

DEED OF LICENCE

Deed made on the 5th day of November 2010

BETWEEN KAPITI COAST DISTRICT COUNCIL

Licensor

AND PAEKAKARIKI LAWN TENNIS CLUB INCORPORATED

Licensee


THE LICENSOR grants to the Licensee and the Licensee accepts a licence of the Land and Buildings described in the Second Schedule together with the right to use the Licensor's fixtures and fittings contained on the Land and in the Building for the term from the date of this licence and at the annual licence fee (subject to review if applicable) as set out in the First Schedule, and upon the terms set out in the First Schedule.

The common seal of the
KAPITI COAST DISTRICT COUNCIL was affixed in the presence of:


Mayor


Chief Executive

Witnessed:

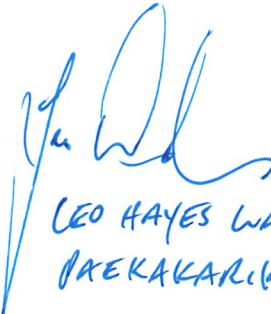

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The Common Seal of **PAEKĀKĀRIKI TENNIS CLUB INC** was
hereunto affixed in the presence of:


President, Paekākāriki Tennis Club Inc


Secretary Paekākāriki Tennis Club Inc

Witnessed:


LEO HAYES WATSON
PAEKAKARIKI

FIRST SCHEDULE

1 Interpretation

In this licence unless the context otherwise requires:

1.1 Definitions

- (i) “Building” means the building situated on the Land and marked on the aerial photograph attached as the Second Schedule;
- (ii) “Land” means the land marked on the aerial photograph attached as the Second Schedule;
- (iii) “Licensee” means the Licensee, its executors, administrators, successors and permitted assigns and other persons by request or invitation of the Licensee or otherwise under the control or direction of the Licensee;
- (iv) “Licensor” means the Licensor, in its capacity as landowner, and its successors and permitted assigns;
- (v) “Management Plan” means any management plan prepared under section 41 of the Reserves Act 1977;
- (vi) “Outgoings” means the outgoings described in clause 3.2; and
- (vii) “Working Day” has the meaning given to it by the Property Law Act 2007.

2 Grant of Licence

2.1 Initial Term

The Licensor grants to the Licensee a licence of the Land and Building for a term of 33 years from the date of this licence on the terms and conditions set out in this licence. The Licensee accepts the licence.

2.2 Renewal: If:

- (i) the Licensee is not in breach of any of its obligations under this licence; and
- (ii) the Licensee has given the Licensor written notice that it wishes to renew the licence not less than three months before the end of the term of this licence; and
- (iii) in the opinion of the Licensor the Licensee has been using the Land and Building sufficiently for the permitted use and in accordance with the Management Plan, and the Licensee

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continues to operate as a viable provider of tennis club activities for the Paekakariki community; and

- (iv) the Licensor approves the renewal of the licence;

then the Licensor will at the Licensee's cost grant the Licensee a licence of the Land and Buildings for a further term of 33 years on the same terms and conditions as this licence, including this right of renewal.

3 Licence Fee and Outgoings

3.1 Covenant to Pay a Licence Fee

- (i) The Licensee will pay an annual licence fee of \$1.00, if demanded by the Licensor, for the first five years from the date of this licence (**Nominal Licence Fee Period**).
- (ii) At the expiry of the Nominal Licence Fee Period, the Licensee will be required to pay an annual licence fee which will be set by the Licensor and reviewed annually. The annual licence fee from the expiry of the Nominal Licence Fee Period will be 50% of the annual tennis court hire fee for district tennis courts set by the Kāpiti Coast District Council.
- (iii) The Kāpiti Coast District Council will have the sole right to decide the policy from time to time as to a reasonable fee applying to the hire of tennis courts under its control in the Kapiti Coast district.

3.2 Licensor's Outgoings

The Licensor will pay all charges and assessments made (excluding the annual licence fee payable under clause 3.1) relating to the use or occupation of the Land and Building including but not limited to rates, electricity, water, telephone and telecommunications charges.

3.3 Taxes and Duties

The Licensee will pay to the Licensor on demand goods and services tax (as that term is defined in the Goods and Services Tax Act 1985 and includes any tax levied in substitution of such tax):

- (i) in respect of the annual licence fee paid by the Licensee to the Licensor; and
- (ii) in respect of goods and services supplied either directly or as part of the outgoings; and
- (iii) in respect of anything paid or payable by the Licensee and paid by the Licensor on account of the Licensee's obligation to make such payment.

4 Use of Land and Building

4.1 Permitted Use

The Licensee will only use the Land and the Building for maintaining and administering the Paekākāriki Tennis Club and for tennis activities including community use of the tennis facilities. The Licensee acknowledges that a change in the permitted use as outlined in this clause 4.1 is expressly prohibited under this licence.

4.2 Subject to clause 17, during scheduled club games, events and interclub events, at times booked by the Licensee, the Licensee will have priority use of the Land and Building. The Licensee will inform the Licensor of all such club and interclub games and events, as far in advance as possible.

4.3 The general public will have access to the Land and Buildings when the Licensee does not require the Land and Buildings for scheduled club games, events, or interclub events. The general public may hire the Land and/or Building during times where the Licensee is not using the Land and Building for scheduled club games, events or interclub events.

4.4 The Licensee will display a sign, at the Licensor's cost, stating:

"The Paekākāriki Tennis Club is entitled to priority use of these facilities when required for scheduled club games and interclub events. At all other times the tennis courts are available for general public use. For Tennis Club Membership and court hireage inquiries, telephone 905 8328 or 905 1172.

The club rooms may be hired by contacting the Kapiti Coast District Council on (04) 296 4700.

Paekakariki Community Library Hours are _____. for information, contact Kāpiti Coast District Council on (04) 296 4700."

4.5 The tennis courts situated on the Land will be secured at all times when not in use by either the Licensee or the Licensor. Access to the tennis courts situated on the Land and the Building in accordance with clause 4.3 of this licence will be managed by the Kapiti Coast District Council.

4.6 Keys to the Building will be issued by the Licensor. Three sets of keys to the Building will be held by the Licensee. The Kāpiti Coast District Council will issue keys as necessary to other hirers of the Land and Building on an as required basis.

4.7 The Licensee acknowledges that any person who complies with the usual rules of the Licensee and pays the Licensees annual subscription fee may join the Licensee's organisation. Members of the Licensee's organisation will have keys to the court facilities issued by the Licensee to be used in accordance with the Licensee's rules.

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5 Maintenance and care of Land and Building

5.1 The Licensor must:

- (i) keep and maintain any surface areas of the Land and all fences in good order and repair;
- (ii) keep the grounds in a tidy condition and maintain any garden or lawn areas in a tidy and cared for condition;
- (iii) subject to clause 4.5 attend to the security of the Land and Building;
- (iv) maintain the tennis courts in a tidy and reasonable playing condition; and
- (v) keep and maintain the storm or wastewater drainage system including downpipes and guttering clear and unobstructed.

5.2 For the avoidance of doubt, and subject to the obligations in clause 5.1 above, the parties acknowledge that after the Licensor has undertaken the initial re-surfacing and restoration of the tennis courts and surrounding fences as agreed in a Deed of Transfer between the parties that will be entered into contemporaneously with this Licence, the Licensor will have full discretion as to what is undertaken by the Licensor in respect to future significant repairs and/or upgrade of the tennis courts and facilities ("Future Works"), but will consult with the Licensee in good faith on any decisions to be made on Future Works

5.3 The Licensee must:

- (i) While using the Land and Buildings, keep them free of rubbish, stones and broken glass;
- (ii) Permit the Licensor at all reasonable times to enter the Land and Building to view their state of repair and condition;
- (iii) Repair all damage intentionally caused by the Licensee or those for whom the Licensee is responsible (including without limitation its members and invitees), or loss caused by improper careless or abnormal use by the Licensee or those for whom the Licensee is responsible;
- (iv) Repair and make good all damage which is a result of an act or omission by the Licensee or those for whom the Licensee is responsible and that act or omission:
 - (a) Occurred on or about the Land and Building; and
 - (b) Constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or

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- (v) Reimburse any insurance monies otherwise payable that are rendered irrecoverable because of an act or omission of the Licensee or those for whom the Licensee is responsible.

6 Alterations and Additions

6.1 Licensors's Consent

The Licensee will not make any improvements, alterations or additions to any part of the Building or Land without the written consent of the Licensor and the Licensee acknowledges that such written consent may contain conditions.

6.2 Removal

On cancellation of the licence, the Licensee must, if required by the Licensor, remove equipment and all partitions, fittings and fixtures installed by the Licensee and repair any damage caused by that removal.

- 6.3 For the avoidance of doubt, any improvements, alterations or additions to any part of the Land or Building authorised by the Licensor under clause 6.1 (if not required by the Licensor to be removed by the Licensee on cancellation of the licence) will become the property of the Licensor at the cancellation of the licence without any compensation being payable to the Licensee.

7 Damage to or Destruction of Land and Building

- 7.1 If the Land and/or Building is destroyed or damaged so as to make them untenable or in the Licensor's opinion so as to require demolition or reconstruction the licence may, at the Licensor's option, be cancelled with effect from the date of the damage.
- 7.2 If the Land and/or Building is damaged, but not so as to give rise to cancellation under clause 7.1 the Licensor may with all reasonable speed reinstate the Land and/or Building using such materials as the Licensor elects, provided that the reinstated Land and/or Building is reasonably adequate for the purpose of carrying out the permitted use (as outlined in clause 4.1). Provided also that the Licensor will not be obliged to reinstate the Land and/or Building, and if it determines, in its absolute discretion, not to do so, in which case the licence will be cancelled with effect from the date of the damage.
- 7.3 In addition to clauses 7.1 and 7.2, if the destruction or damage to the Land and/or Building is caused by the negligence of the Licensee or the Licensee's agent, the Licensor may:
 - (i) cancel this licence, on reasonable notice to the Licensee, if the Licensor's ability to retain insurance cover on reasonable terms for the Land and/or Building has been prejudiced by the destruction or damage; or

- (ii) recover from the Licensee any increased insurance costs incurred by the Licensor in accordance with the provisions of section 270 of the Property Law Act 2007.

8 Compliance with Law and Management Requirements

8.1 The Licensee agrees:

- (i) to comply with the Management Plan (if any);
- (ii) to comply with any Act, regulation, bylaw, ordinance or resource management requirement from time to time affecting the Building and/or Land or any use of it;
- (iii) not to permit the Land and Building to be used for any unlawful activity;
- (iv) Not to permit or do anything that causes annoyance or inconvenience to neighbouring occupiers or to the public at large.

9 Insurance and Indemnity

9.1 Licensor to Insure Buildings

The Licensor will at all times during the term of this licence insure and keep insured the Building and the Licensor's fittings and fixtures to their full replacement value against the Insured Risks.

9.2 Licensee's Contents Insurance

The Licensee will be responsible for arranging its own contents insurance.

9.3 Licensee Proof of Insurance Cover

The Licensee must, if required, produce to the Licensor copies of all insurance policies effected by the Licensee under clause 9.2 and proof of payment for those insurance policies.

9.4 Licensee Not to Void Insurance

The Licensee must not allow anything to be done on the Land and/or Building that would result in:

- (i) any insurance policy covering the risk of loss or damage to the Building becoming void or voidable; or
- (ii) (except with the Licensor's prior written approval) the premium payable on any such insurance increasing, in which case the Licensee will pay any extra premium payable by the Licensor.

9.5 Licensee Indemnifies Licensors

The Licensee indemnifies the Licensors against all costs, claims and demands in respect of injury or damage to the Land and/or Building resulting from any act or omission of the Licensee or any member, employee or invitee of the Licensee.

9.6 Notwithstanding clause 9.5 the Licensee is liable to indemnify the Licensors only to the extent that the Licensors are not fully indemnified under any insurance policy.

9.7 For the purpose of section 271 of the Property Law Act 2007, the Licensee acknowledges and agrees that:

- (i) the Licensors have not insured the Land against destruction or damage arising from flood, fire, explosion, lightning, storm, earthquake or volcanic activity; and
- (ii) the Licensee, subject to the provisions of section 271(2)(a)-(c) of the Property Law Act 2007, will meet the cost of making good any destruction or damage to the Land and indemnifies the Licensors against the cost of doing so should the Licensee default in that obligation.

9.8 The Licensors indemnify the Licensee against all costs, claims and demands in respect of its Club income resulting from any act or omission of the Licensors or any contractor, employee or invitee of the Licensors which caused injury or damage to the Land and/or Building.

10 No Noxious Use

10.1 The Licensee must not:

- (i) bring upon or store within the Land or Building nor allow to be brought upon or stored within the Land or Building 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 Land or Building or any surfaced area.
- (ii) contaminate the Land and/or Building and shall undertake all works necessary to remove any contamination of the Land or Building other than contamination not caused by the Licensee or those for whom the Licensee is responsible. Contamination means any change to the physical chemical or biological condition of the Land or Building by a "contaminant" as that word is defined in the Resource Management Act 1991;

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- (iii) use the Land or Building or allow them to be used for a noisome, noxious, illegal or offensive trade or business or activity; or
- (iv) allow any act or thing to be done which may be or grow to be a nuisance, disturbance or annoyance to the Licensor, other users of the Land and Building, or any other person, and generally the Licensee shall conduct the Licensee's club activities upon the Land and Building in a clean, quiet and orderly manner free from damage, nuisance, disturbance or annoyance to any such persons but the carrying on by the Licensee in a reasonable manner of the use for tennis club activities or any use to which the Licensor has consented shall be deemed not to be a breach of this clause.

11 Assignment

11.1 Consent to Assignment

The Licensee must not assign, transfer, sublet any of its rights under the licence or part with possession of the Land and Building or any part of it without first obtaining the consent in writing of the Licensor.

12 Default by Licensee

12.1 If the Licensee fails to perform any obligation under this licence the Licensor shall give notice in writing of such failure. If the Licensee has failed to perform the work for which notice has been given, or otherwise reached agreement with the Licensor as to the arrangements for the work, within 20 Working Days from the date of such written notice having been given, the Licensor may perform that obligation itself, in which case:

(i) Payment on Demand

The Licensee will, upon demand, pay to the Licensor:

- (a) any costs incurred; and
- (b) a reasonable sum for work done by the Licensor, in respect of performance by the Licensor of that obligation.

(ii) Interest

Until payment, such sums shall bear interest a rate of interest equal to the Base Lending Rate as published by the Licensors bankers from the date the costs were incurred or the work was done.

13 Licensor's Right to Terminate

13.1 Licensor's Right to Cancel

If at any time after making any enquiries as the Licensor thinks fit and giving the Licensee an opportunity of explaining the usage of the Land and Buildings, and the membership of the Licensee's organisation the Licensor is of the opinion that the Land and Buildings are not being used for the permitted use (as outlined in clause 4.1) then the Licensor may cancel this licence by giving not less than six (6) months written notice to the Licensee.

13.2 Grounds for Cancellation

The Licensor (in addition to the Licensor's right to apply to the Court for an order for possession) may also cancel this licence by re-entering the Land and Building at the time or any time after:

- (i) the Licensee fails to pay any instalment of the annual licence fee for twenty (20) Working Days after the due date to pay and the Licensee has failed to remedy that breach within twenty (20) Working Days after service on the Licensee of a notice in accordance with section 245 of the Property Law Act 2007; or
- (ii) the Licensee fails to observe or perform any obligation under this licence (other than the covenant to pay the annual licence fee) and the Licensee has failed to remedy that breach within the period specified in a notice served on the Licensee in accordance with section 246 of the Property Law Act 2007; or
- (iii) the Licensee:
 - (a) becomes insolvent;
 - (b) goes into bankruptcy or liquidation or is about to go into bankruptcy or liquidation; or
 - (c) is wound up, dissolved or becomes defunct; or
- (iv) the Licensor determines it necessary to cancel the licence in accordance with clause 13.1.

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13.3 Licensor's Option to Remedy Licensee's Default

The Licensor may, without being under any obligation to do so, remedy at the Licensee's cost any default by the Licensee under this licence.

14 Notices

14.1 Service of Notices

Any notice or document required or authorised to be given or served under this licence may be given or served:

- (i) Section 245 or 246 of the Property Law Act: 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 2007; and
- (ii) Other Cases: 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 mail or ordinary mail, or by facsimile, or by email.

14.2 Time of Service

In respect of the means of service specified in clause 14.1(ii)(b) any notice or other document will be treated as given or served and received by the other party:

- (i) Personal Delivery: when received by the addressee;
- (ii) Post: three (3) Working Days after being posted to the addressee's last known address in New Zealand;
- (iii) Facsimile: on completion of an error free transmission, when sent by facsimile; or
- (iv) Email: when acknowledged by the addressee by return email or otherwise in writing.

14.3 Signature of Notices

Any notice or document to be given or served under this licence must be in writing and may be signed by:

- (i) Party: the party giving or serving the notice;
- (ii) Attorney: any attorney for the party serving or giving the notice; or

- (iii) Authorised Person: the solicitor or any director, officer, employee or other agent who has authority to give or serve the notice.

15 Dispute Resolution

- 15.1 If any dispute or difference arises between the parties out of or pursuant to this licence or in relation to any breach thereof, the parties will do their utmost to settle such dispute or difference amicably and in good faith.
- 15.2 If the parties are unable to resolve the dispute within five (5) Working Days the matter may be referred by either of them to mediation, negotiation, independent expert appraisal or any other alternative dispute resolution technique as appropriate to the circumstances and as agreed upon by the parties. Failing agreement within five (5) Working Days as to the form of alternative dispute resolution or the facilitator, the President of the New Zealand Law Society will decide the form of dispute resolution and appoint the facilitator/expert. Each party will bear its own costs of the alternative dispute resolution and they will bear equally the costs of the facilitator/expert or any other individual or body required in the process of the alternative dispute resolution.
- 15.3 Both parties agree to use their best endeavours to achieve resolution in this way and further agree that neither party will initiate arbitration without first pursuing such informal dispute resolution techniques.
- 15.4 If the dispute or different between the parties is not settled or resolved by mutual agreement or alternative dispute resolution within twenty (20) Working Days of being referred to same, then the parties may agree to refer such dispute or difference to the arbitration of a single arbitrator, who shall be agreed upon by the parties. Failing agreement as to the arbitrator, the President of the New Zealand Law Society will appoint the arbitrator. Every such reference will be deemed to be a submission within the meaning of the Arbitration Act 1996.
- 15.5 The award of the arbitrator shall be an award with reasons, which reasons shall form part of the award. Subject to any right of appeal or review, the award of the arbitrator shall be final and binding on all parties.
- 15.6 The parties shall bear their own costs and an equal share of the costs of the award in relation to the arbitration, unless the arbitrator determines that a party shall bear some proportion of, or all of, the costs of the other party because of impropriety, lack of cooperation or unreasonable conduct by that party.
- 15.7 If any matter between the parties is to be referred or has already been referred to a mediator or to an arbitrator, or is subject to legal proceedings, the parties shall continue to comply with, observe and

perform their respective obligations and duties and may exercise their respective rights hereunder as if the matter had not arisen.

16 No Lease

- 16.1 The Licensee acknowledges that the granting of this licence does not create a lease or an interest in the Land and Building or otherwise confer on the Licensee any right of exclusive possession of the Land and Buildings.
- 16.2 Despite clause 4.2, the Licensee acknowledges that the Paekakariki Community Library may use the Building during scheduled club games and interclub events.

17 Reserves Act 1977

- 17.1 The parties acknowledges that at the date of commencement of this licence the Land and Building are not currently classified as reserve, but the Licensor generally manages the Land and Building as if it were a reserve and the policy and guidelines for reserves may apply towards the Land and Building.
- 17.2 The parties further acknowledge that the Land and Building may be classified as recreation reserve during the term of this licence and if so, the terms of the Reserves Act 1977 will apply to this licence.
- 17.3 Where the Licensor prepares a Management Plan for the control, management and administration of the Land and Buildings, the Licensor must consult the Licensee on the terms of the Management Plan and take into consideration any written suggestions made by the Licensee on the Management Plan, notwithstanding section 41(5A) of the Reserves Act 1977.

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SECOND SCHEDULE

All that land and building whose boundary is marked on the **attached** aerial photograph.

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Kapiti Coast District Council [KCDC] does not warrant the accuracy of information in this publication and any person using or relying upon such information does so on the basis that KCDC shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.

Map Printed Date: 5/11/2010 by lexb

Paekakariki Tennis Club and Courts

Map Projection:
New Zealand Transverse Mercator (NZGD2000)

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