

AGREEMENT

KAPITI COAST DISTRICT COUNCIL

THE OTAIHANGA BOATING CLUB INCORPORATED

DRAFT



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PARTIES

1. **KAPITI COAST DISTRICT COUNCIL (Council)**
2. **THE OTAIHANGA BOATING CLUB INCORPORATED (Club)**

BACKGROUND

- A. The Club is the registered proprietor of the Property.
- B. The Council has resolved to provide the Funding Contribution to the Club to enable the Club to upgrade the Property.
- C. This Agreement sets out the terms and conditions agreed to by the parties for the Council to provide the Funding Contribution.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

Agreement means this agreement;

Club means The Otaihanga Boating Club Incorporated (216188);

Club Representative means the Commodore;

Community Use means the hire of the Facility by individuals or organisations who wish to use the Facility for non-profit, community based activities, excluding private social functions;

Council means Kapiti Coast District Council;

Council Representative means the Chairperson of the Paraparaumu/Raumati Community Board;

Encumbrance means the encumbrance instrument to be registered against the Property as provided for in clause 5 in the form set out in Schedule One;

Facility means the clubhouse facility owned by the Club and located on the Property;

Funding Contribution means the Council's contribution towards the cost of rebuilding and upgrading the Property, being \$65,648.00 plus GST;

Property means all the land and the buildings located on the land comprised and described in computer freehold register WN604/267;

Term means ten years from the date that this Agreement is signed by both parties; and

Working Day means any day on which the major trading banks are open for business in Wellington.

1.2 Interpretation: In this agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning throughout this agreement, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
- (c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this agreement. Each such schedule and attachment forms part of this agreement;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (i) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and
- (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. CLUB'S OBLIGATIONS

- 2.1** The Club must use the Funding Contribution to rebuild and upgrade the Facility including the provision of car parking and to acquire new furniture, soft furnishings and chattels for use in the Facility and for no other purpose.
- 2.2** The Club must ensure that the Facility is available for Community Use during the Term on the following terms:
- (a)** Community Use of the Facility must generally be booked a minimum of 10 Working Days in advance but provided that there are no existing Club or private function bookings in place, the Club must approve all requests for Community Use;
 - (b)** Subject to clause 2.2(a), the Facility must be available for booking for Community Use for at least ten hours per week between 5 pm and 10 pm Mondays to Thursdays;
 - (c)** The Club may, at its discretion, make the Facility available for Community Use on Fridays, Saturdays and Sundays if the Facility has not been booked for private functions or Club activities;
 - (d)** The Club may charge a reasonable hourly fee for Community Use, provided that the fee does not exceed 80% of the hourly rate set by the Council each year for use of the Waikanae Senior Citizen's Hall.

3. COUNCIL FUNDING CONTRIBUTION

- 3.1** The Council will pay the Funding Contribution to the Club to rebuild and upgrade the Facility, within 10 Working Days of the Encumbrance being registered against the Property.

4. REVIEW AND VARIATION OF AGREEMENT

- 4.1** The Club Representative and the Council Representative will meet six months after the date this Agreement has been signed by both parties, and then annually during the Term to review the terms of this Agreement and the level of Community Use of the Facility.
- 4.2** Any variation or change to this Agreement agreed by the parties must be in writing, be dated, specifically refer to this Agreement and be signed by the parties. To avoid doubt, the parties acknowledge that neither party is obliged to agree to any variation or change to this Agreement.

5. ENCUMBRANCE

- 5.1** The Club agrees to the registration of the Encumbrance against the computer freehold register for the Property .
- 5.2** The Council will, at its cost, arrange for the Encumbrance to be registered over the Property.
- 5.3** The Club agrees that the registration of the Encumbrance will proceed by way of E dealing and that the transaction will be prepared and registered as an electronic

instrument and completed in accordance with the practices and procedures set out in the New Zealand Law Society E dealing guidelines for Electronic Registration as amended from time to time and the Club will, within 10 Working Days of being requested in writing by the Council to do so, execute an Authority and Instruction Form to register the Encumbrance over the Property by E dealing.

- 5.4** The Club must provide the Council with a signed consent from Greater Wellington Regional Council (in the form attached as Schedule Two), consenting to registration of the Encumbrance in its capacity as Encumbrancee under Encumbrance 8346244.1.

6. COSTS

- 6.1** The Council is responsible for all costs relating to the negotiation, preparation and signing of this Agreement and the Encumbrance.

7. DISPUTE RESOLUTION

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

- 7.2** If the parties cannot agree on any dispute resolution technique within 10 Working Days of any dispute being referred in writing by one party to the other, then the dispute will be settled by reference to arbitration in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

- 7.3** Except as otherwise expressly provided in the Agreement, the reference will be to a single arbitrator:

- (i) To be agreed on by the parties; or
- (ii) In the absence of any agreement within 5 Working Days of either party first nominating an arbitrator (or such longer period as the parties may agree in writing), nominated by the President for the time being of the New Zealand Law Society.

- 7.4** 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.

8. NON WAIVER

- 8.1** The failure of any party to insist in any one or more instances on strict performance of any of the terms of this Agreement or the waiver by any party of any term or right under this Agreement or of any default by any other party must not be taken as a waiver by such party of any such term, right or default in the future.

9. SEVERABILITY

- 9.1** If any part of this Agreement or the Encumbrance becomes void, invalid or unenforceable at any time, that will not affect the validity of the rest of this Agreement or the Encumbrance.

10. COMPLETE AGREEMENT

- 10.1** This Agreement and the Encumbrance constitute the entire agreement between the Club and the Council in relation to the Funding Contribution and use of the Facility. This Agreement and the Encumbrance supersede all prior negotiations, representations or warranties except where they have been expressly incorporated into this Agreement and the Encumbrance.

11. CLUB'S WARRANTY

- 11.1** The Club warrants that all information provided to the Council for the purpose of obtaining the agreement of the Council to make the Funding Contribution on the terms and conditions of this Agreement are true and correct.

12. NOTICES

- 12.1** All notices and other communications required or permitted under this Agreement will be in writing and will be delivered personally, sent by post or by facsimile transmission. Any such notice will be deemed given when so delivered personally or sent by facsimile transmission or three days after sending by post to one of the following addresses:

Council:

Kapiti Coast District Council
175 Rimu Road
Private Bag 60601
Paraparaumu 5254

Attention: Chairperson of the Paraparaumu/Raumati Community Board

Club:

P O Box 1715
Paraparaumu Beach

13. NON MERGER

- 13.1** The agreements, obligations and warranties of the parties in this Agreement will not merge with the payment of the Funding Contribution but will remain enforceable to the fullest extent possible, despite any rule of law to the contrary.

SIGNATURES

THE COMMON SEAL of KAPITI COAST DISTRICT COUNCIL was affixed in the presence of:

Mayor

Chief Executive

Councillor

THE COMMON SEAL of THE OTAIHANGA BOATING CLUB INCORPORATED was affixed in the presence of:

Executive Committee Member

Executive Committee Member

Witness (Honorary Secretary):

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SCHEDULE ONE
ENCUMBRANCE INSTRUMENT

DRAFT

SCHEDULE TWO
CONSENT FORM

DRAFT

Form E

Encumbrance Instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
CFR WN604/267	All	

Encumbrancer

The Otaihanga Boating Club Incorporated

Encumbrancee

Kapiti Coast District Council

Estate or interest to be encumbered*Insert e.g. Fee simple; Leasehold in Lease No. etc.*

Fee Simple

Encumbrance Memorandum Number

N/A

Nature of security*State whether sum of money, annuity or rentcharge and amount*

Rent Charge of \$100.00 per annum

Encumbrance*Delete words in [], as appropriate*

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the ~~[above Encumbrance Memorandum]~~ [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the ~~[above Encumbrance Memorandum]~~ ~~and~~ [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Terms

- 1 Length of term **10 years from the date of registration of this Instrument**
- 2 Payment date(s) **Each anniversary of the date of registration of this Instrument**
- 3 Rate(s) of interest #15=*rate(s) of interest*# **Overdraft rate of the bankers of the Encumbrancee**
- 4 Event(s) in which the sum, annuity or rent charge becomes payable
If the Encumbrancer is in breach of the covenants and conditions of this Instrument
- 5 Event(s) in which the sum, annuity or rent charge ceases to be payable
If the Encumbrancer is not in breach of the covenants and conditions of this Instrument

Covenants and conditions

Continue in Annexure Schedule(s), if required

See Annexure Schedule

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

See Annexure Schedule

Annexure Schedule

Insert instrument type

Encumbrance Instrument

BACKGROUND

- A.** The Encumbrancer is registered as proprietor of an estate in fee simple in Computer Freehold Register WN604/267 (**Land**) and the Clubrooms erected on the Land (**Building**).
- B.** The Encumbrancee has agreed to make a payment to the Encumbrancer of \$65,648.00 plus GST (sixty five thousand, six hundred and forty eight dollars) (**Payment**) as a contribution towards the rebuilding and upgrading of the Building.
- C.** The Encumbrancee has agreed to make the Payment to the Encumbrancer subject to the following conditions:
- (a) the Encumbrancer securing to and for the benefit of the Encumbrancee a rent charge with the Encumbrancee as set out in and subject to the conditions expressed in this Instrument; and
 - (b) the Encumbrancer using the Payment for the purposes of rebuilding and upgrading of the Building including the provision of carparking, and to acquire new furniture, soft furnishings and chattels for use in the Building and for no other purpose; and
 - (c) the Encumbrancer agreeing to make the Building available for Community Use on the terms set out in the Schedule.
- D.** The Encumbrancer has agreed to enter into the covenants in favour of the Encumbrancee set out in this Instrument.

ENCUMBRANCE

1. The Encumbrancer encumbers the Land for the benefit of the Encumbrancee for the annual rent charge of \$100.00 to be paid in one annual sum on the anniversary of the date of registration of this Instrument.
2. The Encumbrancer covenants with the Encumbrancee as follows:
 - (a) The Encumbrancer must use the Payment for the purposes of rebuilding and upgrading the Building and for no other purpose.
 - (b) The Encumbrancer must make the Building available for Community Use on the terms set out in the Schedule.

3. If the Encumbrancer fails to comply with the covenants of this Instrument then:
 - (a) the Encumbrancer will, upon demand, pay to the Encumbrancee a sum equal to half the Payment (**Repayment Sum**); and
 - (b) the Encumbrancer will pay the Encumbrancee interest on the Repayment Sum, which will run from the date of demand for the repayment, at the rate of the then current overdraft rate of the bankers of the Encumbrancee; and
 - (c) the Encumbrancee may bring an action against the Encumbrancer for specific performance.
4. If, for the period of 12 months preceding any day on which the annual rent charge is payable, there has been no breach of the covenants in this Instrument, then the annual rent charge payable on that day will be deemed to have been paid.
5. Subject to the provisions of this Instrument, the Encumbrancee will be entitled to all of the powers and remedies given to any party entitled to the benefit of any encumbrance under the Land Transfer Act 1952 and the Property Law Act 2007, excluding the powers of sale given to a mortgagee.
6. The term of this Encumbrance is 10 years from the date of registration of this Instrument (**Term**).
7. This Instrument is fully binding on all transferees, assignees, successors in title, owners and occupiers of any estate or interest in the Land, and provided that the owner is not in default at the date of any transfer or assignment by a registered proprietor to any purchaser or assignee then the liability of any former owner will cease from the date of transfer by such owner.
8. The Encumbrancer will permit the Encumbrancee's employees, contractors and agents to enter the Land and the Building at reasonable times and upon reasonable notice to ensure that the covenants in this Instrument are being complied with.
9. Any repayment of the Repayment Sum or payment of the rent charge by the Encumbrancer does not release the Encumbrancer from, or constitute the satisfaction of, the Encumbrancer's obligations under this Instrument.
10. The Encumbrancer irrevocably covenants with the Encumbrancee for the Term, that:
 - (a) the Encumbrancee will have no obligation to discharge this Instrument under section 97 of the Property Law Act 2007 or otherwise;
 - (b) the Encumbrancer will not take any steps, including, without limitation, pursuant to section 97 of the Property Law Act 2007 or section 115 of the Property Law Act 2007, to redeem or discharge this Instrument, or pursuant to section 317 of the Property Law Act 2007 to have this Instrument revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land;
 - (c) the Encumbrancer will not support any such steps being taken by a third party; and

- (d) the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to have this Instrument discharged, redeemed, revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land.
11. To avoid any doubt:
- (a) if the obligations in this Instrument are of a restrictive nature, for example, by requiring the Encumbrancer not to do something, the performance of those obligations will require the Encumbrancer to observe and comply with those restrictions; and
- (b) where the obligations in this Instrument are of a continuing nature, they will be treated as not having been fully performed for as long as they are capable of still being performed, observed or complied with.
12. Despite clauses 9 to 11, the Encumbrancer will be entitled to a discharge of this Instrument and the Encumbrancee will discharge this Instrument if the Term has expired, or if the Encumbrancee is otherwise satisfied (in its sole discretion) that the obligations and covenants set out in this Instrument become obsolete.
13. If the Encumbrancer defaults in compliance with the terms and conditions of this Instrument, then the Encumbrancer will pay all costs of the Encumbrancee in enforcement of the provisions of this Instrument.
14. No delay or failure by the Encumbrancee to enforce performance of any of the covenants set out in the Schedule and no indulgence granted to the Encumbrancer will prejudice the rights of the Encumbrancee to enforce any of the covenants and provisions of this Instrument.
15. This encumbrance will operate as a second registered charge over the Land behind Encumbrance Instrument 8346244.1. For the purposes of section 92 of the Property Law Act 2007, this Instrument will secure the sum of \$100.00 (plus GST (if any)).
16. The Encumbrancer agrees that the powers, rights and remedies conferred upon and given to the Encumbrancee by this instrument are in addition to and not in substitution for all other powers, rights and remedies conferred upon it by the Local Government Act 1974, the Local Government Act 2002, the Resource Management Act 1991, or any other Act, or statutory regulation or bylaws or provisions of the relevant District Plan, and the exercise of any power, right or remedy under this Instrument will not prejudice the Encumbrancee's authority to exercise any such powers, rights or remedies.
17. Any dispute which may arise between the parties concerning the interpretation of this Instrument will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such disputes.
18. If the parties cannot agree on any dispute resolution technique relating to a dispute under clause 17 within 10 Working Days of the dispute being referred in writing by one party to the other, then the dispute will be settled by reference to arbitration in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

19. Except as otherwise expressly provided in the Agreement, the reference will be to a single arbitrator:
- (a) To be agreed on by the parties; or
 - (b) In the absence of any agreement within 5 Working Days of either party first nominating an arbitrator (or such longer period as the parties may agree in writing), nominated by the President for the time being of the New Zealand Law Society.
20. 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.

SCHEDULE

TERMS OF COMMUNITY USE

The Encumbrancer must ensure that the Building is available for Community Use during the Term of this Instrument on the following terms:

- Community Use of the Building must generally be booked a minimum of 10 Working Days in advance but provided that there are no existing bookings by the Encumbrancer, or private function bookings, the Club must approve all requests for Community Use;
- The Building must be available for booking for Community Use for at least ten hours per week between 5 pm and 10 pm Mondays to Thursdays;
- The Encumbrancer may, at its discretion, make the Building available for Community Use on Fridays, Saturdays and Sundays if the Building has not been booked for private functions or the Encumbrancer's activities, provided that the Community Use has been booked a minimum of 10 Working Days in advance;
- The Encumbrancer may charge a reasonable hourly fee for Community Use, provided that the fee does not exceed 80% of the hourly rate set by the Encumbrancee each year for use of the Waikanae Senior Citizen's Hall.

For the purposes of this Instrument, the parties agree that "Community Use" means the hire of the Building by individuals or organisations who wish to use the Building for non-profit, community based activities, excluding private social functions.

