

**Between**

**Far North District Council – The Lessor**

**and**

**Wupi Investments Limited – The Lessee**

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**DEED OF GROUND LEASE**

**LOT 1 DP 90523 & LOT 1 DP 54531 & AS LOT 1 DP 69081**

**TAURANGA BAY HOLIDAY PARK**

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## Contents

1. INTERPRETATION .....	4
2. GRANT OF LEASE .....	6
3. RIGHT OF RENEWAL .....	6
4. RENT .....	7
5. RENT REVIEW .....	7
6. GST .....	9
7. DEFAULT INTEREST .....	10
8. OUTGOINGS .....	10
9. UTILITY CHARGES .....	10
10. COSTS .....	10
11. INSURANCE .....	11
12. MAINTENANCE .....	11
13. USE OF PREMISES .....	12
14. LESSEES RIGHT TO CONSTRUCT BUILDINGS AND IMPROVEMENTS .....	12
15. REMOVAL OF IMPROVEMENTS .....	13
16. ASSIGNMENT AND SUBLEASING .....	13
17. LESSOR'S RIGHTS OF ENTRY .....	14
18. QUIET ENJOYMENT .....	14
19. DEFAULT .....	14
20. ESSENTIAL TERMS .....	15
21. COMPENSATION .....	16
22. NO WAIVER .....	17
23. INDEMNITY .....	17
24. DISPUTE RESOLUTION .....	17
25. NOTICES .....	19
27. LESSOR'S CONSENT .....	19
28. LESSEE'S EXISTING IMPROVEMENTS .....	19
30. LESSEE'S RIGHT OF FIRST REFUSAL TO PURCHASE THE LAND .....	19
31. LESSOR'S RIGHT OF FIRST REFUSAL TO PURCHASE THE LESSEE'S IMPROVEMENTS .....	20
32. DAMAGE OR DESTRUCTION OF PREMISES .....	21

33. COMPLIANCE WITH STATUTES.....	22
SCHEDULE Reference Schedule.....	23

**THIS DEED** dated the                      day of                      **2018**

**BETWEEN              Far North District Council** (“Lessor”)

**AND                      Wupi Investments Limited** (“Lessee”)

**BACKGROUND**

- A.**     The Lessor is the owner of the land described as Lot 1 DP 90523 & Lot 1 DP 54531 (“the Freehold Land”)
- B.**     The Lessor has agreed to lease the Freehold Land to the Lessee and the Lessee has agreed to take the Premises on lease.
- C.**     The Lessor, on behalf of the Department of Conservation, is the administering body of the land described as Lot 1 DP 69081 (“the Recreation Reserve Land”) which is subject to the Reserves Act 1977 and its amendments.
- D.**     Pursuant to Section 54(1)(a) of the Reserves Act 1977, the Lessor has agreed to lease the Recreation Reserve Land to the Lessee and the Lessee has agreed to take the Premises on lease.
- E.**     By this deed the parties record the terms of the Lease of both the Freehold Land and the Recreation Reserve Land, which together constitute the Premises.

**WITNESSES AS FOLLOWS**

**1.     INTERPRETATION**

In this lease unless the context indicates otherwise:

**1.1     Definitions:**

“**Annual Rent**” means the total combined rent subject to changes consequent on the Lessor’s exercise of any right to review the annual rent for Lot 1 DP 69081, Lot 1 DP 54531 and Lot 1 DP 90523 which jointly make up the Tauranga Bay Holiday Park;

“**Authority**” means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Premises or their use;

“**GST**” means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;

“**Insured Risks**” means loss, damage or destruction resulting from fire, earthquake, storm, tempest and aircraft impact and any other risks which the Lessor reasonably requires to be insured against;

“**Lessee**” means the person specified as the Lessee in the schedule and includes the Lessee’s permitted assigns and the Lessee’s agents, employees, contractors and invitees;

**“Lessee’s Improvements”** means the Lessee’s property situated in, or on the Premises and includes all buildings, structures and improvements and all equipment and plant owned or placed on the Premises by the Lessee, including those buildings, improvements and structures as shown on the plan attached to this lease;

**“Lessor”** means the person specified as the Lessor in the schedule and includes the Lessor’s assigns and the Lessor’s employees, contractors and agents;

**“Outgoings”** means all rates, charges, levies, assessments, duties, impositions and fees from time to time payable to any Authority relating to the Premises;

**“Premises”** means the land described in the schedule and shown outlined on the plan attached to this lease but excludes the Lessee’s Improvements;

**“Term”** means the term of this lease and includes the Initial Term and (if this lease is renewed) the Renewal Term and (if this lease is further renewed) any further Renewal Term(s); and

**“Utilities”** means all utility and other services connected and/or supplied to the Premises, including water, sewage, drainage, electricity, gas, telephone and rubbish collection;

- 1.2 **Building Act Terms:** the terms “Building Work” and “Code Compliance Certificate” have the meanings given to those terms in the Building Act 2004;
- 1.3 **Defined Expressions:** expressions defined in the main body of this lease have the defined meaning in the whole of this lease including the background and the schedule;
- 1.4 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this lease’s interpretation;
- 1.5 **Joint and Several Obligations:** where two or more persons are bound by a provision in this lease, that provision will bind those persons jointly and each of them severally;
- 1.6 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **Parties:** references to parties are references to parties to this lease and include each party’s executors, administrators and successors;
- 1.8 **Persons:** references to persons include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- 1.9 **Plural and Singular:** singular words include the plural and vice versa;

- 1.10 Schedule:** the schedule and its contents have the same effect as if set out in the body of this lease;
- 1.11 Schedule Terms:** the terms “Commencement Date”, “Default Interest Rate”, “Final Expiry Date”, “Initial Term”, “Permitted Use”, “Renewal Term(s)”, “Rent Payment Date(s)”, “Rent Review Date(s)” and “Termination Date” together with the other terms specified in the schedule, will be interpreted by reference to the schedule;
- 1.12 Sections, Clauses and Schedule:** references to sections, clauses and the schedule are references to sections and clauses of and the schedule to this lease; and
- 1.13 Statutes and Regulations:** references to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.

## **2. GRANT OF LEASE**

The Lessor leases to the Lessee and the Lessee takes the Premises on lease for the Initial Term beginning on the Commencement Date and ending on the Termination Date at the Annual Rent.

## **3. RIGHT OF RENEWAL**

### **3.1 Preconditions:** If:

**3.1.1 Written Notice:** at least six months before the Termination Date, the Lessee gives the Lessor written notice of the Lessee’s wish to renew this lease; and

**3.1.2 Compliance by Lessee:** the Lessee has complied with all of the Lessee’s obligations under this lease;

then the Lessor will renew this lease at the Lessee’s cost for the Renewal Term beginning on the day following the Termination Date.

### **3.2 Rent on Renewal:** Subject to clause 3.4, the Annual Rent payable from the beginning of each Renewal Term will be:

**3.2.1 Current Market Rent:** the current market rent of the Premises at the beginning of the relevant Renewal Term; and

**3.2.2 Determined as if Rent Review:** determined using the terms of this lease relating to rent reviews as if the commencement date of the relevant Renewal Term were a Rent Review Date.

The Annual Rent so determined must never be less than the Annual Rent payable immediately prior to the Rent Review Date.

### **3.3 Terms of Renewed Lease:** The renewed lease will be on the same terms as this lease but will exclude this present term for renewal unless further Renewal Term(s) are specified in the schedule. If so, the renewed lease will contain rights to renew for those further Renewal

Term(s) to the same effect as clauses 3.1-3.5 (inclusive). The Term must never expire later than the Final Expiry Date.

**3.4 Reviews of Rent:** The Annual Rent payable during each Renewal Term will be subject to review:

**3.4.1 Set Dates:** on the Rent Review Date(s); or

**3.4.2 No Dates Specified:** at intervals of time equivalent to those provided for rent reviews during the Initial Term, if no Rent Review Date(s) are specified in the schedule for any Renewal Terms.

**3.5 Holding Over:** If, other than under a renewal of this lease or the grant of a further lease, the Lessor permits the Lessee to remain in occupation of the Premises after the end or earlier termination of the Term, the Lessee will occupy the Premises pursuant to a periodic tenancy that may be terminated in accordance with section 210 of the Property Law Act 2007 and any amendment thereto. In so far as they are applicable to periodic tenancies all other matters set out herein and implied by law will continue to apply between the parties.

#### **4. RENT**

The Lessee must pay:

**4.1 Annual Rent:** the Annual Rent by equal monthly payments in advance on the Rent Payment Dates;

**4.2 Monthly Payments:** the first monthly payment of the Annual Rent on the Commencement Date;

**4.3 No Deductions or Set-Off:** all rent and other money payable by the Lessee under this lease to the Lessor without any deduction or set-off; and

**4.4 Method:** all rent payments by direct bank payment or as the Lessor may direct.

#### **5. RENT REVIEW**

**5.1 Process:** The Annual Rent is subject to review on the Rent Review Dates using the process set out in clauses 5.2-5.5 (inclusive).

**5.2 Lessor's Notice:** The Lessor may not earlier than 3 months prior to a market rent review date and not later than the next rent review date give written notice to the other party specifying the annual rent proposed as the current market rent as the relevant market rent review date.

**5.3 Lessee's Notice:** The Lessee may within 28 days of receiving the Lessor's Notice (time being of the essence) by written notice to the Lessor ("Lessee's Notice") dispute the current market rent set out in the Lessor's Notice. The Lessee's Notice must state the Lessee's assessment of the current market rent of the Premises on that particular Rent

Review Date. If the Lessee does not give a Lessee's Notice the Lessee will be taken to have accepted the current market rent set out in the Lessor's Notice.

- 5.4** The annual rent agreed, determined or imposed pursuant to subclause 5 shall be the annual rent payable as from the relevant market rent review date, or the date of service of the Lessor's Notice if such notice is served later than 3 months after the relevant market rent review date.
- 5.5 Resolution of Disputes:** If the Lessee gives a Lessee's Notice, the Lessor and the Lessee must enter into negotiations to resolve the dispute. If the Lessor and the Lessee do not reach agreement within 14 days after the date of service of the Lessee's Notice, then the following provisions will apply:
- 5.5.1 Appointment of Valuer:** the Lessor and the Lessee must within 14 days after the expiry of the 14-day negotiation period each appoint a registered valuer who is an associate member of the New Zealand Property Institute;
- 5.5.2 Joint Determination:** the valuers appointed under clause 5.5.1 will jointly determine the current market rent of the Premises;
- 5.5.3 Sole Determination:** if either party fails to appoint a valuer under clause 5.5.1, the valuer appointed by the other party will determine the current market rent alone;
- 5.5.4 Appointment of Umpire:** before determining the rent, the valuers must jointly appoint an umpire and obtain the umpire's written acceptance of appointment;
- 5.5.5 Umpire Not Appointed:** if within 14 days of the date of their appointment the valuers:
- (a) fail to appoint an umpire; or
  - (b) are unable to agree on an umpire;
- then either party may ask the President of the New Zealand Property Institute to appoint an umpire and obtain the umpire's written acceptance of appointment;
- 5.5.6 Determination by Valuers:** the appointed valuers (or the sole valuer, if clause 5.5.3 applies) will jointly determine the current market rent of the Premises within 28 days of the date of their appointment, in relation to comparable premises on that particular Rent Review Date;
- 5.5.7 Determination by Umpire:** if the valuers cannot agree on the current market rent of the Premises within 28 days of their appointment or within any extended time agreed by the parties, then the umpire will determine the current market rent;



**5.5.8 Directions to Valuers or Umpire:** in determining the current market rent the valuers or the umpire must:

- (a) have regard to the market rent for comparable premises as at the particular Rent Review Date;
- (b) have regard to the terms of this lease; and
- (c) disregard the value of the Lessee's Improvements; and

**5.5.9 Costs of Determination:** all costs of the determination of the current market rent of the Premises by the valuers or the umpire will be borne as follows:

- (a) if the current market rent as determined is either equal to or greater than the rent specified in the Lessor's Notice, by the Lessee;
- (b) if the current market rent as determined is either equal to or less than the rent specified in the Lessee's Notice, by the Lessor;
- (c) if the valuers or the umpire determine that one of the parties should bear all of the costs, or a proportion of the costs greater than one half, due to that party's impropriety, lack of co-operation or unreasonable conduct, then the parties must pay the costs in the proportions so specified; or
- (d) in all other cases, by the Lessor and the Lessee equally.

**5.6** Any Review of the rent herein received shall be in respect of the Land only and shall specifically exclude the improvements constructed by the Lessee and referred to in Clauses 14 and 28 hereof.

**5.7 Rent Ratchet:** The Annual Rent payable by the Lessee following a Rent Review Date must never be less than the Annual Rent payable immediately prior to the Rent Review Date.

## **6. GST**

**6.1 Payment:** The Lessee must pay to the Lessor all GST payable on the Annual Rent and other money payable by the Lessee under this lease. The Lessee must pay GST:

**6.1.1 Annual Rent:** on the Annual Rent on each occasion when any rent falls due for payment; and

**6.1.2 Other Money:** on any other money payable by the Lessee on demand.

**6.2 Default:** If:

**6.2.1 Lessee Fails to Pay:** the Lessee fails to pay the Annual Rent or other money payable under this lease (including GST); and

**6.2.2 Lessor Liable to Penalty:** the Lessor becomes liable to pay additional GST or penalty tax;

then the Lessee must pay the additional tax or penalty tax to the Lessor on demand.

## **7. DEFAULT INTEREST**

If the Lessee fails to pay any instalment of the Annual Rent or any other money payable under this lease for 14 days after:

**7.1 Due Date:** the due date for payment; or

**7.2 Demand:** the date of the Lessor's demand, if there is no due date;

then the Lessee must on demand pay interest at the Default Interest Rate on the money unpaid from the due date or the date of the Lessor's demand (as the case may be) down to the date of payment.

## **8. OUTGOINGS**

**8.1 Lessee to Pay Outgoings:** The Lessee must on demand by the Lessor pay the Outgoings without deduction or set-off. If any Outgoing is not separately assessed on or charged to the Premises, the Lessee must pay a fair and reasonable proportion of that Outgoing.

**8.2 Apportionment:** Any Outgoing which is not assessed or charged for a period falling wholly within the Term will be apportioned between the Lessor and the Lessee.

**8.3 Penalties:** If any Outgoing is payable by a date after which a penalty applies, the Lessee will comply with clause 8.1 if the Lessee pays that Outgoing at least five days before the penalty date.

**8.4 Lessor's Obligation:** The Lessor must pay all costs, expenses and charges relating to the Premises which are not the Lessee's responsibility under this lease.

## **9. UTILITY CHARGES**

**9.1 Lessee to Pay Utility Charges:** The Lessee must promptly pay to the relevant Authority or supplier all charges for Utilities which are separately metered or charged to the Premises.

**9.2 Apportionment:** The Lessee must pay to the Lessor on demand a fair and reasonable proportion of the charge for any Utility which is not separately metered or charged to the Premises.

**9.3 Meters:** If the Lessor or any Authority requires the Lessee to do so, the Lessee must at the Lessee's own expense install any meter or other measuring devices necessary for the proper measurement of the charges for any Utility or other services supplied to the Premises.

## **10. COSTS**

Each party will pay their own costs of the negotiation and preparation of this Lease and any variation, or deed recording a rent review or renewal. The

Lessee shall pay the Lessor's reasonable costs incurred in considering any request by the Lessee for the Lessor's consent to any matter contemplated by this Lease, and the Lessor's legal costs (as between lawyer and client) of and incidental to the enforcement of the Lessor's rights remedies and powers under this Lease.

## **11. INSURANCE**

**11.1 Lessee to Insure:** The Lessee must at all times during the Term:

**11.1.1 Lessee's Improvements:** insure and keep the Lessee's Improvements insured in the joint names of the Lessor and the Lessee for their respective rights and interests to their full insurable value against the Insured Risks; and

**11.1.2 Pay Premiums:** pay the premium for the insurance taken out under clause 11.1.1 when due.

**11.2 Public Risk Insurance:** The Lessee must throughout the Term keep current a public risk insurance policy applicable to the Premises and the business carried on, in, or from the Premises for:

**11.2.1 Specified Amount:** the amount specified in the schedule (being the amount which may be paid out arising from any single accident or event); or

**11.2.2 Increased Amount:** any increased amount that the Lessor reasonably requires.

## **12. MAINTENANCE**

**12.1 Maintenance:** The Lessee must throughout the Term:

**12.1.1 Improvements:** maintain the Lessee's Improvements in good repair;

**12.1.2 Keep Premises Clean:** keep the Premises clean and tidy;

**12.1.3 Removal of Rubbish:** regularly remove all rubbish and waste from the Premises;

**12.1.4 Broken Glass:** replace all broken glass on the Premises; and

**12.1.5 Pests:** prevent and exterminate any pest infestation on the Premises.

**12.1.6 Road & Carpark:** notwithstanding clause 12.2, maintain and repair road and carpark including any necessary tar sealing.

**12.1.7 Care of grounds:** notwithstanding clause 12.2, maintain any garden or lawn areas in a tidy and cared for condition.

**12.2 Limitations on Lessee's Maintenance Obligations:** The Lessee's obligations under clause 12.1 do not:

**12.2.2 Act of God, etc:** apply to damage caused by fire, flood, earthquake, earth subsidence, storm, tempest, act of God or inevitable accident unless the Lessee's act or omission has

caused insurance proceeds to be unavailable which, but for the act or omission, would have been available towards the cost of making good the damage.

### **13. USE OF PREMISES**

**13.1 Permitted Use:** The lessee shall use the premises solely for the purpose of and associated with a camping ground (within the meaning of Regulation 2 of the Camping Ground Regulations Act 1985) and if at any time the lessor is of the opinion that the premises are not being used or are not being used sufficiently for the purpose specified herein the lessor after making such enquires as it thinks fit and given the lessee the opportunity of explaining the usage of the premises and reasonable opportunity to rectify the default and if satisfied the premises are not being used for the purpose specified herein may terminate the lease whereupon the premises together with all improvements thereon shall revert to the lessor without compensation being payable to the lessee by the lessor.

**13.2 Restrictions on Use:** The Lessee must:

**13.2.1 Noxious Activities and Nuisances:** not carry on any noxious, noisy or offensive business or activity in or about the Premises or do anything which is or may become a nuisance or annoyance to any person, but the carrying on of the Permitted Use by the Lessee in a reasonable manner will not of itself be a breach of this clause;

**13.2.2 Resource Management Act:** not do anything which is or may become a breach of any duty imposed on any person by the Resource Management Act 1991

**13.2.3 Health and Safety in Employment Act:** not do anything which is or may become a breach of any duty imposed on any person by the Health and Safety at Works Regulations 2016; and

**13.2.4 Acts, Bylaws, etc:** comply in all respects with all acts, bylaws, regulations, rules and requisitions relating to the Premises and the Lessee's use of the Premises.

### **14. LESSEES RIGHT TO CONSTRUCT BUILDINGS AND IMPROVEMENTS**

**14.1** The Lessee shall have the right to construct further buildings and improvements on the land for the furtherance of the business use recorded herein PROVIDED THAT:

(i) The buildings and improvements shall be built in accordance with accepted architectural and engineering standards and in accordance with plans and specifications approved by the Lessor. Such approval shall not be unreasonably or arbitrarily withheld or delayed if the proposed buildings and improvements are compatible with the existing uses of the land.

- (ii) The buildings and improvements are constructed in accordance with the proper requirements of all relevant local authorities and in a proper and workmanlike manner.

**14.2** The buildings and improvements shall remain the property of the Lessee during the term of this Lease and may be sublet by the Lessee pursuant to clause 16 hereof.

**14.3** The Lessee shall have the right to remove the buildings and improvements from the land in accordance with clauses 15 and 28 hereof upon termination of this Lease within one month after the termination date.

## **15. REMOVAL OF IMPROVEMENTS**

If the Lessee has paid the rent due and is not in breach of any of the terms of this lease, then the Lessee:

**15.1 Remove Lessee's Improvements:** may, and if the Lessor requires at the expiry or earlier termination of the Term, must remove the Lessee's Improvements from the Premises;

**15.2 Repair Damage:** must repair any damage caused to the Premises by that removal; and

**15.3 Leave Premises Tidy:** must leave the Premises in a clean and tidy condition to the Lessor's reasonable satisfaction.

## **16. ASSIGNMENT AND SUBLEASING**

**16.1** The Lessee shall not assign, sublet or otherwise part with the possession of the Premises, or any part of them without first obtaining the written consent of the Lessor which the Lessor shall not unreasonably withhold or delay if the following conditions are fulfilled:

**16.1.1** The Lessee proves to the reasonable satisfaction of the Lessor that the proposed assignee or sublessee is (and in the case of a company that the shareholders of the proposed assignee or sublessee are) respectable responsible and has the financial resources to meet the Lessee's commitments under this Lease and in the case of the sublessee the sublessee's commitments under the sublease. The Lessee shall give the Lessor any additional information reasonably required by the Lessor.

**16.1.2** All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Lessee's covenants.

**16.1.3** In the case of an assignment a deed of covenant in customary form approved or prepared by the Lessor is duly executed and delivered to the Lessor.

**16.1.4** In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Lessor is duly

executed by the principal shareholders of that company and delivered to the Lessor or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Lessor as security for the performance by the company of its obligations under this Lease is provided to the Lessor.

**16.1.5** The Lessee pays the Lessor's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Lessor concerning any proposed assignee sublessee or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds.

**16.2** Where the Lessor consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent.

**16.3** Where the Lessee is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Lessor which will not be unreasonably withheld or delayed.

## **17. LESSOR'S RIGHTS OF ENTRY**

**17.1 Entry to Premises by Lessor:** The Lessor may, with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time without notice in the case of an emergency), enter the Premises to:

**17.1.1 Inspect Premises:** inspect the condition and state of repair of the Premises; or

**17.1.2 Compliance with Statutes, etc:** carry out any works to comply with any statutes, regulations, by-laws, ordinances, orders, proclamations, requirements of or notices by any Authority.

**17.2 Minimise Disturbance to Lessee:** The Lessor will take reasonable steps to minimise any disturbance to the Lessee when exercising the entry rights granted under clause 17.1.

## **18. QUIET ENJOYMENT**

If the Lessee pays the Annual Rent and performs the Lessee's obligations in this lease, the Lessee will be entitled to quiet enjoyment of the Premises without interruption by the Lessor or any person claiming under the Lessor.

## **19. DEFAULT**

**19.1** If the Lessee fails to perform or observe any of this agreement's terms, then the Lessor may without prejudice to any of the Lessor's other rights or remedies at law or in equity sue the Lessee for specific performance or cancel this lease by immediately or thereafter re-entering the Premises if the Lessor has first observed the requirements, where it is required by law to do so, of sections 243-264 Property Law Act 2007.

**19.2** It shall be an act of default under this lease if the Lessee:

**19.2.1 Lessee a Natural Person:** being a natural person:

- (a) is declared bankrupt or insolvent according to law; or
- (b) assigns his or her estate or enters into a deed of arrangement for the benefit of creditors; or

**19.2.2 Lessee a Company:** being a company:

- (a) is or is deemed to be unable to pay the Lessee's debts under section 287 of the Companies Act 1993;
- (b) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Lessor);
- (c) is wound up or dissolved;
- (d) enters into voluntary administration or any assignment or other compromise or scheme of arrangement with the Lessee's creditors or any class of the Lessee's creditors; or
- (e) has a receiver, manager or receiver and manager appointed relating to any of the Lessee's assets.

**19.3 Lessor May Remedy Lessee's Default:** The Lessor may, without being under any obligation to do so, remedy any default or breach by the Lessee under this lease at the Lessee's cost.

## **20. ESSENTIAL TERMS**

**20.1 Essential Terms:** The Lessee's breach of the following terms is a breach of an essential term of this lease:

**20.1.1 Payment of Rent:** the covenant to pay rent or other money payable by the Lessee under this lease;

**20.1.2 Assignment and Subleasing:** the terms dealing with assignment and subleasing; or

**20.1.3 Use of Premises:** the terms restricting the use of the Premises.

**20.2 Waiver:** The Lessor's acceptance of any arrears of rent or other money payable under this lease is not a waiver of the essential obligation to pay any other rent or money payable under this lease.

- 20.3 Compensation:** The Lessee must compensate the Lessor for any breach of an essential term of this lease. The Lessor may recover damages from the Lessee for those breaches. The Lessor's entitlement to compensation under this clause is in addition to any other remedy or entitlement of the Lessor (including the right to terminate this lease).

## **21. COMPENSATION**

- 21.1 Lessee's Acts or Omissions:** If any act or omission of the Lessee:

**21.1.1 Repudiation:** is a repudiation of this lease or of the Lessee's obligations under this lease; or

**21.1.2 Breach of Lease:** is a breach of any of the Lessee's obligations under this lease;

the Lessee must compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach during the whole of the Term.

- 21.2 Entitlement:** The Lessor's entitlement to recover damages will not be affected or limited by:

**21.2.1 Abandonment:** the Lessee abandoning or vacating the Premises;

**21.2.2 Re-entry or Termination:** the Lessor electing to re-enter or to terminate this lease;

**21.2.3 Acceptance of Repudiation:** the Lessor accepting the Lessee's repudiation; or

**21.2.4 Surrender:** the parties' conduct constituting a surrender by operation of law.

- 21.3 Legal Proceedings:** The Lessor may bring legal proceedings against the Lessee claiming damages for the entire Term including the periods before and after:

**21.3.1 Premises Vacated:** the Lessee has vacated the Premises; and

**21.3.2 Abandonment, etc:** the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in clause 21.2;

whether the proceedings are instituted before or after that conduct.

- 21.4 Mitigation of Damages:** If the Lessee vacates the Premises, whether with or without the Lessor's consent, the Lessor must take reasonable steps to:

**21.4.1 Mitigate Damages:** mitigate the Lessor's damages; and

**21.4.2 Lease Premises:** endeavour to lease the Premises at a reasonable rent and on reasonable terms.

The Lessor's entitlement to damages will be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this clause. The Lessor's conduct in pursuance of the duty



to mitigate damages will not by itself constitute acceptance of the Lessee's breach or repudiation, or a surrender by operation of law.

## **22. NO WAIVER**

The Lessor's waiver or failure to act in response to the Lessee's breach of any of the Lessee's obligations in this lease will not operate as a waiver of:

**22.1 Waiver of Breach:** the same breach on any later occasion; or

**22.2 Waiver of Obligations:** any other obligations in this lease.

## **23. INDEMNITY**

**23.1 Lessor Indemnified:** The Lessee indemnifies the Lessor against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Lessor resulting from the Lessee's acts or omission, except where section 268 Property Law Act 2007 applies.

## **24. DISPUTE RESOLUTION**

**24.1** If a party has any dispute with the other party in connection with this Lease:

- a. that party will promptly give full written particulars of the dispute to the other;
- b. the parties will promptly meet together and in good faith try and resolve the dispute.

**24.2** If the dispute is not resolved within 5 working days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation. A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings. The mediation procedure is:

- a. The parties will appoint a mediator and if they fail to agree on a mediator within 5 working days of referral to mediation, the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee.
- b. The parties must cooperate with the mediator in an effort to resolve the dispute.
- c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
- d. If the dispute is not resolved within 10 working days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
- e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments, etc.
- f. The terms of settlement are binding on the parties and override the terms of this Lease if there is any conflict.

- g. The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- h. The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.

**24.3** Either party may commence arbitration proceedings when mediation ceases under clause 24.2d by giving written notice to the other party. If the dispute is referred to arbitration:

- a. The arbitration will be conducted by one arbitrator appointed jointly by the parties.
- b. If the parties cannot agree on an arbitrator within 5 working days of written notice being given under 24.3 the appointment will be made by the President of the New Zealand Law Society or the President's nominee. That appointment will be binding on all parties to the arbitration and will not be the subject of an appeal. The provisions of Article 11 of Schedule 1 of the Arbitration Act 1996 are varied as above.
- c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- d. The place of arbitration will be Whangarei or Kaikohe.
- e. Unless agreed otherwise, the costs and expenses of the arbitration will be met in accordance with Article 6 of Schedule 2 of the Arbitration Act 1996.
- f. Any settlement by arbitration will be recorded in the form of an arbitral award on agreed terms in accordance with Schedule 1 of the Arbitration Act 1996.
- g. The award will be binding on the parties and override the terms of this Lease if there is any conflict.
- h. Either party may appeal to the High Court on any question of law arising out of an award in accordance with the Arbitration Act 1996.
- i. Neither party will unreasonably delay these dispute resolution procedures.

**24.4** The parties must follow and exhaust the procedures outlined in this clause before they can begin any action at law (other than an application for injunctive relief).

**24.5** These dispute resolution procedures do not apply to:

- a. any dispute arising in connection with any attempted renegotiation of this Lease; or

- b. an application by either party for urgent interlocutory relief; or
- c. any provision in this Lease in respect of which the Lessor's decision is final.

**24.6** Pending resolution of any dispute the parties will perform this Lease in all respects including performance of the matter which is the subject of dispute.

## **25. NOTICES**

**25.1 Service of Notices:** Any notice or document required or authorised to be delivered or served under this lease may be delivered or served:

**25.1.1 Property Law Act:** in any manner prescribed in Part 7 of the Property Law Act 2007 for the type of notice being served; or

**25.1.2 Facsimile:** by facsimile where permitted by the Property Law Act 2007 for a notice of its type.

**25.2 Time of Service:** Any notice or other document will be treated as delivered or served and received by the other party:

**25.2.1 Delivery:** on personal delivery;

**25.2.2 Registered Post:** three days after being posted by prepaid registered post; or

**25.2.3 Facsimile:** on completion of an error free transmission, when sent by facsimile.

**25.3 Signature of Notices:** Any notice or document to be delivered or served under this lease must be in writing and may be signed by:

**25.3.1 Attorney, etc:** any attorney, officer, employee or solicitor for the party serving or giving the notice; or

**25.3.2 Authorised Person:** the party serving the notice or any other person authorised by that party.

## **26. LESSOR'S CONSENT**

The Lessor's consent under this lease is required for each occasion even if the Lessor has given a consent for the same or a similar purpose on an earlier occasion.

## **27. LESSEE'S EXISTING IMPROVEMENTS**

The parties acknowledge that the Lessee has constructed certain improvements on the land herein during the term of prior leases of the land which remain the property of the Lessee. The Lessee may remove the Lessee's improvements from the land upon the termination of this Lease provided that the Lessee:

**27.1** Repairs as soon as practicable any damage caused to the land or fixtures owned by the Lessor.

## **29. LESSEE'S RIGHT OF FIRST REFUSAL TO PURCHASE THE LAND**

- 29.1** In the event that the Lessor shall desire to sell its interest in the land the subject of this Lease the Lessor shall offer the Lessor's interest as aforesaid for sale to the Lessee at such price and upon such terms as the Lessor shall think fit.
- 29.2** In the event that the Lessee wishes to purchase the Lessor's interest upon the nominated terms then the Lessee shall deliver to the Lessor an executed unconditional agreement for sale and purchase upon those terms together with a deposit amounting to ten (10) percent of the purchase price within forty (40) days of receipt of notice from the Lessor of the intention to sell.
- 29.3** If the Lessee does not wish to purchase the Lessor's interest upon the nominated terms or if the Lessee fails to deliver to the Lessor the required agreement and deposit within the prescribed time then the Lessor shall be free to place the property on the market for sale PROVIDED THAT the Lessor shall not sell the property at a price or upon terms more favourable to those notified to the Lessee without first having notified the Lessee of such amended terms and having given to the Lessee twenty (20) days within which to deliver to the Lessor a signed unconditional agreement for sale and purchase upon such amended terms together with a deposit equal to ten (10) percent of the purchase price.
- 29.4** If the Lessor does not receive the signed agreement and deposit within the prescribed time then the Lessor may sell the property to a third party on such amended terms.

**30. LESSOR'S RIGHT OF FIRST REFUSAL TO PURCHASE THE LESSEE'S IMPROVEMENTS**

- 30.1** In the event that the Lessee shall desire to sell its interest in the improvements on the land, the Lessee shall offer the Lessee's interest as aforesaid for sale to the Lessor at such price and upon such terms as the Lessee shall think fit.
- 30.2** In the event that the Lessor wishes to purchase the Lessee's interest upon the nominated terms then the Lessor shall deliver to the Lessee an executed unconditional agreement for sale and purchase upon those terms together with a deposit amounting to ten (10) percent of the purchase price within forty (40) days of receipt of notice from the Lessee of the intention to sell.
- 30.3** If the Lessor does not wish to purchase the Lessee's interest upon the nominated terms or if the Lessor fails to deliver to the Lessee the required agreement and deposit within the prescribed time then the Lessee shall be free to sell the improvements to a third party PROVIDED THAT the Lessee shall not sell the improvements at a price or upon terms more favourable to those notified to the Lessor without first having notified the Lessor of such amended terms and having given to the Lessor twenty (20) days within which to deliver to the Lessee a

signed unconditional agreement for sale and purchase upon such amended terms together with a deposit equal to ten (10) percent of the purchase price or

- 30.4** If the Lessee does not receive the signed agreement and deposit within the prescribed time then the Lessee may sell the improvements to a third party on such amended terms or remove the improvements from the land.

**31. DAMAGE OR DESTRUCTION OF PREMISES**

- 31.1** If the improvements belonging to the Lessee situated on the Premises shall be destroyed or so damaged:

**31.1.1** As to render the improvements unusable then the term hereof shall at once terminate from the date of destruction or damage; or

**31.1.2** In the reasonable opinion of the Lessee as to require demolition or reconstruction, the Lessee may within three (3) months of the date of damage give the Lessor twenty (20) working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.

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

- 31.2 No access in emergency:** if there is an emergency and the Lessee is unable to gain access to the Premises to fully conduct the Lessee's business from the Premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:

**31.2.1** A prohibited or restricted access cordon applying to the Premises.

**31.2.2** Prohibition on the use of the Premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the Premises are fit to use.

**31.2.3** Restriction on occupation of the premises by any competent authority.

Then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Lessee became unable to gain access to the Premises to fully conduct the Lessee's business from the Premises until the inability ceases.

- 31.3** This subclause 32.2 applies where subclause 32.1 applies and the Premises are not totally or partially destroyed or damaged as provided for in subclause 31.1. Either party may terminate this Lease by giving twenty (20) working days written notice to the other if:

**31.3.1** The Lessee is unable to gain access to the Premises for the period specified in the First Schedule; or

**31.3.2** The party that terminates this Lease can at any time prior to termination establish with reasonable certainty that the Lessee is unable to gain access to the Premises for that period.

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

## **32. COMPLIANCE WITH STATUTES**

**32.1** In all such matters and at all time as to the use by any person of, and as to any other activity whatever (actual or proposed) on or from, the land or any building or other improvements on it, the Lessee, at the Lessee's expense in all things, shall duly punctually and fully comply with and discharge (to the total exclusion of any liability attaching or accruing to the Lessor) the requirements of:

**33.2.1** All statutes regulations ordinances by-laws and other lawful requirements applicable to the land and any buildings or other improvements on or proposed to be erected or made on the land and their uses or proposed uses;

**33.2.2** All notices orders rules requisitions or requirements made or issued by any statutory territorial or other authority;

**33.2.3** All obligations imposed by or pursuant to any such statute provision or authority or any such notice requisition or other requirements whether on the owner occupier builder or user of any land building or other thing whatever.

**32.2** The Lessee will promptly provide the Lessor with a copy of all requisitions and notices received from a competent authority in respect of requirements that the Lessee is responsible for under this clause.

Executed as a deed

**SIGNED** by the Lessor:

\_\_\_\_\_  
Print Full name

\_\_\_\_\_  
Signature of Lessor

\_\_\_\_\_  
Print Full name

\_\_\_\_\_  
Signature of Lessor

In the presence of:

\_\_\_\_\_  
Witness to signature of Lessor

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Address of witness

**SIGNED** by the Lessee:

\_\_\_\_\_  
Print Full name

\_\_\_\_\_  
Signature of Lessee

In the presence of:

\_\_\_\_\_  
Witness to signature of the Lessee

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Address of witness

Approved for and on behalf of the Minister of Conservation pursuant to delegation under section 10 of the Reserves Act 1977:

\_\_\_\_\_  
Print Full name

\_\_\_\_\_  
Signature

**SCHEDULE**  
**Reference Schedule**

<b>Lessor:</b>	Far North District Council
<b>Lessor's Address:</b>	Memorial Ave, Kaikohe, New Zealand
<b>Lessee:</b>	Wupi Investments Limited
<b>Lessee's Registered Address:</b>	C/o Blakat Accounts Level 1, 17 Huron street, Takapuna, Auckland, 0622, New Zealand
<b>Premises:</b>	All of the Lessors land comprising 2.2602ha more or less being part Lot 1 on DP 54531 comprised in Computer Register NA26B/334 plus 1.0921ha more or less being lot 1 DP 90523 comprised in Computer Register NA86D/201 plus 3.8445ha more or less being part Lot 1 on DP 69081 comprised in Computer Register NA25A/1353 as show on the plan attached.
<b>Initial Term:</b>	21 years
<b>Commencement Date:</b>	<b>01 October 2018</b>
<b>Termination Date:</b>	<b>30 September 2039</b>
<b>Renewal Term(s):</b>	one (1) further term of twenty one (21) years
<b>Final Expiry Date:</b>	<b>30 September 2060</b>
<b>Annual Rent:</b>	Twenty One Thousand Five Hundred Dollars (\$21,500.00) per annum plus GST
<b>Monthly Rent Instalment:</b>	\$1,791.67 plus GST
<b>Rent Payment Dates:</b>	The first day of each month commencing on <b>1 October 2018</b>
<b>Rent Review Date(s):</b>	Every three years on the anniversary date of the lease
<b>Permitted Use:</b>	Camp ground in accordance with Camping Grounds Regulations 1985 or its amendments
<b>Public Risk Insurance:</b>	\$2,000,000.00
<b>Default Interest Rate:</b>	<b>12%</b> per annum



No Access Period:  
(Subclause 32.3)

9 months

