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**Dated**

**February 2010**

**DEED OF LICENCE  
FOR OCCUPATION OF LEGAL ROAD**

**The Council  
THE CHRISTCHURCH CITY COUNCIL**

**The Licensee  
[1=NAME OF LICENSEE - TO BE A NAMED INDIVIDUAL(S), NOT A TRUST OR  
COMPANY]**

**DEED dated**

**February 2010**



**CHRISTCHURCH**  
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## **PARTIES**

**CHRISTCHURCH CITY COUNCIL**  
("Council")

**[2=NAME OF LICENSEE - TO BE A NAMED INDIVIDUAL(S), NOT A TRUST OR COMPANY] of [3=Licensee's address]**  
("Licensee")

## **BACKGROUND**

- A. The Licensee is the owner of a bach located at Taylor's Mistake.
- B. The legality of baches erected at Taylor's Mistake has long been the subject of debate and disagreement. A full analysis of the background is set out in the Decision of the Environment Court C50/2002 dated 2 May 2002 (at paragraphs 21 – 56 inclusive), a decision dealing with references on the CCC City Plan in relation to the Taylor's Mistake baches.
- C. The Decision directed the Council to amend the provisions of its District Plan but did not, and could not, decide whether the Council would grant some sort of tenure for the future occupation of baches at Taylor's Mistake.
- D. At its meeting on \_\_\_\_\_ 2010 Council resolved to issue licences to the owners of the baches scheduled in the CCC City Plan upon the condition that:
- (a) Prior to the issue of a licence, but taking into account the condition of the bach at the commencement of the licence, the work (if any) then necessary to bring the bach to a reasonable standard of repair and appearance in accordance with the Building Act 2004 and into compliance with the provision of the CCC City Plan would be undertaken; and
  - (b) Any licence issued would be on the terms and conditions set out in this licence.
- E. When making that decision Council accepted legal advice that there was no express authority for the grant of this licence but that such authority arises indirectly out of: customary local authority practice in New Zealand; sections 316 and 357(1) of the Local Government Act 1974 and section 12 of the Local Government Act 2002.

## **TERMS OF THIS DEED**

### **1. INTERPRETATION**

#### **1.1 Definitions:**

**"Annual Licence Fee"** means the annual licence fee specified in the First Schedule subject to changes consequent upon the exercise of the Council's right to review the annual licence fee;

**"Authority"** means and includes every government or local authority having jurisdiction over the Site or responsibility for regulation of any uses of the Site;

**"Bach"** means the structure erected on the Site at the Commencement Date (as that term is defined in the First Schedule);

**"Boulder Bay"** means the small bay within the greater Taylor's Mistake bay;

**"CCC City Plan"** means the Christchurch City Council District Plan prepared under the Resource Management Act 1991 as amended from time to time;

**"the Decision"** means a decision of the Environment Court C50/2002 dated 2 May 2002;

**"Default Interest Rate"** means the default interest rate specified in the First Schedule subject to changes consequent upon the exercise of the Council's right to review the default interest rate;

**"Domestic Animal"** includes any cat or dog of any breed and any size;

**"Road"** means the unformed legal road at Taylor's Mistake within which the Site is located;

**"the Site"** means the site at Taylor's Mistake specified and described in the First Schedule;

**"Term"** means the period specified in Clause 3 and includes the Initial Term specified in Clause 3.1 and (if this licence is renewed) any Renewal Term as provided for in clauses 3.2 and 4;

**"Taylor's Mistake"** means the bay and locality of this name at Christchurch which is referred to in the Decision and includes Boulder Bay as the context requires it;

**"Working Day"** has the same meaning as in Section 29 of the Interpretation Act 1999.

#### 1.2 **Headings**

Clause and other headings are for ease of reference only and do not form any part of the context nor affect the interpretation of this Deed;

#### 1.3 **Plural and Singular**

Words importing the singular number include the plural and vice versa.

#### 1.4 **Negative Obligations**

Any obligation not to do anything is deemed to include an obligation not to suffer, permit or cause that thing to be done.

### 2. **GRANT OF LICENCE**

2.1 The Council grants to the Licensee the right to occupy the Site for the Term upon the terms and conditions contained in this licence.

2.2 This license is subject to the Licensee, at its own cost, obtaining all necessary authorisations, including, but not limited to, all necessary resource consents, in respect of the Bach.

### 3. **TERM**

3.1 The term of this licence is 10 years commencing on the Commencement Date ("**the Initial Term**") subject to renewal as provided in Clause 4.

3.2 The licence may be renewed for further term(s) of 10 years each in accordance with Clause 4 below (a "**Renewal Term**").

- 3.3 Notwithstanding Clauses 3.1 and 3.2, the Term will end if, at any time (whether during the Initial Term or a Renewal Term), this licence:
- (a) expires due to circumstances eventuating as outlined in clause 18.1;
  - (b) is cancelled by the Council under Clause 18.2; and/or
  - (c) is terminated by either party under Clause 18.3.

#### **4. RIGHT OF RENEWAL**

- 4.1 Subject to Clauses 18.1, 18.2 and 18.3 below, the Council, at the reasonable cost of the Licensee, will renew this licence for a Renewal Term if:
- (a) at least two months prior to the expiry of the Initial Term or a Renewal Term and following a reminder from the Council the Licensee has given the Council written notice of the Licensee's wish to renew this licence; and
  - (b) the Licensee has complied with all of the obligations of the Licensee under this licence; and
  - (c) the Council considers (in its sole and absolute discretion) that public use of the Road is not being unreasonably restricted by continuing occupation of the Site; and
  - (d) the Council considers (in its sole and absolute discretion) that use of the Road and the surrounding area by wildlife is not being unreasonably restricted by continuing occupation of the Site; and
  - (e) the Council considers (in its sole and absolute discretion) that the continuing occupation of the Site is not inconsistent with any other purpose the Council wishes to promote or support.
- 4.2 The renewed licence will be on the same terms as those set out in this licence, including this provision for renewal.
- 4.3 In the event that the licensee is unable to seek and take advantage of any renewal term for this licence, the Council will, in its absolute discretion, give consideration to this licence being transferred to a member of the licensee's family.

#### **5. ANNUAL LICENCE FEE**

- 5.1 The Licensee will pay the Annual Licence Fee by an annual payment in advance on the Commencement Date and each anniversary of the Commencement Date.
- 5.2 The Annual Licence Fee and other money payable by the Licensee under this licence must be paid to the Council without any deduction or set off.
- 5.3 All payments of the Annual Licence Fee must be paid by direct bank payment or as the Council may direct.

#### **6. REVIEW OF ANNUAL LICENCE FEE**

- 6.1 The first Annual Licence Fee has been ascertained as per the First Schedule.

- 6.2 The Annual Licence Fee and/or Default Interest Rate may be reviewed by the Council at any time during the Term by notice in writing to the Licensee.
- 6.3 Subject to Clause 6.4, the reviewed Annual Licence Fee and/or Default Interest Rate shall take effect on the date specified in the notice served under Clause 6.2, or if no date is specified, immediately.
- 6.4 No notice of review may be given under Clause 6.2 to take effect earlier than 12 months after the effective date of the last review.
- 6.5 Upon a review of the Annual Licence Fee the reviewed Annual Licence Fee must represent the Council's fair and reasonable assessment of the annual cost of the administration of licences for all baches at Taylor's Mistake, divided by the number of baches so licensed at the beginning of each annual period.
- 6.6 Upon a review of the Default Interest Rate the reviewed rate must not exceed an interest rate equal to:
- (a) The average cost of borrowing money by the Council at the date of the review plus;
  - (b) a margin of 5%.

## 7. OUTGOINGS

- 7.1 The Licensee will pay any rates or levies payable to any local authority (the "Council Outgoings") as specified and defined in the First Schedule.
- 7.2 The First annual Council outgoings have been ascertained as per the First Schedule.
- 7.3 The Council may estimate the annual Council Outgoings and require the Licensee to pay such estimate by quarterly instalments in advance on the Council Outgoings Payment Dates specified in the First Schedule. An appropriate adjustment will be made for any period current at the commencement or expiry of the Term.
- 7.4 After 30 June in each year of the Term (or such other date in each year as the Council may specify) and after expiry of the Term, the Council will supply the Licensee with reasonable details of the actual Council Outgoings for the preceding year or period. Any other payment will be credited, or refunded, to the Licensee and any deficiency will be payable to the Council, upon demand in writing by the party to whom payment is due.
- 7.5 The Council Outgoings will be paid to the Council, inclusive of GST if any.
- 7.6 All arrangements and charges for any services including water, electricity, telephone and any other utilities or services supplied to the Site are the sole responsibility of the Licensee, as further outlined in Clause 12 below.

## 8. DEFAULT INTEREST

- 8.1 If the Licensee fails to pay any instalment of the Annual Licence Fee or any other money payable under this Licence within 10 working days of the due date for payment (or if there is no due date within 10 working days of the date of any written demand for payment by the Council) then the Council may require the Licensee to pay interest at the Default Interest Rate on the money unpaid from the due date for payment (or if there is no due date for payment from the date of demand by the Council) down to the date of actual payment.

Interest at the default interest rate shall continue to accrue both before and after judgment.

## **9. COSTS**

9.1 The Licensee shall pay on demand:

- (a) The legal costs (on a solicitor/client basis) of the Council in relation to the preparation and execution of this licence, and of any renewal, extension or variation (including any variation recording a review of the Annual Licence Fee) and, the enforcement or attempted enforcement of the Licensee's obligations under this licence.
- (b) All costs, charges and expenses, (including without limitation the costs of staff time and Councillors' meeting fees and allowances) for which the Council may become liable as a result of any breach by the Licensee of any of the terms of this Licence.

## **10. USE OF SITE**

10.1 The Site may only be used for residential occupation on a casual basis.

10.2 The Site must not be used:

- (a) for permanent residential occupation;
- (b) for casual residential occupation for reward;
- (c) for the carrying on of any business, trade, occupation or profession; or
- (d) as a principal residence.

10.3 Without limiting the generality of Clause 10.2, occupation will be deemed to be permanent residential occupation if the residents have, or the principal resident has, no other place of fixed abode.

10.4 The Licensee must not do anything in, on, over, under or about the Site which may:

- (a) constitute a nuisance or annoyance or be offensive or objectionable to the Council or any person lawfully on the Road or any other occupant or licensee at Taylor's Mistake;
- (b) be a breach of any noise standards imposed under any legislation, regulation, bylaws or the CCC City Plan; or
- (c) be a breach of any other legislation, regulation, bylaws or the CCC City Plan.

10.5 The Licensee is not permitted to bring to or, keep at, or allow to be brought to or kept at the Site any bird or animal, including any Domestic Animal.

10.6 Without limiting Clause 10.4, the Licensee must at all times keep:

- (a) the Site clear and free from vermin, weeds and litter; and
- (b) the Bach in a good, orderly state of repair and condition.

10.7 The Licensee must comply with any written directions of the Council (in its absolute and sole discretion) regarding any use of the Site to facilitate any

purpose which the Council wishes to promote or support including the proposed penguin colony at Boulder Bay.

## **11. SITE ACCESS**

- 11.1 The Licensee may obtain access to the Site on foot only.
- 11.2 Motor vehicles belonging to the Licensee or any visitor of the Licensee must be parked in parking spaces designated by the Council for that purpose in the locality of the Site and not otherwise.

## **12. SERVICES**

- 12.1 All services to the Site that are permitted and that the Licensee may wish to install (power, telephone, water, sewer or storm water) must be installed underground, unless otherwise agreed to in writing by the Council.
- 12.2 The Licensee will ensure that at all times adequate systems exist for the disposal of sewage, grey water and storm water in a manner approved by the Council. In any case where sewage disposal to a reticulated outfall is not possible, the sewage disposal system must be:
  - (a) of type approved by the Council in writing;
  - (b) maintained at all times in a good, efficient operational order and condition.
- 12.3 For the avoidance of doubt, the Council is under no obligation to supply any services and all services shall be arranged by and at the cost of the Licensee. The Licensee accepts full responsibility for any such services that it continues or arranges.

## **13. BUILDINGS, FENCES, PLANTING AND SIGNS**

- 13.1 The Licensee must not at any time erect any structure, fence or other improvement, nor plant or permit any tree or shrub to grow, in or about the site without the prior written approval of the Council. Such approval shall not be unreasonably withheld in respect of any structure, fence or improvement or tree or shrub depicted on any landscaping plan for the beautification of Taylor's Mistake developed, or approved, by the Council. In the event that no landscaping plan for the beautification of Taylor's Mistake has been developed and/or approved by the Council, the Council will not unreasonably withhold such approval if the proposed structure fence, improvement or tree or shrub is, at the sole and absolute discretion of the Council, consistent with the natural surroundings at Taylor's Mistake.
- 13.2 The Licensee must not make any additions or alterations to the Bach, whether by way of repair, maintenance or improvements (except repairs and maintenance in an emergency) without the prior written approval of the Council, such approval not to be unreasonably withheld if that repair or maintenance is in accordance with any management plan for the retention of heritage and cultural values of the Bach developed, or approved, by the Council. No additions or alterations will be authorised by the Council where such alterations or additions propose to increase the height of the Bach by to more than one storey, or to a floor area in excess of 50 m<sup>2</sup>.
- 13.3 The Licensee must not erect any signs, billboards or banners on the Site or on or about the Bach.

- 13.4 The Licensee must ensure that anything brought to, present at or created at the site, including but not limited to building materials, are in-keeping with the natural surroundings at Taylor's Mistake. Without limiting the generality of the foregoing, this prohibition extends to the colour and reflective properties of building materials whether they be existing, replacement or additional building materials.
- 13.5 The Licensee will forthwith comply with any request by the Council, in its sole and absolutely discretion, to change or remove anything in breach of Clause 13.1 to 13.4 above.

#### **14. COMPLIANCE WITH STATUTES AND REGULATIONS**

- 14.1 The Licensee must at all times comply with all statutes, regulations and bylaws affecting the Site made or imposed by any Authority including without limitation the provisions of the CCC City Plan.

#### **15. ALCOHOL BANS**

- 15.1 The Council may from time to time, in accordance with its statutory powers, impose alcohol bans which may prohibit alcohol being consumed on the Road. At such times the Licensee will not be permitted to possess, or consume, alcohol on the Site.

#### **16. NO ASSIGNMENT OR SUBLETTING**

- 16.1 This Licence is personal to the Licensee. The Licensee must not assign, transfer or charge the Licensee's interest under this Licence, or sublet or dispose or otherwise part with possession of the Site.
- 16.2 Where there is more than one Licensee the transfer of this License by way of survivorship or by will to a surviving Licensee will not constitute an assignment for the purposes of Clause 16.1.
- 16.3 The use of the Site by a child, grandchild, sibling or other relative of a Licensee shall not constitute a subletting for the purposes of Clause 16.1.
- 16.4 With the consent of the Council, in its absolute discretion, this Licence may be assigned to a member of the family of the Licensee.

#### **17. INDEMNITY AND LIABILITY**

- 17.1 The Licensee accepts that there is some residual doubt as to the ability of the Council at law to grant this licence. The Licensee enters into this licence in full knowledge of those circumstances and will make no claim against the Council for any costs, damages or claims whatsoever arising directly or indirectly as a consequence of any Court order declaring this licence to be unlawfully granted.
- 17.2 Nothing in Clause 17.1 may be construed as imposing any obligation upon the Council to expend time, money or effort defending any legal proceedings to set aside this licence, or any other licence for another bach at Taylor's Mistake, whether such challenge is mounted on the grounds of illegality or otherwise.



17.3 The Licensee acknowledges the status of the Site and the adjoining land as legal road vested in the Council and that the Road must be available for use and passage by members of the public at all hours of the night and day.

17.4 The Licensee acknowledges that there is a risk of rock fall and/or storm events having an effect on the Bach and its occupiers from time to time. The Licensee agrees to accept all risk to life and property resulting from the presence and occupation of the Bach and acknowledges that there is no minimisation of assumption of such risk by the Council in granting this Licence or otherwise.

17.4 The Licensee agrees to release the Council and keep the Council indemnified to the fullest extent possible by law against any claim for damage or injury that may occur to the Bach, the Licensee, or any person using the Bach with the consent of the Licensee, arising directly or indirectly out of:

- (a) the use of the Road by a member of the public; or
- (b) any other cause whatsoever.

17.5 The Licensee must, at all times during the Term:

- (a) take out and maintain public liability insurance for an amount not less than the amount stated in the First Schedule in the joint names of the Licensee and the Council;
- (b) provide the Council with such written evidence as the Council may reasonably require during the Term from the Licensee's insurers that the insurance required under this Clause is in force; and
- (c) whenever reasonably required by the Council during the Term, produce the relevant policies of insurance and evidence of payment of current premiums.

It is at its absolute discretion the Council will give consideration to whether this condition can be met by the Licensee through a policy of insurance taken out by an association of bach owners for the benefit of the Licensee.

## **18. EXPIRY, CANCELLATION AND/OR TERMINATION OF LICENCE AND REMOVAL OF BACH**

18.1 This licence will expire automatically at any time if:

- (a) the Term of the licence expires without any renewal;
- (b) the Bach remains unoccupied for a continuous period of 365 days;
- (c) the Bach becomes dangerous, as defined in Section 121(1) of the Building Act 2004;
- (d) the Bach becomes insanitary, as defined in Sections 123(a) (situation, construction or state of repair offensive or likely to become injurious to health) or 123(d) (inadequate sanitary facilities) of the Building Act 2004;
- (e) the Bach is damaged beyond repair or habitation by rockfall, landslip, storms, wave action or any other like natural event; and/or
- (f) the Licensee dies, or if there is more than one Licensee, the last surviving Licensee dies.

- 18.2 This licence may be cancelled at any time by the Council if:
- (a) the Licensee is in breach of any term or condition of this licence and fails to remedy that breach within the reasonable period stated in a notice given by the Council specifying the nature of the breach and the required remedy;
  - (b) the Council requires the Land (in its sole and absolute discretion) for redevelopment and/or use for any public purpose;
  - (c) the Council considers (in its sole and absolute discretion) that public use of the Road is unreasonably restricted as a consequence of the continued existence of the Bach and/or the continued occupation of the Bach; and/or
  - (d) the Council considers (in its absolute and sole discretion) that the continued existence of the Bach and/or the continued occupation of the Bach is inconsistent with any purpose which the Council wishes to promote or support including the proposed penguin colony at Boulder Bay.
- 18.3 Notwithstanding any other provision, this licence may be terminated by either party for any reason upon giving 12 months notice in writing.
- 18.4 Subject to Clause 18.6 below, upon expiration of the Licence under Clause 18.1, cancellation under Clause 18.2, and/or termination under Clause 18.3, the Licensee must forthwith remove the Bach from the Site. If the Licensee fails to remove the Bach within two months of cancellation or expiry, the Council may at any time thereafter and, without the need for any notice to the Licensee, demolish the Bach and recover the cost of that work from the Licensee.
- 18.5 Upon the removal, or demolition of the Bach, all utilities and services to the site must be safely and securely terminated (where appropriate by suitably qualified tradesmen) and all rubbish and debris removed so that the Site is left clean, clear, safe and suitable for use by the public as legal (albeit unformed) road.
- 18.6 Notwithstanding the provisions of Clauses 18.4 above, upon expiration of the Licence under Clause 18.1, cancellation under Clause 18.2, and/or termination under Clause 18.3, the Council may in its absolute discretion direct, by giving notice in writing to the Licensee, that the Bach must not be removed from the Site in which case upon such notice being given:
- (a) the provisions of Clauses 18.4 will not apply; and
  - (b) subject to any agreement in writing between the Council and the Licensee to the contrary, the Licensee must forthwith cease to occupy the Bach after first ensuring that all utilities and services to the site are safely and securely terminated (where appropriate by suitably qualified tradesmen), that all rubbish and debris is removed from the Bach and the Site and that the Bach is left in a clean, safe and undamaged condition.

## 19. NO WAIVER

- 19.1 No waiver or failure to act by the Council in respect of any breach by the Licensee of any term or condition of this licence on an earlier occasion or occasions will operate as a waiver of the same breach on any subsequent occasion, or as a waiver of the right to enforce any other term or condition of this licence.

**20. NOTICES**

20.1 Any notice to be served under this Agreement must be served in accordance with Section 353 of the Property Law Act 2007.

**21. THE COUNCIL ACTING AS TERRITORIAL AUTHORITY**

21.1 The Licensee acknowledges that:

- (a) The Council, in its capacity as a territorial authority, is required to carry out its statutory consent functions under legislation including the Local Government Acts 1974 and 2002, the Building Act 2004 and the Resource Management Act 1991 in accordance with the provisions of those and other statutes.
- (b) The granting by the Council of any consent or approval by the Council as territorial authority under any of those Acts or any other legislation will not of itself be deemed to be a consent or approval by the Council under this Licence.
- (c) The Council is bound by statutory obligations to exercise its powers, including discretionary powers and duties under any of those Acts or any other legislation without regard to any relationship it may have with the Licensee under this Licence.

THE COMMON SEAL of the )  
CHRISTCHURCH CITY COUNCIL )  
was hereto affixed in the presence of: )

\_\_\_\_\_ Mayor/Councillor

\_\_\_\_\_ Authorised Officer

SIGNED by the said )  
[4=FULL NAME OF LICENSEE] )  
in the presence of: )

**FIRST SCHEDULE**  
**(Reference Schedule)**

**Licensee Name:**

**Licensee's Address:**

**Site:** That part of the Road marked \_\_\_\_\_ on the  
plan attached as the Second Schedule

**Commencement Date:**

**Initial Annual Licence Fee:** \$3,000.00 (GST inclusive)

**Default Interest Rate:** %

**Estimate of Outgoings:** \$ \_\_\_\_\_ per annum (GST inclusive)

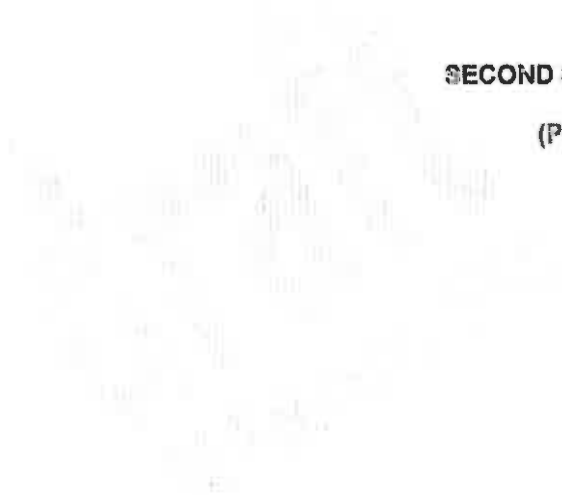
**Monthly Outgoings Payments:** \$ \_\_\_\_\_ per annum (GST inclusive)

**Council Outgoings Payment Dates:** The Commencement Date and thereafter on the [ ]  
day of each month

**Public Indemnity Insurance:** \$1,000,000.00

**Council Outgoings shall include:**

- (a) Rates payable to the Council or any other local authority;
- (b) Levies Payable to the Council or any other local authority;
- (c) Other [specify]



**SECOND SCHEDULE**  
**(Plan)**