

BROOK VALLEY HOLIDAY PARK (CAMPGROUND) MANAGEMENT AGREEMENT

NELSON CITY COUNCIL

[TO BE CONFIRMED]

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PARTIES

1. NELSON CITY COUNCIL (Council)
2. [TO BE CONFIRMED] (Manager)
3. [TO BE CONFIRMED] (Guarantor)

BACKGROUND

- A. The Reserve is vested in the Council as local purpose (outdoor leisure, camping, conservation and education) reserve.
- B. The Council and the Manager have agreed that the Manager will lease the Premises from the Council under the Lease, which will be entered into contemporaneously with this Agreement, and that, while the Lease remains in effect, the Manager will manage the operation of the Campground located on the Premises on the basis set out in this Agreement.
- C. The Guarantor has agreed to guarantee the Manager's obligations under this Agreement.

THIS AGREEMENT RECORDS THAT:

1. DEFINITIONS AND INTERPRETATION

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

Agreement means this management agreement;

Authorisation means any consent, authorisation, registration, agreement, certificate, permission, licence, approval, authority or exemption from, by or with an Authority;

Authority means any government, regulatory, local, regional, territorial, or other authority having jurisdiction or authority over, or in respect of, the Reserve or the Premises or their use as a Campground;

Campground means a place where people stay for one or more nights subject to a paid fee in:

- (a) a tent without a foundation; and/or
- (b) a cabin or unit for short term holiday accommodation; and/or
- (c) a vehicle that can be driven or towed to a different location; and/or
- (d) long term accommodation within a relocatable home park (for a maximum of 15 sites);

including, to avoid doubt, buildings used for communal purposes (e.g. kitchen, bathrooms, utility blocks, and barbeque areas);

Commencement Date means [TBC];

Consent means Resource Consent Number RM205274 as varied by RM205274V1 and any subsequent variations;

Cottage means the three bedroom cottage located on the Premises and approximately marked in blue on the Plan;

Council means Nelson City Council and its executors, administrators, successors and assigns, and where not repugnant to the context, includes its servants and agents;

Council's Improvements means any buildings, fixtures, fittings, improvements or structures located on the Premises at the Commencement Date;

CPI means the Consumer Price Index (All Groups) published by Statistics New Zealand, or other government agency, and any revised, replacement or substituted index.

Default Interest means 14% per annum;

Expiry Date means [TBC];

Final Expiry Date means [TBC];

Good Industry Practice means, in relation to the Campground, the exercise of a degree of skill, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in New Zealand in the management and operation of a Campground, under the same or similar circumstances;

GST means goods and services tax payable under the GST Act at the rate prevailing from time to time, including any tax levied in substitution for that tax;

GST Act means the Goods and Services Tax Act 1985;

Guarantor means the person specified as the Guarantor on the front page of this Agreement and that party's executors, administrators, successors and assigns, and where not repugnant to the context, includes the servants and agents of the Guarantor;

HSWA means the Health and Safety at Work Act 2015;

Improvements collectively means Council's Improvements and Manager's Improvements;

Initial Term means [TBC];

Insured Risks means loss, damage or destruction resulting from fire, flood, explosion, lightning, storm, earthquake and volcanic activity and any other risks which the Council is reasonably required to be insured against (or has covenanted with the Manager to be insured against);

Lease means the Brook Valley Holiday Park (Campground) Deed of Lease between the Council and the Manager dated on or about the date of this Agreement;

Long Term Occupant means an occupant of a site at the Relocatable Home Park and owner of the relocatable home and possessions located on that site;

Main Road means the area formed as road/access that bisects the Premises but is excluded from the Premises on the Plan and which is vested in the Council as reserve;

Management Fee means, at the Commencement Date **[\$X]** plus GST per annum subject to review in accordance with clause 4;

Management Plan means any Management Plan prepared under section 41 of the Act for the Reserve;

Manager means the manager named on the front page of this Agreement and that party's executors, administrators, successors and assigns, and where not repugnant to the context, includes the servants and agents of the Manager;

Manager's Improvements means any buildings, improvements or structures erected on the Premises by the Manager, with the consent of the Council during the term of this Agreement, including any non-maintenance related alterations, additions, betterments, improvements or modifications to the Premises which the Manager considers necessary or desirable in connection with the Campground operation and includes any fixtures, fittings and furnishings contained in such improvements;

Minimum Public Risk Insurance Sum means \$2 million;

Minister means the Minister of Conservation;

Permitted Use means a Campground, that may include a retail shop from which the Manager sells appropriate merchandise for the business of a Campground;

Plan means the plan of the Premises attached at Schedule 1;

Premises means those parts of the Reserve approximately measuring 4.26 hectares as approximately hatched in yellow and red on the Plan and includes all Council Improvements located on the Premises;

Records means all information relating to the operation of the Permitted Use from the Premises, including (but not limited to) financial records (including details of all campground fees, fees from Long Term Occupants and other income and expenses), booking information, invoices, emails, business plans and receipts;

Renewal Dates means **[TBC]**;

Renewal Term means **[TBC]**;

Relocatable Home Park means that part of the Premises where a maximum of 15 Long Term Occupants are permitted to occupy single sites under the terms and conditions of the Consent;

Reserve means the land comprised and described in the following Records of Title:

(a) 786619;

- (b) 791500;
- (c) 956154;
- (d) 786623;
- (e) 786621;
- (f) 956154;
- (g) 53911; and
- (h) NL133/27;

Term means the term of this Agreement and includes the Initial Term and (if this Agreement is renewed) the Renewal Term and (if this Agreement is further renewed) any further Renewal Term(s) and it also incorporates any period during which the Manager is holding over under the Lease; and

Working Day has the meaning given to that term in the Property Law Act 2007.

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. APPOINTMENT AND OPERATION OF CAMPGROUND

2.1 Appointment: The Council appoints the Manager, and the Manager accepts the appointment, to manage the operation of the Campground on the Premises throughout the Term on the terms set out in this Agreement.

2.2 Manager to Operate Campground: At all times during the Term, the Manager will operate the Campground and, in doing so will:

- (a) comply with all laws in effect in New Zealand from time to time (including all Authorisations) that relate to any aspect of the Campground operation;
- (b) obtain and maintain (as applicable) and comply with all Authorisations relating to any aspect of the Campground operation; and
- (c) perform its obligations in accordance with sound commercial practice and comply with Good Industry Practice and in both parties' best interests;
- (d) manage the Relocatable Home Park in accordance with the terms of this Agreement, the Lease, the Consent and any other applicable laws;
- (e) manage all employees and contractors in compliance with all relevant employment laws, including compliance with Part 6A of the Employment Relations Act 2000 in relation to employees in a category specified in Schedule 1A of the Act (vulnerable employees);
- (f) act in a timely and efficient manner; and
- (g) keep the Council (via its Representative) fully informed of all matters material to the operation of the Campground.

2.3 Exclusivity: The Council will not itself, nor will it engage with any person other than the Manager, to operate the Campground at the Premises during the Term.

2.4 Subcontracting by Manager: The Manager may subcontract, in accordance with clause 2.5, the performance of any individual function that is undertaken in the ordinary course of the Campground operation, but the Manager must not subcontract

the overall management of the Campground operation without the prior written consent of the Council (which the Council may grant (with or without conditions) or withhold at its absolute discretion).

2.5 Terms of Subcontracting:

- (a) If the Manager subcontracts the performance of any of its obligations under this Agreement:
 - (i) the Manager must enter into such contracts as are required for the operation of the Campground in the manner contemplated by this Agreement and the Lease;
 - (ii) the Manager must ensure that any contracts that it enters into with any third party that are material for the continued operation of the Campground (in the Council's reasonable opinion) allow for the assignment of that contract to the Council in the event of the termination of this Agreement and the Lease;
 - (iii) the Manager will at all times remain primarily liable to the Council for any act or omission by the subcontractor, despite any consent by the Council to the appointment of the Subcontractor.

3. REPRESENTATIVES

3.1 Representatives: Each party must appoint a suitably qualified and experienced representative and each must have a representative at all times available for consultation during the Term. The names of the Representatives at the date of this Agreement are:

- (a) **Council's Representative:** [TBC];
- (b) **Manager's Representative:** [TBC];

Each party will immediately notify the other in writing of the appointment of a different representative and the removal of a representative.

4. MANAGEMENT FEE

- 4.1 Payment:** In consideration of the Manager carrying out its obligations under this Agreement the Council will pay the Management Fee to the Manager by equal monthly payments in advance on the first Working Day of the month without deduction or set off by direct bank transfer in New Zealand.
- 4.2 Apportionment:** The Management Fee will be calculated on a daily basis for any period of less than one month occurring during the term of this Agreement.
- 4.3 Initial Term Review on Request:** At any time during the first 24 months of the Initial Term, the Manager may give notice in writing to the Council that it does not consider that the Management Fee adequately compensates the Manager for completion of its

duties and obligations under this Agreement and the Lease and proposing a new Management Fee, providing detailed information and Records to the Council outlining why the Manager considers the proposed new Management Fee is appropriate.

4.4 Dispute: The Council may, within 20 Working Days after receipt of the Manager's notice under clause 4.3, dispute that the proposed Management Fee does not reflect the Manager's expenses to comply with its duties and obligations under this Agreement and require the Management Fee to be determined under clause 4.5(d).

4.5 Market Management Fee Review: The Management Fee, may at the sole discretion of the Council, be reviewed on the second anniversary of the Commencement Date, and will be reviewed on the Renewal Dates, as follows:

- (a) The Manager may serve a Management Fee review notice on the Council at any time no earlier than 3 months before the Renewal Date specifying the proposed Management Fee for the Renewal Term.
- (b) The Council may serve a review objection notice on the Manager in writing within 20 Working Days after services of the notice under clause 4.5(a) (time being of the essence).
- (c) If the Council does not serve a review objection notice within the time period set out in clause 4.5(b), the Council will be deemed to have accepted the proposed new Management Fee contained in the notice under clause 4.5(a).
- (d) If the Council serves a valid review objection notice, then the Council and the Manager must enter into negotiations to resolve the dispute. If the parties cannot reach agreement within 10 Working Days after the date of service of the relevant review objection notice (or any longer period agreed by the parties) then the following terms will apply:
 - (i) the parties must each appoint a valuer (who must be a member of The Property Institute of New Zealand Incorporated) within 15 Working Days after the date of service of the review objection notice;
 - (ii) the appointed valuers will jointly determine the current market Management Fee applicable on the Renewal Date, within one month of the date of their appointment;
 - (iii) if either party fails to appoint a valuer under clause 4.5(d)(i), the valuer appointed by the other party will determine the current market Management Fee alone;
 - (iv) before proceeding with their determination, the valuers must jointly appoint an umpire, who must also be a member of The Property Institute of New Zealand Incorporated, and obtain the umpire's written acceptance of appointment;
 - (v) if the valuers fail to appoint an umpire, or cannot agree on an umpire within 10 Working Days of the date of their appointment,

then either party may ask the president of The Property Institute of New Zealand Incorporated to appoint an umpire and obtain the umpire's written acceptance of appointment;

- (vi) if the appointed valuers cannot agree on the current market Management Fee within one month of their appointment or within any extended time agreed by the parties, then the umpire appointed under clause 4.5(d)(v) will determine the current market Management Fee as at the Renewal Date; and
- (vii) in determining the current market Management Fee applicable on the Renewal Date, the valuers (or the sole valuer, if clause 4.5(d)(iii) applies) or the umpire will:
 - (A) act as experts and not as arbitrators; and
 - (B) take into account the obligations on, and benefits directly or indirectly accruing to the Manager by this Agreement.

4.6 Management Fee Pending: Pending the new Management Fee being determined under clause 4.5, the Council must pay the Management Fee proposed in the Management Fee review notice with effect from the Renewal Date. The parties must make any necessary adjustments between themselves immediately on the new Management Fee being determined for the relevant period under clause 4.5.

4.7 Costs of Review: The parties will share equally the valuers' or the umpire's costs of determining the new Management Fee under clause 4.5 (or those of the sole valuer, if clause 4.5(d)(iii) applies).

4.8 Failure to Serve Renewal Notice: The Manager will not forfeit or be taken to have waived the Council's right to have the Management Fee reviewed on the Renewal Date if the Manager fails to serve a Management Fee review notice later than the Renewal Date. If the Manager serves a Management Fee review notice later than the Renewal Date, the Management Fee review notice whenever given will have the same force and effect as if it were served before that date, except that any new management fee will only be payable from the date of the Management Fee review notice, if that notice is given later than 60 Working Days after the Renewal Date.

4.9 In the event that clause 11.4 of the Lease applies and a fair proportion of rent and outgoings ceases to be payable, an appropriate reduction of the Management Fee will also apply that reflects reduced management responsibilities for the duration of any emergency. In the event that the parties are unable to agree on an appropriate reduction, clause 12 will apply.

5. GENERAL RIGHTS AND OBLIGATIONS OF THE MANAGER

Collection and Retention of Campground Fees and Other Income

5.1 Manager to Collect and Retain Fees: The Manager is responsible for collection of all campground fees and occupation fees from Long Term Occupants and is entitled to retain all such fees and other income generated from the Campground operation.

- 5.2 Setting of Fees:** With the prior approval of the Council, not to be unreasonably or arbitrarily withheld, the Manager may set reasonable fees for the Campground, including fees for powered and unpowered tent sites, cabins and sites at the Relocatable Home Park.

Use of the Premises

- 5.3 Use:** The Manager must not use or permit the Premises or any part of the Premises to be used for any activity which is or may become dangerous, offensive, noxious, noisy, illegal or immoral or which is or may become a nuisance or annoyance to the Council or to the owner or occupier or any neighbouring property.
- 5.4 Permanent and semi-permanent occupation prohibited:** With the exception of the Relocatable Home Park, the Manager will not allow the Premises to develop into or function as a permanent or semi-permanent residential area nor allow individuals to erect permanent or semi-permanent structures for their own use.
- 5.5 Relocatable Home Park:** During the Term (but only up to the maximum duration allowed by the Consent), the Manager will allow long term accommodation in relocatable homes in the Relocatable Home Park in accordance with the requirements of the Consent. To avoid doubt, a maximum of 15 single sites may be occupied by 15 individual occupants in this manner at any time and the individual accommodation units located on each site are owned by the occupant and not the Manager, or the Council.
- 5.6 Reasonable Use:** The Manager will use its reasonable endeavours to keep the Premises open, used and occupied for the Permitted Use at all times (subject to seasonal demand) during the Term of this Lease. During off-peak periods, the Manager will allow reasonable public use of that part of the Premises not occupied for the purpose of accommodation provided such use does not interfere with the Manager's primary revenue generation and is consistent with the purposes for which the Reserve is classified. To avoid doubt, nothing in this clause will require the Manager to provide accommodation or campground sites when it is uneconomic to do so.
- 5.7 Supervision and control of Premises:** The Manager will, at its own cost, maintain, supervise and control the use of the Premises to a high standard. In particular, the Manager will:
- (a) employ appropriate staff with sufficient numbers of competent employees to enable the Manager to carry out the Permitted Use efficiently and in accordance with Good Industry Practice;
 - (b) ensure that all employees are properly trained on an ongoing basis and are advised of any relevant laws, bylaws, rules and regulations that apply to the use of the Premises for the Permitted Use;
 - (c) ensure that all employees shall at all times present a neat and clean appearance and give competent and friendly service to visitors and long term occupants at the Premises;

- (d) pay the Manager's own general overhead expenses including the wages and salaries of any person employed by the Manager to carry out the Manager's duties under this Agreement;
- (e) ensure that the Permitted Use is operated at all times in accordance with any rules developed under clause 5.10; and
- (f) ensure that any complaints received from visitors and long term occupants or members of the public in respect of the operation of the Permitted Use from the Premises are resolved in accordance with the complaints procedure developed under clause 5.10.

5.8 Noise: The Manager must limit noise levels to a moderate level and in particular must keep the noise level within the requirements of the Nelson Resource Management Plan and any resource consent issued in respect of any relevant activity on the Premises.

5.9 Supporting the Brook Waimarama Sanctuary: The Manager will actively foster a positive relationship with the Brook Waimarama Sanctuary including:

- (a) enabling overflow parking where required (for example during open days)
- (b) monitoring and supporting Council's efforts in conservation of the area (including controlling pest animals and plants); and
- (c) educating visitors and long term occupants in relation to responsible pet ownership and discouraging pest animals (including not feeding pest animals).

5.10 Manager's Rules and Complaints Procedure: The Manager shall make rules for the management and control of the Premises and for the conduct of persons using the Premises and a complaints procedure to manage any complaints from visitors and long term occupants or members of the public. The rules must not be inconsistent with the terms of this Agreement or the Lease or the provisions of the Reserves Act 1977 or any Management Plan for the Reserve. Before the rules and complaints procedure come into effect they must be approved by the Council (with consent not to be unreasonably withheld).

5.11 Management Plan: If a Management Plan is implemented for the Reserve, the Manager will comply with the terms of the current Management Plan.

5.12 Statutory obligations: The Manager must, in its occupation, management and use of the Premises, comply with the Reserves Act 1977, the Resource Management Act 1991, the Building Act 2004 and any other relevant legislation.

5.13 Reserves Act: Without limiting clause 5.12 the Manager acknowledges that:

- (a) the Reserve is subject to the Reserves Act 1977 and the restrictions in that Act apply to the Reserve; and

- (b) in addition to camping purposes, the Reserve is also held under the Reserves Act 1977 for outdoor leisure, conservation and education purposes and the Manager will ensure that in exercising its rights and obligations under this Agreement and the Lease it will use its best endeavours to enhance and assist with furthering those purposes and not to compromise them.

5.14 Fees: The Manager must obtain the Council's approval for any camping fees, other occupation fees and bonds charged to the public for use of the Premises.

Licence to Sell or Supply Alcohol

5.15 Alcohol: The Manager must not, during the Term of this Lease, supply or sell alcohol on the Premises and must not apply for a licence to supply or sell alcohol on the Premises without the prior approval of the Council, whose consent must not be unreasonably withheld. To avoid doubt, in this clause the word "alcohol" has the meaning given to it in the Sale and Supply of Alcohol Act 2012.

Maintenance of Improvements

5.16 Good Order and Repair: Subject to clause 6.1, the Manager must keep and at its sole cost, maintain to the satisfaction of the Council any Improvements on or forming part of the Premises in good, clean and working order, repair and condition, other than fair wear and tear arising from reasonable use or damage caused by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk for which the Council is (or has covenanted with the Manager to be) insured against, unless:

- (a) the damage was intentionally caused by the Manager or by those for whom the Manager is responsible; or
- (b) the damage was the result of an act or omission by the Manager or those for whom the Manager is responsible and that act or omission:
 - (i) occurred on or about the Premises or on or about the Reserve on which the Premises is situated; and
 - (ii) constitutes an indictable offence within the meaning of the Summary Offences Proceedings Act 1957;

then the Manager is liable for the cost of making good that damage.

5.17 Repairs and Replacements: The Manager's obligation to maintain and repair the Premises includes repairing or replacing as reasonably necessary any windows (both interior and exterior), doors, glazing, light fittings, light bulbs, electrical wiring, carpets and floor coverings, surface and subsurface structures (including cables, pipes and drains) to the point of connection to the mains network (whether that connection is located inside or outside the Premises) and minor repairs to the roof and external cladding of any building, and to avoid doubt, includes interior and exterior painting.

5.18 Toilets: The toilets, sinks, shower facilities and drains shall be maintained by the Manager and used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

5.19 Reinstatement: At the end of the Term the Manager will yield up the Premises in good, clean and substantial order, repair and condition and if necessary make good any damage so as to reinstate the Premises to the condition it was in at the Commencement Date.

5.20 Maintenance of Manager Improvements: To avoid doubt, the parties agree that the Manager is solely responsible for all maintenance and repair of any Manager's Improvements constructed on the Premises.

Grounds Maintenance

5.21 Tidy Condition: The Manager must at all times, at its sole cost, maintain the grounds and surrounds of the Premises, including any lawns, gardens, fences and paths, in a tidy and attractive condition to the satisfaction of the Council, including:

- (a) keeping the Premises free from rubbish, stones and broken glass and keeping rubbish bins and containers in a tidy and sanitary condition;
- (b) maintaining existing formed access routes included in the Premises to a satisfactory standard;
- (c) mowing any lawns included in the Premises in accordance with the specifications set out in Schedule 3;
- (d) keeping any gardens and planted areas weeded and watered and replacing plants and shrubs which die or are destroyed;
- (e) maintaining the storm or wastewater drainage system including downpipes and guttering clear and unobstructed;
- (f) maintaining trees on the Premises in a neat, tidy and safe condition in accordance with the specifications set out in Schedule 4. To avoid doubt, mature trees must be inspected by a qualified arborist at two yearly intervals and after significant weather events and any tree work must only be undertaken by a qualified arborist and trees may not be felled without the prior written approval of the Council;
- (g) taking effective measures to prevent any noxious weeds and recognised environmental plant pests growing on the Premises and complying with the provisions of the Biosecurity Act 1993;
- (h) removing any externally visible graffiti on the Premises promptly and in any event, within **[48]** hours of being notified (verbally or in writing) of the graffiti
- (i) taking effective measures to keep the Premises free from rabbits, domestic and feral cats, dogs (except approved service dogs) and other vermin.

5.22 Exemption for Individual Domestic Cats at Commencement Date: The parties agree that clause 5.21(i) will not apply to 3 domestic cats which are chipped and neutered and resident at the Relocatable Home Park at the Commencement Date with the

Council's prior approval. To avoid doubt, the individual cats must not be replaced if they cease to live at the Relocatable Home Park for any reason.

- 5.23 New vegetation:** The Manager may with the prior written consent of the Council plant new trees or vegetation on the Premises in places approved by the Council.
- 5.24 Fencing:** The Manager is solely responsible for fencing the Premises to a reasonable standard having regard to the Permitted Use, and must maintain all fences to a reasonable standard at all times, at its sole cost. The Manager must not damage or remove any fencing existing at the commencement of this Lease without the prior written consent of the Council. Despite this clause, if the Council removes any fences on or adjoining the Premises, or causes any such fences to be removed, it will replace, or reinstate them at its own cost.
- 5.25 Fencing Act:** The Council will have no liability to contribute to fencing for the purposes of the Fencing Act 1978.

Access and Security

- 5.26 Exclusive use:** The Manager is entitled to exclusive use of the Premises, subject to the limitations of the Reserves Act 1977 and any terms and conditions contained in this Agreement and the Lease.
- 5.27 Right to refuse entry:** The Manager may refuse to admit to the Premises or may remove from the Premises any person:
- (a) who is disorderly or disreputable;
 - (b) who by reason of intoxication or other reasons is not in a proper condition to use the Premises;
 - (c) who is not properly and decently attired and clean in person;
 - (d) who behaves in an indecent and disorderly manner or annoys or is offensive to any other person using the Premises;
 - (e) who fails or refuses to comply with any lawful request of the Manager or its agents or employees given for the purpose of enforcing the terms of this Agreement and the Lease or of maintaining the proper management and preservation of the Premises and the comfort and convenience of the people using the Premises; or
 - (f) who fails or refuses to comply with any rule or rules prescribed by the Manager for the administration of the campground and the Premises, provided that such rules have been approved by the Council under clause 5.10.

Health and Safety

- 5.28** Without limiting the generality of anything else in this Agreement, the Manager, so far as is reasonably practicable, will ensure the health and safety of all workers and other persons relevant to the exercise of the Permitted Use on the Premises.
- 5.29** The Manager, so far as is reasonably practicable, must ensure that all workers who are carrying out or undertaking the Permitted Use on the Premises, comply with their obligations under HSWA, all regulations and approved codes of practice.
- 5.30** The Manager acknowledges to the Council that as between the Manager and the Council, the Manager is the person managing and in control of the workplace(s) where the Permitted Use is being undertaken on the Premises, and accordingly so far as is reasonably practicable, has the primary duty to ensure the health and safety of all persons in and about the workplace to the extent that they are involved in or in any way affected by the undertaking of the Permitted Use of the Premises.
- 5.31** The Council and the Manager agree to consult, cooperate and coordinate activities and facilitate engagement with each other and any other persons to the extent that the parties have overlapping duties under HSWA in relation to health and safety. The Manager must therefore report and communicate to the Council if it has any health and safety concerns in relation to the Permitted Use on the Premises.
- 5.32** The Manager will take primary responsibility to ensure that all necessary induction for any worker carrying out work for the Manager in relation to the Permitted Use on the Premises, in terms of HSWA, its rules, obligations and codes, and the Manager's health and safety policies, systems and requirements are carried out and observed by the Manager.
- 5.33** The Manager will take primary responsibility to ensure that all necessary supervision of all workers under the management or control of the Manager in terms of HSWA, its rules, obligations and codes, and the Manager's health and safety policies, systems and requirements is carried out by the Manager.
- 5.34** The Manager must ensure so far as reasonably practicable that no act or omission by the Manager:
- (a)** is a breach of duty or obligation of the Manager under the HSWA; and
 - (b)** does or is likely to give risk to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under HSWA against the Council, the Manager or their contractors or subcontractors.
- 5.35** After giving reasonable prior written notice to the Manager and after completing any health and safety induction reasonably required by the Manager, the Council has the right, during the Term, to access the Premises for the purposes of monitoring the Manager's activities on the Premises and to carry out a safety audit. This includes requiring the Manager to provide a copy of its health and safety plan and policies and systems relevant to the exercise of the Permitted Use on the Premises. The Manager must within a timeframe that is reasonable taking into account the seriousness of the

matter, comply with all reasonable requests and requirements of the Council in relation to or in connection with any such audit.

- 5.36** Following the notification of any notifiable events to WorkSafe NZ, the Manager will also as soon as practicable notify the Council of the facts and circumstances of the notifiable event, including promptly communicating to the Council any indication from WorkSafe NZ of whether it intends to prosecute or take any action against either the Manager or the Council.
- 5.37** If, as a result of the Manager's Permitted Use on the Premises, WorkSafe NZ decides to investigate, prosecute or take any action against the Council, the Manager will:
- (a) provide such co-operation and assistance as the Council may reasonably require in the event of any investigation, prosecution or action against the Council in connection with the Manager's exercise of the Permitted Use on the Premises; and
 - (b) this co-operation and assistance will be provided as required, and at no cost to the Council.

Building and Painting

- 5.38 Approval Required:** Subject to the provisions of clauses 5.39 to 5.46 and clause 5.50, the Manager must not:

- (a) erect or carry out any building or improvement including erecting any Manager's Improvements;
- (b) alter, reinstate or extend any existing building or improvement; or
- (c) paint the exterior of any building or improvement;

on the Premises without first giving plans and specifications of the proposed work (if appropriate) to the Council and obtaining the prior written approval of the Council (such approval not to be unreasonably withheld) in addition to any consent or permit required from the Council as a regulatory authority.

- 5.39 Conditions:** Without limiting the grounds on which the Council may withhold approval under clause 5.38, the Council may also as a condition of any approval require that the proposed work:

- (a) is consistent with any applicable Management Plan;
- (b) complies with any reasonable standards applicable to the Reserves (whether or not included in the Management Plan) which the Council may from time to time set as to the design, quality, materials and colour of any Improvements; and
- (c) will not in the opinion of the Council create more than minor adverse environmental effects or overload or endanger the proper working of any services, utilities or amenities.

- 5.40 Work Carried Out under Supervision:** If the Council gives its approval and consent under clauses 5.38 and 5.39 then the Manager must arrange for the Building Work to be carried out under the supervision of an architect, project manager, engineer or other suitably qualified person in a proper and professional manner in accordance with the approved plans and specifications and all approvals, permits and consents.
- 5.41 Manager Obtain Consents:** The Manager must obtain all consents required under the Building Act 2004 and the Resource Management Act 1991 and provide the Council with a copy of those consents. The Council will be responsible for obtaining any Building Warrant of Fitness required for the Premises.
- 5.42 No Warranty:** In granting consent or approval under clause 5.38 the Council will not be deemed to have warranted that the plans or specifications are suitable for the Manager's purposes or that any person involved in the work is suitable or adequately qualified.
- 5.43 Builders Risk Insurance:** During the construction of the Building Work the Manager must maintain, in the joint names of the Council and the Manager for their respective interests, builders' risk and public liability insurance for amounts approved by the Council and will provide the Council with a copy of the policies. All Building Work is at the sole risk of the Manager.
- 5.44 Council's Power to Stop Work:** If during the course of the Building Work the Council reasonably considers the Manager is failing to adhere to the approved plans or specifications, the project programme, the standards referred to in clause 5.39(b), or reasonably considers that the project is not being properly managed, the Council may by notice in writing to the Manager require that all work in the Premises stop immediately, or require it to take other action as necessary to mitigate the Council's concerns.
- 5.45 Code Compliance Certificate:** On completion of the Building Work the Manager must provide the Council with a copy of the code compliance certificate under the Building Act 2004 and a complete set of drawings accurately showing buildings and improvements on the Premises as constructed or altered.
- 5.46 Signs:** The Manager must not erect, paint, display or allow on the Premises any signs, notices or advertising material unless the Manager first obtains the prior written approval of the Council in each case. Approval will not be unreasonably withheld in respect of a sign, notice or advertising material describing the Permitted Use carried on at the Premises and conforming to the Council's reasonable requirements. It will be a condition of any approval that any approved sign must comply with the relevant Council bylaws, Nelson Resource Management Plan, Management Plan and have necessary regulatory consents. At the expiry or earlier termination of this Agreement and the Lease, the Manager must remove any such sign, notice or advertising material and make good any damage caused by its removal.

Reporting

- 5.47 Reporting Requirements:** The Manager must:

- (a) keep, store and maintain Records in accordance with proper business/accounting practices and all applicable laws;
- (b) make sure the Records clearly identify all relevant income derived and expenses incurred in the operation of the Permitted Use from the Premises; and
- (c) make sure the Records are readily accessible.

5.48 Access to Records: Subject to applicable laws relating to privacy and protection of information, the Manager grants the Council full and unrestricted access to the Records during the Term of this Agreement. The Records will be made available to the Council, upon request, for inspection and review at the Manager's place of business. In addition, the Manager must provide such copies of Records to the Council as the Council reasonably requests if required by the Council for legal, business or operational purposes of the Council related to this Agreement. All information provided by the Manager must be in a format that is useable by the Council for the purposes of review and inspection, and made available within a reasonable time of the request.

5.49 Financial Statements: In addition to requests made by the Council pursuant to clause 5.48 the Manager must provide:

- (a) an annual financial statement certified by a chartered accountant, in respect of the period of 1 July to 30 June, to be provided no later than 30 September, detailing all revenue and expenses in respect of the Permitted Use on the Premises; and
- (b) quarterly financial statements to be provided no later than one calendar month after the end of the relevant quarter.

Each financial statement must include an income statement, statement of financial position and cashflow statement in relation to the Premises.

Manager's Improvements

5.50 Undertaking of Manager's Improvements: With the prior approval of the Council [not to be unreasonably withheld], the Manager is permitted to undertake Manager's Improvements in accordance with the requirements of clauses 5.39 to 5.47. On completion of the construction of any Manager's Improvements the Manager will provide a full set of as-built plans to the Council.

5.51 Council to Own Manager's Improvements: On expiry or termination of this Agreement and the Lease, all Manager's Improvements will vest in the Council.

Cottage

5.52 Use of the Cottage by Manager: The Manager may elect to live in the cottage, use it for residential accommodation by any employee of the Manager, or use it as Campground accommodation.

- 5.53 Service Tenancy:** If the Manager elects to use the Cottage for residential accommodation by an employee, the Manager must comply with any requirements of the Residential Tenancies Act 1986 that apply to service tenancies.
- 5.54 Campground Accommodation:** If the Manager elects to use the Cottage for Campground accommodation, it must not rent the Cottage to one tenant or group of tenants for more than 50 days at a time.

Main Road

- 5.55 Main Road Excluded from Premises:** The Main Road does not form part of the Premises, and notwithstanding that it is not vested as a legal road, it is available for use by the general public and the Council is responsible for its maintenance and repair during the term of this Agreement and the Lease.
- 5.56 Other Roads Included in Premises:** To avoid doubt, any other roads and accessways that are included within the footprint of the Premises are part of the Premises and the Manager is responsible for their maintenance and repair during the term of this Agreement and the Lease.

Booking System

- 5.57** The Manager must use an appropriate electronic booking system to manage bookings for the Campground for the duration of this Agreement and the Lease.

6. GENERAL OBLIGATIONS OF THE COUNCIL

Council Works and Maintenance

- 6.1 Compliance with Consent:** To avoid doubt, the Council is responsible for complying with any conditions of the Consent that require the consent holder to complete structural works, including the provision of service hubs for sites located in the Relocatable Home Park.
- 6.2 Council's Maintenance:** Subject to the Manager's maintenance obligations under clause 5, and subject to clause 6.3, the Council will be responsible for more than minor repairs and maintenance of the roof and external cladding and any repairs of a structural nature to any Council Improvements on or forming part of the Premises, that are necessary for the Manager's continued use and enjoyment of the Premises for the Permitted Use. The Council must keep any Council Improvements forming part of the Premises weather-tight and in good order and repair and suitable for use by the Manager for the Permitted Use within a reasonable time of the requirement for such repairs and maintenance having been brought to the Council's notice either by the Manager or any other person.
- 6.3 Access to Carry out Maintenance:** The Council has the right to enter upon the Premises at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency) to carry out repairs or maintenance under clause 6.1.

- 6.4 Notice of need for Council Maintenance:** If the Council fails to carry out any repair or maintenance to any Improvements required under clause 6.1 and that failure has a material adverse effect on the Manager's use, operation and enjoyment of the Premises, then, without prejudice to the Manager's other rights and remedies, the Manager may give the Council written notice specifying the failure and requiring the Council to remedy the failure.
- 6.5 Failure to Comply with Notice:** If the Council fails to remedy any failure notified under clause 6.4 within a reasonable time after receipt of such notice (having regard to the nature, extent and urgency of the failure in any particular case), then after giving the Council 5 Working Days' notice of its intention to do so, the Manager may carry out the repair or maintenance to remedy the failure and the Council must pay the cost of that work on demand (together with Default Interest from the time of payment by the Manager until the Council reimburses the Manager).

Inspections

- 6.6 Council's Right to Inspect:** The Manager must allow the Council or any person authorised by the Council at all reasonable times on to the Premises to inspect them and at least annually.
- 6.7 Condition Assessment Report:** The Council will, at its cost, engage an independent consultant on each third anniversary of the Commencement Date to prepare a condition assessment report of Improvements.
- 6.8 Reporting Requirements:** Each condition assessment report will identify:
- (a) whether any Improvements require any repair, maintenance, removal, or replacement work to bring it up to a suitable standard for the Permitted Use (**Remedial Work**);
 - (b) the approximate cost of any Remedial Work; and
 - (c) the extent to which the need for any Remedial Work is attributable to any breach by the Manager of this Agreement or the Lease.
- 6.9 Completion of Remedial Work:** Any party responsible for Remedial Work under this Agreement must promptly complete the Remedial Work, at their cost, and in accordance with this Agreement, the Lease and any relevant Authorisation required.
- 6.10 Notice to Repair or Obtain Approvals:** If the Council gives the Manager notice of failure to do repairs or obtain approvals required by this Agreement, the Manager must carry out work or obtain approvals with all speed and complete the work in a diligent and professional manner. To avoid doubt, the Council is not entitled to give notice under this clause requiring the Manager to carry out work or obtain approvals that are the responsibility of the Council under this Agreement or the Lease.
- 6.11 Failure to Comply with Notice:** If the Manager fails to comply with clause 6.7 or the approvals are not granted then the Council is entitled to enter the Premises and carry out the work and remove or make good unauthorised work and the Manager must pay

the cost of that work on demand (together with Default Interest from the time of payment by the Council until the Manager reimburses the Council).

7. RELATIONSHIP BETWEEN THE PARTIES

7.1 Legal Status of the Parties' Relationship: Nothing express or implied in this Agreement constitutes either party, or any of its personnel, as the partner, agent, employee or officer of, or as a joint venturer with, the other party. Neither party will make any contrary representation to any other person.

7.2 Relationship Management:

- (a) Each party will appoint a relationship manager (**Relationship Manager**) prior to or as soon as possible after the date of this Agreement.
- (b) The role of each Relationship Manager will be to act as the primary point of contact between the parties, in relation to the implementation of this Agreement and the Lease. Each party will ensure that its Relationship Manager is kept fully informed of all information that is relevant to the performance by the parties of their respective obligations under this Agreement.
- (c) The parties will ensure that the Relationship Managers meet at regular intervals, not less than once every 6 months, to review any matters arising relating to the performance by the parties of their obligations under this Agreement, and to resolve any operational issues which arise in relation to this Agreement.

7.3 Day-to-day and Emergency Contacts:

- (a) Each party (**First Party**) will, at all times during the Term, maintain and make readily available to the other party, a list that sets out the First Party's representatives who are:
 - (i) responsible for liaison between the parties during the hours of 9.00 am to 5.00 pm on any Working Day relating to day-to-day operational aspects of this Agreement; and
 - (ii) the First Party's primary and secondary points of contact, during and after the hours set out in clause 7.3(a)(i) in the event of any emergency at or affecting the Premises.

8. CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS

8.1 Joint Announcement: Following signing of this Agreement the parties will work together to issue a joint press announcement or media release regarding the general matters which are the subject of this Agreement.

8.2 Disclosure by Parties: Subject to clauses 8.3 and 8.4, the parties will not disclose the provisions of this Agreement or any matters relating to this Agreement to any person.

8.3 Advisers or Required by Law: A party may make disclosures of provisions of this Agreement or matters relating to this Agreement:

- (a) that is already public knowledge otherwise than as a result of a breach by the party disclosing the information of any provision of this Agreement;
- (b) to those of its employees, officers, professional or financial advisers and bankers as the party reasonably thinks necessary for purposes related to this Agreement, but only on a strictly confidential basis;
- (c) if that party is subject to any legal obligations to disclose the terms of this Agreement, including but not limited to, in the case of the Council, any obligation under the Local Government Official Information and Meetings Act 1987; or
- (d) as authorised in writing by the other party.

8.4 Public Announcements by the Council: The Council may make press releases, publicity or media announcements or public statements of a general nature about this Agreement, or matters relating to this Agreement, at its discretion. In doing so, the Council must not disclose any confidential information obtained from the Records provided to the Council by the Manager.

8.5 Public Announcements by the Manager: The Manager may only make press releases, publicity or media announcements or public statements about this Agreement, or matters relating to this Agreement (except those required by law) with the prior written consent of the Council.

9. INSURANCE, RISK, INDEMNITY AND TAXATION

9.1 Council to Insure Improvements: The Council will at all times during the Term of this Agreement and the Lease insure and keep insured the Improvements and the Council's fittings and fixtures to their full replacement value against the Insured Risks. The Manager is responsible for payment of any reasonable insurance excess imposed in respect of any claim, and all insurance premiums payable for the Premises as an Outgoing under the Lease.

9.2 Manager's Public Liability Insurance: During the Term of this Agreement and the Lease, the Manager will at its own cost keep at all times with a reputable insurance company in the joint name of the Council and the Manager for their respective rights and interests public risk insurance applicable to the Premises and the business carried on, in, or from the Premises for an amount not less than the Minimum Public Risk Insurance Sum or such other amount as the Council may from time to time reasonably require.

9.3 Manager's Contents Insurance and Insurance of Manager's Property: The Manager will be responsible for arranging its own contents insurance and insurance to full replacement value against the Insured Risks for any Manager's property owned or placed on the Premises by the Manager.

- 9.4 Manager Proof of Insurance Cover:** The Manager must, if required, produce to the Council copies of all insurance policies effected by the Manager under clauses 9.2 and 9.3 and proof of payment for those insurance policies.
- 9.5 Manager Not to Void Insurance:** The Manager must not allow anything to be done on the Premises that would result in:
- (a) any insurance policy covering the risk of loss or damage to the Premises becoming void or voidable; or
 - (b) (except with the Council's prior written approval) the premium payable on any such insurance increasing, in which case the Manager will pay any extra premium payable.
- 9.6 Risk:** The Manager uses the Premises at its risk and releases, to the full extent permitted by law, the Manager, its employees and agents from all liabilities, claims and demands of any kind which may arise in respect of any accident, damage, injury or loss suffered by any person or property in or about the Premises, or in connection with the Manager's use of the Premises.
- 9.7 Manager Indemnifies Council:** The Manager indemnifies the Council against all costs, claims and demands in respect of injury or damage resulting from any act or omission of the Manager or any member, employee or invitee of the Manager.
- 9.8 Limitation of Indemnity:** Notwithstanding clause 9.7 and subject to clause 6.1 the Manager is liable to indemnify the Council only to the extent that the Council is not fully indemnified under any insurance policy.
- 9.9 No Liability:** The Council will not be liable for any loss or damage to the Premises or any personal property caused or arising out of the use of the Premises by the Manager.
- 9.10 Taxation:** Each party is solely responsible and liable for the taxation position it takes in respect of any amount it has paid or received or that it is required to pay or to receive pursuant to this Lease and no party makes any representation or warranty or is otherwise liable to any other party as to the appropriate taxation position in respect of any amount paid or received or payable or receivable pursuant to this Lease.

10. TERMINATION

Ownership of Manager's Improvements

- 10.1 Ownership of Improvements:** All Manager's Improvements made by or on behalf of the Manager at any time during the Term of this Agreement will be held on trust by the Manager for the Council. All Manager's Improvements will vest in the Council upon the earlier of the expiration or earlier termination of this Agreement and the Lease.
- 10.2 No Right to Compensation:** Upon the expiration or earlier termination of this Agreement and the Lease, the Manager will vacate the Premises and will not be entitled to compensation for any Manager's Improvements.
- 10.3 Survival:** Clauses 10.1 and 10.2 survive the expiry or termination of this Lease.

Termination Events

10.4 Termination of Lease: This Agreement will automatically terminate if the Lease is terminated, such termination to be effective from the time of termination of the Lease.

10.5 Manager's Right to Terminate: The Manager may terminate this Agreement at any time if:

- (a) the Council fails to pay any instalment of the Management Fee for 20 Working Days after the due date to pay and the Council has failed to remedy that breach within a further 20 Working Days after service on the Manager of a written notice requiring payment; or
- (b) the Council fails to observe or perform any obligation under this Agreement (other than the covenant to pay the Management Fee) and the Council has failed to remedy that breach within a reasonable period specified in a written notice served on the Manager.

10.6 Council's Right to Terminate: The Council may terminate this Agreement at any time if:

- (a) the Manager fails to observe or perform any obligation under this Agreement and the Manager has failed to remedy that breach within a reasonable period specified in a written notice served on the Manager; or
- (b) the Manager:
 - (i) becomes insolvent;
 - (ii) goes into bankruptcy or liquidation or is about to go into bankruptcy or liquidation; or
- (c) is wound up, dissolved or becomes defunct.

Consequences of Termination

10.7 Consequences: Upon the termination (including expiry) of this Agreement:

- (a) the Manager, with effect from the date of termination or expiry of this Agreement, will cease carrying out the Campground operation on the Premises;
- (b) the Council or its nominee, with effect from the date of termination or expiry of this Agreement, will assume responsibility for carrying out the Campground operation on the Premises (including compliance with the Employee Protection Provisions at Part 6A of the Employment Relations Act 2000);
- (c) the Lease will terminate in accordance with its terms; and

- (d) such termination will not affect or extinguish any rights or remedies of either party in respect of any breach of this agreement by the other party, where that breach occurred prior to the date of termination or expiry of this Agreement.

11. WARRANTIES

Each party (**First Party**) warrants to the other that:

- 11.1** all information which the First Party has disclosed to the other party in relation to this Agreement was, when disclosed, and remains, complete and accurate in all material respects; and
- 11.2** the First Party holds all Authorisations, and has taken any other steps, required in order for it to enter into and perform its obligations under this Agreement,

and such warranties will be deemed to be repeated by the First Party continually throughout the Term.

12. DISPUTE RESOLUTION

- 12.1 Negotiation or Mediation:** Except for those provisions where the Council has a discretion, if any dispute arises between the Council and the Manager concerning this Agreement or the Lease, the parties will try in good faith to settle the matter by negotiation, and if that is unsuccessful by mediation.
- 12.2 Minister:** If the dispute cannot be settled by negotiation or mediation, then the dispute will be decided upon by the Minister or the Minister's nominee, if the Minister is required under the Act to decide the matter, and in any other case the dispute will be referred to arbitration.
- 12.3 Referral to Arbitrator:** The dispute will be referred to a sole arbitrator if the parties agree upon one, and if not then the dispute will be referred to an arbitrator appointed by the then President or Vice President of the New Zealand Law Society.
- 12.4 Award Final:** The arbitration will be governed by the Arbitration Act 1996 and the arbitral award will be final and binding on the parties.

13. NOTICES

- 13.1 Method of Delivery:** Any written notice or document required under this Agreement must be given or served in the same manner as set out in the Lease.

14. ASSIGNMENT

- 14.1 Assignment with Consent:** The Manager will not assign or transfer or part with possession or occupation of the Premises or any part of the Premises without the prior written consent of the Council, which may be subject to the following conditions:

- (a) the Manager must show to the Council's reasonable satisfaction that the proposed assignee is responsible and, in the case of an assignment, financially sound;
- (b) the Manager must have performed all of the Manager's obligations under this Agreement and the Lease up to the date of the proposed assignment;
- (c) the assignee is an assignee of the Manager's interest under the Lease;
- (d) the assignee must execute a deed of covenant with the Council agreeing to perform the Manager's obligations under this Agreement and the Lease, but without releasing the assignor or any other person from liability under this Agreement and the Lease; and
- (e) in the case of an assignment to a company, the shares in which are not listed on the New Zealand Stock Exchange, the directors and shareholders of the assignee must (if the Council requires) guarantee the assignee's obligations under the deed of covenant executed by the assignee.

14.2 Change of Shareholding: If the Manager is a company that is not listed on the main board of the New Zealand Stock Exchange, then any change in its shareholding or any alteration in its constitution having the effect of altering the effective management and control of the Manager will be deemed to constitute an assignment of this Agreement and the Lease, and the provisions of this clause 14, will apply.

15. LIABILITY

15.1 Exclusion: Nothing expressed or implied in this Agreement will confer any liability on either party (**First Party**) in respect of any:

- (a) indirect, consequential or special loss, damage, cost or expense suffered or incurred by the other party as a direct or indirect result of a breach by the First Party of any of its obligations under this Agreement; or
- (b) loss, damage, cost or expense suffered or incurred by the other party, to the extent to which this results from any act or omission by that other party.

16. GENERAL

16.1 Entire Agreement: This Agreement and the Lease constitute the entire agreement between the parties in relation to the Premises and they supersede and extinguish all earlier negotiations, understandings and agreements, whether oral or written, between the parties relating to the Premises. The Manager acknowledges that it has either taken, or has been given the opportunity to take, independent legal advice about the nature, effects and obligations of this Management Agreement, before signing it.

16.2 Costs: Unless otherwise stated in this Agreement, each party will bear its own costs and expenses incurred in connection with the negotiation, preparation and implementation of this Agreement.

- 16.3 Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this Agreement. Without limiting the effect of this clause, if the Manager fails to sign any document that it is required to sign in order to give effect to this Agreement, the Manager will be deemed to have appointed the Council, irrevocably, to sign that document as the attorney of the Manager (without any requirement for the exercise of this power of attorney to be ratified at any time by the Manager).
- 16.4 Waiver:** Any waiver by a party of its rights or remedies under this Agreement will be effective only if it is recorded in writing and signed by a duly authorised senior representative of that party. If the waiver relates to a breach of any provision of this Agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver or any breach, or failure to enforce any provision of this Agreement at any time by either party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this Agreement.
- 16.5 Partial Invalidity/Severance:** If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 16.6 Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 16.7 Counterparts:** This Agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same document. A party may enter into this Agreement by signing a counterpart copy, including by electronic signature, and sending it to the other party, including by email.
- 16.8 Electronic Signature:** Each party irrevocably consents to the signing of this Agreement by electronic signature(s) in accordance with the Contract and Commercial Law Act 2017 and agrees to be bound if this Agreement is signed by electronic signature(s). In the event that any party does sign this Agreement by electronic signature, they will provide separate written confirmation to the other parties that:
- (a) the electronic signature was legitimately applied with the relevant authority; and
 - (b) the signatory has full knowledge of the contents of this agreement and intends to be bound by it.
- 16.9 Copies:** Any copy of this Agreement that is received by email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Agreement. This Agreement may be entered into on the basis of an exchange by email of PDF or other document reproduction format.

- 16.10 Amendment:** No amendment to this Agreement will be effective unless it is in writing and signed by each party.

17. COUNCIL'S REGULATORY ROLE

- 17.1 Council as Land Owner:** The Council has signed this Agreement in its non-regulatory capacity as land owner and administering body of the Reserve. This Agreement does not bind the Council in its capacity as a regulatory authority in any way, and any consent or agreement the Council gives under this Agreement is not an agreement or consent in its regulatory capacity and vice versa. When acting in its regulatory capacity, the Council is entitled to consider all applications to it without regard to this Agreement. The Council will not be liable to the Manager or any other party if, in its regulatory capacity, the Council declines or imposes conditions on any consent or permission that the Manager or any other party seeks for any purpose associated with this Agreement.

18. GUARANTEE

- 18.1 Guarantee:** In consideration of the Council entering into this Agreement at the Guarantor's request, the Guarantor:

- (a) guarantees payment of any money payable by the Council under this Agreement and the Manager's performance of the Manager's obligations in this Agreement during the Term of this Agreement (including during any period of holding over under the Lease); and
- (b) indemnifies the Council against any actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind which the Council may suffer or incur as a result of the Manager's breach of any of the Manager's obligations or covenants in this Agreement.

- 18.2 Guarantor is a Principal Debtor:** As between the Manager and the Guarantor, the Guarantor may be merely a surety, but as between the Guarantor and the Council, the Guarantor is a principal debtor (jointly and severally with the Manager).

- 18.3 Liability not Affected:** The Guarantor's liability under clause 18.1 is not affected by:

- (a) the granting of time or any other indulgence to the Manager;
- (b) the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the Council's rights against the Manager;
- (c) the Council's failure to enforce the Council's rights against the Manager;
- (d) any variation of this Agreement (including any review of the Management Fee);
- (e) the bankruptcy, death, or as the case may be by the receivership, liquidation, winding up, dissolution or voluntary administration of the Manager; or

- (f) any other thing which under the law on sureties would or might, if not for this clause, wholly or partly release the Guarantor from the Guarantor's obligations under clause 18.1.

18.4 Proceedings: The Council does not have to take proceedings against the Manager before taking proceedings against the Guarantor.

SIGNATURES

SIGNED on behalf of **NELSON CITY COUNCIL**

by:

Full name of authorised signatory

Signature of authorised signatory

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED on behalf of **[NAME OF MANAGER]**
by:

Full name of authorised signatory

Signature of authorised signatory

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED on behalf of **[NAME OF
GUARANTOR]** by:

Full name of authorised signatory

Signature of authorised signatory

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SCHEDULE 1
PLAN



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastre information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Brook Valley Holiday Park

Lease Plan



- Lease area approx 4.28 ha
- Camp Cottage

0 20 40 m
Scale 1:2,500

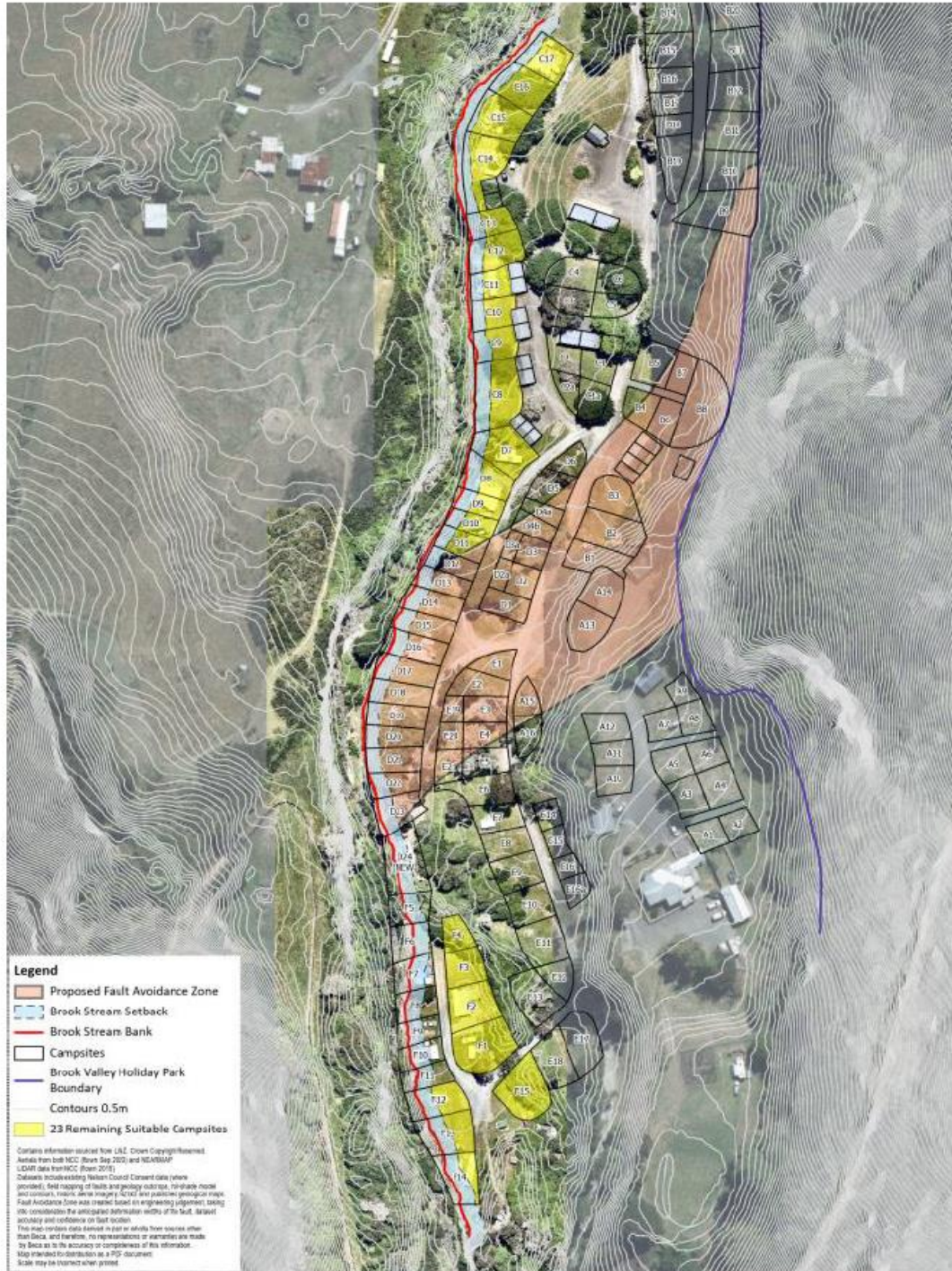


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IT: Original map size A4.

SCHEDULE 2

SITE PLAN



SCHEDULE 3
MOWING SPECIFICATIONS

3.0 TURF MAINTENANCE



3.3 Mowing - Amenity Turf

Amenity turf mowing includes several different standards of turf defined mainly by use and height.

- **Elite and premium** - usually limited to top tier parks and green spaces for high quality visual appearance and low impact passive recreation and social activities such as walking and sitting.
- **Standard** - applies to most parks grass mowing for many informal recreation activities.
- **Basic** - grass that is maintained for visual and environmental purposes rather than recreation e.g. stormwater swales, nature parks.
- **Seasonal** - banks, roadside mowing, weed control, fire hazard control and other utilitarian purposes.

Customer Outcomes

- Grass is maintained throughout the year with a presentation and grass height that is suitable for a range of visual amenity, social and informal recreation purposes.



Scheduled operations	Best Practice Principles	Service Level Indicators					Performance Assessment Customer Outcomes are met when:
		Elite ★★★★★	Premium ★★★★	Standard ★★★	Basic ★★	Seasonal ★	
Grass height	<ul style="list-style-type: none"> • Grass heights are suitable for the intended use of the area. • Flower and seed stalks don't adversely affect the use and appearance of the lawn. 	<ul style="list-style-type: none"> • 20mm to 40mm grass height • Stalks no more than 100mm height 	<ul style="list-style-type: none"> • 30mm to 50mm grass height • Stalks no more than 100mm height 	<ul style="list-style-type: none"> • 40mm to 80mm grass height • Stalks no more than 150mm height 	<ul style="list-style-type: none"> • 50mm to 150mm grass height • Stalks no more than 300mm height 	<ul style="list-style-type: none"> • 100mm to 300mm 	<ul style="list-style-type: none"> • Turf is suitable for the intended social, informal recreation and environmental use.

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3.0 TURF MAINTENANCE

Indicative mowing frequency and timing	<ul style="list-style-type: none"> Grass is cut at the appropriate frequency to maintain grass height within the specified range. 	<ul style="list-style-type: none"> At least weekly while grass is actively growing 35 to 48 cuts per year 	<ul style="list-style-type: none"> Every 7 to 10 days while grass is actively growing 30 to 45 cuts per year 	<ul style="list-style-type: none"> Every 10 to 14 days while grass is actively growing 18 to 26 cuts per year 	<ul style="list-style-type: none"> Every 14 to 21 days while grass is actively growing 10 to 12 cuts per year 	<ul style="list-style-type: none"> 1 to 4 cuts per year 	<ul style="list-style-type: none"> Grass height is maintained within the specified range.
Clippings	<ul style="list-style-type: none"> Clippings are either caught and removed, or discharged evenly over the mown area without clumping or windrowing. 	<ul style="list-style-type: none"> All clippings are to be caught with no visible clippings left following mowing. 	<p>EITHER:</p> <ul style="list-style-type: none"> All clippings are to be caught with no visible clippings left following mowing, or Clippings are discharged evenly over the mown area without clumping or windrowing. 	<ul style="list-style-type: none"> Clippings are discharged evenly over the mown area without clumping or windrowing. 	<ul style="list-style-type: none"> Clippings are discharged evenly over the mown area without clumping or windrowing. 	<ul style="list-style-type: none"> Clippings are discharged evenly over the mown area without significant clumping or windrowing. 	<p>EITHER:</p> <ul style="list-style-type: none"> Clippings are all caught and removed from site, or Clippings do not significantly detract from the health, use or appearance of the grass
Mowing coverage and timing	<ul style="list-style-type: none"> Mowing is undertaken to cut the full extent of the area and as close as possible (without damage) to fixed obstructions. Moveable obstructions are moved to allow mowing and replaced before leaving the site. Edge mowing by smaller equipment is completed to 	<ul style="list-style-type: none"> At every cut Same day 	<ul style="list-style-type: none"> At every cut Within 24 hours 	<ul style="list-style-type: none"> At every cut Within 48 hours 	<ul style="list-style-type: none"> At every cut Within 72 hours 	<ul style="list-style-type: none"> At every cut NA 	<ul style="list-style-type: none"> The entire mowable area is cut to a consistent standard There are no wheel or tyre marks left in the turf following mowing operation

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SCHEDULE 3: MOWING SPECIFICATIONS

3.0 TURF MAINTENANCE



	<p>the same standard as the main area so that there is no discernible height difference.</p> <ul style="list-style-type: none"> Mowing is not carried out when the operation or equipment is likely to cause damage to the turf. 						
Edges	<ul style="list-style-type: none"> Edges around and along structures, trees and fences shall be maintained with the appropriate equipment or chemical. Where a hard surface edge is flush with the grass, the edge is mechanically cut and not sprayed. 	<ul style="list-style-type: none"> Edges between grass and hard surfaces or structures are trimmed mechanically to the same standard as the lawn, and so that grass extends no more than 25mm over the edge of the hard surface. 	<ul style="list-style-type: none"> Grass extends no more than 25mm over the edge of hard surfaces. <p>And either:</p> <ul style="list-style-type: none"> Grass edges are trimmed to the same standard as the main area so that there is no discernible height difference, or a vegetation free strip no more than 50mm wide is maintained around and along structures. a vegetation free strip no more than 100mm wide is 	<ul style="list-style-type: none"> Grass extends no more than 50mm over the edge of hard surfaces. <p>And either:</p> <ul style="list-style-type: none"> Grass edges are trimmed to the same standard as the main area so that there is no discernible height difference, or a vegetation free strip no more than 100mm wide is maintained around and along structures. a vegetation free strip no more than 200mm wide is 	<ul style="list-style-type: none"> Grass extends no more than 75mm over the edge of hard surfaces. <p>And either:</p> <ul style="list-style-type: none"> Grass edges are trimmed to the same standard as the main area so that there is no discernible height difference, or a vegetation free strip no more than 200mm wide is maintained around and along structures. a vegetation free strip no more than 300mm wide is 	<ul style="list-style-type: none"> NA 	<p>EITHER:</p> <ul style="list-style-type: none"> Edges are neatly trimmed, Vegetation free strips are wider than specified.

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SCHEDULE 3: MOWING SPECIFICATIONS

3.0 TURF MAINTENANCE



			maintained along boundaries	maintained along boundaries	maintained along boundaries		
Debris and litter removal	<ul style="list-style-type: none"> All visible stones, bottles, litter, fallen branches and other debris that will damage turf or machinery, create an untidy appearance after mowing, or create a hazard to operators or public is collected and disposed of prior to mowing. Grass cutting is carried out to prevent mower flung projectiles presenting a danger to park users or property. 	<ul style="list-style-type: none"> Remove litter before each mowing Fallen leaves, flowers, twigs and fruit are collected as required to prevent turf damage. 	<ul style="list-style-type: none"> Remove litter before each mowing 	<ul style="list-style-type: none"> Remove litter before each mowing 	<ul style="list-style-type: none"> Remove litter before each mowing 	<ul style="list-style-type: none"> Remove litter before each mowing 	<ul style="list-style-type: none"> Litter and debris does not damage or detract from turf health or the appearance of the turf.

Unscheduled operations	Best Practice Principles	★★★★★	★★★★★	Response times ★★★★	★★	★	Customer Outcomes are met when:
	•	•	•	•	•	•	•

Supporting images	

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SCHEDULE 4

TREE MANAGEMENT SPECIFICATIONS

2.0 TREES AND HEDGES



2.3 Mature trees

Mature trees are well established with a fully developed root system that under most conditions will be capable of supporting the tree. They are not necessarily fully grown but have a well developed crown and branch structure that will be representative of the final form of the tree. Mature trees may still require some formative pruning as the crown develops and matures to ensure that branches are well spaced, and the crown is balanced and stable. As trees mature, they may require other forms of maintenance for tree health and safety reasons, such as removal of dead and damaged wood, crown lifting, and bracing.

High risk trees are those where the consequence of failure could be significant or severe (serious harm or death) because of the location of the tree and the activities that happen around it, and the likelihood of failure is likely or very likely because of the condition or inherent qualities of the tree (hazards).

*All arboricultural work should be done to ACOP standards
<http://www.worksafe.govt.nz/worksafe/information-guidance/all-guidance-items/acop-arboriculture?searchterm=arboriculture>*



Customer Outcomes

- Mature trees are safe and healthy.
- Mature trees are attractive and enhance their surroundings.

Scheduled operations	Best Practice Principles	Service Level Indicators			Performance Assessment measures Customer Outcomes are met when:
		Premium ★★★★★	Standard ★★★★	Basic ★★★	
Inspections	<ul style="list-style-type: none"> • Identify high risk trees. • Assessment for damage, health, condition, stability, form, hazards etc. • Develop a prioritised proactive tree maintenance programme. 	<ul style="list-style-type: none"> • Inspect high risk trees annually, following storm events and prior to major events 	<ul style="list-style-type: none"> • Inspect high risk trees annually and following storm events 	<ul style="list-style-type: none"> • Inspect high risk trees annually • Inspect park and street trees every 4 to 5 years 	<ul style="list-style-type: none"> • High risk trees are identified and monitored • Tree maintenance is prioritised and carried out proactively to avoid or minimise hazards and maintain tree health.

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SCHEDULE 4 – TREE MANAGEMENT SPECIFICATIONS

2.0 TREES AND HEDGES



		<ul style="list-style-type: none"> Inspect CBD street trees annually Inspect other parks and street trees every three years 	<ul style="list-style-type: none"> Inspect park and street trees every three years 		
Condition and general care	<ul style="list-style-type: none"> Trees are mulched to reduce mechanical and chemical damage, and promote soil moisture retention. Soil nutrient levels are maintained at levels that support optimum tree development. Tree protection is removed when no longer required. 	<ul style="list-style-type: none"> Mulch is kept tidy and is topped up annually 	<ul style="list-style-type: none"> Mulch is topped up every 2 to 3 years 	<ul style="list-style-type: none"> Mulch is topped up as required 	<ul style="list-style-type: none"> Mulch cover provides tidy and effective coverage the root zone. Trees are in good condition and well-grown with no obvious defects or deficiencies. Trees are not damaged by vegetation control operations (chemical or mechanical damage).
Pruning	<ul style="list-style-type: none"> Pruning is carried out in accordance with best arboricultural practice to enhance and maintain tree form and health. Crowns are lifted to maintain clearance over pedestrian areas and roads. Crowns are lifted to maintain clearance for mowing machinery on parks (this may not apply to conifers with a weeping form that have a skirt of branches to ground level). Vegetation is cleared from signage, lighting and buildings. Dead and diseased wood over 50mm diameter is removed. Epicormic growth is removed. 	<ul style="list-style-type: none"> Prune every 1 to 2 years based on tree maintenance programme Remove epicormic growth as required to maintain clean trunk. 	<ul style="list-style-type: none"> Prune every 3 to 5 years based on tree maintenance programme Remove epicormic growth as required to maintain clean trunk. 	<ul style="list-style-type: none"> Prune every 5 years or longer based on tree maintenance programme Remove epicormic growth as required to maintain clean trunk. 	<ul style="list-style-type: none"> Poor pruning practices do not adversely affect tree health, form or create hazards. Tree branches are at least 2.5m clear over pedestrian areas Tree branches are at least 4.5m clear over local roads and 5m clear over major arterials. Tree branches are at least 2m clear of buildings. Trees are free of potentially hazardous dead wood Trees are free of epicormic growth that can be removed from ground level with hand tools.

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