 The Lessor's Notice must be accompanied by a signed registered valuer's certificate substantiating the price fixed by the Lessor for such purpose, failing which the Lessor's Notice shall be null and void.
- 3.08.3 The Lessee shall have thirty (30) Working Days from the date of receipt of the Lessor's notice within which to elect by notice in writing to the Lessor ("the Lessee's Notice") to purchase the Land at the price and on the terms and conditions specified in the Lessor's Notice.
- 3.08.4 Upon the Lessee having exercised the Lessee's option to purchase by serving the Lessee's Notice pursuant to clause 3.08.3 the parties will be deemed to have entered into a contract for the sale and purchase of the Land on the terms of the agreement at the date of the exercise of the right then in use by the New Zealand Law Society in association with the Real Estate Institute of New Zealand.
- 3.08.5 The Lessee shall within eighty (80) Working Days of receipt by the Lessor of the Lessee's Notice complete the purchase by making payment to the Lessor of the purchase price specified in the Lessor's Notice plus GST (if any) and all rent, outgoings and other amounts payable and due or accruing due under the Lease up to the date of settlement. Upon such payment being made by the Lessee to the Lessor the Lessor will transfer the Land to the Lessee for an estate in fee simple free of any mortgage, charge or encumbrance.
- 3.08.6 If the Lessee declines to elect to purchase the Land or does not give notice within the said period of thirty (30) Working Days after receipt of the Lessor's Notice then the Lessor will be at liberty to sell the Land on the open market, PROVIDED THAT the Lessor may not offer to sell the Land



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to any other party at a price lower than that first offered by the Lessor in the Lessor's Notice or on terms and conditions more favourable to a purchaser than those specified in the Lessor's Notice without first reoffering the Land by notice in writing to the Lessee for purchase at such lower price and on such terms and conditions. In such case the Lessee shall have fourteen (14) Working Days after receipt of such notice in writing within which to elect to purchase the Land at such lower price or on such more favourable terms and conditions and shall complete such purchase in the manner hereinbefore provided within eighty (80) Working Days of receiving the Lessor's amended notice.

3.08.7 The provisions of clause 3.08.6 shall apply each time the Lessor wishes to sell the Land to any other party at a price lower than that offered by the Lessor in the Lessor's Notice or on terms and conditions more favourable to a purchaser than those specified in the Lessor's Notice where such offer has been declined by the Tenant in accordance with the provisions of clause 3.08.6.

3.08.8 The Lessor agrees that this section 3.08 creates a caveatable interest in the Land in favour of the Lessee. The Lessee shall be entitled to lodge (at the Lessee's cost) a caveat against the title to the Land to secure the Lessee's interest by way of the first right of refusal to purchase created by this section 3.08 at any time after the date of this Deed.

3.08.9 For the purposes of the section 3.08 the term "sale" means:

- a) A sale, transfer, vesting or other disposition of the Lessor's registered estate and interest in the Land;
- b) The entering into by the Lessor of a superior lease in respect of the Land;
- c) Where the Lessor is a company, the only asset of which is the Land (or the Land together with other Land leased to the Lessee), any change or rearrangement in the beneficial ownership of the shareholding of the Lessor having the effect of altering the effective control of the Lessor

and the word "sell" shall have a corresponding meaning.

**3.09 DISPOSAL OF LESSOR'S INTEREST**

3.09.1 Subject to the provisions of this clause the Lessor may at any time dispose of the Lessor's interest in the Land provided that:

3.09.1.1 the Lessor has first complied with the provisions of clause 3.08 herein on each and every occasion the Lessor proposes to dispose of the Lessor's interest in the Land; and

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3.09.1.2 any such disposal shall preserve to the Lessee all the Lessee's rights and remedies under this Lease; and

3.09.1.3 for so long as the Lessee is a Government Agency the following further provisions shall apply:

- (1) The Lessor shall advise the Lessee in writing of the person or corporation to whom the Lessor intends to dispose of its interest in the Land (proposed Assignee).
- (2) If the Lessee has any objection to the proposed Assignee because the Lessee reasonably apprehends in good faith that either:
  - (a) The proposed Assignee presents an actual or potential threat to the discharge by the Lessee of the Lessee's statutory obligations; or
  - (b) The role or function of the Lessee will be prejudiced by the proposed Assignee becoming the Lessor;

then the Lessee shall within ten (10) working days of receiving the Lessor's advice pursuant to clause 3.09.1.3(1) above, notify the Lessor in writing of its objection to the proposed Assignee and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

- (3) If the Lessor does not receive written notice from the Lessee pursuant to clause 3.09.1.3(2)(a) or 3.09.1.3(2)(b) above together with grounds to substantiate its reasonable apprehension within ten (10) working days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.
- (4) If the Lessee objects to the proposed Assignee in accordance with clause 3.09.1.3(2)(a) or 3.09.1.3(2)(b) above, then the Lessor shall not dispose of its interest to the proposed Assignee.
- (5) The Lessor agrees that this section 3.09 creates a caveatable interest in the Land in favour of the Lessee. The Lessee shall be entitled to lodge (at the Lessee's cost) a caveat against the title to the Land to secure the Lessee's interest in preventing the disposal of the Lessor's interest in the Land to a party to whom the Lessee has any reasonable objection in terms of clause 3.09.1.3(2) at any time after the date of this Deed. Such caveat shall ensure that any prospective purchaser of the Lessor's interest in the Land is aware of the provisions of this clause section 3.09 and shall prevent the Lessor disposing of its interest in the Land without first complying with the requirements of this section 3.09.



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**3.10 HEALTH AND SAFETY**

The Lessor shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from the Lessor's ownership of the Land;
- (b) Take all reasonable steps to ensure that any obligations placed on the Lessor as a Person Conducting a Business or Undertaking as that term is defined in the Health and Safety at Work Act 2015 by virtue of the Lessor's ownership of the Land, are met;
- (c) At all material times keep in place appropriate rules and procedures in order to comply with Health and Safety at Work requirements which the Lessor is obliged by law to comply with.

**3.11 LESSOR'S ACKNOWLEDGEMENT**

The Lessor agrees that if the Land or any part of the Land has any inherent defect, whether arising prior to the Commencement Date or during the term of this Lease, the Lessee has no liability in respect of such inherent defect and the Lessor releases to the fullest extent permitted by law the Lessee, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any inherent defect in the Land or any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused by the wilful or reckless act of the Lessee or persons acting under the control of the Lessee.

**PART IV – MUTUAL COVENANTS**

**4.00 MUTUAL COVENANTS**

**4.01 ASSIGNMENT AND SUBLETTING**

- (a) The Lessee will not without the previous consent in writing of the Lessor assign, transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without some good cause assigned having regard to the solvency or respectability of the proposed assignee, transferee or sublessee.
- (b) Notwithstanding subclause (a), where the Crown (as that term is defined in section 7 (1) of the Crown Entities Act 2004) remains as the Lessee under this Lease and in occupation of the Land no such consent shall be required from the Lessor except that on each occasion that a different Crown entity (as defined in section 2 of the Public Finance Act 1989) or any other Crown body or State Owned Enterprise assumes the role and obligations of the Lessee under this Lease, the Lessee shall notify the Lessor in writing of that change.
- (c) In the case of an assignment where the proposed assignee or transferee is a company not listed by the New Zealand Stock Exchange the Lessor may require the controlling shareholders of such company to enter into a deed guaranteeing



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the performance by that company of the terms of this Lease such guarantee to be in a form acceptable to the Lessor.

- (d) This clause 4.01 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- (e) For the purpose of this clause 4.01, any proposed change in the shareholding of the Lessee or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clause 4.01(f).
- (f) For the purposes of clause 4.01(a), a proposed change in the effective control of any Lessee that is a Crown entity as that term is defined in section 7 (1) of the Crown Entities Act 2004 or a State Owned Enterprise shall be a proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control on the ability of the Lessee to continue to meet its obligations under the Lease including contingent liabilities. For the purposes of this clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.
- (g) Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, in a form prepared by the Lessor at the Lessee's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.
- (h) Where the Lessor consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any Sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- (i) Notwithstanding any rule of law to the contrary it is specifically agreed that in the event of an assignment or transfer of this Lease by Her Majesty the Queen ("**the Crown**"), the following provisions shall apply:
  - (i) in the event of an assignment or transfer during the initial Term of the Lease the liability of the Crown shall cease at the expiration date of the initial Term of the Lease or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of



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the Lease or any other act or omission before the expiration date of the initial Term of the Lease;

- (ii) in the event of an assignment or transfer during any renewed Term of the Lease, the liability of the Crown shall cease and determine as from the expiration of that renewed term or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of the Lease or any other act or omission before the expiration date of such renewed term.
- (j) Where the Assignee is a party which is not a Crown entity, the Lessee will at the Lessee's own expense procure the execution by the Assignee of a variation of this Lease whereby the Lease will cease to be perpetually renewable and the number of further terms will be reduced to four (4) terms of five (5) years each so that the Lease will have a final expiry date if all rights of renewal are exercised at the date of expiration of a period of twenty (20) years following the expiration of the term of the Lease during which the assignment is effected.

4.02 LESSOR MAY REMEDY LESSEE DEFAULT

- (a) Should the Lessee default in the observance or performance of any of the Lessee's obligations hereunder and should the Lessor have first served not less than twenty-one (21) clear days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.
- (b) Any notice served under the provisions of clause 4.02(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.

4.03 LESSEE'S IMPROVEMENTS

- (a) If at any time during the Term of the Lease the Lessee declares that the Lessee's Improvements is surplus to the requirements of the Crown and the Lessee decides to sell the Lessee's Improvements, then the Lessee will first give the Lessor notice in writing of the Lessee's intention to sell, the price fixed by the Lessee for such purposes, the timeframe for exercising the option to purchase (which shall be no less than 15 working days) and other terms and conditions proposed by the Lessee ("The Lessee's Notice"). If the Lessor does not exercise its right to purchase as specified in the Lessee's Notice, then the Lessee will be



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at liberty to sell the Lessee's Improvements on the open market provided the Lessee will not offer the Lessee's Improvements to any other party at a price lower than the first offered by the Lessee or more favourable terms and conditions than those specified in the Lessee's Notice.

- (b) Subject to clause 4.03(a), the parties acknowledge that:
- (i) The Lessee not being in breach of the Lease may, either prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed within a period of six months from the expiration or sooner determination of the within Lease, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee a Licence to enter the Land for a period of six (6) months subsequent to the expiration of this Lease and remove Lessee's Improvements and further that this provision shall ensure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;
  - (ii) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land and restore the Land to a neat, tidy and safe condition subsequent to any such removal;
  - (iii) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease or within six months after this time and notwithstanding any rule of law or equity to the contrary;
  - (iv) In any review of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental;
  - (v) Notwithstanding the generality of the provisions of clause 4.03(b)(i), the Lessee shall not remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor, which may be given or withheld at the discretion in all things of the Lessor.

For the avoidance of doubt, nothing herein shall obligate the Lessee to remove the property referred to in this clause 4.03(b)(v), should the



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Lessee decide to abandon such property to the Lessor upon the expiration of this Lease;

- (vi) The Lessee shall pay a licence fee equal to the rental payable immediately before the determination of the Lease for the six month period, or such lesser period as the Lessee requires to remove Lessee's Improvements from the Land;
- (vii) The provisions of this clause shall not merge upon the expiration or sooner determination of this Lease but shall ensure for the benefit of the party entitled until completely performed;
- (viii) All Lessee's Improvements remaining upon the Land after the expiration of the six month period provided in subclause 4.03(b)(i) shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor.

**4.04 RENEWAL**

- (a) The Lessee, not being at that time in breach of any material provision of this Lease shall on or prior to the end of the initial term of any subsequent term of this Lease, be entitled to a renewal of this Lease for the further term specified in Schedule One from the date of expiry of the initial term of any subsequent term as follows:
  - (i) The Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 4.05 as though the commencement date of the renewed term were a Rent Review Date.
  - (ii) The renewed Lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.
- (b) No earlier than 24 months prior to the expiration to the initial term or any subsequent term, the Lessor shall give written notice to the Lessee specifying that the term of the Lease is due to expire and that if the Lessee fails to exercise the right of renewal referred to in clause 4.04(a) within six (6) months from the date of receipt of notice from the Lessor (time being of the essence) then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease. The parties acknowledge and agree that the earlier state by which the Lessee can be required to give notice of renewal as a result of the operation of this clause 4.04(b) is the date which falls 18 months prior to the expiration of the relevant term.
- (c) In the event that the Lessor does not give notice to the Lessee pursuant to clause 4.04(b), the Lessee shall be entitled to renew this Lease by notice in writing to that effect given to the Lessor at any time up until the expiry date.



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- (d) The annual rent for the first term of any renewal shall be agreed upon or, failing agreement, shall be determined in accordance with clause 4.05 which shall apply with such modifications as may be necessary.
- (e) Otherwise, the renewed Lease shall be upon the same terms and conditions as are expressed or implied in this Lease.

**4.05 RENT REVIEW**

- (a) The Annual Rental payable as from each review date shall be determined as follows:
  - (i) Either party may not earlier than three (3) months prior to review date and not later than one (1) year after any review date (time being of the essence) give written notice to the other party specifying the annual rent proposed as the current annual rent as at the relevant review date, which shall be equal to [X percent (X%)] of the Value of the Land as defined in clause 1.08.
  - (ii) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within twenty (20) Working Days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the recipient as the current annual rent, then the new rent shall be determined in accordance with clause 4.05(b);
  - (iii) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
  - (iv) The Annual Rental agreed, determined or imposed pursuant to this clause shall be the annual rental payable as from the relevant rent review date, or the date of service of the Initiator's notice if such notice is served later than 6 months after the relevant rent review date but subject to clause (c) and (d).
  - (v) The rent review at the option of either party may be recorded in a Deed.
- (b) Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current annual rent for the Land, but if agreement is not reached within twenty (20) working days then the same may be determined either:
  - (i) By one party giving written notice to the other requiring the current annual rent for the Land to be determined by arbitration; or
  - (ii) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:

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- (aa) Each party shall appoint a valuer and give written notice of the appointment to the other party within twenty (20) working days of the parties agreeing to so determine the new rent;
- (bb) If the party receiving a notice fails to appoint a valuer within the twenty (20) working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
- (cc) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer;
- (dd) The valuers appointed by the parties shall determine the current annual rent for the Land but if they fail to agree then the rent shall be determined by the third expert;
- (ee) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any such representations but not be bound thereby.

In ascertaining the new annual rental to apply from a review date:

- (ff) The value of any building or improvements then existing upon the Land shall not be taken into consideration; and
- (gg) For so long as the Lessee is a Government Agency, the parties and their valuers shall take into account the contents of Schedule C in determining the rent

When the new rent has been determined, the person or persons determining the same shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and which provision shall be binding on the parties.

- (c) The annual rent so determined or accepted:
  - (i) Shall not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rental payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rental payable at the commencement of such subsequent term; and
  - (ii) Shall be the Annual Rental from the Rent Review Date, or the date of the initiated notice if such notice is given later than six (6) months after the Rent Review Date.
- (d) For the avoidance of doubt, where the rent review date coincides with the commencement of a renewed or subsequent terms, the annual rent shall be the



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current annual rent payable by the Lessee as agreed or determined as at that date in accordance with the foregoing provisions, and no minimum rent shall apply.

- (e) Pending determination of the current annual rent for the Land, the Lessee if it is a Government Agency shall from the relevant review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant review date, until the determination of the current annual rent, pay an interim rent equivalent to that prior to the review date, however if the lessee is not a Government Agency it will pay an interim rent as follows:
  - (i) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
  - (ii) If only one party supplies a registered valuer's certificate, the interim rent
  - (iii) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant review date.
- (f) Upon determination of the new rent, any overpayment or any shortfall in payment shall immediately be payable by the Lessor or the Lessee as the case may be.

**4.06 LESSEE'S RIGHT OF EARLY TERMINATION**

Notwithstanding anything to the contrary herein contained or implied it is agreed that the Lessee may at any time in its sole discretion and without being required to give any reason, terminate this Lease by providing to the Lessor not less than twelve (12) months notice in writing to that effect PROVIDED THAT:

- (a) no such notice may be given so as to effect termination of this Lease within the first two (2) years of the initial term or the first two (2) years of any renewed term of this Lease; and
- (b) the parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.

**4.07 RE-ENTRY**

- (a) The Lessor may re-enter the Land where:
  - (i) rental is in arrears for a period exceeding thirty (30) days after any rent payment date;
  - (ii) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
  - (iii) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;



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- (iv) the Lessee becomes insolvent, bankrupt or goes into liquidation;
- and the term of this Lease shall terminate on such re-entry and all Lessee's Improvements on the Land shall vest in and become the property of the Lessor, and no compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor. Termination shall otherwise be without prejudice to the rights of either party against the other.
- (b) Whilst **HER MAJESTY THE QUEEN** is the Lessee under this Lease and should **HER MAJESTY THE QUEEN** either default in the payment of any rental for a period exceeding thirty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice (hereafter called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged.
- (c) The Default Notice notwithstanding anything to the contrary contained in clause 4.07(a) above shall specify that:
- (i) the Lessee must within thirty (30) days of receipt of such notice remedy the default specified; and
  - (ii) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this clause 4.07.
- (d) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 4.07(b) have been satisfied in full and further that any re-entry contrary to the provisions of clause 4.07(b) shall be null and void ab initio.

4.08 INSURANCE

- (a) The Lessor shall be responsible for insuring any Lessor's Property on the Land.
- (b) The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land.
- (c) Should any property referred to in sub clauses (a) and (b) above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of theirs) whether to effect reinstatement or not and the other party shall abide by this decision whatever it may be.
- (d) In the event that the Lessee elects not to effect reinstatement of the Lessee's Improvements following damage or destruction thereof, then the Lessee shall be entitled to determine this Lease by giving three (3) months notice in writing to that effect to the Lessor. At the expiration of such period this Lease will come to an



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end and neither party will have any claim upon the other except in respect of any antecedent breach by either party.

**4.09 RATING ASSESSMENTS**

The parties agree that the Lessee may at any time make application to the Valuation Department for a separate rating assessment of the Land in its name and thereafter account direct to the Territorial Authority for all rates payable on the Land.

**4.10 ENTIRE AGREEMENT**

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

**4.11 DIFFERENCES AND DISPUTES**

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the District Law Society of the District within which the Land is situated. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies prescribed in clauses 4.06 and 4.07 hereof.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.05(b)(ii).

**4.12 SERVICE OF NOTICES**

Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 13 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.

If either party does not have a current address for service, then service in terms of this clause may be effected on that party by registered post addressed to the registered office or principal place of business of the party intended to be served; and any notice or other



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document given or served shall be deemed to have been given or served and received by the other party two days after the date of posting.

**4.13 REGISTRATION OF LEASE**

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 2017 at the expense of the Lessee in all things. The Lessor agrees to make title available for this purpose and consents to the Lessee caveating the title to protect its interest in the within Lease prior to the registration of this Lease. The parties shall take all practical steps to register the Lease as soon as possible and the Lessee shall withdraw any caveat it has lodged on the registration of the Lease.

**4.14 COSTS**

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

**4.15 INTEREST**

If the Lessee shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

**4.16 ESSENTIAL TERMS**

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) ***Payment of Rental:***

The covenant to pay rental or other money payable by the Lessee under this Lease;



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(b) ***Assignment and Sub Leasing:***

The provisions dealing with assignment and sub leasing; or

(c) ***Use of Land:***

The provisions restricting the use of the Land.

**4.17 WAIVER**

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

**4.18 RENT MORATORIUM**

If any moratorium or other law, act or regulation that (notwithstanding clause 4.06 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, the review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

**4.19 ARTEFACTS OR FOSSILS**

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.

**4.20 EXCLUSION OF IMPLIED CONDITIONS**

The parties agree that following covenants, conditions, and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 shall not apply to this Lease:

- (i) Part 2, Clause 5;
- (ii) Part 2, Clause 10;
- (iii) Part 2, Clause 11; and
- (iv) Part 3, Clause 13.

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SCHEDULE C

Establishing Rental on Rent Reviews

1. The parties acknowledge and agree that in establishing the annual rental payable from the commencement date of this Lease, the rental was determined by assessing the current market value of the Land and applying an appropriate adjustment to reflect the designation and associated use of the Land as a Courthouse by the Lessee.
2. The parties acknowledge the importance of maintaining consistency between the approach taken on setting the commencement rental and the approach to be taken in setting the rent payable by the Lessee while the Land remains designated as a Courthouse and used by the Lessee as a Courthouse.
3. In order to maintain consistency, the parties shall ensure that on each rent review, the respective valuers are instructed to assess the rent payable by the Ministry of Justice by assessing the rent based on the designation and use of the Land as a Courthouse, on the same basis as which the commencement rental was established at the outset of the Lease, as articulated in Schedule C Paragraph 1.



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10.3 LEASE WITH NEW ZEALAND POLICE

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10.3: LEASE WITH NEW ZEALAND POLICE

[ ]

**HER MAJESTY THE QUEEN**  
acting by and through the  
**COMMISSIONER OF POLICE**

**MEMORANDUM OF LEASE**

[ ] Police Station



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10.3: LEASE WITH NEW ZEALAND POLICE

MEMORANDUM OF LEASE DATE:

PARTIES:

- (1) [ ] (Lessor)
- (2) **HER MAJESTY THE QUEEN** acting by and through the COMMISSIONER OF POLICE  
(Lessee)

**THE LESSOR DOES HEREBY LEASE TO THE LESSEE and THE LESSEE DOES TAKE ON LEASE** the Land for the term and at the rental set out in the Reference Schedule and subject to the covenants, conditions, agreements and restrictions set out in this Lease which comprises the Schedule of Terms, the Reference Schedule and the Schedule of Land.

**IN WITNESS WHEREOF** these presents have been executed this                      day of                      20

Signed for and on behalf of                      )  
[ ]:                      )  
in the presence of:                      )

Signed for and on behalf of                      )  
**HER MAJESTY THE QUEEN**                      )  
acting by and through the                      )  
**MINISTER OF POLICE** by                      )  
authorised agent of the Commissioner                      )  
of New Zealand Police, on behalf of the                      )  
Commissioner of New Zealand Police                      )  
in the presence of                      )

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10.3: LEASE WITH NEW ZEALAND POLICE

**THE REFERENCE SCHEDULE**

**ITEM 1: LESSOR PARTICULARS:**

Name: [ ]

Address: [ ]

Fax: [ ]

Telephone: [ ]

Contact person: [ ]

**ITEM 2: LESSEE PARTICULARS:**

Name: Her Majesty the Queen acting by and through the Commissioner of Police

Address: New Zealand Police, National Property Office, P O Box 3017, Wellington

Fax: (04) 498 7415

Telephone: (04) 474 9473

Contact person: National Property Manager

**ITEM 3: LAND:**

[ ] hectares, more or less, being [ ], record of title [ ].

**ITEM 4: TERM:**

[ ] ([ ]) years

**ITEM 5: DATE OF COMMENCEMENT:**

(insert)

**ITEM 6: FURTHER TERMS:**

Perpetual rights of renewal of [ ] ([ ]) years each.

**ITEM 7: RENEWAL DATES:**

The renewal date [ ] ([ ]) years from the Commencement Date and thereafter, in accordance with item 6 of this schedule.

**ITEM 8: ANNUAL RENT:**

\$ .....plus GST



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10.3: LEASE WITH NEW ZEALAND POLICE

**ITEM 9: REVIEW DATES:**

[ ] yearly

**ITEM 10: PERMITTED USE:**

For any Police/Justice related purpose and any permitted activity under the relevant Regional and District Plans or use permitted under any resource consent held in respect of the Land.

10.3: LEASE WITH NEW ZEALAND POLICE

THE SCHEDULE OF TERMS

1 INTERPRETATION

- 1.1 For the purpose of the interpretation or construction of this Lease unless the context provides otherwise:
- 1.1.1 Words importing any gender shall include all other genders.
  - 1.1.2 Words importing the singular shall include the plural and vice versa.
  - 1.1.3 Payments shall be made in the lawful currency of New Zealand.
  - 1.1.4 Headings are for ease of reference only and do not in any way limit or govern the construction of the terms of this Lease.
  - 1.1.5 References to schedules are references to schedules in this Lease and clauses are references to clauses in this Schedule of Terms and references to parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under clause 13) unless expressly stated otherwise.
  - 1.1.6 Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
  - 1.1.7 A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise in each case whether or not having separate legal personality.
  - 1.1.8 "writing" shall include words visibly represented or reproduced.
  - 1.1.9 No consent or waiver, express or implied, by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.
  - 1.1.10 Nothing contained in this Lease shall be deemed or construed or constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.
  - 1.1.11 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.
  - 1.1.12 The parties acknowledge and agree that certain covenants set out in this Lease (in particular provisions relating to the treatment of Lessee's Improvements on termination or sooner determination of this Lease) shall continue beyond determination of this Lease for the benefit of the parties notwithstanding such determination.



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**10.3: LEASE WITH NEW ZEALAND POLICE**

- 1.1.13 This Lease shall be construed and take effect in accordance with the laws of New Zealand.
- 1.1.14 Any provision in this Lease to be performed by two or more persons shall bind those persons jointly and severally.
- 1.1.15 Any reference in this Lease to "month" or "monthly" shall mean respectively calendar month and calendar monthly.
- 1.1.16 "Authority" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and any Lessee's Improvements.
- 1.1.17 "business days" means any day other than a Saturday or Sunday or statutory or anniversary holiday.
- 1.1.18 "Date of Commencement" means the date specified in Item 5 of the Reference Schedule.
- 1.1.19 "Lessee's Improvements" means all improvements excluding Lessor's Improvements whether constructed or installed on the Land before or at any time during the term of this Lease (including any renewal or variation extending the term of this Lease), including any building, structure or other improvements on or fixed to the Land and any concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, signage, fixtures and fittings.
- 1.1.20 "The Land" means that land described in the Schedule of Land excluding the Lessee's Improvements.
- 1.1.21 The expression "Lessor" and "Lessee" includes their respective successors and assigns (if permitted in the case of the Lessee under clause 13) and where the context permits the Lessee includes the Lessee's Sublessees and other lawful occupiers of the Land and the Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessee).
- 1.1.22 "Lessor's Improvements" means work done or material used on or for the benefit of the Land (whether before or during the term of this Lease including any renewal or variation extending the term of this Lease) in:
- (a) the draining, excavation, filling, or reclamation of the Land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling or reclamation; or
  - (b) the grading or levelling of the Land or the removal of rocks, stone, sand, or soil therefrom; or
  - (c) the removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
  - (d) the alteration of soil fertility or of the structure of the soil; or

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(e) the arresting or elimination of erosion or flooding.

1.1.23 "Reference Schedule" means the schedule preceding this Schedule of Terms described as such and forming part of this Lease.

1.1.24 "Regional Plan" and "District Plan" shall have ascribed to them the definitions set out in section 2 of the Resource Management Act 1991 and "Regional and District Plans" shall be construed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.

1.1.25 "Schedule of Land" means the schedule described as such and forming part of this Lease.

1.1.26 "Schedule of Terms" means this schedule described as such and forming part of this Lease.

**2 TERM**

2.1 The term of this Lease shall commence on the Date of Commencement and shall be for the period specified in Item 4 of the Reference Schedule.

2.2 Notwithstanding anything to the contrary herein contained or implied it is agreed that the Lessee may at any time in its sole discretion and without being required to give any reason, terminate this Lease early by providing to the Lessor not less than twelve (12) months' notice in writing to that effect PROVIDED THAT:

(a) No such notice may be given so as to effect termination of this Lease within the first five (5) years of the initial term or the first two (2) years of any renewed term of this Lease.

(b) The parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have occurred up to the date of termination.



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**10.3: LEASE WITH NEW ZEALAND POLICE**

**3 RIGHT OF RENEWAL OF LEASE**

- 3.1 If the Lessee has not been in any material breach of this Lease and has given to the Lessor written notice to renew this Lease at least three (3) calendar months before the end of each term then the Lessee shall have the right to obtain in accordance with the provisions hereinafter contained a renewed lease of the Land for the term of years specified in Item 6 of the Reference Schedule computed from the relevant date specified in Item 7 of the Reference Schedule and subject to the same covenants and provisions expressed and implied in this Lease.
- 3.2 If the Lessee fails within the time aforesaid to give any notice under clause 3.1 as to whether it desires a renewed lease and the Lessor at any time after such expired time has given one month's written notice to the Lessee advising the Lessee that it has one further month from the date of such letter to exercise its right of renewal, and the Lessee still fails to advise the Lessor of its desire to renew, then the Lessee shall be deemed to have given notice that a renewed lease is not required. If the Lessee gives notice in writing that it does not desire a renewed lease or there is a deemed notice that a renewal is not required then its right for a renewed lease shall cease on expiry of the one month notice period aforesaid or on the date at which notice is received by the Lessor (as the case may be).
- 3.3 Any notice by the Lessee under clause 3.1 or clause 3.2 of its desire to accept a renewed lease shall be deemed to constitute a contract between the Lessor and the Lessee for the granting and acceptance of a renewed lease at the rent to be determined under clause 5 for the term and subject to the covenants and provisions referred to in clause 3.1.
- 3.4 The term of any renewed lease shall run from the day immediately after the expiry of the prior lease, and the rent thereunder shall accrue from that date instead of the rent reserved in the prior lease, notwithstanding the fact that the renewed lease may not be executed until after that date. Clause 5.11 shall otherwise apply.
- 3.5 The Lessor shall prepare each memorandum of renewal of this Lease and the Lessee will forthwith enter into and execute such memorandum of renewal of lease.

**4 RENT**

- 4.1 The Lessee shall pay the annual rent specified in Item 8 of the Reference Schedule from the Date of Commencement until the rent is varied under clause 5 at which time the Lessee will pay rent at the varied rate.
- 4.2 Rent shall be paid on the first day of each month by equal monthly payments in advance with broken period payments due on a proportionate basis for any broken period at the Date of Commencement and on expiry of the Lease term.
- 4.3 All rent shall be paid without any deduction or set-off whatsoever by direct automatic bank payment to the Lessor or as the Lessor may otherwise direct.

**5 RENT REVIEW PROVISIONS**

- 5.1 In this clause "Initiating Party" means the party that gives the Notice defined in clause 5.2 and "Recipient" means the party that receives that Notice.
- 5.2 The annual rent may be reviewed by the Lessor or by the Lessee on the dates



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specified in Item 9 of the Reference Schedule. At any time not earlier than three (3) months prior to the relevant date specified in Item 9 of the Reference Schedule (each of such dates being called the "review date") but no later than six (6) months after the review date (time being of the essence), either party may give notice in writing to the other ("the Notice") of that party's assessment of the annual rent of the Land to apply from that particular review date.

- 5.3 The annual rent of the Land shall be assessed on the basis of current market rental of the Land as determined as at the review date. In determining the annual rent of the Land the valuers and any umpire shall, in addition to other relevant factors:

5.3.1 Disregard:

- (a) any deleterious condition of the Land if such condition results from any breach of this lease by the Lessee;
- (b) the value of any goodwill attributable to the Lessee's business; and
- (c) all Lessee's Improvements made to the Land.

5.3.2 Have regard to:

- (a) the Lessor's Improvements; and
- (b) the permitted use under this Lease; and
- (c) Regional and District Plans.

- 5.4 In the event that the Recipient does not agree with the Initiating Party's assessment of the annual rent of the Land to apply from the particular review date, the Recipient shall notify the Initiating Party in writing ("the Counter Notice") within twenty-one (21) business days (in which respect time shall be of the essence) that the Recipient requires such rent to be determined in accordance with clause 5.7 and the Recipient shall set out in the Counter Notice the amount which the Recipient considers to be the annual rent as at the particular review date.

- 5.5 Unless such notice is given by the Recipient within twenty-one (21) business days, then the amount stated in the Notice shall become the annual rent of the Land reserved by this Lease as and from the particular review date in substitution of the previous amount payable.

- 5.6 For the avoidance of doubt failure to give the Notice in accordance with clause 5.2 above shall result in either party forfeiting its right to have the annual rent reviewed as from that particular review date and neither party shall have a claim against the other.

- 5.7 Where the Counter Notice is given, the Lessor and Lessee shall enter into negotiations to resolve the dispute. Should agreement not be reached within fourteen (14) business days (or such longer period as the Lessor and Lessee shall agree upon in writing) after the date on which the Recipient gives the Counter Notice then:

- 5.7.1 the Lessor and Lessee shall, within twenty-one (21) business days after the date on which the Recipient gives the Counter Notice, each appoint a



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valuer to jointly determine the ground rent of the Land. A valuer nominated by either party pursuant to this clause shall be a full registered member of the New Zealand Institute of Valuers and shall be competent to practice as a valuer of ground leases and shall have at least five (5) years' experience in valuing ground leases within the district in which the Land is situated and be active in the market at the time of his or her appointment.

- 5.7.2 if either the Lessor or the Lessee fails to appoint a valuer within twenty-one (21) business days as aforesaid, then the determination of the annual rent shall be made by the sole valuer as nominated by either the Lessor or Lessee as the case may be, within one (1) month of the expiry of the twenty-one (21) business days as aforesaid and his or her determination shall be final and binding on both parties as if his or her appointment had been by consent.
- 5.7.3 before proceeding with their determination, the said valuers shall agree upon and appoint an umpire (also qualified in the manner referred to in clause 5.7.1) and obtain the umpire's acceptance in writing of his or her appointment and who, as a condition of his or her acceptance, undertakes to hand down his or her determination of the annual rent within one month of being instructed to proceed or such other time period as the Lessor and Lessee may agree, whichever is the latest.
- 5.7.4 if the said valuers within fourteen (14) business days of the date of their appointment either fail to appoint an umpire or are unable to agree upon an umpire, then either the Lessor or the Lessee may request the President, for the time being, of the New Zealand Institute of Valuers or any successor to such Institute to appoint an umpire (also qualified in the manner aforesaid) and obtain the umpire's acceptance in writing of his or her appointment and who as a condition of his or her acceptance undertakes to hand down his or her determination of the annual rent in the same manner as if he or she had been appointed pursuant to clause 5.7.1.
- 5.7.5 subject to clauses 5.7.2, 5.7.3 and 5.7.4 the valuers so nominated shall within one (1) month of the date of appointment jointly determine the annual rent as at that particular review date.
- 5.7.6 in the event that either valuer fails to provide to the other valuer his or her written assessment of the annual rent within one month of the date of appointment, then the annual rent shall be determined by the other valuer and his or her determination shall be final and binding on both parties.
- 5.7.7 if the said valuers are unable to agree upon a determination within one month of their appointment or within such extended time as the Lessor and Lessee may agree, then the annual rent shall be determined by the umpire whose determination shall be final and binding on the parties. The umpire shall without limiting his or her enquiries and conduct of any hearing:
- (a) have due regard to any evidence submitted by the valuers as to their assessment of the annual rent;
  - (b) take into account any expert witness evidence considered relevant to the hearing;



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- (c) have regard to the legal rules of evidence and the interests of natural justice in the conduct of any hearing as between the parties;
  - (d) give in his or her determination the reasons therefor in writing.
- 5.7.8 the costs incurred in the determination pursuant to clause 5.7 of the annual rent shall be borne by the parties in the following manner:
  - (a) subject to clause 5.7.8(b) each party shall be responsible for the cost of its own appointed valuer;
  - (b) where the determination is made by a single valuer pursuant to clause 5.7.2 the cost of his or her determination shall be apportioned equally as between the Lessor and Lessee;
  - (c) the parties shall share equally the costs of the umpire unless any party has acted capriciously or unreasonably in any of the proceedings pursuant to the provisions of this clause 5.7 in which case the umpire may determine the manner in which such costs shall be apportioned between the parties PROVIDED THAT in all cases if the annual rent to apply from the review date is:
    - (1) equal to or exceeding the annual rent nominated in the notice given by the Lessor (whether the Notice or the Counter Notice) then all costs of the valuers and the umpire (where applicable) shall be borne by the Lessee alone; or
    - (2) equal to or less than the annual rent nominated in the notice given by the Lessee (whether the Notice or the Counter Notice) then all costs of valuers and the umpire (where applicable) will be borne by the Lessor alone;
    - (3) other than the foregoing then all costs of valuers and the umpire (where applicable) will be borne equally by the Lessor and the Lessee.
- 5.8 The valuers or umpire shall be deemed to be acting as experts and not as arbitrators.
- 5.9 Despite any provision in this clause 5, the annual rent agreed, determined or imposed pursuant to this clause 5 shall be the annual rent payable as from the relevant rent review date.
- 5.10 Where a review pursuant to this clause 5 of the annual rent reserved by this Lease is completed after the review date, then:
  - 5.10.1 pending completion of the review, annual rent shall be paid at the rate prevailing immediately prior to the relevant review date; and
  - 5.10.2 on completion of the review, any increased annual rent payable as from the review date, or the date of service of the Notice if such notice is served later than 12 months after the relevant rent review date, shall be paid by the Lessee to the Lessor no later than the date on which the next instalment of annual rent is payable hereunder; and



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- 5.10.3 on completion of the review, any overpayment of annual rent paid as from the review date, or the date of service of the Notice if such notice is served later than 12 months after the relevant rent review date, shall be held by the Lessor to the Lessee's credit on account of annual rent next falling due for payment unless the Lessee requests the Lessor in writing to refund such payment in which case the Lessor will comply with that request.
- 5.11 If any moratorium or other law Act or regulation that applies to this Lease has the effect of postponing any periodic review of annual rent as at the review date then if and whenever such moratorium is lifted or the law, Act or regulation is repealed or amended so as to permit the annual rent to be reviewed then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, Act or regulation is repealed or amended to the intent that the rent review shall establish the annual rent as at such date and not as at the postponed review date but any subsequent rent review shall take place on the next following review date fixed in accordance with clause 5.
- 5.12 Immediately upon the parties agreeing to pay a revised annual rent or on determination under clause 5.7 the Lessee shall enter into an appropriate registrable Memorandum of Variation of Lease recording such revised annual rent prepared by the Lessor.

**6 CHARGES**

- 6.1 The Lessee will pay all charges incurred by the Lessee for electricity, gas, water or power or other services in respect of the Land and Lessee's Improvements including all connection, disconnection, or other fees payable by the Lessee or the Lessor to other authorities in respect of such services.

**7 PAYMENT OF RATES AND IMPOSITIONS**

- 7.1 The Lessee will pay all rates, taxes (including without limitation land or improvements tax but excluding any income tax or capital gains tax or such similar tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land), charges, assessments, impositions and outgoings whatsoever which now are or which during the term or any renewed lease shall be taxed, rated, charged, assessed or imposed on the Land, any Lessee's Improvements or on the Lessor or Lessee in respect thereof by any Authority.
- 7.2 In accordance with section 11(1)(b) of the Local Government (Rating) Act 2002 the Lessee will be entered in the rating information database and the district valuation roll (as these terms are defined in the Local Government (Rating) Act 2002) as the ratepayer in respect of the Land.

**8 GOODS AND SERVICES TAX**

- 8.1 The Lessee shall pay to the Lessor upon demand any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefor including all amendments and any enactments in substitution therefor or in addition thereto or otherwise in respect of any payments made by the Lessee under this Lease (including the payment of annual rent) or paid by the Lessor on behalf of the



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Lessee's obligation to make such payment under this Lease.

**9 INTEREST ON OVERDUE RENT OR OTHER MONEYS**

- 9.1 Without prejudice to other rights powers and remedies of the Lessor, if any annual rent, goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for fifteen (15) business days after the due day for payment thereof (whether any formal or legal demand therefor shall have been made or not) such unpaid moneys shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such moneys at a rate being 1 % above the average 90 day bank bill buy rate (described as the BID rate) at 10.45am on the date the payment was due as shown on page BKBM (or its successor page) on the Reuters screen or at a rate based on any successor screen or if there is none at a rate equal to the bank overdraft rate of the Lessor's bank at the time of any default and the said interest shall be recoverable in the same manner as rent in arrears.

**10 USE OF THE LAND AND LESSEE'S IMPROVEMENTS**

- 10.1 The Lessee shall be permitted the right to carry on the business specified in Item 10 of the Reference Schedule.
- 10.2 Should any of the uses of the Land and any Lessee's Improvements be permissible only with the consent or licence of any Authority under or in pursuance of statute or any Regional and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or licence at the sole cost and expense of the Lessee including but not limited to any costs of financial contributions required and the Lessee shall at all times comply with any conditions of such consent, order or authority obtained. Where required, the Lessor shall promptly provide any consent necessary to enable the Lessee to obtain such consent or licence from any Authority.
- 10.3 Where the Lessee is lawfully obliged to obtain any licence, resource consent (including any land use consent or discharge permit) or other consents from any Authority such as required under section 348 of the Local Government Act 1974, the Lessor agrees that it and any officer, or employee or agent of the Lessor shall not raise any objection or requisition relating thereto as landowner of the Land where the Lessee is using the Land for any permitted use under this Lease and is not in any material breach or likely to be in any material breach at any time in the future of any terms and conditions of this Lease.
- 10.4 Despite any other provision in this Lease, if at any time during the term of this Lease, the Land cannot be, or can no longer be lawfully used for Police purposes, the Lessee may terminate this Lease on giving reasonable notice to the Lessor.

**11 NO FENCING**

- 11.1 Subject to obligations under the Fencing Act 1978, the Lessor shall be under no liability to contribute towards the cost of erection or repair of any boundary fences between the Land and any adjacent land and nothing herein contained shall be deemed to limit any liability imposed by statute upon any present or future lessee of the Lessor of any adjoining land.

**12 STATUTORY REQUIREMENTS**



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**10.3: LEASE WITH NEW ZEALAND POLICE**

- 12.1 The Lessee must comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and Lessee's Improvements or which relate to the Lessee's use of the Land and Lessee's Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:
- 12.1.1 ensure that a building warrant of fitness is obtained each year in respect of any Lessee's Improvements if required under the Building Act 2004;
  - 12.1.2 comply with and observe at all times the terms and conditions of all resource consents held in respect of the use of the Land and the requirements imposed and otherwise arising under the Resource Management Act 1991; and
  - 12.1.3 ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety at Work Act 2015.
- 12.2 The Lessee shall not, during the term of this Lease:
- 12.2.1 make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors;
  - 12.2.2 suffer insolvency, bankruptcy or liquidation;
  - 12.2.3 suffer distress or allow execution to issue against the Lessee's property, goods or effects under any judgment against the Lessee in any Court in a sum in excess of twenty five thousand dollars (\$25,000.00) provided however that this subclause 12.2.3 shall have no application or effect whilst Her Majesty the Queen Acting By and Through the Commissioner of Police is the Lessee hereunder.

**13 ASSIGNMENT AND SUBLETTING**

- 13.1 The Lessee will not without the previous consent in writing of the Lessor assign, transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without good cause having regard to the solvency or respectability of the proposed assignee, transferee or sublessee.
- 13.2 Notwithstanding clause 13.1, where the Crown (as that term is defined in section 7 (1) of the Crown Entities Act 2004) remains as the Lessee under this Lease and in occupation of the Land no such consent shall be required from the Lessor except that on each occasion that a different Crown entity (as defined in section 2 of the Public Finance Act 1989) or any other Crown body or State Owned Enterprise assumes the role and obligations of the Lessee under this Lease, the Lessee shall notify the Lessor in writing of that change.
- 13.3 In the case of an assignment where the proposed assignee or transferee is a company not listed by the New Zealand Stock Exchange the Lessor may require the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lease such guarantee to be in a form acceptable to the Lessor.



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**10.3: LEASE WITH NEW ZEALAND POLICE**

- 13.4 This section 13 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- 13.5 For the purpose of this section 13, any proposed change in the shareholding of the Lessee or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clause 13.6.
- 13.6 For the purposes of clause 13.1, a proposed change in the effective control of any Lessee that is a Crown entity as that term is defined in section 7 (1) of the Crown Entities Act 2004 or a State Owned Enterprise shall be a proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control on the ability of the Lessee to continue to meet its obligations under the Lease including contingent liabilities. For the purposes of this clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.
- 13.7 Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, in a form prepared by the Lessor at the Lessee's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.
- 13.8 Where the Lessor consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any Sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- 13.9 Notwithstanding any rule of law to the contrary it is specifically agreed that in the event of an assignment or transfer of this Lease by Her Majesty the Queen ("the Crown"), the liability of the Crown shall cease and determine immediately as from the date of assignment or transfer, but without releasing the Crown in respect of any liability arising in relation to any antecedent breach of the provisions of the Lease before the date of assignment or transfer;
- 13.10 Where the Assignee is a party which is not a Crown entity, the Lessee will at the Lessee's own expense procure the execution by the Assignee of a variation of this Lease whereby the Lease will cease to be perpetually renewable and the number of further terms will be reduced to four (4) terms of five (5) years each so that the Lease will have a final expiry date if all rights of renewal are exercised at the date of expiration of a period of twenty (20) years following the expiration of the term of the Lease during which the assignment is effected.

**14 LESSEE'S ACKNOWLEDGEMENT OF RISK**

- 14.1 The Lessee agrees to occupy and use the Land and any Lessee's Improvements at the Lessee's risk and release to the full extent permitted by law the Lessor its



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employees and agents from all claims and demands of any kind and from all liability which in the absence of any negligence on its or their part may arise in respect of any accident damage or injury occurring to any person or property in or about the Land and any Lessee's Improvements thereon except where the Lessor or any person under the control of the Lessor is at fault or negligent through their own acts or omissions.

**15 QUIET ENJOYMENT/REPUDIATION**

- 15.1 Provided the Lessee performs and observes the covenants, provisions, conditions and agreements contained in this Lease the Lessee shall peaceably hold and enjoy the Land and Lessee's Improvements thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.
- 15.2 The Lessor is to compensate the Lessee and the Lessee shall be entitled to recover any damages for any loss or damage suffered by reason of any acts or omissions of the Lessor constituting a repudiation of the Lease or the Lessor's obligations under the Lease. Such entitlement shall subsist notwithstanding any cancellation or early termination of the Lease and shall be in addition to any other right or remedy which the Lessee may have.

**16 REGISTRATION**

- 16.1 The Lessor shall register this Lease under the provisions of the Land Transfer Act 2017.
- 16.2 The Lessee will be responsible for survey and other costs incurred in obtaining registration of this Lease.

**17 LESSEE'S IMPROVEMENTS DURING LEASE**

- 17.1 Throughout the term of this Lease and on any renewal any Lessee's Improvements installed or erected on the Land shall be deemed to remain in the ownership of the Lessee unless the Lessor and the Lessee otherwise agree in writing.
- 17.2 Throughout the term of this Lease and on any renewal the Lessee shall have the right to alter, construct and demolish any Lessee's Improvements on the Land without the need to obtain the Lessor's consent providing all obligations required of the Lessee under this Lease relevant to Lessee's Improvements on the Land are satisfied.
- 17.3 Throughout the term of this Lease and on any renewal the Lessee shall have full exclusive and absolute operational control over all Lessee's Improvements on the Land including, but not limited to, the right to vacate all such Lessee's Improvements and leave them vacant at any time during the then current term of the Lease.

**18 LESSEE'S IMPROVEMENTS ON TERMINATION OF LEASE**

- 18.1 No later than twelve (12) months prior to the expiry of any term of Lease the Lessee may give notice ("the Lessee's Transfer Notice") to the Lessor specifying any Lessee's Improvements which the Lessee wishes to transfer to the Lessor following expiry of the Lease or renewal. The Lessee's Transfer Notice shall contain details



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of those Lessee's Improvements, their current market value and the proposed terms of transfer of the Lessee's Improvements.

- 18.2 The Lessor agrees to consult with the Lessee regarding the Lessee's Improvements specified in the Lessee's Transfer Notice, and to consider any proposal to transfer such Lessee's Improvements. Nevertheless, the Lessee acknowledges that nothing in this clause or in the Lessee's Transfer Notice shall oblige the Lessor to take a transfer of, or to pay any compensation or consideration for, such Lessee's Improvements.
- 18.3 If no agreement is reached regarding the transfer of Lessee's Improvements pursuant to this clause (before six months prior to the expiry of the Lease, or before the earlier termination of the Lease), the following provisions of this clause 18 shall apply.
- 18.4 On termination of this Lease (whether by expiry of time or otherwise) except where the Lessee has exercised any rights of renewal, the Lessee may, but shall not be required by the Lessor to, remove any Lessee's Improvements specified in a written notice ("the Lessee's Removal Notice") given to the Lessor in accordance with clause 18.5.
- 18.5 The Lessee may, but shall not be required by the Lessor to, remove Lessee's Improvements that are clearly identified in the Lessee's Removal Notice which must be given no later than three (3) months prior to the expiry of the term (time being of the essence) or one (1) month after any sooner termination.
- 18.6 The Lessee must remove all Lessee's Improvements specified in the Lessee's Removal Notice within six (6) months from the date of termination (time being of the essence) and must ensure within that time that all services to any Lessee's Improvements are properly and lawfully disconnected, the Land under any Lessee's Improvements is adequately filled with soil so that the surface of the Land is stable and restored to the Lessor's reasonable satisfaction and such Land is otherwise grassed and left in a neat and tidy condition.
- 18.7 If the Lessee fails to remove any Lessee's Improvements specified in the Lessee's Removal Notice in accordance with clause 18.6 then the Lessor may remove them and all costs and expenses incurred directly and indirectly shall be recoverable against the Lessee.
- 18.8 Any Lessee's Improvements remaining on the Land after the period referred to in clause 18.6 shall become the property of the Lessor without any compensation or other payment whatsoever to the Lessee.
- 18.9 The Lessee must continue to pay rent and outgoings under this Lease and comply with all other obligations under this Lease until it has met its obligations under clause 18.6.
- 18.10 Whenever resource consent is required to remove or demolish any Lessee's Improvements the Lessee shall use all reasonable endeavours to obtain all necessary consents and shall continue to be obliged to pay rent and outgoings under this Lease until such time that the Lessor is satisfied on reasonable grounds that the Lessee has used all reasonable endeavours to obtain all necessary consents and produced to the Lessor evidence reasonably satisfactory to the Lessor to satisfy this requirement.



10.3: LEASE WITH NEW ZEALAND POLICE

19 DESTRUCTION AND REDEVELOPMENT

19.1 The Lessee shall be entitled to carry out repairs, demolition, relocation, additions, reinstatement or redevelopment to any Lessee's Improvements on the Land in the event of total or partial destruction or in the event of the Lessee wishing to demolish, relocate, redevelop, replace or add to any Lessee's Improvements on the Land provided the following conditions are or will be satisfied:

19.1.1 any repair, demolition, relocation, addition, reinstatement or redevelopment shall comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and

19.1.2 the Lessee is able to obtain all resource and building consents necessary to carry out any works programme;

and upon satisfaction of such conditions to the Lessee's satisfaction the Lessee shall repair, demolish, relocate, reinstate, rebuild or add to (as the case may be) any Lessee's Improvements or such part of Lessee's Improvements requiring such work in accordance with the conditions set out above.

19.2 In the event that the Lessee is prevented or unable to reinstate or rebuild in the event of total or partial destruction it may forthwith terminate this Lease provided that the Lessee demolishes the Lessee's Improvements and clears and restores the Land all in accordance with the requirements of clause 18.6.

20 NOTICES

20.1 All notices must be in writing and must be served by one of the following means:

20.1.1 in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and

20.2.2 in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:

(a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or

(b) by personal delivery, or by posting by registered or ordinary mail, or by email.

20.2 All notices to be given to the Lessor or to the Lessee hereunder shall be deemed sufficiently served:

20.2.1 in the case of personal delivery, when received by the addressee at the address detailed in clause 20.3; and

20.2.2 in the case of posting by registered mail, on the third business day following the date of posting to the addressee at the address detailed in clause 20.3; and

20.2.3 in the case of email, when acknowledged by the addressee by return email or otherwise in writing except that return emails generated

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**10.3: LEASE WITH NEW ZEALAND POLICE**

automatically shall not constitute an acknowledgement under this Lease.

**20.3 Details for Notices:**

Manager Property New Zealand Police		
Police	National	Headquarters
PO Box 3017		
Wellington		

- 20.4 A notice shall be valid if given by the duly authorised representative of the party giving the notice. If a notice is not given by the Lessor, it is to be supported by satisfactorily written delegation from the Lessor confirming the appointment of the party giving the notice.

**21 DEFAULT BY LESSEE**

- 21.1 The Lessor may (in addition to the Lessor's right to apply to the Court for an order for possession) cancel this Lease by re-entering the land at the time or any time thereafter:

21.1.1 If the rent shall be in arrear twenty (20) business days after any of the rent payment dates and the Lessee has failed to remedy that breach within ten (10) business days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;

21.1.2 In case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with Section 246 of the Property Law Act 2007;

and the term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

- 21.2 In the event that the Lease is terminated by the Lessor in accordance with clause 21.1, the Lessee's obligations under clause 18 with respect to Lessee's Improvements must be satisfied.

**22 DISPUTE RESOLUTION**

- 22.1 Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.

- 22.2 If the parties cannot resolve a dispute or difference within fifteen (15) business days of any dispute or difference arising then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).



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- 22.3 If the parties cannot agree on any dispute resolution technique within a further fifteen (15) business days of any dispute or difference being considered for referral by both parties to any informal dispute resolution technique under clause 22.2 then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 or any successor Act.
- 22.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

**23 COSTS**

- 23.1 The parties shall each pay their own solicitors' costs of preparing and finalising this Lease or any renewal or variation of this Lease.
- 23.2 The Lessee shall be responsible for payment of all registration fees imposed and all government tax duty or imposts at any time payable on this Lease or any renewal or variation to this Lease.
- 23.3 The Lessee shall pay all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observation of any of the terms, covenants and conditions of this Lease.

**24 LESSOR'S RIGHTS TO INSPECT AND DISPLAY SIGNS**

- 24.1 The Lessor will have the right to inspect the Land no more than twice each year during the term or any renewal of this Lease with valuers or other experts and consultants provided such inspections are carried out at times reasonably acceptable to the Lessee on reasonable notice to the Lessee and only when accompanied by a servant or agent of the Lessee. Any such inspections should be carried out in accordance with the Lessee's security and health and safety requirements and the Lessee shall have the right to change any suggested time to a convenient time.
- 24.2 Notwithstanding anything else herein, the parties agree that the Lessee may require any person wishing to enter the Land for inspection purposes to first provide their details to the Lessee for a security check. If the results of such check are not acceptable to the Lessee for any reason then such person may be refused entry to the Land.
- 24.3 If the Lessor desires to, or is required to, undertake any works on the Land, including any repair or maintenance works, that involves the use of contractors or other third parties, the Lessor must procure any contractor or other third party who will have access to the Land to undertake such works to:
- 24.3.1 complete a security check on terms reasonably acceptable to the Lessee;
- 24.3.2 provide the Lessee with a copy of the contractor's Health and Safety Plan which shall be subject to the Lessee's reasonable approval prior to any

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**10.3: LEASE WITH NEW ZEALAND POLICE**

work commencing; and

- 24.3.3 familiarise themselves with and commit to complying with the Lessee's own Health and Safety Plan in all material respects.
- 24.4 The Lessor will not provide or allow the provision of any information relating to the structure, or access to, the Land or the buildings on the Land in any way to any person without first obtaining the written permission of the Lessee.
- 24.5 The Lessee will during the period of three (3) months prior to the termination date of this Lease permit the Lessor to exhibit the Land to prospective lessees or purchasers and allow the Lessor to affix to the Land appropriate sale or reletting notices.

**25 DISPOSAL OF LESSOR'S INTEREST**

- 25.1 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and the consent of the Lessee shall not be required except in such circumstances where a different fully owned subsidiary of the Lessor assumes the role and obligations of the Lessor under this Lease, the Lessor shall then be required to notify the Lessee in writing of that change.
- 25.2 Subject to the provisions of this clause the Lessor may at any time dispose of the Lessor's interest in the Land to a body which is not a fully owned subsidiary of the Lessor provided that:
- 25.2.1 any such disposal shall preserve to the Lessee all the Lessee's rights and remedies under this Lease; and
- 25.2.2 the Lessee shall have the right of first refusal to purchase the Land provided the Lessor and Lessee can agree within thirty (30 business days the terms and conditions of such a purchase; and
- 25.2.3 for so long as the Lessee is the Crown (as that term is defined in section 2 of the Public Finance Act 1989) or a Crown entity (as that term is defined in section 7(1) of the Crown Entities Act 2004) the following further provisions shall apply:
- (1) The Lessor shall advise the Lessee in writing of the person or corporation to whom the Lessor intends to dispose of its interest in the Land (proposed Assignee).
- (2) If the Lessee has any objection to the proposed Assignee because the Lessee reasonably apprehends in good faith that either:
- (a) The proposed Assignee presents an actual or potential threat to the discharge by the Lessee of the Lessee's statutory obligations; or
- (b) The role or function of the Lessee will be prejudiced by the proposed Assignee becoming the Lessor;

then the Lessee shall within fifteen (15) business days of receiving the

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**10.3: LEASE WITH NEW ZEALAND POLICE**

Lessor's advice pursuant to clause 25.2.2(1) above, notify the Lessor in writing of its objection to the proposed Assignee and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

- (3) If the Lessor does not receive written notice from the Lessee pursuant to clause 25.2.2(2)(a) or 25.2.2(2)(b) above together with grounds to substantiate its reasonable apprehension within fifteen (15) business days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.
- (4) If the Lessee objects to the proposed Assignee in accordance with clause 25.2.2(2)(a) or 25.2.2(2)(b) above, then the Lessor shall not dispose of its interest to the proposed Assignee.
- (5) If the Lessor fails to advise the Lessee in writing of the disposal of its interest in the Land and the Lessee has objections to the proposed Assignee based on those reasons set out in clauses 25.2.2(2)(a) or 25.2.2(2)(b) above, then the Lessee shall be entitled at any time thereafter to terminate this Lease on seven (7) business days written notice and the Lessee's obligations under this Lease shall cease from the expiration of such notice.

**26 HOLDING OVER**

If the Lessor permits the Lessee to remain in occupation of the Land after the expiration or sooner determination of this Lease, such occupation shall be a tenancy at will only terminable by twenty (20) business days written notice at the rent then payable per month for the Land and otherwise on the same covenants and agreements (so far as applicable to a tenancy at will) as herein expressed or implied.

**27 EXCLUSION OF IMPLIED PROVISIONS**

Clause 11 of Schedule 3 of the Property Law Act 2007 is expressly excluded from application to this Lease.

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10.3: LEASE WITH NEW ZEALAND POLICE

**SCHEDULE OF LAND**

[ ] hectares, more or less, being [ ] record of title [ ].



### 10.3: LEASE WITH NEW ZEALAND POLICE

Correct for the purposes of the Land Transfer Act 2017

**HER MAJESTY THE QUEEN**  
acting by and through the  
**COMMISSIONER OF POLICE**  
Lessee

District Land Registrar of the [ ]  
Land Registry

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**11. AGREEMENTS TO LEASE AND LEASES IN RELATION TO  
SPECIFIED CULTURAL REDRESS SITES**

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11.1 AGREEMENT TO LEASE FOR PAKIHI SITE 1

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# Agreement to Lease

## Ground Lease

364 Pakihi Road, Toatoa, Opotiki  
Pakihi Conservation Area A  
Pakihi

[Whakatōhea PSGE]

(Lessor)

[Insert Full Names of all Trustees]  
as trustees of the Stewart Everitt Trust

(Lessee)

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**Morrison Kent** |  
Lawyers

Morrison Kent  
Lawyers  
Wellington and Rotorua  
Individual Acting: Matthew Whimp

Telephone: (04) 472-0020  
Facsimile: (04) 472-7017  
Office: Level 19,  
105 The Terrace, Wellington  
DX: SP20203  
PO Box: 10-035, Wellington 6143

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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

**11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1**

**Agreement to Lease**

**Agreement** dated the \_\_\_\_\_ day of \_\_\_\_\_ 2021

**Parties**

1. **[Whakatōhea PSGE]** ("Lessor")
2. **[Insert Full Names of all Trustees]** as trustees of the Stewart Everitt Trust ("Lessee")

**Background**

- A. The Lessor will become the registered owner of Land pursuant to the relevant Treaty Settlement legislation.
- B. The Lessee is the owner of the building(s) and other improvements currently located on the Land.
- C. The Lessor has agreed to grant to the Lessee and the Lessee has agreed to take on lease the Land upon the terms and conditions contained in this Agreement.

**Agreement**

**1. Definitions and Interpretation**

**1.1 Interpretation**

In this Agreement unless the context otherwise requires:

*Agreement* means this agreement, as varied from time to time by written agreement between the Lessor and the Lessee, and includes the recitals and schedules;

*Commencement Date* means the date specified as such in the First Schedule;

*Expiry Date* means the date specified as such in the First Schedule;

*Land* means the Land described in the First Schedule;

*Lessee* means the Lessee named as a party to this Agreement, its successors and permitted assigns, and where not repugnant to the context, includes persons under the control of the Lessee;

*Lessor* means the Lessor named as a party to this Agreement, its successors and assigns, and where not repugnant to the context, includes the employees, consultants, agents, workmen and authorised representatives of the Lessor;

*Lease* means the lease in the form of the lease attached as the Second Schedule, completed in accordance with the terms of this Agreement and containing a plan identifying the Land, to be executed by the parties as provided for in clause 4.2;

*Plan* means the plan of the Land attached as the Third Schedule;

*Working Day* has the meaning given to it under the Lease.

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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1**

**1.2 Words References and Derivatives**

In this Agreement unless the context otherwise requires:

- (a) Subject to clause 1.1, and unless otherwise specified, all words and phrases throughout this Agreement will have the meanings ascribed to them as set out in the Lease.
- (b) Words importing the singular number will include the plural; the masculine gender will include the feminine; persons will include companies (and vice versa).
- (c) Any provision of this Agreement to be performed by two or more persons will bind those persons jointly and severally.
- (d) Any headings have been inserted for convenience only and will not in any way limit or govern the construction of the terms of this Agreement.
- (e) Any reference in this Agreement to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation.
- (f) Where in this Agreement a reference is made to any institute, body or authority, that reference will, if the relevant institute, body or authority has ceased to exist, be deemed a reference to that institute, body or association as then serves substantially the same objects and any reference to the president of that institute, body or authority will, in the absence of that president, be deemed to be a reference to the appropriate senior officer for the time being thereof.
- (g) All provisions contained in this Agreement will be construed so as not to be invalid, illegal or unenforceable in any respect but, if any such provision on its true interpretation is illegal, invalid or unenforceable, that provision may at the option of the Lessor be construed to whatever extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable, in all the circumstances, so as to give it a valid operation of a partial character. If that provision, or part thereof, cannot be so construed, it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired by that avoidance and severance.
- (h) References to Schedules, Sections, paragraphs and clauses are references to Schedules, Sections (of the Second Schedule), paragraphs and clauses in this Agreement, unless expressly stated otherwise.
- (i) Reference in this Agreement to "GST" means Goods and Services Tax or any tax imposed pursuant to the provisions of the Goods and Services Tax Act 1985 and known as Goods and Services Tax.
- (j) This Agreement is governed by, and will be construed in accordance with, the law of New Zealand.

**1.3 Implied Covenants**

The covenants implied by law (statutory or otherwise) are not negated but will be deemed to have been modified (where so permitted) to the extent of any inconsistency with the provisions of this Agreement.

  
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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1**

**2. Agreement to Lease, Term and Payments**

**2.1 Agreement to Lease**

The Lessor agrees to lease and the Lessee agrees to take on lease the Land upon the terms and conditions specified in the First Schedule, and otherwise contained in this Agreement and in the Lease.

**2.2 Commencement of Lease**

The term of the Lease will commence on the Commencement Date and expire on the Expiry Date.

**2.3 Payments**

As from the Commencement Date the Lessee will pay the rent, the outgoings specified in the Lease and any other payments payable by the Lessee under the Lease, without any deduction or set off, in the manner provided for in the Lease.

**2.4 Goods and Services Tax**

The Lessee will pay the Goods and Services Tax payable by the Lessor in respect of the rent, outgoings and other payments payable by the Lessee under the Lease in the manner provided for in the Lease.

**3 Lease**

**3.1 Completion of Lease**

The Lease will be completed by the insertion of the details set out in this Agreement and in the First Schedule to this Agreement and, where applicable, modified as provided for in this Agreement.

**3.2 Execution of Lease by Lessee**

The Lease will be prepared by the Lessor and submitted to the Lessee in duplicate as soon as possible after this Agreement is fully executed and all information required for the completion of the Lease is available. The Lease, in duplicate, must be executed by the Lessee and submitted to the Lessor for execution within 10 Working Days of the Lessee receiving the Lease from the Lessor. The Lessor will execute the Lease promptly and return to the Lessee the Lessee's duplicate copy of the Lease.

**3.3 Obligations pending execution of lease**

Until such time as the Lease is executed by all parties the respective obligations of the Lessor and the Lessee will be as set out in the form of the Lease, modified as necessary by the provisions of this Agreement.

**4. Annual Rent**

**4.1 Initial Market Rent to be Determined**

Unless otherwise agreed between the Lessor and Lessee, at least 3 months prior to the Commencement Date, the Lessor shall procure a registered valuer, appointed by the Lessor, to determine the current annual market rent for the Land. The cost of the

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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1**

valuation shall be shared equally between the Lessor and Lessee. Subject to clause 0, the annual market rent so determined shall be the annual rent payable by the Lessee under the Lease from the Commencement Date. The Lessor shall provide written notice ("the Initial Rent Notice") to the Lessee of the initial annual rent determined pursuant to this clause 0 as soon as received from the valuer. Subject to clause 0, the determination of the market rent in accordance with this clause is final and binding. The annual rent payable by the Lessee is subject to the rent review provisions in the Lease.

**4.2 Lessee May Dispute the Initial Market Rent**

Upon receiving the Initial Rent Notice, the Lessee may, within 10 Business Days of receipt, by written notice to the Lessor ("the Dispute Notice"), dispute the market rent, and the annual rent payable from the Commencement Date shall be determined in accordance with clause 5.2 of the Lease as if the Dispute Notice were a "Recipient's Notice" for the purpose of clause 5.2 of the Lease. Pending determination of the annual rent under this clause, the Lessee shall pay the rent set out in the Initial Rent Notice. Upon determination of the annual rent, clause 5.4 of the Lease shall apply.

**5. Land**

**5.1 Land Subject to Final Survey**

The parties acknowledge and agree that the area of the Land specified in the First Schedule is an estimate only and that the final area of the Land, being the subject of the Lease, shall be determined prior to the Commencement Date by way of survey undertaken by a registered surveyor in accordance with the applicable Treaty Settlement legislation.

**6. Conditions**

- 6.1 This Agreement is conditional on the Land vesting in the Lessor pursuant to Treaty of Waitangi settlement legislation.

**7. Assignment**

**7.1 No assignment by Lessee**

The rights duties and obligations of the Lessee under this Agreement may not be assigned.

**8. General Provisions**

**8.1 Costs**

Each party will pay its own costs (including solicitor's costs) of the negotiation, preparation and completion of this agreement and the Lease.

**8.2 No caveat**

The Lessee will not register a caveat against the Land in respect of its interest under this agreement or the Lease.

**8.3 No merger**

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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

**11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1**

The obligations and warranties of the parties contained in this Agreement will not merge insofar as they have not been fulfilled at the time of the execution of the Lease but will remain in full force and effect.

**8.4 No waiver**

A waiver by a party of a breach of any of the obligations of the other party under this Agreement will not prevent the subsequent enforcement of those obligations and will not be deemed a waiver of any subsequent breach.

**8.5 Notices**

Any notice produced under this Agreement will be in the form, and will be delivered and received, in the manner provided for in the Lease.

**8.6 Entire Agreement**

This Agreement constitutes the entire understanding and agreement of the parties relating to this agreement and supersedes and extinguishes all prior agreements.

**8.7 Counterparts**

This Agreement may be executed in any number of counterpart copies which taken together will be deemed to form the same document. This Agreement will be deemed to be executed by a party if that party has executed an original, a facsimile copy, a photocopy, or a PDF or other scanned copy of it.

**Execution**

**Signed by [Whakatōhea PSGE] as Lessor**  
by:

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

**Signed by [Full Name] as trustee of the  
Stewart Everitt Trust as Lessee by:**

\_\_\_\_\_  
Name of Trustee

\_\_\_\_\_  
Signature of Trustee

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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1

**Signed by [Full Name]** as trustee of the  
Stewart Everitt Trust as Lessee by:

\_\_\_\_\_  
Name of Trustee

\_\_\_\_\_  
Signature of Trustee

**Signed by [Full Name]** as trustee of the  
Stewart Everitt Trust as Lessee by:

\_\_\_\_\_  
Name of Trustee

\_\_\_\_\_  
Signature of Trustee

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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1

**First Schedule**

<b>Name and address of Lessor</b>	[Whakatōhea PSGE] [Address]
<b>Name(s) and address(es) of Lessee</b>	<b>[Full Names of all Trustees] as trustees of the Stewart Everitt Trust</b> [Address]
<b>Description of Land</b>	<i>Estate:</i> Fee Simple  <i>Description:</i>  Pakihi Conservation Area A comprising 0.20 hectares approximately, being Part Section 15 Block XIII Waiaua Survey District as indicatively shown outlined in red on the Plan (subject to Survey [and replaced by plan if in time]).
<b>Address of Land</b>	364 Pakihi Road, Toatoa, Opotiki
<b>Commencement date</b>	The date that the Land vests in the Lessor pursuant to the applicable Treaty Settlement legislation.
<b>Term:</b>	Thirty (30) years
<b>Expiry date</b>	As stipulated in the Lease.
<b>Rights of Renewal:</b>	Nil
<b>Initial annual rent:</b>	An amount determined in accordance with clause 5.
<b>Rent Reviews:</b>	As stipulated in the Lease
<b>Outgoings:</b>	As stipulated in the Lease.
<b>Business Use:</b>	As stipulated in the Lease.
<b>Default Interest Rate:</b>	Official cash rate during default period plus [ 5 ]% per annum



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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

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11.1: AGREEMENT TO LEASE FOR PAKIHI SITE 1

Second Schedule

Form of Lease

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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

Third Schedule - Land Plan



NZOD 2000 New Zealand Transverse Mercator  
Not for publication nor navigation  
Crown Copyright Reserved  
Scale at A4 = 1:1 000  
Produced by: DCM  
Date Produced: 15/12/2021  
Te Arawhiti Land Team

Pakihi Site A - lease area



Department of  
Conservation  
Te Papa Atawhai  
newzealand.govt.nz

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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

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11.2 LEASE DOCUMENT FOR PAKIHI SITE 1

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# Deed of Lease

**Ground Lease  
Pakihi Conservation Area A  
Pakihi**

**[Whakatōhea PSGE]**

(Lessor)

**[Insert Full Names of all Trustees]  
as trustees of the Stewart Everitt Trust**

(Lessee)

---

**Morrison Kent** | Lawyers

Morrison Kent  
Lawyers  
Wellington and Rotorua  
Individual Acting: Matthew Whimp

Telephone: (04) 472-0020  
Facsimile: (04) 472-7017  
Office: Level 19,  
105 The Terrace, Wellington  
DX: SP20203  
PO Box: 10-035, Wellington 6143

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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

Deed dated the \_\_\_\_\_ day of \_\_\_\_\_ 2021

**Parties**

3. **[Whakatōhea PSGE]** ("Lessor")
4. **[Insert Full Names of all Trustees]** as trustees of the Stewart Everitt Trust ("Lessee")

**Background**

5. Pursuant to the [ \_\_\_\_\_ ] Settlement Claims Act [20xx], the land vested in [ \_\_\_\_\_ ].
6. The Lessor is the registered owner of the Land.
7. The Lessee is the owner of the building(s) and other improvements currently located on the Land.
8. The Lessor and the Lessee have agreed to enter into a ground lease in respect of the land on the terms and conditions contained in this deed.

**Schedule of Land**

Computer Register Identifier	Area	Legal Description
<i>[insert details following survey]</i>	<i>[insert details following survey]</i>	<i>[the area indicatively shown outlined in red on the aerial map attached (subject to survey)]</i>
Encumbrances, Liens and Interests: <i>[insert details following survey]</i>		

**Schedule A**

<b>Term:</b>	Thirty (30) years
<b>Commencement Date:</b>	[TBD] [but will be the date the land vests in the lessor pursuant to the settlement legislation]
<b>Expiry Date:</b>	[TBD]
<b>Rights of Renewal:</b>	Nil
<b>Rent:</b>	[\$[TBD] plus GST per annum payable in accordance with clause 4.
<b>Permitted Use:</b>	Residential accommodation only and does not include any commercial letting or use
<b>Default Interest Rate:</b>	The official cash rate for the period for which default interest is payable, plus 5 percent per annum
<b>Rent Review Dates:</b>	Every three (3) years from the anniversary of the Commencement Date.
<b>Rent Payment Dates:</b>	The Commencement Date and on each anniversary of the Commencement Date in accordance with clause 4.

  
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TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS

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11.2: LEASE DOCUMENT FOR PAKIHI SITE 1

**Schedule B**

**Introduction**

**1. Definitions and Interpretation**

- 1.1 For the purposes of the interpretation or construction of this Lease, unless the context provides otherwise:

**Definitions**

- (a) *Authority* means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and/or the Improvements.
- (a) *Business Day* means any day other than a Saturday or Sunday or statutory or anniversary holiday in Opotiki.
- (b) *GST* means goods and services tax chargeable in accordance with the GST Act.
- (c) *GST Act* means the Goods and Services Tax Act 1985.
- (d) *Improvements* means any building, structure or other improvements including drains, concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, facilities, fixtures and fittings existing on the Land at the commencement of this Lease and from time to time installed by or on behalf of the Lessee on the Land during the term of this Lease.
- (e) *Land* means that land described in the Schedule of Land, together with and subject to all interests noted thereon.
- (f) *Regional and District Plans* shall have ascribed to them those definitions set out in section 2 of the Resource Management Act 1991 where there is reference to "Regional Plan" and successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- (g) *Services* means all pipes, drains, mains, wires, cables, channels, gutters, sewers, and other utilities or services.
- (h) *Sign* means any sign, advertisement, notice, advertising device or other distinctive mark erected upon, or affixed to or placed on the Land, Improvements or the exterior of the Improvements.
- (i) *Tax Invoice* has the meaning given in section 2 of the Goods and Services Tax Act 1985.

  
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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

**Interpretation**

- (j) Words importing any gender shall include all other genders.
- (k) Words importing the singular shall include the plural and vice versa.
- (l) Payments shall be made in the lawful currency of New Zealand.
- (m) Headings shall be ignored.
- (n) References to clauses and schedules are references to clauses and schedules in this Lease and references to parties are references to the parties to this Lease unless expressly stated otherwise.
- (o) Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
- (p) A *person* shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust, State or agency of a State in each case whether or not having separate legal personality.
- (q) *writing* shall include words visibly represented or reproduced.
- (r) Where approvals or consents are required in this Lease they shall not be unreasonably or arbitrarily withheld or delayed and such approvals or consents may be given with conditions which are both reasonable and relevant to the circumstances giving rise to the request to seek approval or consent and shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.
- (s) Notwithstanding that there may be no privity of contract existing between the parties to this Lease and certain named third parties in this Lease nevertheless such third parties shall have the right to enforce any provisions in this Lease which are of benefit to them with such right to enforce being acknowledged and intended in accordance with the requirements of the Contract and Commercial Law Act 2017.
- (t) The expressions *Lessor* and *Lessee* includes their respective successors and assigns and where the context permits the Lessor's or the Lessee's respective tenants and other lawful occupiers of the Land and their respective contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessor or the Lessee, as the case may be).

**2. Operative Clause**

- 2.1 The Lessor leases to the Lessee and the Lessee accepts the lease of the Land for the Term and at the rent and subject to the conditions, covenants, agreements and restrictions herein set forth in Schedule A and Schedule B.

  
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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

**3. Term**

- 3.1 The Lease shall commence on the Commencement Date and expire on the Expiry Date.

**4. Rent**

- 4.1 The Lessee shall pay the annual Rent (as varied pursuant to any rent review) in one lump sum in advance on the Rent Payment Dates. The first rental payment shall be payable on the Commencement Date. All rent shall be paid without any deduction or set-off by direct payment to the Landlord or as the Landlord may direct.

**5 Rent Review**

- 5.1 Unless otherwise agreed between the Lessor and Lessee, the annual rent payable as from each market rent review date shall be determined as follows:

- (a) Either party may not earlier than 3 months prior to a rent review date and not later than the next rent review date give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant rent review date.
- (b) If the party receiving the notice ("Recipient") gives written notice to the party giving notice ("the Initiator") within 20 Business Days after service of the Initiator's notice, disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with clause 5.2.
- (c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
- (d) Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable immediately prior to the relevant rent review date.
- (e) The annual rent agreed, determined or imposed pursuant to 5.1 shall be the annual rent payable as from the relevant rent review date or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to clauses 5.3 and 5.4.
- (f) The rent review at the option of either party may be recorded in a deed.

- 5.2 Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 Business Days then the new rent shall be determined by registered valuers acting as experts and not as arbitrators as follows:

  
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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

- (a) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 Business Days of the parties agreeing to so determine the new rent.
- (b) If the party receiving a notice fails to appoint a valuer within the 20 Business Day period, then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on the parties.
- (c) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.
- (d) The valuers appointed by the parties shall determine the current market rent of the Land but if they fail to agree then the rent shall be determined by the third expert.
- (e) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuer or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
- (f) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.
- (g) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this clause 5.1.

When the new rent has been determined the person or persons determining it shall give the written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.

5.3 Pending determination of the new rent, the Lessee shall from the relevant market rent review date, or the date of service of the Initiators notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:

- (a) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
- (b) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
- (c) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date,

But in no circumstances shall the interim rent be less than the rent payable immediately preceding the relevant rent review date.

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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

The interim rent shall be payable with effect from the relevant rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 5.4, shall not be subject to adjustment.

- 5.4 Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Lessee. Any shortfall in payment shall immediately be payable by the Lessee.
- 5.5 At each rent review, the Lessee may raise for discussion with the Lessor alternative arrangements to this lease agreement including the possibility of land exchanges. This clause does not create any obligation on either the Lessee or Lessor to agree or enter into alternative arrangements.

**6. Payment of Rates and Impositions**

- 6.1 In addition to the Rent, the Lessee will promptly pay all applicable rates, taxes (including without limitation land or improvements tax but not tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor for the Land), charges, assessments, levies, impositions and all outgoings whatsoever which now are or which during the said term shall be taxed, rated, charged, assessed, levied or imposed on the Land, the Improvements or their use, or on the Lessor or Lessee in respect thereof by authority of any Authority.
- 6.2 Where any amounts in clause 6.1 are lawfully required to be paid or collected for payment by the Lessor the Lessee agrees to pay such amounts which are liable to be paid under clause 6.1 on demand made by the Lessor without deduction or set off.

**7. Utilities and Services**

- 7.1 The Lessee will pay all charges for electricity, gas, water or power or other services in respect of the Land and Improvements.
- 7.2 If reasonably requested by the Lessor or required by the Authority, the Lessee shall install, maintain, and upgrade whenever necessary at its cost any meter or other measuring device necessary for the proper charging of any Services supplied to the Land or Improvements.

**8. Use of the Land and Improvements**

- 8.1 The Lessee shall only use the Land and the Improvements for the Permitted Use.
- 8.2 Notwithstanding any other provision contained in this Lease, if at any time during the term the Lessor is of the reasonable opinion that the Land is not being used for the Permitted Use, the Lessor may terminate this Lease by providing written notice of such termination to the Lessee.

**Statutory Requirements**

- 8.3 The Lessee shall if required by any Authority (either directly or indirectly through the Lessor) comply with all statutes, Regional and District Plans, bylaws and regulations which relate to

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**TE MĀKEOTANGA – DEED OF SETTLEMENT  
DOCUMENTS**

**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

the Land and Improvements or which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:

- (a) If applicable, comply with the Building Code as amended from time to time;
- (b) ensure that a warrant of fitness is obtained each year in respect of any Improvements if required under the Building Act 2004;
- (c) comply with and observe at all times the terms and conditions of all applicable resource consents and their conditions held in respect of the Lessee's use of the Land and Improvements and the requirements imposed and otherwise arising under the Resource Management Act 1991 including without limitation the need to obtain any permit or such other licence as may be required to occupy the Land from time to time during the Term of this Lease;
- (d) obtain, maintain and comply with all applicable permits or licences required for the Permitted Use (including without limitation all applicable permits or licences relating to sanitation and fire safety); and
- (e) ensure that, consistent with the obligation placed on the Lessee under the Health and Safety at Work Act 2015, proper and adequate health and safety procedures are adopted in accordance with such Act.

**9. Condition of the Land and the Improvements**

- 9.1 The Lessee will at all times during the Term of the Lease keep and maintain the Land in a clean and tidy condition to the reasonable satisfaction of the Lessor.
- 9.2 The Lessor and persons under its control and direction may at all reasonable times after reasonable prior written notice, enter, and if necessary remain, on the Land to examine and view that condition and state of repair and maintenance of the Land and Improvements. The Lessor may (without being under any obligation to do so) give notice to the Lessee of any maintenance and/or replacement work required to be carried out in respect of the Land and/or Improvements, and the Lessee shall within a reasonable period of time complete such maintenance and/or replacement work in a diligent and workmanlike manner.
- 9.3 If the Lessee fails to comply with the provisions of clause 9.2, the Lessor may (without being under any obligation to do so) at all reasonable times and from time to time enter the Land and/or the Improvements (as the case may be) bringing all necessary equipment, vehicles and materials, and complete all or any of the required maintenance or replacement work as the Lessor thinks fit.
- 9.4 In addition to the Lessor's other remedies, the Lessor shall be entitled to recover from the Lessee all reasonable costs of such maintenance and/or replacement work, including all reasonable fees and expenses incurred in connection with the inspection of the Land and/or Improvements and the issue of the notice.

  
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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

**10. Assignment and Subletting**

- 10.1 The Lessee will not assign, mortgage, charge, transfer, sublease or otherwise dispose of the Lessee's interests under this Lease or any part of it.

**11. Signage**

- 11.1 The Lessee shall not erect, paint, display or allow any Sign unless the Lessee first obtains the written approval of the Lessor in each case.
- 11.2 The Lessor may require that any Sign complies with any reasonable standards and policies the Lessor may from time to time set as to type, quality, materials, colour and size. If the Lessor sets such standards and policies and the Lessee erects any Sign which in the Lessor's reasonable opinion do not comply with the standards and/or policies the Lessor may require, the Lessee shall, upon receipt of written notice from the Lessor to remove the Sign, immediately remove the Sign at its cost.

**12. Protection of Environment**

- 12.1 Except as approved in writing by the Lessor the Lessee will not, whether by act or omission:
- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Land; or
  - (b) bring any firearms on to the Land; or
  - (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
  - (d) pile or store materials in any place on the Land where it may obstruct the public or create a nuisance; or
  - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land.
- 12.2 The Lessee will keep the Land in a clean and tidy condition and free of weeds.
- 12.3 The Lessee will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition.
- 12.4 The Lessee must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Permitted Use or from any act or neglect of its employees, contractors, invitees, agents or occupiers;
  - (b) not light or permit to be lit any open fire on the Land;
  - (c) not store or permit to be stored fuels or other combustible materials on the Land without the written permission of the Lessor. In that event storage of fuels and



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combustible materials must be in accordance with the provisions of the Hazardous Substances and new Organisms Act 1996.

12.5 The Lessee must ensure that its employees, clients, invitees and visitors do not carry out any acts prohibited under this clause 12.

12.6 The Lessee must immediately report to the Lessor any act in contravention of clause 12 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Lessor with details of the circumstances surrounding such incidents.

**13. Indemnity and Insurance**

13.1 The Lessee will indemnify and keep indemnified the Lessor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Lessee, its employees, agents, contractors, or clients or otherwise caused as a result of its carrying out the Permitted Use on the Land.

13.2 This indemnity will continue after the expiry or other determination of this Lease in respect of those acts or omissions occurring or arising before its expiry or determination.

13.3 [Without prejudice to or in any way limiting its liability under clause 13.1, the Lessee must take out and keep in force during the Term a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Permitted Use on the Land and covering

13.4 a general indemnity for a sum not less than \$1,500,000.00. With respect to clause 13.2, the Lessee must provide copies of certificates of currency for the policies of insurance before commencing the Permitted Use and on each renewal of them.

13.5 Without prejudice to any other provision in this Lease, the Lessee will indemnify the Lessor against all damage or loss resulting from any act or omission on the part of the Lessee or the Lessee's employees, agents, contractors, clients, or invitees. The Lessee will recompense the Lessor for all expenses incurred by the Lessor in making good any damage to the Land or the property of the Lessor resulting from such act or omission.

(a) The Lessor will not be liable and does not accept any responsibility for damage to or interference with the Permitted Use or to the Improvements on the Land or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to clause 13.6(b), such damage or interference is caused by any wilful act or omission of the Lessor, the Lessor's employees, agents or contractors.

(b) Where the Lessor is found to be liable due to a wilful act or omission, the total extent of the Lessor's liability is limited to \$1,000,000 in respect of the Lessee's Improvements.

13.6 Notwithstanding anything else contained in this clause 13, the Lessor is not liable for any indirect or consequential loss howsoever caused.

  
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**14. No Warranty**

- 14.1 The Lessor does not in any way warrant that the Land is or will remain suitable or adequate for any of the purposes of the Lessee and to the fullest extent permitted by law all warranties as to suitability and to adequacy implied by law are expressly negated.
- 14.2 The Lessee shall be responsible for satisfying itself (by the carrying out of soil testing, underground investigation, foundation design or such other action or research as may be necessary) as to the suitability of the Land for any use.

**15. Nuisance and Discharges**

- 15.1 The Lessee shall not commit, permit or suffer on the Land and/or Improvements any act which is a nuisance or annoyance to any neighbouring properties, or occupiers thereof, **provided that** carrying out the Permitted Use in the manner contemplated by this Lease shall not constitute a nuisance or annoyance at any time.
- 15.2 The Lessee will at all times comply with the requirements of any person having lawful authority in respect of the discharge of liquids or substances into the sewerage reticulation system operated by any Authority.

**16. Lessee's Structures, Facilities and Land Alterations**

- 16.1 Other than the existing Improvements and the existing Services which are on the Land as at the Commencement Date, the Lessee must not erect or bring on to the Land any Improvement, building or structure or install any facility on the Land or alter the Land in any way except in accordance with clause 18.

**17. Destruction and Redevelopment**

- 17.1 The Lessee may:
- (a) Alter or repair any building or structure on the Land; and/or
  - (b) Carry out reinstatement works or redevelopment works to the Improvements on the Land in the event of total or partial destruction, provided the following conditions are or will be satisfied:
    - (i) Any repair, reinstatement or redevelopment shall fully comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and
    - (ii) The Lessee is able to obtain all resource and building consents necessary to carry out any works programme; and
    - (iii) The Lessee will continue to use the Land and Improvements for the Permitted Use and

  
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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

- (iv) Any insurance proceeds lawfully payable to the Lessee will be fully utilised towards the repair or replacement of the Improvements on the Land,

and upon satisfaction of such conditions, the Lessee shall alter, repair, reinstate or rebuild (as the case may be) the Improvements or such part of the Improvements requiring such work in accordance with the conditions set out above.

- 17.2 In the event that the Lessee is prevented or unable to reinstate or rebuild or if insurance proceeds lawfully payable to the Lessee are of an inadequate or insufficient amount to facilitate redevelopment or replacement, it may (and at the request of the Lessor shall) forthwith if it is lawfully able to do so demolish the Improvements and clear the Land or the affected part of all Improvements, rubbish and debris and restore the vacant Land to a compacted level, tidy and clean site.

- 17.3 [Where the Lessee is unable to reinstate or rebuild for a period of not less than [one(1) year] from the date of the damage and/or destruction and can no longer carry out the Permitted Use, then the Lessee may serve notice that this Lease shall be at an end and the Lessor and the Lessee shall do all things necessary to perfect a surrender of this Lease and neither of them shall have any claim for compensation, damages or otherwise against the other whatsoever except for any antecedent breach of covenant of this Lease.]

**18. Improvements**

- 18.1 The parties agree that the Improvements during the term of this Lease remain in the ownership of the Lessee.

**19. Removal of Improvements**

- 19.1 At the end of the Lease, the Lessee shall, no later than three (3) weeks from the Expiry Date and at its cost, remove all of the Improvements from the Land and clear the Land or the affected part of all Improvements, rubbish and debris and restore the vacant Land to a compacted level, tidy, clean and vacant site.
- 19.2 To avoid doubt, the Lessee is not entitled to compensation for any improvements placed or carried out by the Lessee on the Land.

**20. Fencing**

- 20.1 The Lessor shall be under no liability whatsoever under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land hereby agreed to be leased and any land owned or occupied by the Lessor but nothing herein contained shall be deemed to limit any liability imposed by statute upon any present or future lessee to the owner of any adjoining land.

**21. Lessee's Acknowledgement of Risk**

- 21.1 The Lessee agrees to occupy and to use the Land and any Improvements thereon at the Lessee's risk and releases to the fullest extent permitted by law the Lessor its employees and agents from all claims and demands of any kind including any claim or liability due to

  
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contamination of the Land and/or the Improvements whether arising before or after the Commencement Date and from all liability which in the absence of any negligence on its or their part may arise in respect of any accident damage or injury occurring to any person or property in or about the Land and any Improvements.

- 21.2 The Lessee will do all acts and things necessary to remove any contaminant from the Land and the Improvements under the direction and control of any Authority all at the cost to the Lessee provided however that the Lessee shall not be responsible for any contamination which occurred prior the Lessee having any access to the Land unless it was otherwise caused by the Lessee.

**22. Prior Representations**

- 22.1 The covenants, provisions, terms and agreements contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties to the Lease (notwithstanding any negotiations or discussions prior to the execution of this Lease or anything contained in any brochure, report or other document prepared by or on behalf of the Lessor or submission to potential lessees of the Land).
- 22.2 The parties expressly agree and declare that no further or other covenants, agreements, provisions or terms whether in respect of the Land or otherwise shall be deemed to be implied or to arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by any party to the other or others on or prior to the execution of this Lease and the existence of any such implication or collateral or other agreement is hereby expressly negated and the Lessee further acknowledges that the Lessee has not been induced to enter into this Lease by any representation, verbal or otherwise made by or on behalf of the Lease which is not set out in this Lease.

**23. Quiet Enjoyment**

- 23.1 Provided the Lessee performs and observes the material covenants provisos conditions and agreements contained in this Lease, the Lessee shall, subject to any constraints or limitations of use arising under this Lease peaceably hold and enjoy the Land and Improvements thereon without hindrance or interruption by the Lessor or any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.

**24. Waiver**

- 24.1 The Lessee acknowledges and accepts that notwithstanding the covenant for quiet enjoyment and the other provisions of this Lease, the Land and any Improvements thereon are capable of being adversely affected by lawful operations which may arise in the course of, or are incidental to, the business or responsibilities of the Lessor. Accordingly, the Lessee agrees:
- (a) not to obstruct or in any way interfere with the lawful operations or responsibilities of the Lessor;



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- (b) only to take action or commence, join in, or pursue any action or procedure against the Lessor if the Lessor is acting unlawfully or there is a material adverse effect on the Lessee's ability to carry out the Permitted Use; and
- (c) to waive all rights of action which the Lessee or any person claiming through the Lessee may have or, but for this provision, might have in commencing, joining in, or pursuing any action or proceeding against the Lessor or such other persons or any of them or any of their employees or agents in respect of such adverse effects.

**25. Disclaimer**

- 25.1 Subject to clause 25.2, under no circumstances shall the Lessor be liable for any repairs, replacement or maintenance to the interior, exterior or structure of the Improvements.
- 25.2 The Lessor shall have no obligation or liability for any loss of, or damage to, any property of the Lessee nor shall the Lessor be under any obligation or liability to the Lessee in respect of any loss, damage, cost or expense incurred by the Lessee arising out of its occupancy or use of the Land and the Improvements, except to the extent that the Lessor is liable where wilful neglect or default by the Lessor can be lawfully established.

**26. Artefacts**

- 26.1 Subject to any rights of ownership vested in the Crown under the Protected Objects Act 1975, all fossils, artefacts, coins, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological, or cultural interest or value discovered on or under the surface of the Land, as between the Lessor and the Lessee, shall be deemed to be the absolute property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged, and shall notify the Lessor of such discovery and, carry out at the expense of the Lessor, the Lessor's orders as to the delivery up or disposal of such articles or things.

**27. Default and Termination**

- 27.1 Subject to the relevant provisions of the Property Law Act 2007, if the Lessee breaches any covenant or agreement on the Lessee's part expressed or implied in this Lease (other than the covenant to pay rent) the Lessor may, in addition to the Lessor's right to apply to the Court for an order of possession, cancel this lease by re-entering the Land if the Lessee has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
- 27.2 The term of the Lease shall terminate on the cancellation but without prejudice to the rights of either party against the other.

**28. Goods and Service Tax**

- 28.1 If GST is chargeable on any supply made by one party (the "Supplier") to another party (the "Recipient") under this Lease the Recipient will pay to the Supplier an amount equal to the GST chargeable on that supply in addition to, at the same time and in the same manner as the consideration otherwise payable under this Lease for that supply and the Supplier will



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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

issue a Tax Invoice to the Recipient in respect of that supply on or before the date on which payment for that supply is due under this Lease. For the avoidance of doubt, references in this clause to any supply being made by one party shall, in the context of the Lessor, include supplies it makes as agent and any supplies it makes on its own behalf.

**29. Interest on Unpaid Money**

- 29.1 If the Lessee defaults in payment of the rent or other moneys payable hereunder for ten (10) Business Days (in which respect time shall be of the essence) then the Lessee shall pay on demand interest at the Default Interest Rate on the moneys unpaid from the due date for payment down to the date of payment.

**30. Notices**

- 30.1 All notices including requests, demands and other communications under this Lease, to be given by a party to any other party shall be in writing and may be given if personally delivered or sent by an accepted means of electronic transmission to the other party. Any notices personally delivered in the manner set out above shall be deemed given when personally delivered or if sent by electronic transmission in the manner set out above shall be deemed given on the first business day following the day of sending of the electronic transmission.

**31. No Caveat**

- 31.1 The Lessee will not register a caveat against the Land in respect of its interest under this Lease.

**32. Disputes, Resolutions and Arbitration**

- 32.1 Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.
- 32.2 If the parties cannot resolve a dispute or difference within fifteen (15) Business Days of any dispute or difference arising the, unless otherwise expressly provided in this Lease they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution) or any other alternative dispute or organisation agreed upon by the parties.
- 32.3 If the parties cannot agree on any dispute resolution technique then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon or if not agreed then appointed by the President or his or her nominee for the time being of the New Zealand Law Society, Auckland Branch or its successor body, such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

  
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**11.2: LEASE DOCUMENT FOR PAKIHI SITE 1**

- 32.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

**33. Costs**

- 33.1 The parties shall each pay their own solicitor's costs on preparing and finalising this Lease. The Lessee shall be responsible for payment of all government tax duty or imposts at any time payable on this Lease or any variation to this Lease and shall pay all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease and likewise the Lessor shall pay for all costs, charges and expenses for which the Lessee shall become liable in consequence of or in connection with any breach or default of the Lessor in the performance or observance of any of the terms, covenants and conditions of this Lease.

**34. Implied Relationship**

- 34.1 Nothing contained in this Lease shall be deemed or construed or constitute any party or parties' agent or representative or other party to be deemed to create any trust, commercial partnership or joint venture.

**35. Partial Invalidity**

- 35.1 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.

**36. Governing Law**

- 36.1 This Lease shall be construed and take effect in accordance with the laws of New Zealand.

**37. Further Assurances**

- 37.1 Each of the parties agree to execute and deliver any documents and to do all things as may reasonably be required by the other party or parties to obtain the full benefit of this Lease according to its true intent.

  
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11.2: LEASE DOCUMENT FOR PAKIHI SITE 1

In Witness of which this agreement has been signed.

Signed by  
[Whakatōhea PSGE]  
by

)  
) .....  
) (Designation)  
)  
) .....  
) (Designation)

Witnessed by:

..... (signature and name)  
..... (occupation)  
..... (address)

Signed by the said  
[ ]  
as trustee of the Stewart Everitt Trust  
in the presence of:

)  
) .....  
) [Name]  
)

Witnessed by:

..... (signature and name)  
..... (occupation)  
..... (address)

Signed by the said  
[ ]  
as trustee of the Stewart Everitt Trust  
in the presence of:

)  
) .....  
) [Name]  
)

  
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11.2: LEASE DOCUMENT FOR PAKIHI SITE 1

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

**Signed** by the said

[ ..... ]  
as trustee of the Stewart Everitt Trust  
in the presence of:

)  
) .....  
) [Name]  
)

Witnessed by:

..... (signature and name)

..... (occupation)

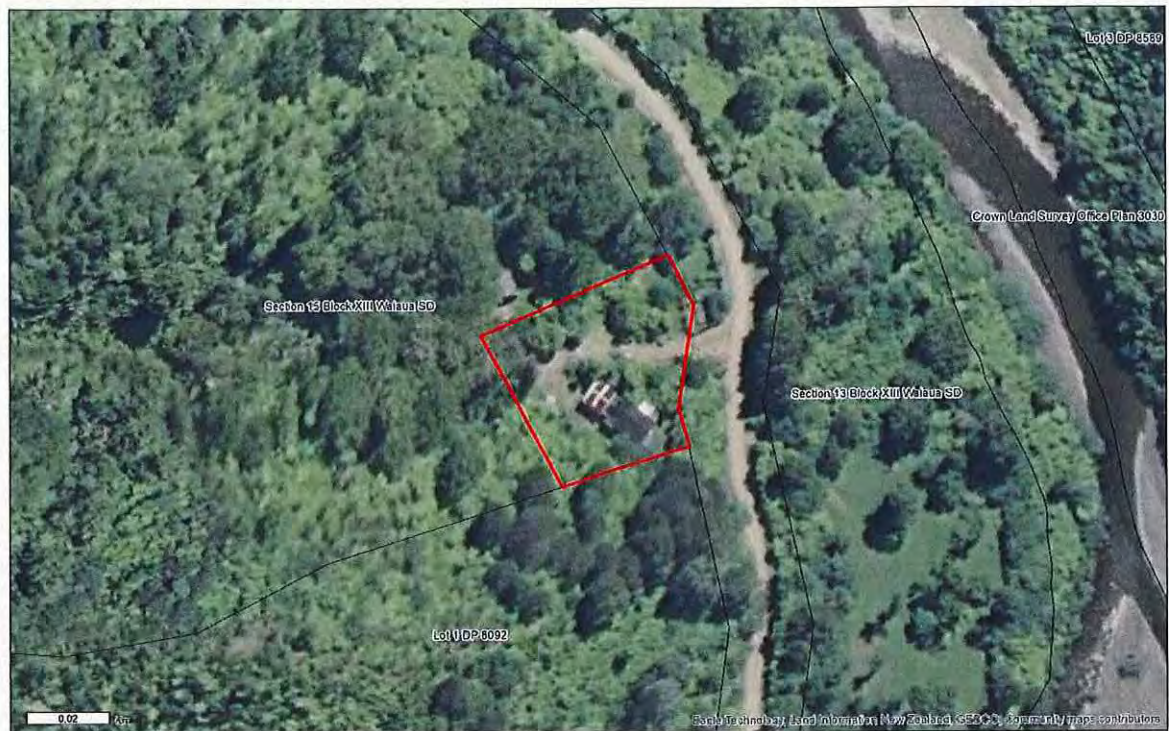
..... (address)



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11.2. LEASE DOCUMENT FOR PAKIHI SITE 1

Map of proposed lease area (subject to survey)



©2000 New Zealand Transverse Mercator  
Not for publication or navigation  
Crown Copyright Reserved  
Scale to A4 = 1:1,000  
Produced by: DCC  
Data Produced: 13/12/2021  
Te Arawā, Land Team

Pakihi Site A - lease area



Department of  
Conservation  
Te Papa Ahurea  
newzealand.govt.nz

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11.3 AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1

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Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'RG' followed by '450' and some initials.



# Agreement to Lease

Ground Lease

Tirohanga Dunes Conservation Area – Site A

Tirohanga

(Whakatōhea PSGE)

(Lessor)

**Munro Family Holdings Limited**

(Lessee)

---

**Morrison Kent** | Lawyers

Morrison Kent  
Lawyers  
Wellington and Rotorua  
Individual Acting: Matthew Whimp

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Facsimile: (04) 472-7017  
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PO Box: 10-035, Wellington 6143

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11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1

**Agreement to Lease**

Agreement dated the                      day of    2020

**Parties**

1.     **[Whakatōhea PSGE]** ("Lessor")
2.     **Munro Family Holdings Limited** ("Lessee")

**Background**

- A.     The Lessor will become the registered owner of Land pursuant to the relevant Treaty Settlement legislation.
- B.     The Lessee is the owner of the motor camp located on the immediately adjoining land known as the "Tirohanga Motor Camp".
- C.     The Lessor has agreed to grant to the Lessee and the Lessee has agreed to take on lease the Land upon the terms and conditions contained in this Agreement.

**Agreement**

**1.     Definitions and Interpretation**

**1.1    Interpretation**

In this Agreement unless the context otherwise requires:

*Agreement* means this agreement, as varied from time to time by written agreement between the Lessor and the Lessee, and includes the recitals and schedules;

*Commencement Date* means the date specified as such in the First Schedule;

*Expiry Date* means the date specified as such in the First Schedule;

*Land* means the Land described in the First Schedule;

*Lessee* means the Lessee named as a party to this Agreement, its successors and permitted assigns, and where not repugnant to the context, includes persons under the control of the Lessee;

*Lessor* means the Lessor named as a party to this Agreement, its successors and assigns, and where not repugnant to the context, includes the employees, consultants, agents, workmen and authorised representatives of the Lessor;

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**11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1**

*Lease* means the lease in the form of the lease attached as the Second Schedule, completed in accordance with the terms of this Agreement and containing a plan identifying the Land, to be executed by the parties as provided for in clause 3.2;

*Plan* means the plan of the Land attached as the Third Schedule;

*Working Day* has the meaning given to it under the Lease.

**1.2 Words References and Derivatives**

In this Agreement unless the context otherwise requires:

- (a) Subject to clause 1.1, and unless otherwise specified, all words and phrases throughout this Agreement will have the meanings ascribed to them as set out in the Lease.
- (b) Words importing the singular number will include the plural; the masculine gender will include the feminine; persons will include companies (and vice versa).
- (c) Any provision of this Agreement to be performed by two or more persons will bind those persons jointly and severally.
- (d) Any headings have been inserted for convenience only and will not in any way limit or govern the construction of the terms of this Agreement.
- (e) Any reference in this Agreement to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation.
- (f) Where in this Agreement a reference is made to any institute, body or authority, that reference will, if the relevant institute, body or authority has ceased to exist, be deemed a reference to that institute, body or association as then serves substantially the same objects and any reference to the president of that institute, body or authority will, in the absence of that president, be deemed to be a reference to the appropriate senior officer for the time being thereof.
- (g) All provisions contained in this Agreement will be construed so as not to be invalid, illegal or unenforceable in any respect but, if any such provision on its true interpretation is illegal, invalid or unenforceable, that provision may at the option of the Lessor be construed to whatever extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable, in all the circumstances, so as to give it a valid operation of a partial character. If that provision, or part thereof, cannot be so construed, it will be deemed to be void and

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**11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1**

severable and the remaining provisions of this Agreement will not in any way be affected or impaired by that avoidance and severance.

- (h) References to Schedules, Sections, paragraphs and clauses are references to Schedules, Sections (of the Second Schedule), paragraphs and clauses in this Agreement, unless expressly stated otherwise.
- (i) Reference in this Agreement to "GST" means Goods and Services Tax or any tax imposed pursuant to the provisions of the Goods and Services Tax Act 1985 and known as Goods and Services Tax.
- (j) This Agreement is governed by, and will be construed in accordance with, the law of New Zealand.

**2.3. Implied Covenants**

The covenants implied by law (statutory or otherwise) are not negated but will be deemed to have been modified (where so permitted) to the extent of any inconsistency with the provisions of this Agreement.

**3. Agreement to Lease, Term and Payments**

**3.1. Agreement to Lease**

The Lessor agrees to lease and the Lessee agrees to take on lease the Land upon the terms and conditions specified in the First Schedule, and otherwise contained in this Agreement and in the Lease.

**3.2. Commencement of Lease**

The term of the Lease will commence on the Commencement Date and expire on the Expiry Date.

**3.3. Payments**

As from the Commencement Date the Lessee will pay the rent, the outgoings specified in the Lease and any other payments payable by the Lessee under the Lease, without any deduction or set off, in the manner provided for in the Lease.

**3.4. Goods and Services Tax**

The Lessee will pay the Goods and Services Tax payable by the Lessor in respect of the rent, outgoings and other payments payable by the Lessee under the Lease in the manner provided for in the Lease.

**4. Lease**

**4.1. Completion of Lease**

  
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**11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1**

The Lease will be completed by the insertion of the details set out in this Agreement and in the First Schedule to this Agreement and, where applicable, modified as provided for in this Agreement.

**4.2. Execution of Lease by Lessee**

The Lease will be prepared by the Lessor and submitted to the Lessee in duplicate as soon as possible after this Agreement is fully executed and all information required for the completion of the Lease is available. The Lease, in duplicate, must be executed by the Lessee and submitted to the Lessor for execution within 10 Working Days of the Lessee receiving the Lease from the Lessor. The Lessor will execute the Lease promptly and return to the Lessee the Lessee's duplicate copy of the Lease.

**4.3. Obligations pending execution of lease**

Until such time as the Lease is executed by all parties the respective obligations of the Lessor and the Lessee will be as set out in the form of the Lease, modified as necessary by the provisions of this Agreement.

**5. Annual Rent**

**5.1. Initial Market Rent to be Determined**

Unless otherwise agreed between the Lessor and Lessee, prior to the Commencement Date, the Lessor shall procure a registered valuer, appointed by the Lessor, to determine the current annual market rent for the Land. The cost of the valuation shall be shared equally between the Lessor and Lessee. The annual market rent so determined pursuant to the clause 4.1 shall be the annual rent payable by the Lessee under the Lease from the Commencement Date. The Lessor shall provide written notice to the Lessee of the initial annual rent determined pursuant to this clause 4.1 as soon as reasonably practicable prior to the Commencement Date. The determination of the market rent in accordance with this clause is final and binding. The annual rent payable by the Lessee is subject to the rent review provisions in the Lease.

**6. Land**

**6.1. Land Subject to Final Survey**

The parties acknowledge and agree that the area of the Land specified in the First Schedule is an estimate only and that the final area of the Land, being the subject of the Lease, shall be determined prior to the Commencement Date by way of survey undertaken by a registered surveyor in accordance with the applicable Treaty Settlement legislation.

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**11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1**

**7. Assignment**

**7.1. No assignment by Lessee**

The rights duties and obligations of the Lessee under this Agreement may not be assigned.

**8. Conditions**

**8.1. This Agreement is conditional on:**

- (a) The Lessee and the Crown entering into an unconditional agreement for sale and purchase to effect an exchange of land necessary vest the Land in the Crown on terms satisfactory to the Lessee and the Crown in all respects; and
- (b) The Land vesting in the Lessor pursuant to Treaty of Waitangi settlement legislation.

**9. General Provisions**

**9.1. Costs**

Each party will pay its own costs (including solicitor's costs) of the negotiation, preparation and completion of this agreement and the Lease.

**9.2. No caveat**

The Lessee will not register a caveat against the Land in respect of its interest under this agreement or the Lease.

**9.3. No merger**

The obligations and warranties of the parties contained in this Agreement will not merge insofar as they have not been fulfilled at the time of the execution of the Lease but will remain in full force and effect.

**9.4. No waiver**

A waiver by a party of a breach of any of the obligations of the other party under this Agreement will not prevent the subsequent enforcement of those obligations and will not be deemed a waiver of any subsequent breach.

**9.5. Notices**

Any notice produced under this Agreement will be in the form, and will be delivered and received, in the manner provided for in the Lease.

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**11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1**

**9.6. Entire Agreement**

This Agreement constitutes the entire understanding and agreement of the parties relating to this agreement and supersedes and extinguishes all prior agreements.

**9.7. Counterparts**

This Agreement may be executed in any number of counterpart copies which taken together will be deemed to form the same document. This Agreement will be deemed to be executed by a party if that party has executed an original, a facsimile copy, a photocopy, or a PDF or other scanned copy of it.

**Execution**

**Signed by (Whakatōhea PSGE) as  
Lessor by:**

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Name of Authorised Signatory

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Signature of Authorised Signatory

**Signed by Munro Family Holdings  
Limited as Lessee by:**

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Name of Authorised Signatory

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Signature of Authorised Signatory

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11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1

**First Schedule**

<b>Name and address of Lessor</b>	(Whakatōhea PSGE) [Address]]
<b>Name(s) and address(es) of Lessee</b>	Munro Family Holdings Limited [Address]
<b>Description of Land</b>	<i>Estate:</i> Fee Simple  <i>Description:</i>  Tirohanga Dunes Conservation Area – Site A 0.300 hectares approximately, being the Crown land hatched blue on the Plan (subject to Survey).
<b>Address of Land</b>	[.....]
<b>Commencement date</b>	The date that the Land vests in the Lessor pursuant to the applicable Treaty Settlement legislation.
<b>Expiry date</b>	As stipulated in the Lease.
<b>Rights of Renewal:</b>	Nil
<b>Initial annual rent:</b>	An amount determined in accordance with clause 4.
<b>Rent Reviews:</b>	As stipulated in the Lease
<b>Outgoings:</b>	As stipulated in the Lease.
<b>Business Use:</b>	As stipulated in the Lease.
<b>Default Interest Rate:</b>	OCR plus [5]% per annum



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11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1

Second Schedule

Form of Lease

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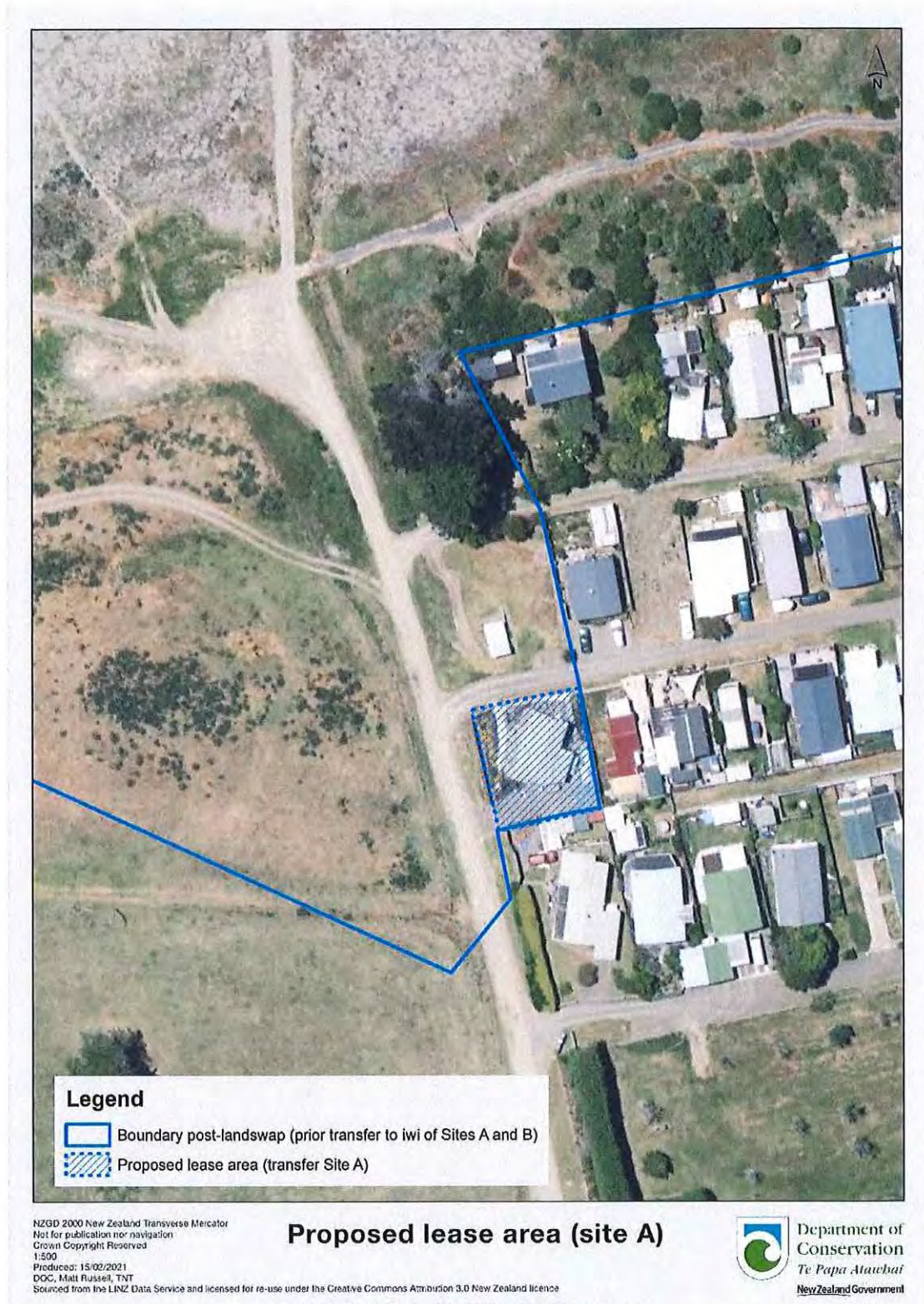
Handwritten signatures and initials in blue ink, including a large signature on the left, the number 459 in the center, and several initials on the right.

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11.3: AGREEMENT TO LEASE FOR TIROHANGA DUNES SITE 1

Third Schedule

Land Plan





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11.4 LEASE DOCUMENT FOR TIROHANGA DUNES SITE 1

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# Deed of Lease

**Ground Lease**  
**Tirohanga Dunes Conservation Area – Site A**  
**Tirohanga**

**[Whakatōhea PSGE]**

(Lessor)

**Munro Family Holdings Limited**

(Lessee)

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**Morrison Kent** | Lawyers

**Morrison Kent**  
Lawyers  
Wellington and Rotorua  
Individual Acting: Matthew Whimp

Telephone: (04) 472-0020  
Facsimile: (04) 472-7017  
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105 The Terrace, Wellington  
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PO Box: 10-035, Wellington 6143

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**11.4: LEASE DOCUMENT FOR TIROHANGA DUNES SITE 1**

Deed dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**Parties**

1. **[Whakatōhea PSGE]** ("Lessor")
2. **Munro Family Holdings Limited** ("Lessee")

**Background**

- A. Pursuant to the [.....] Settlement Claims Act [20xx], the land vested in [.....].
- B. The Lessor is the registered owner of the Land.
- C. The Lessee is the owner of the motor camp located on the immediately adjoining land known as the "Tirohanga Motor Camp".
- D. The Lessor and the Lessee have agreed to enter into a ground lease in respect of the land on the terms and conditions contained in this deed.

**Schedule of Land**

Computer Register Identifier	Area	Legal Description
<i>[insert details following survey]</i>	<i>[insert details following survey]</i>	<i>[the area hashed blue on the aerial map attached (subject to survey)]</i>
Encumbrances, Liens and Interests: <i>[insert details following survey]</i>		

**Schedule A**

<b>Term:</b>	The period commencing on and from the Commencement Date and ending on the Expiry Date.
<b>Commencement Date:</b>	[TBD] [but will be the date the land vests in the lessor pursuant to the settlement legislation]
<b>Expiry Date:</b>	That date calculated in accordance with clause 3.
<b>Rights of Renewal:</b>	Nil
<b>Rent:</b>	[\$[TBD - An amount equal to 75% of the income received by the Lessee from the Occupiers] plus GST per annum payable in accordance with clause 4.
<b>Permitted Use:</b>	Residential accommodation by the Occupiers pursuant to the Licence to Occupy
<b>Default Interest Rate:</b>	The official cash rate for the period for which default interest is payable, plus 5 percent per annum
<b>Rent Review Dates:</b>	Every five (5) years on the anniversary of the commencement of the Licence to Occupy (being 27 August 2018).

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**11.4: LEASE DOCUMENT FOR TIROHANGA DUNES SITE 1**

<b>Rent Payment Dates:</b>	One annual payment, on 1 April in each year of the Term, commencing on the first Rent Payment Date after the Commencement Date (with adjustment for the first payment as necessary in accordance with clause 4).
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**Schedule B**

**Introduction**

**1. Definitions and Interpretation**

- 1.1. For the purposes of the interpretation or construction of this Lease, unless the context provides otherwise:

**Definitions**

- (a) *Authority* means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and/or the Improvements.
- (a) *Business Day* means any day other than a Saturday or Sunday or statutory or anniversary holiday in Tirohanga.
- (b) *GST* means goods and services tax chargeable in accordance with the GST Act.
- (c) *GST Act* means the Goods and Services Tax Act 1985.
- (d) *Improvements* means any building, structure or other improvements including drains, concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, facilities, fixtures and fittings existing on the Land at the commencement of this Lease and from time to time installed by or on behalf of the Lessee on the Land during the term of this Lease, but excludes the Occupiers Improvements..
- (e) *Land* means that land described in the Schedule of Land, together with and subject to all interests noted thereon.
- (f) *Licence to Occupy* means the licence to occupy the Land entered into between Robert Gordon McLellan and Glennis Amelia McLellan as owners, the interests under which are now vested in the Lessee, and the Occupiers dated 27 August 2018, as it may be amended from time to time in accordance with clause 9.2 of this Lease
- (g) *Occupiers* means Lewis and Dorothy Wilson pursuant to the Licence to Occupy and notwithstanding any other provision contained in this Lease does not extend to any successors, nominees or permitted assigns.



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**11.4: LEASE DOCUMENT FOR TIROHANGA DUNES SITE 1**

- (h) *Occupiers Improvements* means any relocatable building and other property of the Occupiers of the Land pursuant to the Licence to Occupy.
- (i) *Regional and District Plans* shall have ascribed to them those definitions set out in section 2 of the Resource Management Act 1991 where there is reference to "Regional Plan" and successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- (j) *Services* means all pipes, drains, mains, wires, cables, channels, gutters, sewers, and other utilities or services.
- (k) *Sign* means any sign, advertisement, notice, advertising device or other distinctive mark erected upon, or affixed to or placed on the Land, Improvements or the exterior of the Improvements or the Occupiers Improvements.
- (l) *Tax Invoice* has the meaning given in section 2 of the Goods and Services Tax Act 1985.

**Interpretation**

- (m) Words importing any gender shall include all other genders.
- (n) Words importing the singular shall include the plural and vice versa.
- (o) Payments shall be made in the lawful currency of New Zealand.
- (p) Headings shall be ignored.
- (q) References to clauses and schedules are references to clauses and schedules in this Lease and references to parties are references to the parties to this Lease unless expressly stated otherwise.
- (r) Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
- (s) A *person* shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust, State or agency of a State in each case whether or not having separate legal personality.
- (t) *writing* shall include words visibly represented or reproduced.
- (u) Where approvals or consents are required in this Lease they shall not be unreasonably or arbitrarily withheld or delayed and such approvals or consents may be given with conditions which are both reasonable and relevant to the circumstances giving rise to the request to seek approval or consent and shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.

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- (v) Notwithstanding that there may be no privity of contract existing between the parties to this Lease and certain named third parties in this Lease nevertheless such third parties shall have the right to enforce any provisions in this Lease which are of benefit to them with such right to enforce being acknowledged and intended in accordance with the requirements of the Contract and Commercial Law Act 2017.
- (w) The expressions *Lessor* and *Lessee* includes their respective successors and assigns and where the context permits the Lessor's or the Lessee's respective tenants and other lawful occupiers of the Land and their respective contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessor or the Lessee, as the case may be).

**2 Operative Clause**

- 2.1 The Lessor leases to the Lessee and the Lessee accepts the lease of the Land for the Term and at the rent and subject to the conditions, covenants, agreements and restrictions herein set forth in Schedule A and Schedule B.

**3 Term**

- 3.1 The Lease shall commence on the Commencement Date and expire on the Expiry Date. For the purposes of the Lease, the Expiry Date shall be the earlier of:
  - (b) The date that the Occupiers cease to occupy the Land for residential purposes; or
  - (c) The expiry or earlier termination of the Licence to Occupy; or
  - (d) The deaths of both of the Occupiers, namely Lewis Wilson and Dorothy Wilson.

**4. Rent**

- 4.1. The Lessee shall pay the annual rent by one annual payment in advance (or as varied pursuant to any rent review) on the Rent Payment Dates. The first payment (together with rent calculated on a daily basis for the period from the Commencement Date of the term to the first rent payment date) shall be payable on the first Rent Payment Date. All rent shall be paid without any deduction or set-off by direct payment to the Landlord or as the Landlord may direct.

**5. Rent Review**

- 5.1. Unless otherwise agreed between the Lessor and Lessee, the annual rent payable as from each market rent review date shall be determined as follows:
  - (a) Either party may not earlier than 3 months prior to a rent review date and not later than the next rent review date give written notice to the



**TE MĀKEOTANGA – DEED OF SETTLEMENT  
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**11.4: LEASE DOCUMENT FOR TIROHANGA DUNES SITE 1**

other party specifying the annual rent proposed as the current market rent as at the relevant rent review date.

- (b) If the party receiving the notice ("Recipient") gives written notice to the party giving notice ("the Initiator") within 20 Business Days after service of the Initiator's notice, disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market, rent, then the new rent shall be determined in accordance with clause 5.2.
- (c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
- (d) Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable immediately prior to the relevant rent review date.
- (e) The annual rent agreed, determined or imposed pursuant to 5.1 shall be the annual rent payable as from the relevant rent review date or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to clauses 5.3 and 5.4.
- (f) The rent review at the option of either party may be recorded in a deed.

5.2. Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 Business Days then the new rent shall be determined by registered valuers acting as experts and not as arbitrators as follows:

- (a) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 Business Days of the parties agreeing to so determine the new rent.
- (b) If the party receiving a notice fails to appoint a valuer within the 20 Business Day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on the parties.
- (c) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.

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**11.4: LEASE DOCUMENT FOR TIROHANGA DUNES SITE 1**

- (d) The valuers appointed by the parties shall determine the current market rent of the Land but if they fail to agree then the rent shall be determined by the third expert.
- (e) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuer or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
- (f) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.
- (g) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this clause 5.2.

When the new rent has been determined the person or persons determining it shall give the written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.

5.3. Pending determination of the new rent, the Lessee shall from the relevant market rent review date, or the date of service of the Initiators notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:

- (a) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
- (b) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
- (c) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date,

But in no circumstances shall the interim rent be less than the rent payable immediately preceding the relevant rent review date.

The interim rent shall be payable with effect from the relevant rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 5.4, shall not be subject to adjustment.

5.4. Upon determination of the new rent, any overpayment shall be applied in payment of the next annual rent payment and any amount then remaining shall



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immediately be refunded to the Lessee. Any shortfall in payment shall immediately be payable by the Lessee.

**6. Payment of Rates and Impositions**

- 6.1. In addition to the Rent, the Lessee will promptly pay all applicable rates, taxes (including without limitation land or improvements tax but not tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor for the Land), charges, assessments, levies, impositions and all outgoings whatsoever which now are or which during the said term shall be taxed, rated, charged, assessed, levied or imposed on the Land, the Improvements or their use, or on the Lessor or Lessee in respect thereof by authority of any Authority.
- 6.2. Where any amounts in clause 6.1 are lawfully required to be paid or collected for payment by the Lessor the Lessee agrees to pay such amounts which are liable to be paid under clause 6.1 on demand made by the Lessor without deduction or set off.

**7. Utilities and Services**

- 7.1. The Lessee will pay all charges for electricity, gas, water or power or other services in respect of the Land and Improvements.
- 7.2. If reasonably requested by the Lessor or required by the Authority, the Lessee shall install, maintain, and upgrade whenever necessary at its cost any meter or other measuring device necessary for the proper charging of any Services supplied to the Land or Improvements.

**8. Use of the Land and Improvements**

- 8.1. The Lessee shall only use the Land and the Improvements for the Permitted Use.

**9. Licence to Occupy**

- 9.1. The Lease is a concurrent lease and has been granted by the Lessor to the Lessee subject to the Licence to Occupy.
- 9.2. The Lessee will at all times comply with the obligations of the owner under the Licence to Occupy. The Lessee will not vary or agree to vary the Licence to Occupy nor agree to any proposed assignment of the Licence to Occupy provided that the Lessee is permitted to agree to a renewal of the term of the existing Licence to Occupy to the Occupiers for a term not exceeding the term of this Lease and at a rental to be determined in accordance with the Licence to Occupy and otherwise on the same terms contained in the Licence to Occupy.

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**11.4: LEASE DOCUMENT FOR TIROHANGA DUNES SITE 1**

- 9.3. The Lessee will at all times ensure that the Occupiers comply with their obligations of under the Licence to Occupy and will do all things reasonably necessary to enforce compliance with such obligations.

**Statutory Requirements**

- 9.4. The Lessee shall if required by any Authority (either directly or indirectly through the Lessor) comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and Improvements or which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:
- (a) If applicable, comply with the Building Code as amended from time to time;
  - (b) ensure that a warrant of fitness is obtained each year in respect of any Improvements if required under the Building Act 2004;
  - (c) comply with and observe at all times the terms and conditions of all applicable resource consents and their conditions held in respect of the Lessee's use of the Land and Improvements and the requirements imposed and otherwise arising under the Resource Management Act 1991 including without limitation the need to obtain any permit or such other licence as may be required to occupy the Land from time to time during the Term of this Lease;
  - (d) obtain, maintain and comply with all applicable permits or licences required for the Permitted Use (including without limitation all applicable permits or licences relating to sanitation and fire safety); and
  - (e) ensure that, consistent with the obligation placed on the Lessee under the Health and Safety at Work Act 2015, proper and adequate health and safety procedures are adopted in accordance with such Act.

**10. Condition of the Land and the Improvements**

- 10.1. The Lessee will at all times during the Term of the Lease keep and maintain the Land in a clean and tidy condition to the reasonable satisfaction of the Lessor.
- 10.2. The Lessor and persons under its control and direction may at all reasonable times after reasonable prior written notice, enter, and if necessary remain, on the Land to examine and view that condition and state of repair and maintenance of the Land and Improvements. The Lessor may (without being under any obligation to do so) give notice to the Lessee of any maintenance and/or replacement work required to be carried out in respect of the Land and/or Improvements, and the Lessee shall within a reasonable period of time complete such maintenance and/or replacement work in a diligent and workmanlike manner.



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- 10.3. If the Lessee fails to comply with the provisions of clause 10.2, the Lessor may (without being under any obligation to do so) at all reasonable times and from time to time enter the Land and/or the Improvements (as the case may be) bringing all necessary equipment, vehicles and materials, and complete all or any of the required maintenance or replacement work as the Lessor thinks fit.
- 10.4. In addition to the Lessor's other remedies, the Lessor shall be entitled to recover from the Lessee all reasonable costs of such maintenance and/or replacement work, including all reasonable fees and expenses incurred in connection with the inspection of the Land and/or Improvements and the issue of the notice.

**11. Assignment and Subletting**

- 11.1. Subject to clause 9, the Lessee will not assign, mortgage, charge, transfer, sublease or otherwise dispose of the Lessee's interests under this Lease or any part of it without the prior written consent of the Lessor (such consent not to be unreasonably or arbitrarily withheld or delayed). The Lessee will meet all the Lessor's reasonable costs in relation to any documentation or enquiries for a proposed assignment or transfer under this clause 11.1 with such costs being payable by the Lessee whether or not the proposed assignment or transfer proceeds.
- 11.2. If the Lessor gives its consent pursuant to clause 11.1 the Lessor may as a condition of granting its consent procure from the transferee, sublicensee or assignee a covenant to be bound by the terms and conditions of this Lease. The Lessor and Lessee (at the Lessee's cost) will do all things necessary and sign all documents necessary to give effect to an assignment or transfer of this Lease pursuant to clause 11.1.

**12. Signage**

- 12.1. The Lessee shall not erect, paint, display or allow any Sign unless the Lessee first obtains the written approval of the Lessor in each case.
- 12.2. The Lessor may require that any Sign complies with any reasonable standards and policies the Lessor may from time to time set as to type, quality, materials, colour and size. If the Lessor sets such standards and policies and the Lessee erects any Sign which in the Lessor's reasonable opinion do not comply with the standards and/or policies the Lessor may require, the Lessee shall, upon receipt of written notice from the Lessor to remove the Sign, immediately remove the Sign at its cost.

**13. Protection of Environment**

- 13.1. Except as approved in writing by the Lessor the Lessee will not, whether by act or omission:
- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Land; or

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- (b) bring any firearms on to the Land; or
  - (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
  - (d) pile or store materials in any place on the Land where it may obstruct the public or create a nuisance; or
  - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land.
- 13.2. The Lessee will keep the Land in a clean and tidy condition and free of weeds.
- 13.3. The Lessee will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition.
- 13.4. The Lessee must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Permitted Use or from any act or neglect of its employees, contractors, invitees, agents or the Occupiers;
  - (b) not light or permit to be lit any open fire on the Land;
  - (c) not store or permit to be stored fuels or other combustible materials on the Land without the written permission of the Lessor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Hazardous Substances and new Organisms Act 1996.
- 13.5. The Lessee must ensure that its employees, clients, invitees and Occupiers do not carry out any acts prohibited under this clause 13.
- 13.6. The Lessee must immediately report to the Lessor any act in contravention of clause 13 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Lessor with details of the circumstances surrounding such incidents.

**14. Indemnity and Insurance**

- 14.1. The Lessee will indemnify and keep indemnified the Lessor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Lessee, its employees, agents, contractors, or clients, or the Occupier, or otherwise caused as a result of its carrying out the Permitted Use on the Land.

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- 14.2. This indemnity will continue after the expiry or other determination of this Lease in respect of those acts or omissions occurring or arising before its expiry or determination.
- 14.3. Without prejudice to or in any way limiting its liability under clause 14.1, the Lessee must take out and keep in force during the Term a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Permitted Use on the Land and covering
- 14.4. A general indemnity for a sum not less than \$1,500,000.00. With respect to clause 14.2, the Lessee must provide copies of certificates of currency for the policies of insurance before commencing the Permitted Use and on each renewal of them.
- 14.5. Without prejudice to any other provision in this Lease, the Lessee will indemnify the Lessor against all damage or loss resulting from any act or omission on the part of the Lessee or the Lessee's employees, agents, contractors, clients, or invitees. The Lessee will recompense the Lessor for all expenses incurred by the Lessor in making good any damage to the Land or the property of the Lessor resulting from such act or omission.
- (a) The Lessor will not be liable and does not accept any responsibility for damage to or interference with the Permitted Use or to the Improvements on the Land or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to clause 14.6(b), such damage or interference is caused by any wilful act or omission of the Lessor, the Lessor's employees, agents or contractors.
- (b) Where the Lessor is found to be liable due to a wilful act or omission, the total extent of the Lessor's liability is limited to \$1,000,000 in respect of the Lessee's Improvements.
- 14.6. Notwithstanding anything else contained in this clause 14, the Lessor is not liable for any indirect or consequential loss howsoever caused.
- 15. No Warranty**
- 15.1. The Lessor does not in any way warrant that the Land is or will remain suitable or adequate for any of the purposes of the Lessee and to the fullest extent permitted by law all warranties as to suitability and to adequacy implied by law are expressly negatived.
- 15.2. The Lessee shall be responsible for satisfying itself (by the carrying out of soil testing, underground investigation, foundation design or such other action or research as may be necessary) as to the suitability of the Land for any use.

**16. Nuisance and Discharges**

Handwritten signatures in blue ink, including a large signature and a smaller one, with the number 473 written in the center.

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- 16.1. The Lessee shall not commit, permit or suffer on the Land and/or Improvements any act which is a nuisance or annoyance to any neighbouring properties, or occupiers thereof, **provided that** carrying out the Permitted Use in the manner contemplated by this Lease shall not constitute a nuisance or annoyance at any time.
- 16.2. The Lessee will at all times comply with the requirements of any person having lawful authority in respect of the discharge of liquids or substances into the sewerage reticulation system operated by any Authority.

**17. Lessee's Structures, Facilities and Land Alterations**

- 17.1. Other than the existing relocatable home which exists on the Land pursuant to the Licence to Occupy and the existing Services that exists of the Land as at the Commencement Date, the Lessee must not erect or bring on to the Land any Improvement, building or structure or install any facility on the Land or alter the Land in any way.

**18. Destruction and Redevelopment**

- 18.1. The Lessee may carry out repairs, reinstatement or redevelopment to the Improvements on the Land in the event of total or partial destruction provided the following conditions are or will be satisfied:
- (a) any repair, reinstatement or redevelopment shall fully comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and
  - (b) the Lessee is able to obtain all resource and building consents necessary to carry out any works programme; and
  - (c) the Lessee will continue to use the Land and Improvements for the Permitted Use and
  - (d) any insurance proceeds lawfully payable to the Lessee will be fully utilised towards the repair or replacement of the Improvements on the Land.
- 18.2. In the event that the Lessee is prevented or unable to reinstate or rebuild or if insurance proceeds lawfully payable to the Lessee are of an inadequate or insufficient amount to facilitate redevelopment or replacement, it may forthwith if it is lawfully able to do so demolish the Improvements and clear the Land or the affected part of all Improvements, rubbish and debris and restore the vacant Land to a compacted level, tidy and clean site.
- 18.3. Where the Lessee is unable to reinstate or rebuild for a period of not less than one(1) year from the date of the damage and/or destruction and can no longer carry out the Permitted Use, then the Lessee may serve notice that this Lease shall be at an end and the Lessor and the Lessee shall do all things necessary to perfect a

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surrender of this Lease and neither of them shall have any claim for compensation, damages or otherwise against the other whatsoever except for any antecedent breach of covenant of this Lease.

**19. Improvements**

- 19.1. The parties agree that the Improvements during the term of this Lease remain in the ownership of the Lessee.

**20. Removal of Improvements**

- 20.1. At the end of the Lease, the Lessee shall, no later than three (3) weeks from the Expiry Date and at its cost, remove all of the Improvements from the Land and clear the Land or the affected part of all Improvements, rubbish and debris and restore the vacant Land to a compacted level, tidy, clean and vacant site.
- 20.2. To avoid doubt, the Lessee is not entitled to compensation for any improvements placed or carried out by the Lessee on the Land.
- 20.3. Notwithstanding the provisions contained in clause 20.1, if the Lease is terminated pursuant to clause 3.1(c) of this Deed then the time period for the Lessee to comply with the obligations of clause 20.1 shall be extended to three (3) months from the Expiry Date.

**21. Fencing**

- 21.1. The Lessor shall be under no liability whatsoever under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land hereby agreed to be leased and any land owned or occupied by the Lessor but nothing herein contained shall be deemed to limit any liability imposed by statute upon any present or future lessee to the owner of any adjoining land.

**22. Lessee's Acknowledgement of Risk**

- 22.1. The Lessee will do all acts and things necessary to remove any contaminant from the Land and the Improvements under the direction and control of any Authority all at the cost to the Lessee provided however that the Lessee shall not be responsible for contamination which occurred prior the Lessee having any access to the Land unless it was otherwise caused by the Lessee.

**23. Prior Representations**

- 23.1. The covenants, provisions, terms and agreements contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties to the Lease (notwithstanding any negotiations or discussions prior to the execution of this Lease or anything contained in any brochure, report or other document prepared by or on behalf of the Lessor or submission to potential lessees of the Land).

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23.2. The parties expressly agree and declare that no further or other covenants, agreements, provisions or terms whether in respect of the Land or otherwise shall be deemed to be implied or to arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by any party to the other or others on or prior to the execution of this Lease and the existence of any such implication or collateral or other agreement is hereby expressly negated and the Lessee further acknowledges that the Lessee has not been induced to enter into this Lease by any representation, verbal or otherwise made by or on behalf of the Lease which is not set out in this Lease.

**24. Quiet Enjoyment**

24.1. Provided the Lessee performs and observes the material covenants provisos conditions and agreements contained in this Lease, the Lessee shall, subject to any constraints or limitations of use arising under this Lease peaceably hold and enjoy the Land and Improvements thereon without hindrance or interruption by the Lessor or any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.

**25. Waiver**

25.1. The Lessee acknowledges and accepts that notwithstanding the covenant for quiet enjoyment and the other provisions of this Lease, the Land and any Improvements thereon are capable of being adversely affected by lawful operations which may arise in the course of, or are incidental to, the business or responsibilities of the Lessor. Accordingly, the Lessee agrees:

- (a) not to obstruct or in any way interfere with the lawful operations or responsibilities of the Lessor;
- (b) only to take action or commence, join in, or pursue any action or procedure against the Lessor if the Lessor is acting unlawfully or there is a material adverse effect on the Lessee's ability to carry out the Permitted Use; and
- (c) to waive all rights of action which the Lessee or any person claiming through the Lessee may have or, but for this provision, might have in commencing, joining in, or pursuing any action or proceeding against the Lessor or such other persons or any of them or any of their employees or agents in respect of such adverse effects.

**26. Disclaimer**

26.1. Subject to clause 26.2, under no circumstances shall the Lessor be liable for any repairs, replacement or maintenance to the interior, exterior or structure of the Improvements.

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- 26.2. The Lessor shall have no obligation or liability for any loss of, or damage to, any property of the Lessee nor shall the Lessor be under any obligation or liability to the Lessee in respect of any loss, damage, cost or expense incurred by the Lessee arising out of its occupancy or use of the Land and the Improvements, except to the extent that the Lessor is liable where wilful neglect or default by the Lessor can be lawfully established.

**27. Artefacts**

- 27.1. Subject to any rights of ownership vested in the Crown under the Protected Objects Act 1975, all fossils, artefacts, coins, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological, or cultural interest or value discovered on or under the surface of the Land, as between the Lessor and the Lessee, shall be deemed to be the absolute property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged, and shall notify the Lessor of such discovery and, carry out at the expense of the Lessor, the Lessor's orders as to the delivery up or disposal of such articles or things.

**28. Default and Termination**

- 28.1. Subject to the relevant provisions of the Property Law Act 2007, if the Lessee breaches any covenant or agreement on the Lessee's part expressed or implied in this Lease (other than the covenant to pay rent) the Lessor may, in addition to the Lessor's right to apply to the Court for an order of possession, cancel this lease by re-entering the Land if the Lessee has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
- 28.2. The term of the Lease shall terminate on the cancellation but without prejudice to the rights of either party against the other.

**29. Goods and Service Tax**

- 29.1. If GST is chargeable on any supply made by one party (the "Supplier") to another party (the "Recipient") under this Lease the Recipient will pay to the Supplier an amount equal to the GST chargeable on that supply in addition to, at the same time and in the same manner as the consideration otherwise payable under this Lease for that supply and the Supplier will issue a Tax Invoice to the Recipient in respect of that supply on or before the date on which payment for that supply is due under this Lease. For the avoidance of doubt, references in this clause to any supply being made by one party shall, in the context of the Lessor, include supplies it makes as agent and any supplies it makes on its own behalf.

**30. Interest on Unpaid Money**

- 30.1. If the Lessee defaults in payment of the rent or other moneys payable hereunder for ten (10) Business Days (in which respect time shall be of the essence) then the

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Lessee shall pay on demand interest at the Default Interest Rate on the moneys unpaid from the due date for payment down to the date of payment.

**31. Notices**

- 31.1. All notices including requests, demands and other communications under this Lease, to be given by a party to any other party shall be in writing and may be given if personally delivered or sent by an accepted means of electronic transmission to the other party. Any notices personally delivered in the manner set out above shall be deemed given when personally delivered or if sent by electronic transmission in the manner set out above shall be deemed given on the first business day following the day of sending of the electronic transmission.

**32. No Caveat**

- 32.1. The Lessee will not register a caveat against the Land in respect of its interest under this Lease.

**33. Disputes, Resolutions and Arbitration**

- 33.1. Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.
- 33.2. If the parties cannot resolve a dispute or difference within fifteen (15) Business Days of any dispute or difference arising the, unless otherwise expressly provided in this Lease they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution) or any other alternative dispute or organisation agreed upon by the parties.
- 33.3. If the parties cannot agree on any dispute resolution technique then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon or if not agreed then appointed by the President or his or her nominee for the time being of the New Zealand Law Society, Auckland Branch or its successor body, such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.
- 33.4. The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

  
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**34. Costs**

- 34.1. The parties shall each pay their own solicitor's costs on preparing and finalising this Lease. The Lessee shall be responsible for payment of all government tax duty or imposts at any time payable on this Lease or any variation to this Lease and shall pay all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease and likewise the Lessor shall pay for all costs, charges and expenses for which the Lessee shall become liable in consequence of or in connection with any breach or default of the Lessor in the performance or observance of any of the terms, covenants and conditions of this Lease.

**35. Implied Relationship**

- 35.1. Nothing contained in this Lease shall be deemed or construed or constitute any party or parties' agent or representative or other party to be deemed to create any trust, commercial partnership or joint venture.

**36. Partial Invalidity**

- 36.1. The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.

**37. Governing Law**

- 37.1. This Lease shall be construed and take effect in accordance with the laws of New Zealand.

**38. Further Assurances**

- 38.1. Each of the parties agree to execute and deliver any documents and to do all things as may reasonably be required by the other party or parties to obtain the full benefit of this Lease according to its true intent.

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**In Witness** of which this agreement has been signed.

<b>Signed by</b>	)	
<b>[Whakatōhea PSGE]</b>	)	.....
<b>by</b>	)	(Designation)
	)	
	)	.....
	)	(Designation)

Witnessed by:

.....	(signature and name)
.....	(occupation)
.....	(address)

<b>Signed by</b>	)	
<b>Munro Family Holdings Limited</b>	)	.....
<b>by</b>	)	(Designation)
	)	
	)	.....
	)	(Designation)

Witnessed by:

.....	(signature and name)
.....	(occupation)
.....	(address)

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