

KOTARE COMMUNITY LAND TRUST

AND

Deed of Lease for the Kotare Village - site ____



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Deed of Lease

PARTIES

- 1 **KOTARE COMMUNITY LAND TRUST** (“lessor”)
- 2 *Name of lessee and address and occupation if an individual* (“lessee”)

BACKGROUND

- A The lessor owns the freehold title to the property.
- B Part of the property is to be used as a community housing development.
- C The Society is the manager of the community housing development for the benefit of the owner and all other tenants of the lessor and shall itself Lease all of the property which are designated as common areas.
- D The lessor and the lessee have agreed that the lessor shall lease to the lessee, and the lessee shall take on lease from the lessor, the site and have entered into this lease to record the terms and conditions on which the lessee will use and enjoy the site.

THIS DEED WITNESSES

- 1 **Reference schedule**
 - 1.1 **Property (clause 2.1)**

The land situated at Kotare Road being 25.6113 Ha, Lot 2 DP 7871 and Lot 1 DP 8823 and being comprised and described in unique identifier 271710, in respect of which the lessor owns an estate in fee simple.
 - 1.2 **Site (clause 2.1)**

That part of the property, as more particularly shown on the plan attached and as viewed by the tenant.
 - 1.3 **Term (clause 5.1)**

34 years commencing on XXX and expiring on XXX.
 - 1.4 **Right of extension (clause 5.2)**

There are to be no rights to extend the term of this lease and no variation to this Lease shall be entered in to if the effect is to extend the term of the Lease. The period of the lease shall not be under any circumstance more than 34 years.
 - 1.5 **Rental (clause 6.1)**

\$12.00 per annum plus goods and services tax until a rent review takes place.
 - 1.6 **Payment of rental (clause 6.2)**

Equal monthly instalments of \$1.00 plus Goods and Services Tax, until a rent review takes place.
 - 1.7 **Rent review dates (clause 6.3)**

On the anniversary of the commencement date.
 - 1.8 **Property expenses (clause 6.4)**

That percentage of the property expenses being equal to 100 divided by the number of Lease holders in relation to the Property at the time of receipt of the property expenses for payment or such other lesser figure advised in writing by the Lessor.
 - 1.9 **Interest on overdue rental (clause 6.5)**

5% percentage per annum.
 - 1.10 **Permitted use of site (clause 10.1)**

That purpose as defined in clause 10.1
- 2 **Definitions and interpretations**
 - 2.1 **Definitions**

In this deed unless the context otherwise requires:

“Building” means the building comprising part of the property and in which the site are situated;

“Business Day” means a day other than a Saturday or a Sunday, on which commercial trading banks are open for business in both Auckland and Wellington, and excludes any day during the period commencing on 24 December and expiring on 5 January in each year, and

“Business Days” has a corresponding meaning.

“Commencement date” means the date specified in clause 1.3 on which the term shall commence;

“Common areas” means the areas, as from time to time varied, extended or reduced by the lessor at the lessor’s discretion, permitted by the lessor to be used in general by the occupants of the property;

“Expiration date” means the date provided in clause 1.3 on which the term shall expire;

“Goods and services tax” means all tax from time to time payable under the Goods and Services Tax Act 1985;

“Lease” means this deed of lease and includes any schedules and annexures to it;

“Lease year” means each 12 month period during the term commencing on the commencement date;

“Lessee” means the lessee and the lessee’s executors, administrators, successors and permitted assigns;

“Lessee’s building” means the buildings or other improvements, including alterations and additions, owned or erected by the lessee (if any);

“Lessor” means the lessor and the lessor’s executors, administrators, successors and assigns, and where the context permits the servants and agents of the lessor;

“Occupants of the property” includes all tenants, subtenants, licensees and other persons (including the lessor) from time to time entitled to occupy space on the property on a permanent or semi-permanent basis, and includes for the avoidance of any doubt the lessee ;

“Persons under the control of the lessee” includes all sublessees, licensees, servants, employees, agents, contractors, customers and other invitees of the lessee;

“Rules” means those rules in relation to the use of the site provide in the second schedule together with those rules as imposed from time to time by the society;

“Site” includes the lessor’s improvements of a permanent nature (if any) and all services including Power and Telephone supplied to the site installed by the Lessor

“Society” means the Kotare Village Incorporated or its successors and permitted assigns;

“Property” means the interest in the land owned by the lessor described in clause 1.1 and includes the lessor’s improvements, fixtures, relating to that land;

“Property expenses” means the amounts specified in the First Schedule.

2.2 Interpretation

In this lease:

- (a) where obligations bind more than one person those obligations shall bind those persons jointly and severally;
- (b) the benefits and burdens shall be binding upon the parties and their respective successors and personal representatives and any permitted assigns or transferees and references to the parties shall be construed accordingly;
- (c) words importing one gender include all other genders and words importing the singular number include the plural and vice versa;
- (d) a “person” includes any individual, company, corporation, incorporated society, limited partnership, firm, partnership, joint venture, association, organisation, trust, state, or agency of state, government department or territorial authority in each case whether or not having separate legal personality;
- (e) any schedules to this lease shall have the same effect as if set out in the body of this lease;
- (f) clause headings are inserted for reference only and shall not affect the interpretation of this lease;
- (g) references to any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and:
 - (i) references to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to (including any enactment passed in substitution therefore); and
 - (ii) expressions defined or explained in any statute shall bear those meanings in this lease;
- (h) any covenant not to do anything also constitutes an obligation not to suffer, permit or cause that thing to be done;
- (i) references to covenants include conditions and agreements;
- (j) references to covenants include covenants expressed or implied;
- (k) to “perform” a covenant includes to keep, observe and fulfil that covenant;
- (l) a right granted or reserved may be exercised from time to time and at all times;
- (m) any reference to a “month” or “monthly” shall mean respectively calendar month and calendar monthly;

3 Covenant to lease

The lessor leases to the lessee and the lessee takes on lease from the lessor the site upon the terms of this lease.

4 Exclusion of statutory provisions

Any covenants and powers implied in leases by virtue of the provisions of the Property Law Act 2007, or any other Act, regulation or by-law are excluded to the extent that are inconsistent with the provisions of this lease.

5 Term and right of extension

5.1 Term of lease

The term shall commence on the commencement date and shall expire on the expiration date.

5.3.1 Monthly tenancy

If the lessee with the consent of the lessor continues to occupy the site beyond the expiration date ("holding over") it shall pay a rental determined pursuant to the provisions of clause 6.1, but shall otherwise occupy the site as a tenant at will pursuant to the provisions of section 210 of the Property Law Act 2007.

6 Rental, rent reviews, property expenses and goods and services tax

6.1 Covenant to pay rental

The lessee covenants to pay rental to the lessor at the rate stated in clause 1.5 or otherwise fixed pursuant to this lease.

6.2 Manner of payment of rental

6.2.1 The lessee shall pay rental, by equal monthly instalments as provided in clause 1.6, in advance on the first day of each month but the first payment shall be made on the commencement date on a proportionate basis for any broken period until the first day of the next month.

6.2.2 Rental and all other monies howsoever payable to the lessor by the lessee shall be paid when due and without deduction or set off (whether legal, equitable, statutory or any other form) by automatic bank authority or otherwise as the lessor may in writing otherwise direct.

6.3 Rent reviews

6.3.1 The lessor may review the rental on the rent review dates specified in clause 1.7 in the following manner:

- (a) the lessor shall give to the lessee notice in writing ("lessor's notice") of the rental that the lessor considers to be the current appropriate rental (recognising that use of the site is restricted by some of the provisions of the Lease) for the site for that period between the review date triggering the current review process and the next rent review date or the expiration of the lease. The lessor's notice shall refer to the consequences specified in paragraph 6.3.1(c);
- (b) if within 20 business days of receipt by the lessee of a lessor's notice the lessee gives to the lessor a notice ("lessee's notice") stating that the lessee disputes the rental specified in the lessor's notice, then the rental payable for the relevant period shall be determined in accordance with clause 6.3.2;
- (c) if the lessee fails to give to the lessor a lessee's notice within 20 business days of receipt of a lessor's notice, then the rental specified in the lessor's notice shall be deemed to be the current rental for the site as at the relevant review date.

6.3.2 If the lessee gives a lessee's notice to the lessor within 20 business days of a lessor's notice, then the lessee and the lessor shall each use reasonable endeavours to agree upon the current appropriate rental as at the relevant review date. If the lessee and the lessor do not reach agreement upon the current appropriate rental within 10 business days of the giving of the lessee's notice then the appropriate rental shall be determined by majority vote of the members for the time being of the society.

6.3.3 The rental determined pursuant to clause 6.3 shall be the rental payable by the lessee from the relevant review date, unless the lessor did not give the lessor's notice within three months of the relevant review date, in which case the rental determined pursuant to this clause shall be payable only from the date on which the lessor's notice was given to the lessee.

6.3.4 Upon the determination of the new rental the lessee and the lessor shall (if required by the lessor) record such new rental in writing.

6.3.5 In any determination of the current appropriate rental for the site the value of the improvements (if any) on the site shall not be taken into account.

6.4 Additional payments by lessee

The lessee covenants to pay in the manner provided in the First Schedule as additional rental the percentage provided in clause 1.8 of the property expenses.

6.5 Interest on overdue rental or other monies

If any rental, property expenses or other monies payable by the lessee remain unpaid for five business days after their due date, then the lessee shall pay to the lessor interest on those monies at the annual percentage rate stated in clause 1.9 calculated from the due date to the date of payment and the lessor may recover the monies in arrears and interest as if the same were rental in arrears.

6.6 Goods and services tax

The lessee shall at the time it falls due for payment pay to the lessor, or as the lessor shall direct, all goods and services tax payable on the rental and any other amounts payable under the lease.

7 Assignment/subletting

7.1 Lessee not to sublet without consent

- 7.1.1 The lessee shall not, except as provided in this clause, sublet, assign, mortgage, charge or part with possession of the site or any part of the site or this lease or any estate or interest in this lease in any manner howsoever.
- 7.1.2 The lessee may assign the whole of this lease or sublet part of the site with the prior written consent of the lessor to a respectable, responsible, solvent and suitable assignee or sublessee ("transferee") provided such conditions as are imposed by the Lessor have been met.
- 7.1.3 Before giving consent and as a condition precedent the lessor may require performance and satisfaction of the following conditions:
- (a) the lessee shall demonstrate to the reasonable satisfaction of the lessor that the transferee is responsible and of sound financial standing and intends to use the site only for the use specified in clause 1.10;
 - (b) all rental and other monies payable by the lessee to the lessor have been paid up to the date of the proposed transfer, assignment or subletting;
 - (c) there is not any existing unremedied breach of any of the terms of this lease;
 - (d) in the case of an assignment, the execution by the transferee of a covenant with the lessor, in a form acceptable to the lessor, that the transferee will be bound by and perform the covenants in this lease to be observed and performed by the lessee. The execution of such covenant shall not release the lessee from the lessee's obligations under this lease;
 - (e) all reasonable costs incurred by the lessor (whether or not the proposed sublease or assignment proceeds to completion) have been paid by the lessee;
 - (f) in the case of a sublease, the lessor may stipulate that the sublease contains a condition that it is not to be assigned or the area sublet be further sublet without the prior written consent of the lessor and the terms of clause 7.1 shall apply, mutatis mutandis, to such consent.
 - (g) the lessee if assigning the Lease complies with the procedure in clause 7.1.5.
- 7.1.4 In the event of the death of the lessee the Lease may be assigned to the beneficiaries of the lessee's estate, unless otherwise disposed of by the executors or administrators of the lessee's estate, provided that such beneficiaries agree in any such assignment to comply with and be bound by the terms of this Lease.
- 7.1.5 In the event that lessee wishes to assign the Lease and sell the lessee's buildings, the lessee shall follow the following procedure:
- (a) The lessee shall notify the lessor, in writing, of their intention to sell. Such notice shall include a statement as to whether lessee wishes to recommend a prospective buyer as of the date of the notice. Such notice shall also contain the calculation described in clause 7.1.5(c).
 - (b) No later than 14 days after the lessor's receipt of the lessee's notice, a market valuation of the Lease and the lessee's buildings ("the valuation") shall be commissioned to be performed by a Registered Quantity Surveyor and/or a Registered Valuer as mutually agreed upon. The lessee shall commission and pay the cost of the valuation which shall state the value of the Lease separate to the value of the lessee's buildings and improvements. The valuation must be provided to the lessor and the lessee .
 - (c) The sale price payable by any purchaser to the lessee shall be no more than the sum of the amount equal to
 - i. the price paid by the lessee for the Lease adjusted by the CPI as published by Statistics New Zealand for the period the lessee has held the Lease, plus
 - ii. the depreciated building cost, in the 'valuation', of any constructions, plus
 - iii. the depreciated value of any landscape plantings
 - (d) The lessor shall have 14 days from receipt of the valuation to notify the lessee in writing whether the lessor, or a person nominated by the lessor who will be identified, wishes to purchase the Lease and the lessee's buildings at the sale price calculated in accordance with clause 7.1.5(c). From the date of receipt of such notice by the lessee a binding agreement shall exist for the sale and purchase of the property.
 - (e) The parties shall settle any resulting sale within 30 days of the date of the agreement. Where the lessor has nominated another person as purchaser, the lessor shall at all times be liable for all obligations on the part of the purchaser under the agreement.
 - (f) If the lessor either does not respond to the lessee's notice within the period as provided in clause 7.1.5(b), or the lessor's notice contains advice the lessor does not wish to purchase the Lease and the Lessee's buildings at the price stipulated in clause 7.1.5(c), then at any time within 12 months from the date of the lessee's notice the lessee may sell the Lease and the Lessee's buildings to any other person for a price no more favourable to the purchaser than the price offered to the lessor. If within such period the lessee wishes to offer a lower price the

lessee shall reoffer the Lease and the Lessee's buildings to the lessor under clause 7.1.5(d) but the lessor shall only have 7 days in which to respond.

- (g) The lessee must when seeking the lessor's consent pursuant to clause 7.1.2 disclose the purchase price payable by the purchaser and provide sufficient evidence to enable the lessor to ensure that this clause has been complied with. In the event that sufficient evidence has not been received then the lessor shall not consent to the assignment until such evidence has been received.

7.2 Assignments and subletting

The grant or purported grant of any assignment or subletting in contravention of clause 7.1 constitutes a material breach entitling the lessor to summarily terminate this lease. The lessee waives, disclaims, abandons, abrogates and covenants not to exercise or seek to exercise any right to relief from forfeiture which arises or may arise as a result of (in whole or in part) any termination pursuant to this clause 7.2.

7.3 Obligations of Assignor on assignment of Lease

The obligations of the Assignor following an assignment of this lease pursuant to the provisions of clause 7.1 in relation to the lease shall cease as at the date of that assignment, but without prejudice to those obligations which arose prior to, and which remain unfulfilled at the date of the assignment of this lease.

8 Maintenance repairs alterations and additions

8.1 Lessee to keep site in good repair

The lessee shall keep the site in good repair and condition.

8.2 Lessee's further maintenance/repair obligations

The lessee shall punctually, at the lessee's expense:

- (a) keep the site clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the society;
- (b) keep and maintain any paving and other sealed or surfaced areas in a good and proper serviceable condition having regard to their purpose;
- (c) keep and maintain any garden or lawn area in a tidy and cared for condition;
- (d) make good any damage to any part of the site caused by the lessee or persons under the control of the lessee;
- (e) take any steps to control any pest infestation occurring in, or emanating from, within the site;
- (f) comply with all statutes, regulations and by-laws, including without limiting the foregoing the Biosecurity Act 1993; and
- (g) comply with any notices or orders which may be given by any competent authority in respect of the site or their use by the lessee and keep the lessor indemnified in respect of all such matters.

8.3 Construction of buildings, alterations and additions

8.3.1 The lessee may park a caravan, build or place a cabin or house and erect a fabric tent and use such caravan, cabin, house or tent to dwell in on the site, provided that the lessee must at all times comply with the rules and the terms of this lease.

8.3.2 The lessee shall not make or permit:

- (a) any excavation of the site;
 - (c) any construction or erection of any buildings on the site; or
 - (d) any installation, alteration or interference with any services or other system relating to the site or the property;
- without the society's prior written approval provided that such approval shall not be unreasonably withheld but may be given subject to such conditions as are described in clause 8.3.3.

8.3.3 In seeking the lessor's approval under subclause 8.3.2 the lessee shall submit plans and specifications of the proposed work.

8.3.4 The Lessee's building shall be property of the lessee. Title to the Lessee's building shall be and remain vested in the lessee. However, the lessee's exercise of the rights of ownership is subject to the provisions of this Lease, including but not limited to provisions regarding the disposition of improvements by the lessee in the event of termination or default.

8.4 Removal of building, other improvements, fixtures and fittings by lessee on termination for Breach of Lease

8.4.1 The lessee shall, if required by the lessor:

- (a) remove all or part of the unapproved improvements made by the lessee to the site; and
 - (b) remove all or part of the lessee's unapproved building;
- on the termination of the Lease pursuant to clause 11.4.

8.4.2 The lessee shall:

- (a) make good damage to the property caused by such removal or otherwise caused by the lessee, including, but not by limitation, the removal of rubbish;

- (b) restore the site to its condition prior to the lessee making such improvements; and
- (c) where the term is determined for any reason, effect such removal and making good of damage immediately after determination.

8.4.3 If the lessee fails to complete any removal and making good when required under subclause 8.4.1 and 8.4.2, the lessor may:

- (a) do so and the lessee will on demand pay all costs and expenses incurred by the lessor in so doing; or
- (b) elect not to effect such removal and give notice in writing to the lessee that unless the lessee effects removal within 14 days of the date on which the notice is given (time being of the essence) the lessee's building shall, at the option of the lessor, be forfeited to the lessor without compensation. If the lessee fails to comply with the notice of the lessor may, by further notice in writing to the lessee, elect to forfeit the lessee's building and on service of such notice the lessee's building shall become the property of the lessor.

8.4.4 If at the expiration date the lessee has observed and performed all of the terms and conditions of this lease, the lessee shall be entitled to remove the lessee's building and improvements installed or made by the lessee to the site in which case the lessee shall comply with clause 8.4.2.

8.5 Notice of damage and defects by lessee

The lessee shall immediately give notice to the lessor of:

- (a) any damage or accident to, or defects in, the site or in any of the services or other facilities provided by the lessor in the site; and
- (b) any circumstances occurring within the site likely to cause damage or injury.

8.6 Fencing

The lessee shall not, during the currency of this lease, call upon the lessor to repair or contribute towards the cost of repair of any dividing fence or boundary wall between the site and any adjoining land.

9 Insurance and indemnity

9.1 Lessee to insure property

The lessee shall be solely responsible to insure, and keep insured, the lessee's building.

10 Use of site and building

10.1 Use to which site may be put by lessee

10.1.1 Principal Place of Residence

The lessee shall use the site to construct a dwelling within a period of two years from the commencement of the lease that is to be used as their principal place of residence. If the lessee wishes to use the site for any other purpose the lessee must get agreement from the lessor.

10.2 No warranty by lessor as to suitability of site

10.2.1 The lessor does not warrant:

- (a) that the site is, or will remain, suitable or adequate for any specific purpose of the lessee, apart from the permitted use provided in clause 1.10 in general; or
- (b) that the permitted and conditional uses of the site provided in the relevant town planning ordinances permit the operation of such specific purpose, or the permitted use desired by the lessee.

10.2.2 The lessee accepts the site as being satisfactory in all respects and with full knowledge of, and subject to, any prohibitions or restrictions on the use of the site.

10.3 Payment of utility charges by lessee

The lessee shall pay to the proper authorities all charges for utilities and other services connected or used in the site. Should the lessee make default in payment of such charges the lessor may pay them and immediately recover the amount paid as if it were rental in arrears payable by the lessee; penalty interest shall accrue upon any sums expended by the lessor in satisfaction of utilities and/or other charges under this clause from the date of payment by the lessor until repayment in full by the lessee.

10.4 Restrictions on use of site property and land by lessee

The lessee shall comply with those restrictions on the use of the site, property and the land as provided in the Second schedule.

11 Rights reserved by lessor

11.1 Maintenance by lessor

The lessor or the society may use, maintain and repair all services in, on or passing through the site or the property, but in so doing the lessor or the society will cause as little inconvenience to the lessee as is reasonably possible. In the event that a charge is payable for such use the lessor or society shall pay a proportionate amount of that charge based on usage.

11.2 Entry by lessor to view and effect repairs and alterations

The lessor or the society may enter upon the site with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) to view the state of repair of the site and to ascertain whether or not there has been any breach of the covenants in this lease; and
- (b) to carry out repairs to the services to the property or to any adjacent property; and
- (c) to execute any work required to remedy a defect which is the lessee's duty to remedy if the lessee has not, within 10 business days of the date of receipt of written notice from the lessor or the society requiring remedial action, taken that action, and without prejudice to other remedies, the lessor or the society may recover the costs of the remedial action from the lessee on demand; and
- (d) for the purpose of complying with the terms of any statute affecting the site or the property or any notice served on the lessor or lessee by any competent authority for which the lessee is not responsible under this lease; and
- (e) for the purpose of carrying out any repairs, alterations, additions or other works to the utility or other services provided to the site and other areas of the property.

In exercising such rights the lessor shall use best endeavours to minimise disturbance to the lessee.

11.3 Work by lessor to remedy lessee's default

The lessor may elect to, on reasonable notice at any time, remedy any default by the lessee under this lease and whenever the lessor so elects, all costs and expenses incurred by the lessor (including legal costs and expenses on a solicitor/client basis) in remedying such default shall be paid by the lessee to the lessor immediately on demand. Penalty interest shall accrue upon any sums expended by the lessor, in remedying a default by the lessee of seeking to enforce compliance by the lessee, from the date of payment by the lessor until repayment in full by the lessee.

11.4 Default by lessee

If at any time:

- (a) the rental is in arrears and unpaid for 20 business days after any payment date (whether it has been demanded or not); or
- (b) repairs required by any notice given by the lessor under this lease are not commenced within 20 business days of such notice having been given, or if commenced are not diligently completed; or
- (c) the lessor gives written notice to the lessee specifying any breach (other than a breach of the type referred to in (a) or (b) above) in this lease which breach remains unremedied 20 business days after giving the notice; or
- (d) the lessee (if an individual) shall be declared or adjudicated bankrupt or insolvent; or
- (e) any assignment shall be made of the lessee's property for the benefit of creditors or if the lessee compounds with the lessee's creditors; or
- (f) the interests of the lessee in or under this lease or in the site shall be attached or taken in execution under any legal process;

the lessor may serve notice pursuant to s 245 of the Property Law Act 2007 on the lessee and if 20 working days after service of such notice the breach has not been remedied the lessor may:

- (i) immediately, or at any time subsequently, and without any further notice or demand re-enter (forcibly if necessary) the site or any part of the site; and
- (ii) by such action determine the lessee's estate and interest in the site; and
- (iii) expel and remove the lessee and the chattels of the lessee and those claiming under the lessee without being guilty of any manner of trespass or conversion.

Upon such event this lease shall cease and determine, but without releasing the lessee from liability in respect of any breach of any covenant.

11.5 Essential terms

11.5.1 Any breach of the following covenants by the lessee shall be a breach of an essential term of this lease:

- (a) the covenants to pay rental, property expenses and other monies due to the lessor throughout the term where such breach of covenant gives rise to a right of re-entry pursuant to this lease (clauses 6.1 to 6.6 (inclusive) and clause 11.4);
- (b) the covenant dealing with assignments, subletting and parting with possession (clauses 7.1 to 7.3 (inclusive));
- (c) the covenants dealing with repair and maintenance (clauses 8.1 and 8.2);
- (d) the covenant dealing with alterations and additions (clause 8.4);
- (e) the covenant dealing with the use of the site (clause 10.1); and/or
- (f) the covenant dealing with membership of the society (clause 13).

11.5.2 The lessee shall compensate the lessor for any breach of an essential term of this lease and the lessor is entitled to recover damages from the lessee in respect of such breaches. The lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the lessor is entitled (including the right to terminate this lease).

11.5.3 In respect of the obligation referred to in paragraph 11.5.1(a), acceptance by the lessor of arrears or of any late payment of rental shall not be a waiver of the essentiality of the lessee's obligation to pay rental in respect of those arrears or late payment or the lessee's continuing obligation to pay rental throughout the term.

11.6 Compensation for breach

- 11.6.1 In the event the lessee's conduct (whether acts or omissions) constitutes a repudiation of this lease (or of the lessee's obligations under this lease) or constitutes a breach of any lease covenants, the lessee shall compensate the lessor for the loss or damage suffered by reason of the repudiation or breach.
- 11.6.2 The lessor shall be entitled to recover damages against the lessee in respect of repudiation or breach of covenant for the damage suffered by the lessor during the whole of the term.
- 11.6.3 The lessor's entitlement to recover damages shall not be affected or limited by any of the following:
- (a) the lessee abandoning or vacating the site;
 - (b) the lessor electing to re-enter or to terminate the lease;
 - (c) the lessor accepting the lessee's repudiation;
 - (d) the parties' conduct constituting a surrender by operation of law.
- 11.6.4 The lessor shall be entitled to recover damages against the lessee in respect of the entire term, including the periods before and after the lessee has vacated the site and before and after the events referred to in subclause 11.6.3 whether recovery proceedings are instituted before or after such conduct.

11.7 Removal of lessee's chattels and improvements

Upon the expiration or earlier determination of this lease, the lessor may remove from the site any chattels situated in the site and place them outside the property without being responsible or liable for any resultant loss or damage.

12 Covenants by lessor

12.1 Rates

Subject to the provisions of this deed, the lessor shall pay all rates, taxes and assessments charged upon the property except those which the lessee is obliged to pay.

12.2 Quiet enjoyment

The lessee performing the lessee's obligations under this lease shall peaceably possess and enjoy the site without any undue interruption or disturbance from the lessor.

12.3 Maintenance by lessor

- 12.3.1 The lessor shall take all reasonable steps to keep all services to the site in working order and condition, except so far as any repairs are necessitated by the wrongful acts or defaults of the lessee or persons under the control of the lessee.
- 12.3.2 The lessor shall not be liable for any damage, injury or loss incurred by the lessee or by any person under the control of the lessee caused by breach of this clause unless notice in writing of the disrepair causing the damage, injury or loss has previously been given to the lessor by the lessee and the lessor has failed to remedy such disrepair within a reasonable time after receipt of such notice.

13 Membership of Society

The lessee will, for such time as they are the lessee, be a member of the society. The lessee understands that every lessee of the property will be a member of the society and that the lessor may grant further leases at any time. Any breach of the rules of the society will be a breach of this lease. The lessee's membership of the society will cease immediately on assignment, termination or expiry of this Lease.

14 Miscellaneous

14.1 Lessee to pay lessor's costs

In addition to the rental and other monies reserved by this lease the lessee shall pay:

- (a) the lessor's legal costs of preparation of this lease (such costs being limited to \$350.00 including GST) and any variation of this lease and the lessor's costs in obtaining any consents or approvals associated with this lease;
- (b) all costs, charges and expenses for which the lessor shall become liable in consequence of, or in connection with, any breach or default by the lessee in the performance of any of the covenants in this lease; and
- (c) all costs, charges and expenses (including actual legal costs as between solicitor and client) that may be incurred by the lessor in enforcing or attempting to enforce any of the lessee's covenants, or any of the lessor's rights, under or arising out of this lease.

14.2 Notices

- 14.2.1 Any notice or other document required to be given or served under this lease may (in addition to any other method permitted by law):
- (a) in the case of the lessee, be given or served by signature required courier or by delivery to the lessee at the lessee's last known place of abode or business or by delivery to the site; and
 - (b) in the case of the lessor, be given or served by signature required courier or by delivery to the lessor's principal place of business or such address as may be notified to the lessee from time to time.
- 14.2.2 Any notice or other document shall have been served on the other party one business day after the date of posting or delivery.

- 14.2.3 In the case of any notice or document required to be served or given by the lessor, the same may be signed on behalf of the lessor or society by any authorised officer of the lessor or society or by the lessor's solicitors.

14.3 Dispute resolution

- 14.3.1 Any dispute that arises from or touches upon this agreement for which no other dispute resolution process is specified, must be referred in the first instance to non-binding mediation.

The non-binding mediation procedure is:

- (i) The party wishing to resolve a dispute by mediation must give notice in writing of the dispute to the other party(s).
 - (ii) The notice must state that a dispute has arisen and provide sufficient particulars as to the nature and ambit of the dispute so as to permit the other party(s) to formulate a response.
 - (iii) When a notice of dispute is given in accordance with this agreement the parties will appoint a mediator by agreement within ten [10] business days of receipt of a notice; should the parties fail to agree upon a mediator to be appointed within five [5] business days of receipt of a notice, any party may request that the President for the time being of the New Zealand Law Society (or his or her nominee) ("president") to appoint a mediator. The nomination of the president shall be final and bringing upon the parties, subject only to disqualification due to actual or presumed bias, manifest inadequacy (having regard to the subject matter of the dispute), or actual or presumed conflict of interest.
 - (iv) The parties will actively and expeditiously engage with the mediator, and in the mediation process in an effort to resolve the dispute.
 - (v) If the dispute is settled then the terms of settlement will be written up by the mediator and signed by the parties to the dispute.
 - (vi) Subject to any written agreement to the contrary, any such mediation settlement agreement shall encompass all matters the subject of the notice and shall comprise a full final and binding settlement of the same.
 - (vii) If the dispute is not settled within 15 business days of the appointment of the mediator, or within any extended time that the parties agree to in writing then the parties will no longer be bound by this mediation provision.
- 14.3.2 The parties acknowledge that all written statements given to the mediator or to each other and any discussions between the parties, or any of them, and/or between any of the parties and the mediator during the mediation are inadmissible in legal or arbitral proceedings by any party other than the party that made them.
- 14.3.3 The parties to any dispute will share equally the cost of the mediator's fees and costs including travel, room hire and refreshments.
- 14.3.4 Any dispute which is not settled by mediation shall, at the lessors election, be referred either to a court of competent jurisdiction or to arbitration (by a single arbitrator appointed as though the same were a mediator under this clause) in accordance with the Arbitration Act 1996.
- 14.3.5 Nothing in the forgoing provisions shall prevent any party to this agreement from seeking urgent interlocutory relief from any court of competent jurisdiction.
- 14.3.6 Notwithstanding anything to the contrary expressed or implied in this agreement, the provisions of this clause shall survive the cancellation or termination of this agreement.

14.4 No registration

The lessee shall not call upon the lessor to execute a registrable memorandum of lease of the site unless the lessee shall have first paid to the lessor the full amount of the costs and expenses to be incurred, including legal, survey and lessor's administration, in preparing, executing and causing to be registered such lease and the lessee shall not at any time lodge a caveat against any title to the land comprised in the property.

15 No representations

Each party warrants that it has entered into this agreement solely in reliance upon its own skill and judgment and it has not relied upon any oral or written representation made to it by the other party(s), or its employees or agents, and that it has made (and has been permitted a reasonable opportunity to make) its own independent investigations into all matters relevant to the subject matter of this agreement.

16 Independent Advice

The parties acknowledge that prior to entering into this agreement they were provided with a copy of this agreement and advised to, and provided with the opportunity of seeking independent legal advice as to its provisions.

17 Entire agreement

This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior agreement(s) between the parties whether written or oral and any such prior agreements are cancelled as at the date hereof but without prejudice to any rights which have already accrued to a party thereunder.

18 Jurisdiction

This agreement is governed by New Zealand law in every particular including formation and interpretation and notwithstanding the domicile of the parties nor the place of its execution shall be deemed to have been made in New Zealand, and the parties shall and do hereby submit to jurisdiction of the New Zealand courts.

19 Variation

19.1 Any provision in this agreement may be varied by written agreement between the parties (except for any provision which is intended to extend the term of this lease). No variation to this agreement will be legally enforceable unless it is in writing and signed by the parties ("variation notice").

19.2 No party to this agreement shall:

- (i) tender to any court, tribunal, mediator or arbitrator or other judicial or quasi-judicial body, any evidence in support of any variation other than a variation notice, or
- (ii) assert or attempt to assert any equitable entitlement upon the basis of any variation purportedly made in contravention of this clause.

20 Force Majeure

20.1 In the event of inability of any party(s) to this agreement to perform its obligations under this agreement by reason of riot, earthquake, volcanic activity, fire, storm, operation of law or other like cause beyond the control of that party ("force majeure event"), such party(s) shall, upon service of written notice specifying the force majeure event (including due particulars of the time the force majeure event commenced having effect) ("force majeure notice") on all other parties to this agreement, be released from its obligations under this agreement if and to the extent that such party(s) is prevented or delayed from performing such obligations by reason of that force majeure event ("release"), but without prejudice to any pre-existing claim or pre-existing liability in respect of this agreement.

20.2 No force majeure notice will be effectual unless it is served within a reasonable time of the occurrence of the force majeure event, such time to be determined having regard to the circumstances then prevailing.

20.3 The non-performing party shall forthwith upon the cessation of a force majeure event, serve each party to this agreement with written notice specifying the cessation of the force majeure event (including due particulars of the time the force majeure event ceased having effect) ("cessation notice").

20.4 For the avoidance of doubt:

- (i) the service of a force majeure notice is a condition precedent to the non-performing parties' reliance upon any release pursuant to this clause.
- (ii) A release shall continue only for such time as the non-performing party is incapable of performing its obligations by virtue of the force majeure event.
- (iii) Any dispute concerning whether an event constitutes a force majeure event shall be resolved pursuant to the dispute resolutions provisions of this agreement.
- (iv) No strike, lockout or similar industrial action shall comprise a force majeure event.
- (v) If the lessee determines, acting reasonably, that the effect of any force majeure event is, or will be, to substantially reduce the benefit(s) it obtains, or to substantially increase its obligations, under this agreement, then it may terminate this agreement by 15 business days written notice.

First Schedule - Property expenses

1 The lessee shall pay upon demand, to the lessor, the percentage stated in clause 1.8 of the amount of the property expenses incurred or payable during the term.

2 "Property expenses" means:

- (a) rates or levies payable to any local or territorial authority in respect of the property;
- (b) charges for water, gas, electricity, lighting, telephones and other utilities or services to the site to the extent only that such charges are not separately metered;
- (c) rubbish and waste collection charges;

3 The lessee's contribution to the property expenses shall be apportioned if necessary to correspond with the term.

4 For the purposes of making payment of the lessor's property expenses:

- (a) the lessor may make a reasonable estimate of such expenses for each lease year or broken period, and shall provide the lessee with a statement setting out the lessee's percentage of such estimate;
- (b) the lessee shall pay to the lessor the lessee's percentage of such estimate by equal payments on each rental payment date; and
- (c) as soon as reasonably possible at the expiration of each lease year or broken period the lessor shall provide a statement of the actual property expenses for the lease year or broken period and an adjustment shall then immediately be made between the lessor and the lessee to ensure that the lessee pays the lessee's actual percentage of the property expenses for the relevant period.

5 Notwithstanding clause 4 of this schedule the lessor may:

- (a) by separate invoice require immediate payment in one sum of any item of the property expenses which:
 - (i) was omitted from the estimate referred to in subclause 4(a) of this schedule; or
 - (ii) is a substantial amount payable by the lessor at three monthly or longer intervals; or

- (iii) was omitted from the amount of the property expenses recovered during previous lease years or broken periods; and
 - (b) require the lessee to enter into contracts with the supplier for the supply of any of the services comprising the property expenses as they relate to the site and pay the cost of those services direct to the supplier.
- 8 The lessor may recover from the lessee after the expiration or determination of the term property expenses not recovered or invoiced for during the term.

Second schedule (see clause 10.4) - Site and property use rules

The lessee shall not:

- (a) use for other than their designed purpose any of the lessor's improvements on the site (if any);
- (b) do or permit to be done on the site or the property anything which in the opinion of the lessor may become a nuisance, disturbance or obstruction or cause damage whether to the lessor or to other tenants or users of the property or to neighbouring owners or occupants nor use the site in any noisy, noxious or offensive manner;
- (c) obstruct or interfere with any of the entrances or common areas of the property;
- (d) permit any external television or radio antenna, sign, advertisement, name or notice to be placed on any part of the property without the prior written consent of the lessor
- (e) Lease or Licence all or any part of the site except in accordance with the terms of this lease.
- (f) Damage the property or use any part of it other than in accordance with the Rules.
- (g) Fence or otherwise create or cause obstruction through the property unless such fence or obstruction is wholly contained on the site.
- (h) Enter, cross or use the site of any other lessee except as authorised by such lessee.
- (i) Plant any type of plant including any tree or shrub or remove, damage or destroy any tree, plant or shrub on any part of the property (excluding the site) except as authorised in writing by the Lessor.
- (j) Allow any cats or dogs or beehives on the site except as authorised in writing by the Lessor in the Lessor's sole discretion.
- (k) Allow any other pets or animals onto site unless they are contained within the boundaries of the site.
- (l) Use on the site any Genetically Modified Organisms and products produced from or by GMOs.
- (m) Allow any planting on the site to exceed a height from the natural ground level of 4 m, except as authorised in writing by the Lessor in the Lessor's sole discretion.

Characteristics of Housing and Buildings

- (n) The primary house building must be on the identified suitable building platform as shown on the attached plan. Exceptions to this can be negotiated with the Lessor.
- (o) The maximum roofed area of all buildings on the site must be less than 150 m². Exceptions to this can be negotiated with the Lessor.
- (p) All house designs and associated waste-water disposal systems; and toilet designs need the agreement of the Lessor, particularly with regard to heating requirements, use of non-toxic materials, and any other particulars that will have adverse effects on neighbours and/or common resources. The agreement of the Lessor must be obtained prior to obtaining any building consent.
- (q) Current guidelines on building design and materials are contained in the Kotare Village Building Guidelines

EXECUTION

This lease was executed the day of of .

EXECUTED by

KOTARE COMMUNITY LAND)

TRUST)_____

as lessor by by affixing the common)

seal in the presence of _____)

EXECUTED by _____)

Name of Lessee) _____

as lessee)

in the presence of _____)