

LICENCE TO OCCUPY FOR 9M PEN

BY THIS AGREEMENT made

BETWEEN **TAUPO DISTRICT COUNCIL** (the "**Council**")

AND The party listed in **item 1** of the schedule to this licence
(the "**Licensee**")

WHEREAS

- A. Council controls, administers, and manages the recreation reserve land known as the Nukuhau Boat Ramp Area Reserve ("**the reserve**").
- B. Council agrees to licence and the Licensee agrees to take on a licence part of the reserve ("**the pen**") on the terms and conditions described in this licence.

IT IS AGREED:

TERM

1. Council agrees to licence and the Licensee agrees to take on the licence of the pen (as described in **item 2** of the schedule) for a term of _____ years commencing from and including _____ and expiring on _____ ("**the term**").

COUNCIL'S PERMISSION

2. Council authorises and permits the Licensee to use the pen for the purpose of storing, on a mobile trailer, a masted sailing craft ("**the craft**") only and for no other purpose ("**the licensed use**"). The craft and trailer are identified in **item 3** of the schedule.

LICENCE FEE

3. For the grant of this licence to the Licensee of the pen the Licensee shall pay to Council the annual licence fee (without any deduction or set-off) set out in **item 4** of the schedule. The Licensee shall pay the annual licence fee in advance and in instalments on (or before) the dates set out in **item 5** of the schedule.
4. On _____ the annual licence fee will be adjusted by the same proportion as any percentage movement in the All Groups Index of the Consumer Price Index for the proceeding 12-month period.

DEFAULT INTEREST

5. If the Licensee fails to pay any instalment of the licence Fee, or any other money payable under this licence (when demanded), then the Licensee must pay on demand interest at the default interest rate (set out in **item 6** of the schedule) on the money unpaid from the due date down to the date of payment.

RIGHTS IN CONTRACT ONLY

6. The Licensee acknowledges that the Licensee's rights under this licence are in personam rights only and the granting of this licence does not create a lease or an interest in land relating to the pen or the reserve.

GENERAL OBLIGATIONS OF LICENSEE

7. The Licensee shall:
 - i. at its own expense comply with all the requirements of all local bodies and government departments in respect of the pen and/or in respect of the Licensee's use of the pen;
 - ii. at all times observe and comply with all statutes, ordinances, regulations, by-laws or other enactments affecting or relating to the use of the pen and with all requirements which may be given by any Authority and all obligations and requirements exercised under statute or regulation from time to time and will keep Council indemnified in respect of any non-compliance therewith by the Licensee;
 - iii. during the term keep the pen (including its gates) in good, clean, serviceable, substantial and tenantable repair, order and condition (depreciation from fair, wear and tear and damage by fire and inevitable accident without neglect of the Licensee always and alone excepted) and will at the expiration or sooner determination of the term quietly yield up to Council the pen in the same like good, clean, serviceable, substantial and tenantable repair, order and condition except as aforesaid;
 - iv. not make any improvements, erect any structures, or make any alterations or extensions to the pen;
 - v. take all practicable steps to ensure the safety of all persons at or around the pen;
 - vi. not carry out any work on the craft or its trailer other than of a minor repair or maintenance nature; and
 - vii. only store craft in the ownership of the Licensee at the pen and shall notify Council in writing of the details of any change of the Licensee's craft (name and/or type and description) as stored in the pen.

INSPECTION

8. Council and Council's employees contractors and invitees may at all reasonable times enter the pen to view its condition, and to effect any repairs to any property of Council provided that such inspection or repairs shall be carried out with the least possible inconvenience to the Licensee.

ASSIGNMENT

9. The Licensee may not transfer, assign, sub-licence, lend, let, or otherwise part with the possession of the pen or any part thereof. Council may assign all or part of its interests in this licence to any other party, including for purposes of management or administration.

NUISANCE

10. The Licensee shall not at any time do or suffer any act or omission upon, under or about the pen which shall be a disturbance, nuisance, damage or annoyance to Council or users of the reserve.

11. The Licensee shall not at any time do anything or omit to do anything in or upon the pen to the annoyance, nuisance, damage or disturbance of occupiers of the pens adjoining the pen or users of the reserve.

RIGHT OF RENEWAL

12. If the Licensee has not been in breach of this licence and has given to Council written notice to renew the licence at least three (3) calendar months before the end of the term then Council will renew the licence for one further term of three (3) years from _____.
13. The Licensee acknowledges that Council has the sole right to determine the policy from time to time as to the reasonable market related charges to be made for licenses for pens on the reserve. In this regard Council will review, and then set, the annual licence fee payable for the renewed term upon receiving the Licensee's notice to renew the licence.
14. The annual licence fee will be adjusted, in the manner provided in clause 4 of this licence, on _____ and _____ (in the event that this licence is renewed).
15. The renewed licence shall otherwise be upon and subject to the covenants and agreements herein expressed and implied except that the term of the licence shall expire on or before _____.

RIGHT TO REACQUIRE

16. The Licensee acknowledges that Council may in the future require the pen (as part of the reserve) for community purposes. Council has the right, upon giving to the Licensee at least three (3) month's prior written notice, to determine this licence and reacquire the pen at any time, without any recourse by the Licensee other than a part refund of the annual licence fee (if applicable).

COUNCIL'S RIGHT TO TERMINATE

17. If there is any breach of the Licensee's obligations under this licence, and the breach remains unrectified following written notice to the Licensee specifying the breach and seeking rectification within fourteen (14) days, Council may terminate the licence by giving the Licensee a further fourteen (14) days' notice in writing.
18. Upon termination, the Licensee shall formally surrender all of the applicable rights under this licence (without prejudice to any rights which have accrued to Council up to the date of termination).

LICENCE SURRENDER

19. In the event the Licensee, during the term of this licence, wishes to surrender this licence, such surrender may be accepted by Council upon one month's notice in writing being given and upon such other conditions as Council may consider appropriate, following which the Licensee shall receive a part refund of the annual licence fee (if applicable).

RESPONSIBILITY FOR LOSS OR DAMAGE

20. Except in the case of Council's wilful misconduct or negligence, Council is not responsible for or liable to the Licensee for:

- i. any loss or damage caused or sustained in any way to the pen or the craft, trailer, equipment, fittings and chattels located in the pen.
 - ii. the theft or loss of any of the Licensee's craft, trailer, equipment, fittings or chattels.
21. It is the Licensee's responsibility to provide a suitable padlock to secure the pen, which shall be removed by the Licensee upon the termination or surrender of this licence.

SUITABILITY OF PEN

22. Council does not warrant that the pen is or will remain suitable or adequate for the licensed use. All warranties as to suitability and adequacy implied by law are expressly negated to the full extent permitted by law.
23. Council is not responsible for providing any safety measures to protect the craft or trailer, or any fittings, chattels, or equipment from water damage, fire, explosion, storm, hazard or potential hazard whether coming from inside the pen or from outside.

COUNCIL'S PUBLIC LAW OBLIGATIONS

24. The Licensee acknowledges that nothing in this licence affects, limits, or otherwise fetters Council's public law obligations as a territorial authority (including reserve manager), consent authority and requiring authority. In the event of any inconsistency between those statutory functions and duties and this licence, those statutory functions and duties will prevail.

DESTRUCTION

25. If the pen is destroyed or so damaged that it cannot be used for the licensed use, then Council may terminate this licence by one month's written notice to the Licensee. Council shall be under no obligation to repair or reinstate the pen if it is destroyed or so damaged that it cannot be used.

SIGNAGE

26. The Licensee must not affix any signage to any part of the pen without Council's prior written consent (which may be withheld in its absolute discretion, or granted upon such terms and conditions as it may see fit).

NOTICES

27. Any notice, notification or demand given by either party for the purposes of this licence shall be in writing and shall be sent to the other party at the address from time to time and in writing specified by the other party.

COSTS

28. The Licensee must pay to Council on demand all reasonable costs (including legal and valuation costs), charges and other expenses which Council may incur or for which Council may become liable relating to this licence or Council remedying the Licensee's breach of any term of this licence or Council's exercise or attempted exercise or enforcement of any power, right, or remedy conferred on Council by this licence.

AMENDMENT

29. Every amendment or renewal of this licence shall not be valid unless it is in writing and signed by or on behalf of both of the parties.

WAIVER

30. No waiver by either of the parties of any of the provisions of this licence shall constitute a waiver of any of the other provisions of this licence, and no such waiver shall be of a continuing nature unless otherwise expressly provided and each such waiver shall be of no effect unless it is in writing or evidenced in writing signed by or on behalf of the party giving or making the waiver.

TERMINATION

31. If:
- i. the Licensee fails to pay the licence fee or any other money payable under this licence to Council on the due date for payment, or the date of Council's demand (if there is no due date);
 - ii. the Licensee fails to perform or observe any of the Licensee's other obligations under this licence for a period of 14 days;
 - iii. execution is levied against any of the Licensee's assets;
 - iv. the Licensee enters into a composition or scheme of arrangement for the benefit of all or a class of its creditors;
 - v. a receiver or manager is appointed of any of the assets of the Licensee; or
 - vi. the Licensee assigns or attempts to assign or transfer this licence, or lends, lets, sub-licenses or attempts to lend, let, or sub-license the pen;
- Council may:
- vii. re-enter the pen (with force, if necessary) and determine this licence; or
 - viii. terminate this licence by written notice of termination served on the Licensee; either immediately or at any later time.
32. If Council terminates this licence under clause 31, then:
- i. the Licensee will be treated as having breached an essential term of this licence;
 - ii. the Licensee must compensate Council for Council's losses (if any) which arise as a result of termination following the Licensee's breach;
 - iii. Council may recover damages for that breach;
 - iv. this licence and the parties' respective rights and obligations under this licence will cease from the date of termination, but without prejudice to any rights which have accrued up to the date of termination.

INDEMNITY

33. The Licensee shall indemnify and keep indemnified Council against all actions, claims, proceedings, losses, damage, costs and other liabilities of any nature whatsoever, direct or indirect, arising in respect of any act or omission on the part of the Licensee arising from a breach of this licence or relating to the use of the pen.

RESERVES ACT 1977

34. It is acknowledged by the Licensee that the pen is located on reserve held under the Reserves Act 1977. Further, the Licensee acknowledges that under the Reserves Act 1977 (in particular schedule 1) it is a term of this licence that it can be terminated in the event that Council is of the opinion that the pen is not being used sufficiently for the licensed use, provided that the Licensee is first given an opportunity to explain or remedy the usage of the pen.

RULES AND DIRECTIONS

35. During the term of this licence and with reference to the pen, Council may from time to time issue in writing to the Licensee reasonable rules and reasonable directions for the purposes of protecting the pen and its usage, and it shall be the duty of the Licensee to ensure observance of these rules and directions.

DISPUTES

36. In the event of any dispute or difference arising under this licence or between the parties then such dispute or difference shall be referred to the arbitration of a single Arbitrator if one can be agreed upon or to two Arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration) and such arbitration shall be carried out in accordance with the provisions of the Arbitration Act 1996 or any then statutory provisions relating to arbitration.

ENTIRE AGREEMENT

37. This licence constitutes the whole of the arrangement between the parties and all previous correspondence, negotiations, explanations and statements leading to the creation of this licence shall not form part of this licence.

Item 6

(default interest rate): 15% per annum.

SIGNED for and behalf of the
TAUPO DISTRICT COUNCIL
by:

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) _____

(all persons listed as the Licensee in item 1 above must sign below)

SIGNED by the
LICENSEE

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)
) _____
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) _____