

COMMUNITY GROUP LEASE

between

HAMILTON CITY COUNCIL

and

[NAME OF LESSEE]

DRAFT

PARTIES

- (1) **HAMILTON CITY COUNCIL** ("Lessor")
- (2) **[NAME OF LESSEE]** ("Lessee")

BACKGROUND

- A. The Lessor is the administering body of the **[INSERT NAME OF RESERVE]** Reserve under the Reserves Act 1977 ("Reserve"). **OR**
- A. The Lessor is the registered proprietor of the land and/or buildings situated at **[INSERT STREET ADDRESS]** ("Property").
- B. The Lessor has agreed to lease and the Lessee has agreed to take on lease that part of the *[Reserve or Property]* as shown outlined in **[INSERT]** on the plan attached to this Lease as Schedule 3 ("Premises").

1. GRANT OF LEASE

- 1.1 The Lessor leases to the Lessee and the Lessee takes on lease the Premises for the Term from the Commencement Date at the Rent subject to the terms and conditions set out in this Lease.

Executed as a deed

SIGNED on behalf of **HAMILTON CITY COUNCIL** as Lessor by
 its Chief Executive Officer
 acting under delegated authority:)
)
)
) Chief Executive Officer

SIGNED on behalf of)
)
 as Lessee by)
 and by)
 both being authorised signatories:)

SCHEDULE 1

(Reference Schedule)

Premises	<p>That part of [INSERT NAME OF RESERVE AND LEGAL DESCRIPTION OF RESERVE] OR [LEGAL DESCRIPTION OF PROPERTY] as shown outlined in [INSERT] on the plan attached to this Lease as Schedule 3.</p> <p>Does the Lessor own the building(s)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, insert details to describe and define the Lessor's improvements, fixtures and fittings:</p> <ul style="list-style-type: none">• _____• _____• _____• _____ <p>If no, insert details below to describe and define the Lessee's buildings and improvements:</p> <ul style="list-style-type: none">• _____• _____• _____• _____		
Car Parks (if any)	[INSERT NUMBER OF CARPARKS OR INSERT NIL IF NO CARPARKS ARE TO BE PROVIDED]		
Term			
Commencement Date	<table border="1" style="width: 100%;"><tr><td style="width: 50%;"></td><td style="width: 50%;">Expiry Date</td></tr></table>		Expiry Date
	Expiry Date		
Right of Renewal	There is no right of renewal provided by this Lease.		
Rent	[INSERT AMOUNT] plus GST per annum		
Rent Payment Dates	The [INSERT] day of [INSERT MONTH] and [INSERT MONTH] in each year during the Term of this Lease.		
Rent Review Dates	Each anniversary of the Commencement Date (refer clause 4.2 of Schedule 2).		

Proportion of Outgoings	[INSERT PROPORTION OF OUTGOINGS AS A PERCENTATGE E.G.100%]	
Default Interest Rate	[INSERT DEFAULT INTEREST RATE]	
Permitted Activity (clause 2)	[INSERT PERMITTED ACTIVITY]	
Public Liability Insurance (clause 16.4)	\$ [INSERT AMOUNT] or such other amount from time to time reasonably required by the Lessor	
Lessor's Contact Details	Parks and Open Spaces Unit Manager Hamilton City Council Private Bag 3010 Hamilton 3240	
Lessee's Contact Details	Name:	
	Address:	
	Phone:	
	Email:	

SCHEDULE 2

(General Terms and Conditions)

1. INTERPRETATION

1.1 In this Lease:

- (a) “the Lessor” and “the Lessee” means where appropriate the executors, administrators, successors and permitted assignees of the Lessor and the Lessee.
- (b) “Lease” means this Deed of Lease including Schedules 1 to 5.
- (c) “Maintenance Matrix” means the maintenance matrix set out in Schedule 4.
- (d) “Policy” means Hamilton City Council’s Community Occupancy Policy attached as Schedule 5 or any policy amending, consolidating or replacing it.
- (e) “Working Day” has the meaning given to it in the Property Law Act 2007.
- (f) Whenever words appear in this Lease that also appear in Schedule 1 then those words shall mean and include the details supplied after them in Schedule 1.
- (g) References to clauses and schedules are references to clauses and schedules of this Lease.
- (h) Whenever the words “includes” or “including” are used in this Lease, they are deemed to be followed by the words “without limitation”.
- (i) Any covenant or agreement on the part of two or more persons will bind those persons jointly and severally.
- (j) Reference to any statute, regulation, ordinance, or bylaw will be deemed to extend to all statutes, regulations, ordinances, or bylaws amending, consolidating or replacing the same.
- (k) Where the Lessor’s consent or approval is required pursuant to any provision of this Lease, the consent or approval will be required for each separate occasion, notwithstanding any prior consent or approval obtained for the like purpose on any prior occasion, and such approval must not be unreasonably withheld or delayed.

2. USE OF PREMISES

- 2.1 The Lessee is only allowed to use the Premises for the Permitted Activity. The Lessee will not enter into any arrangement with any party to allow commercial activity or any other activity not specified in Schedule 1 to be based on the Premises unless the Lessee has obtained the prior approval in writing of the Lessor.

- 2.2 If, after making such enquiries as the Lessor thinks fit and giving the Lessee an opportunity of explaining the usage of the Premises, the Lessor is of the opinion that the Premises are not being used or are not being sufficiently used for the Permitted Activity specified in this Lease, then the Lessor may terminate this Lease by giving not less than 6 months written notice to the Lessee, and the Premises together with all improvements (if any) will revert to the Lessor without compensation being payable to the Lessee.

3. **TERM**

- 3.1 The term of this Lease shall be that provided in Schedule 1.
- 3.2 If this Lease continues, with the consent of the Lessor, past the expiration of the Term then the Holding Over provisions of this Lease shall apply.

4. **PAYMENTS**

4.1 **Payment of Rent**

The Lessee shall pay the Rent by equal half yearly payments in advance (or as varied pursuant to any rent review) on the Rent Payment Dates, but the first half yearly payment shall be payable on the Commencement Date on a proportionate basis for any broken period until the next Rent Payment Date. All rent shall be paid without any deductions by direct payment to the Lessor or as the Lessor may direct.

4.2 **Rent Review**

The Lessor may review the Rent on the Rent Review Dates as follows:

- (a) The Lessor can at any time up to the date that is one (1) month before the Rent Review Date give written notice to the Lessee specifying the new Rent as at the Rent Review Date.
- (b) The new Rent must be set in accordance with and must be consistent with the Policy.
- (c) The new Rent shall be payable as from the Rent Review Date and the Lessee shall have no right of objection or arbitration in respect of the Lessor's decision as to the amount of rental payable under this Lease.
- (d) The Lessor may require the rent review to be recorded in a Deed.

4.3 **Outgoings**

- (a) The Lessee shall pay all outgoings properly and reasonably incurred in respect to the Premises including:

[Drafting Note: Delete those outgoings that do not apply]

- (i) All general and special rates, water rates, sewerage, rubbish collection and other charges for the Premises.

- (ii) All charges for gas, electricity, telephones and any other utilities or services including line charges for the Premises.
 - (iii) New Zealand Fire Service charges for all fire detection and fire fighting equipment and related maintenance for the Premises.
 - (iv) Insurance premiums (clause 16).
 - (v) Service contract charges for air conditioning, lifts, other building services and security services.
 - (vi) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to any building owned by the Lessor (minor repairs to the roof of a building shall not be a structural repair).
 - (vii) The provisioning of toilets and other shared facilities.
 - (viii) The cost of ground maintenance i.e. lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
 - (ix) Yard and car parking area maintenance and repair charges but excluding charges for structural repairs to any car parking area of the building if owned by the Lessor.
 - (x) Management expenses.
 - (xi) The costs incurred and payable by the Lessor in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004.
- (b) Where any outgoing is not separately assessed or levied in respect of the Premises then the Lessee shall pay such fair proportion as shall be specified by the Lessor acting reasonably.
 - (c) The Lessor may vary the proportion of any outgoing payable to ensure the Lessee pays a fair proportion of the outgoing.
 - (d) The outgoings shall be payable on demand.
 - (e) The Lessee's liability to pay outgoings incurred during the Term shall subsist notwithstanding the end or earlier termination of the Term.

4.4 Goods and Services Tax

- (a) The Lessee shall pay to the Lessor or as the Lessor shall direct Goods and Services Tax payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The tax 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.

- (b) If the Lessee shall make default in payment of the rental or other moneys payable hereunder and the Lessor becomes liable to pay additional Goods and Services Tax then the Lessee shall on demand pay to the Lessor the additional tax.

4.5 Interest on Unpaid Money

If the Lessee defaults in payment of the rent or other moneys payable hereunder for 10 Working Days then the Lessee shall pay on demand interest at the Default Interest Rate on the moneys unpaid from the due date for payment to the date of payment.

4.6 Costs

The Lessee shall pay the Lessor's costs arising out of and in connection to this Lease including:

- (a) All statutory and administration costs incurred by the Lessor.
- (b) The Lessor's solicitor's reasonable costs of and incidental to the preparation of this Lease and any variation or renewal or any Deed recording a rent review.
- (c) The Lessor's reasonable costs incurred in considering any request by the Lessee for the Lessor's consent to any matter contemplated by this Lease.
- (d) The Lessor's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Lessor's rights remedies and powers under this Lease.

5. REPORTING REQUIREMENTS

- 5.1 The Lessee will share with the Lessor such information on its activities as may reasonably be requested by Lessor from time to time. As a minimum requirement, the Lessee will report to the Lessor on the following:

[Drafting Note: Delete those that are not required]

- (a) Lessee's Community Outcomes Plan developed in accordance with the Policy.
- (b) Report outlining Lessee's achievements against the Community Outcomes Plan.
- (c) Lessee's annual accounts (the Lessor may require these to be audited).
- (d) Lessee's adopted budget for the forthcoming year.
- (e) Confirmation of current insurance policies for the Premises.
- (f) Contact details (e.g. name, postal address, phone number and email address of contact person for the Lessee).
- (g) Copies of any minutes, resolutions, president's reports of the Lessee.

- (h) Report on usage rates for the Premises by the Lessee.

6. LESSEE'S RULES

- 6.1 The Lessee must make rules for the management and control of the Premises and for the conduct of persons using the Premises. All such rules must be submitted and approved by the Lessor before coming into force and must not be inconsistent with the terms of this Lease, the provisions of the Reserves Act 1977 and any management plan prepared under section 41 of the Reserves Act 1977.

7. NO DISCRIMINATION

- 7.1 The Lessee must comply with the Human Rights Act 1993 so far as it applies to the Lessee, and will not refuse membership to any person applying for membership by reason of any of the prohibited grounds for discrimination in that Act.

8. HEALTH AND SAFETY

- 8.1 The Lessee must exercise the rights granted by this Lease in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992.
- 8.2 The Lessee shall at its own cost prepare a health and safety plan and shall ensure that the health and safety plan is fully implemented and in addition the Lessee shall:
 - (a) Notify the Lessor of any occurrence, activity or event on the Premises or the **[Reserve or Property]** which may endanger the public or the environment.
 - (b) Take all practicable steps to eliminate any dangers and to protect the safety of all persons present on the Premises and must, where necessary, erect signposts warning the public of any dangers they may encounter on the Premises.
 - (c) Record and report to the Lessor all accidents involving serious harm within 24 hours of their occurrence and forward an investigation report within 3 days of the accident occurring.

9. NO NOXIOUS USE

- 9.1 The Lessee shall not:
 - (a) Bring upon or store within the Premises nor allow to be brought upon or stored within the Premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of such weight size or shape as is likely to cause damage to the **[Reserve or Property]**, any surfaced area or the Lessor's improvements, fixtures or fittings;
 - (b) Contaminate the Premises and shall undertake all works necessary to remove any contamination of the Premises other than contamination not caused by the Lessee or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or

biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991;

- (c) Use the Premises or allow them to be used for any noisome noxious illegal or offensive trade or business; or
- (d) Allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Lessor, other lessees, licences or users of the **[Reserve or Property]**, or any other person.

10. LIQUOR

- 10.1 The Lessee must not apply for a special liquor licence or vary any liquor licence for the Premises or any part of the Premises without first obtaining the consent in writing of the Lessor in its capacity as administering body and or registered proprietor of the **[Reserve or Property]** in addition to any consent required from Hamilton City Council acting in its regulatory capacity.

11. MAINTENANCE

11.1 Maintenance Matrix

The Lessee and the Lessor shall each be responsible for their respective maintenance obligations as set out in the Maintenance Matrix in Schedule 4.

11.2 Lessee's obligations

- (a) Subject to the provisions of the Maintenance Matrix, the Lessee shall in a proper and workman like manner and to the reasonable requirements of the Lessor keep and maintain the Premises including the Lessor's fixtures and fittings in the same clean order repair and condition as they were in at the commencement of this Lease and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. Where the Premises are damaged by fire flood explosion lightning storm earthquake volcanic activity or any risk against which the Lessor is (or has covenanted with the Lessee to be) insured, then the Lessee is liable for the cost of making good that damage to the extent that:
 - (i) The damage was intentionally caused by the Lessee or those for whom the Lessee is responsible;
 - (ii) The damage was the result of an act or omission by the Lessee or those for whom the Lessee is responsible and that act or omission:
 - A. occurred on or about the **[Reserve or Property]** and
 - B. constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
 - (iii) Any insurance moneys otherwise payable are rendered irrecoverable because of an act or omission of the Lessee or those for whom the Lessee is responsible.

- (b) The Lessee shall make good any damage to the **[Reserve or Property]** or loss caused by improper careless or abnormal use by the Lessee or those for whom the Lessee is responsible, to the Lessor's reasonable requirements.
- (c) If the Premises contain toilets, sinks and drains then they shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.
- (d) The Lessee shall regularly cause rubbish and garbage to be removed from the Premises and will keep any rubbish bins or containers in a tidy condition.
- (e) If the Lessor gives the Lessee written notice of any failure on the part of the Lessee to comply with any of the requirements of clauses 11.1 or 11.2 the Lessee shall with all reasonable speed so comply.

11.3 Lessor's obligations

If the Premises comprise the whole or part of a building owned by the Lessor then the Lessor shall keep and maintain the building, all building services, the Lessor's fixtures and fittings, and the car parks in good order repair and condition but the Lessor shall not be liable for any:

- (a) Repair or maintenance which the Lessee is responsible to undertake; or
- (b) Want of repair or defect in respect of building services, so long as the Lessor is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Lessor; or
- (c) Repair or maintenance which is not reasonably necessary for the Lessee's use and enjoyment of the Premises and the car parks (if any); or
- (d) Loss suffered by the Lessee arising from any want of repair or defect unless the Lessor shall have received notice in writing thereof from the Lessee and shall not within a reasonable time thereafter have taken appropriate steps to remedy the same.

11.4 Notification of defects

If the Premises comprise any buildings and improvements owned by the Lessor then the Lessee shall give to the Lessor prompt notice of any accident to or defect in the Premises of which the Lessee may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.

11.5 Lessor's right of inspection

The Lessor and the Lessor's employees contractors and invitees may at all reasonable times enter upon the Premises to view their condition.

11.6 Lessor may repair

If default shall be made by the Lessee in the due and punctual compliance with any repair notice given by the Lessor pursuant to this Lease, or if any repairs for which the Lessee is responsible are required to be undertaken as a matter of urgency then without prejudice to the Lessor's other rights and remedies expressed or implied the Lessor may by the Lessor's employees and contractors with all necessary equipment

and material at all reasonable times enter upon the Premises to execute such works. Any moneys expended by the Lessor in executing such works shall be payable by the Lessee to the Lessor upon demand together with interest thereon at the Default Interest Rate from the date of expenditure to the date of payment.

11.7 Access for repairs

The Lessee shall permit the Lessor and the Lessor's employees and contractors at all reasonable times to enter the Premises to carry out repairs to the Premises or adjacent Premises and to install inspect repair renew or replace any services where the same are not the responsibility of the Lessee all such repairs inspections and work to be carried out with the least possible inconvenience to the Lessee.

12. IMPROVEMENTS

12.1 The Lessee shall not build any buildings or make any structural or other alterations to any buildings comprising part of the Premises without the prior written consent of the Lessor. The Lessors consent can be withheld for any reason.

12.2 The Lessee, when undertaking any "building work" to the Premises (as that term is defined in the Building Act 2004), shall:

- (a) Complete such building works strictly in accordance with the plans and specifications that have been approved by the Lessor in accordance with clause 12.1 above and within such timeframes as reasonably required by the Lessor and if the Lessor has not specified a timeframe at the time of approving the plans and specifications then within 24 months of the date of commencement of the building works; and
- (b) Comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the Premises to be open to members of the public or allow use of the Premises by members of the public if that would be in breach of section 363 of the Building Act 2004.

13. REMOVAL OF IMPROVEMENTS

13.1 On termination of this Lease for any reason whatsoever the land together with all buildings and improvements comprising part of the Premises shall revert to the Lessor without compensation payable to the Lessee PROVIDED THAT:

- (a) The Lessee shall, if required by the Lessor:
 - (i) Remove all or part of the partitions, alterations or additions installed or made by the Lessee to the Premises; and
 - (ii) Remove all or part of the Lessee's building;on, or prior to, the expiration of the Term or such other timeframe agreed in writing by the Lessor.
- (b) The Lessee shall, if required by the Lessor:

- (i) Make good damage to the **[Reserve or Property]** caused by such removal or otherwise caused by the Lessee, including, but not by limitation, the removal of rubbish;
 - (ii) Restore the Premises to their condition prior to the Lessee making such alterations or improvements; and
 - (iii) Where the Term is determined for any reason, effect such removal and making good of damage immediately after determination.
- (c) If the Lessee fails to complete any removal and making good when required under subclauses 13.1(a) and 13.1(b), the Lessor may do so and the Lessee will on demand pay all costs and expenses incurred by the Lessor in doing so.

14. COMPLIANCE WITH STATUTES AND REGULATIONS

- 14.1 The Lessee shall comply with the provisions of all statutes, ordinances, regulations and by-laws in any way relating to or affecting the Premises or the use of the Premises by the Lessee or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the Premises or their use by the Lessee or other occupant.
- 14.2 Notwithstanding the provisions of clause 14.1, where the Premises or any part of the Premises comprise a building owned by the Lessor then the Lessor will undertake such action required to ensure compliance with the Building Act 2004 (unless any particular obligation is the responsibility of the Lessee as the occupier of the Premises) but the Lessee shall on demand by the Lessor pay by way of refund to the Lessor all costs incurred by the Lessor in respect of such action.

15. SIGNS

- 15.1 The Lessee must not erect, paint, display or allow on the Premises any signs, notices or advertising material unless the Lessee first obtains the consent in writing of the Lessor as the administering body and or registered proprietor of the **[Reserve or Property]** in each case. It will be a condition of any consent that any approved signs must comply with the relevant bylaws, district plan and have necessary regulatory approvals. The Lessor acting in its sole discretion may require any approved signs to be removed at any time. The Lessee must remove any signs and make good any damage occasioned thereby within 10 Working Days of receiving a request from the Lessor.

16. INSURANCE AND INDEMNITY

16.1 Buildings

The Lessee, at the Lessee's expense, shall insure all buildings and improvements situated on or within the Premises for full replacement value, including all professional and consent fees, and costs of demolition, site clearance and for any works required by statute PROVIDED THAT if any such buildings and improvements are owned by the Lessor then the Lessor will arrange such insurance as the Lessor considers necessary but the Lessee shall on demand by the Lessor pay by way of refund to the Lessor all costs incurred by the Lessor in respect of such action.

16.2 Lessee to occupy Premises at own risk

The Lessee agrees to occupy and use the Premises at the Lessee's risk and releases to the full 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 accident, damage or injury occurring to any person or property in or about the Premises or the **[Reserve or Property]**.

16.3 Indemnity by Lessee

The Lessee shall keep the Lessor indemnified against all claims, actions, losses and expenses of any nature which the Lessor may suffer or incur or for which the Lessor may become liable in respect of:

- (a) The neglect or careless use or misuse by the Lessee or persons under the control of the Lessee of the Premises or the **[Reserve or Property]** or arising out of any faulty fixture or fitting of the Lessee; and
- (b) Any accident or damage to property or any person arising from any occurrence in or near the Premises wholly or in part by reason of any act or omission by the Lessee or persons under the control of the Lessee.

16.4 Public Liability

The Lessee, at the Lessee's expense, shall effect and keep current in respect of the Premises, and the Lessee's use of the Premises, a policy of public risk insurance for an amount of not less than the amount specified in Schedule 1, or such other amount from time to time reasonably required by the Lessor, for any one event with a substantial reputable insurance office or company first approved in writing by the Lessor (such approval not to be unreasonably or arbitrarily withheld).

16.5 Insurance Policies

The Lessee must provide the Lessor with a copy of all insurance policies effected pursuant to clauses 16.1 and 16.4 together with such confirmation of payment of premiums as the Lessor may from time to time reasonably require.

16.6 Failure to Comply

If the Lessee fails to comply with its obligations under clauses 16.1 and 16.4 the Lessor may (but will not be obliged to) carry out such obligations on behalf of, and in the name of, the Lessee and pay any premiums. All moneys paid by the Lessor pursuant to this clause together with interest at the Default Interest Rate and the Lessor's reasonable costs incurred while carrying out such obligations will be recoverable by the Lessor from the Lessee as if they were arrears of rental.

16.7 Lessee not to Void Insurances

The Lessee shall not do anything or permit anything to be done which may render void or voidable or less effective any policy of insurance effected in respect of the Premises. Where the Lessee has rendered any insurance less effective or void and the Lessor has suffered loss or damage thereby the Lessee shall forthwith compensate the Lessor in full for such loss or damage.

17. DAMAGE TO OR DESTRUCTION OF PREMISES

17.1 Total Destruction

If the Premises or any portion of any building owned by the Lessor of which the Premises form part shall be destroyed or so damaged:

- (a) As to render the Premises untenable then the Term shall at once terminate; or
- (b) In the reasonable opinion of the Lessor as to require demolition or reconstruction, then the Lessor may within 3 months of the date of damage give the Lessee 20 Working Days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.

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

17.2 Partial Destruction

- (a) If the Premises or any portion of any building owned by the Lessor of which the Premises may form part shall be damaged but not so as to render the Premises untenable and:

- (i) The Lessor's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Lessee; and
- (ii) All the necessary permits and consents shall be obtainable:

Then the Lessor shall with all reasonable speed expend all the insurance moneys received by the Lessor in respect of such damage towards repairing such damage or reinstating the Premises and/or the Lessor's building(s) but the Lessor shall not be liable to expend any sum of money greater than the amount of the insurance money received.

- (b) Any repair or reinstatement may be carried out by the Lessor using such materials and form of construction and according to such plan as the Lessor thinks fit and shall be sufficient so long as it is reasonably adequate for the Lessee's occupation and use of the Premises.
- (c) Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date the damage occurred.
- (d) If any necessary permit or consent shall not be obtainable or the insurance moneys received by the Lessor shall be inadequate for the repair or reinstatement then the Term shall at once terminate but without prejudice to the rights of either party against the other.

18. LESSOR'S RIGHT TO TERMINATE

- 18.1 If, after giving due consideration to the public interest in the **[Reserve or Property]**, the Lessor is of the view that the Premises or any part of the Premises could be

better used for any other purpose, the Lessor may terminate this Lease by not less than 6 months written notice to the Lessee.

19. DEFAULT

19.1 Cancellation

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 Premises at the time or any time thereafter:

- (a) If the rent shall be in arrears and unpaid for ten 10 working days after any of the rent payment dates and the Lessee has failed to remedy that breach within 10 Working Days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;
- (b) 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;
- (c) If the Lessee shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Lessee's creditors;
- (d) In the event of the insolvency bankruptcy or liquidation of the Lessee; or
- (e) If the Lessee shall suffer distress or execution to issue against the Lessee's property goods or effects under any judgement against the Lessee in any Court for a sum in excess of five thousand dollars (\$5,000):

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

19.2 Essentiality of Payments

- (a) Failure to pay rent or other moneys payable hereunder on the due date shall be a breach going to the essence of the Lessee's obligations under the Lease. The Lessee shall compensate the Lessor and the Lessor shall be entitled to recover damages from the Lessee for such breach. Such entitlement shall subsist notwithstanding any determination of the Lease and shall be in addition to any other right or remedy which the Lessor may have.
- (b) The acceptance by the Lessor of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Lessee's continuing obligation to pay rent and other moneys.

19.3 Repudiation

The Lessee shall compensate the Lessor and the Lessor shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Lessee constituting a repudiation of the Lease or the Lessee's obligations under the

Lease. Such entitlement shall subsist notwithstanding any determination of the Lease and shall be in addition to any other right or remedy which the Lessor may have.

20. ASSIGNMENT OR SUBLETTING

- 20.1 The Lessee must not assign, mortgage, charge, sublet or part with possession of the Premises, or any part of the Premises, without first obtaining the written consent of the Lessor. The Lessor shall at all times have power in the public interest and may in its discretion refuse any application for consent or grant its consent subject to such conditions as it thinks fit.
- 20.2 If this Lease has been granted under paragraph (b) or paragraph (c) of section 54(1) of the Reserves Act 1977, consent may only be granted to a transfer, assignment or sublease if the transferee, assignee or sublessee is a registered incorporated society or a registered charitable trust whose aims and objects are similar to those of the Lessee and are acceptable to the Lessor.
- 20.3 The provisions of clause 20.2 shall only apply if the Premises are vested in the Lessor as a reserve under section 26 of the Reserves Act 1977.

21. PUBLIC USE OF PREMISES

- 21.1 If Lessor requires the Lessee to make the whole or any part of the Premises available to other persons or groups then the Lessee shall:
- (a) prepare a set scale of hire charges and submit the same to the Lessor for approval;
 - (b) use its best endeavours to ensure that the best public use is made of the Premises;
 - (c) not unreasonably prevent or restrict the hireage of the Premises when they are not required by the Lessee;
 - (d) not impose on any person or group hiring the Premises any charge or requirement which has not been approved in writing by the Lessor;
 - (e) provide an annual report to the Lessor setting out a list of the uses made of the Premises; and
 - (f) comply with all requests from the Lessor relating to the hire of the Premises within 10 Working Days or such other reasonable time as agreed between the parties.

22. PREMISES ADJACENT TO PLAYING FIELD

- 22.1 If the Premises are adjacent to but do not include a playing or sports field or ground then the Lessee will not permit its members to use such field or ground without first obtaining from the Lessor a licence to use and occupy upon such conditions and terms as a determined by the Lessor.

23. CAR PARKS

- 23.1 The Lessee shall have the right to exclusive possession of the leased car parks, but when any car park is not being used by the Lessee other persons shall be entitled to pass over the same.
- 23.2 The Lessor may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Lessee except pursuant to clauses 17.1 or 17.2.
- 23.3 The Lessee shall comply with the Lessor's reasonable requirements relating to the use of the car parks and access thereto and in particular shall only use the car parks for the parking of one car per parking space.
- 23.4 The provision of this Schedule 2 shall apply to the car parks as appropriate.

[Drafting Note: Delete clause 24 if Premises are not a Reserve]

24. RESERVES ACT 1977

- 24.1 While the Premises hereby leased are intended primarily for the Lessee to quietly hold and enjoy throughout the Term it is acknowledged by the parties that the land on which the Premises are situated is vested in the Lessor as Reserve. In particular, the parties agree and acknowledge that:
- (a) this Lease is subject to the consent of the Minister of Conservation;
 - (b) there are public rights associated with the Reserve that will (or are likely to) impact on the Lessee's quiet enjoyment of the Premises;
 - (c) this Lease may be terminated early pursuant to clause 18; and
 - (d) the covenants and provisions required to be included in this Lease by the Reserves Act 1977 and by any regulations made under the Reserves Act 1977 shall to the extent that they are compulsory in their application to this Lease be binding on the parties in the same manner as if such provisions had been fully set out in this Lease.

25. GENERAL

25.1 Holding Over

If the Lessor permits the Lessee to remain in occupation of the Premises after the expiration or sooner determination of the term, such occupation shall be a periodic tenancy only terminable by 20 working days notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as herein expressed or implied.

25.2 Lease of Premises Only

The tenancy shall relate only to the Premises and car parks (if any) and this Lease will not detract, limit or otherwise interfere with the rights of the Lessor and the public to use and enjoy the **[Reserve or Premises]**.

25.3 **Administering Body or Registered Proprietor**

The Lessor has entered into this Lease in its capacity as administering body and or registered proprietor of the **[Reserve or Property]** and not as a regulatory authority. The two roles are different and nothing in this Lease shall restrict or bind Hamilton City Council in its regulatory capacity. Any consents or agreements given herein shall not be construed as consent or agreement by Hamilton City Council in its regulatory capacity.

25.4 **Neglect of Other Persons**

The Lessor shall not be responsible to the Lessee for any act or default or neglect of any other Lessee, Licensee or other user of the **[Reserve or Premises]**.

25.5 **Suitability**

No warranty or representation expressed or implied has been or is made by the Lessor that the Premises are now suitable or will remain suitable or adequate for use by the Lessee or that any use of the Premises by the Lessee will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

25.6 **Waiver**

No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.

25.7 **Not Registrable**

This Lease is not registrable and the Lessee may not register a caveat against the Identifier for the **[Reserve or Property]**.

25.8 **Notices**

- (a) All notices must be in writing and must be served by one of the following means:
 - (i) 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
 - (ii) 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 facsimile, or by email.
- (b) In respect of the means of service specified in clause 24.8(a)(ii)B, a notice is deemed to have been served:
 - (i) In the case of personal delivery, when received by the addressee;

- (ii) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
 - (iii) In the case of facsimile transmission, when sent to the addressee's facsimile number; or
 - (iv) In the case of email, when acknowledged by the addressee by return email or otherwise in writing.
- (c) In the case of a notice to be served on the Lessee, if the Lessor is unaware of the Lessee's last known address in New Zealand or the Lessee's facsimile number, any notice placed conspicuously on any part of the Premises shall be deemed to have been served on the Lessee on the day on which it is affixed.
- (d) A notice shall be valid if given by any director, general manager, solicitor or other authorised representative of the party giving the notice.

25.9 **Dispute Resolution**

- (a) If any dispute or difference shall arise between the parties as to:
- (i) the meaning or application of any part of this Lease; or
 - (ii) any other matter in connection with, arising out of, or which may have an effect on, this Lease;
- then representatives of the Lessee and the Lessor shall meet within 10 working days of the dispute or difference ("Issue") arising to endeavour to reach an agreement on the resolution of the Issue.
- (b) If the meeting referred to in clause 25.9(a) ("Meeting") does not result in the resolution of the Issue:
- (i) then the Lessee and the Lessor shall, within 10 working days of the date of the Meeting, appoint a mediator to mediate the issue;
 - (ii) if the parties are unable to agree upon the person to be appointed as mediator, then the president of the New Zealand Law Society shall be asked to appoint the mediator;
 - (iii) the mediation shall be held within one month of the date of the mediator being appointed; and
 - (iv) the Lessee and the Lessor shall attend and participate in the mediation in good faith to negotiate towards achieving a settlement of the Issue.

26. SPECIAL CONDITIONS

26.1 [INSERT ADDITIONAL CLAUSES TO DEAL WITH ANY SPECIAL CONDITIONS]

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SCHEDULE 3

(Plan)

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SCHEDULE 4
(Maintenance Matrix)

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SCHEDULE 5
(Community Occupancy Policy)

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