



Port Nikau

WHANGAREI 35.7°S - 174.3°E

Dated

2023

Marine Park Limited and Port Road Limited trading as

PORT NIKAU JOINT VENTURE

LICENCE AGREEMENT
PORT NIKAU MARINA PIER B

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LICENCE AGREEMENT

Parties

1. Marine Park Limited and Port Road Limited trading as Port Nikau Joint Venture (**Licensor**)
2. The licensee named in Schedule 1 (**Licensee**)
3. The guarantor named in Schedule 1 (if applicable) (**Guarantor**)

Background

- A. The Licensor holds the Resource Consent for Port Nikau Marina.
- B. The Licensor has agreed to grant a licence to occupy a berth in the Port Nikau Marina to the Licensee, and the Licensee has agreed to accept that licence, on the terms of this Agreement.
- C. The Guarantor, where applicable, has agreed to guarantee the performance of the Licensee's obligations under this Agreement.

The Parties Agree:

1. Definitions

- 1.1 In this Agreement unless the context requires otherwise:

Agreement means this Agreement together with the terms and conditions contained in any Schedule (or annexure to any Schedule).

Authority means Whangarei District Council, Northland Regional Council and all other regulatory authorities having jurisdiction over Port Nikau Marina.

Berth means the marina berth described at Item 5 of Schedule 1.

Berth Plan means the marina scheme plan attached at Schedule 2, and any amended or replacement plan or plans.

Commencement Date means the date specified at item 14 of Schedule 1.

Expiry Date means the date specified at Item 15 of Schedule 1.

Good and Services Tax (GST) means goods and services tax chargeable, or to which a person may be liable, under the GST Act.

GST Act means the Goods and Services Tax Act 1985 or any replacement legislation.

Last Part Period means the period from 1 April 2038 to the Expiry Date.

Law means common law and any statute, rule, regulation, proclamation, ordinance or by-law, licence, permit, approval, regulatory instrument, or other legally binding direction or requirement, from time to time.

Licence has the meaning given to that term in clause 2.1.

Licence Fee means the sum specified at Item 11 of Schedule 1.

Licence Holders means those persons who are party to a licence agreement for use and occupation of a berth in the Port Nikau Marina (including the Licensee), and Licence Holder means any one of them.

Licensee means the party named at Item 2 of Schedule 1 and where more than one person then each of them jointly and severally.

Licensor means Marine Park Limited and Port Road Limited (trading as Port Nikau Joint Venture) as the consent holder under the Resource Consent, including its employees, contractors and agents, and any assignee and /or successor that is nominated as such in writing by the Licensor from time to time.

Manager means a manager of Port Nikau Marina appointed under clause 22.1. As at the Commencement Date, Port Nikau Marina is managed by the Licensor.

Marina Area means the marina waters, common marina fairways, the floating structures, fingers and jetties, all marina foreshore areas, administration and service areas, parking areas, ramps and driveways and all other areas used for the Port Nikau Marina.

Management Fee means the fee payable to the Licensor described in clause 9.1.

Marina Rules means the Port Nikau Marine Precinct Terms and Conditions attached as Schedule 4, as those rules may be updated by the Licensor from time to time.

Nominated Boat means the boat specified in Schedule 1, or any replacement boat nominated by the Licensee and approved by the Licensor under clause 3.2.

Novation means when a party replaces a contracting party and takes a transfer of and legally assumes that party's rights and obligations under the relevant contract.

Operating Expenses has the meaning set out in clause 7.1.

Operational Period means 1 April to 31 March each year during the Term.

Port Nikau Marina means the marina located at 325 Port Road, Whangarei.

Port Nikau Schedule of Fees means the "Port Nikau Schedule of Fees- Marinas" displayed on the Port Nikau website located at URL: www.portnikau.co.nz/marine/pricing.

Refurbishment Expenses has the meaning set out in clause 8.1.

Refurbishment Fund means the fund referred to in clause 8.1 made up of contributions by Licence Holders to cover Refurbishment Expenses, plus any interest earned on those contributions.

Resource Consent means the Northland Regional Council Resource Consent reference AUT.038614.01.01 - AUT.038614.03, expiring 31 March 2054.

Structures means the finger forming the Berth together with the Structures giving access to the Berth.

Term means the period commencing on the Commencement Date and ending on the Expiry Date.

Transfer means to sell, nominate, assign, alienate, sub-let, transfer or otherwise effectively dispose of or part with the rights to the Berth and/or the benefits under this Agreement.

Transfer Fee means a fee of \$1,000 plus GST, which fee may be increased (but not decreased) with effect from each anniversary of the Commencement Date (**review date**) by the percentage change in the Consumer Price Index (All Groups) published by Stats NZ Tatauranga Aotearoa (**CPI**) measured from the CPI last published prior to the date of the immediately preceding review date or the Commencement Date (whichever is the earlier) to the CPI last published prior to the review date. In the event that the index ceases to be published, the Licensor may, in its sole discretion, specify an alternative index which is applicable to incorporate inflationary and general price increase.

Working Day means any day of the week other than: a Saturday, a Sunday, a public holiday (as defined in the Holidays Act 2003) in Auckland and Northland and a day commencing on 24 December to 5 January inclusive in any year; and a working day shall be deemed to commence at 9.00am and end at 5.00pm New Zealand time.

1.2 **Interpretation:** In this Agreement, unless the context requires otherwise:

- (a) References to clauses and schedules are to clauses of, and schedules to, this Agreement.
- (b) A word denoting the singular includes the plural and vice versa.
- (c) The word “person” includes an individual, trust, corporation, firm, partnership, joint venture or limited liability company.
- (d) The word including and other similar words do not imply any limitation.
- (e) If the Licensee comprises more than one person those persons are bound by the terms and conditions of this Agreement, both jointly and severally.
- (f) The headings are for convenience only and shall not affect the interpretation of this Agreement.
- (g) A reference to a statute includes all legislative instruments and other subordinate legislation made under that statute. A reference to a statute, legislative instrument or other subordinate legislation, or to a provision of any statute, legislative instrument or other subordinate legislation, includes that statute, legislative instrument or other subordinate legislation or provision as amended, re-enacted or replaced from time to time.
- (h) Any reference to a document or agreement shall include any amendment to, supplement of, or replacement of, that agreement or document.
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

2. **Grant of Licence**

2.1 In consideration of the payment of the Licence Fee by the Licensee, the Licensor grants to the Licensee a licence to use, occupy and enjoy the Berth (**Licence**) for the Term on the terms and conditions contained in this Agreement. The Licensee shall pay the Licence Fee to the Licensor on or before the Commencement Date as a condition of entry into this Agreement, or on terms otherwise agreed and set out in Schedule 1 (as applicable). If any deferred payment terms are

agreed, the unpaid amount of the Licence Fee will be immediately due and payable upon termination of this Agreement.

2.2 The Licensee accepts the grant of the Licence on the terms set out in this Agreement and agrees as follows:

- (a) the Licence is granted strictly on the terms of this Agreement, which includes the Marina Rules which shall be deemed to be part of this Agreement;
- (b) the Licensee is bound by and shall comply with all of the Marina Rules, and any other rules of Port Nikau Marina as adopted from time to time by the Licensor or the Manager. The Licensee shall procure that all of the Licensee's invitees and contractors comply with all such rules at all times;
- (c) a default under the Marina Rules may result in termination of this Agreement and the Licence in accordance with this Agreement;
- (d) the Licensee shall, in the use of the Berth and Port Nikau Marina, comply with and be bound by:
 - (i) all Laws which are relevant to Port Nikau Marina, including the terms of any Resource Consent and all local authority bylaws; and
 - (ii) the instructions of the Manager;
- (e) any permission granted to enable the Licensee to "Liveaboard" the Nominated Boat is subject always to the Marina Rules and all Laws. The Licensee acknowledges that:
 - (i) any permission to "Liveaboard" will not be granted by the Licensee on a permanent basis and will be subject always to the Licensor's right to terminate such permission on notice at its sole discretion; and
 - (ii) additional charges apply and are payable by the Licensee in relation to "Liveaboard", such charges being those specified in the Port Nikau Schedule of Fees;
- (f) the Licensee is responsible for ensuring that the length and width of the Nominated Boat (including appendages) will fit within the size of the Berth as stipulated in Schedule 1;
- (g) where the Berth is located in a double berth, the Licensee shall moor so that its vessel (including fenders) is no closer than 300mm of the centreline;
- (h) In addition to rules for berthing set out in the Marina Rules, the Licensee shall not, without the prior approval of the Licensor, at any time:
 - (i) allow any part of the Nominated Boat moored in the Berth to extend beyond the dimensions of the Berth; or
 - (ii) permit any part of the Nominated Boat to extend onto or over any walkway forming part of Port Nikau Marina;
- (i) the Licensee shall not mortgage, charge, pledge or otherwise encumber its interest under this Agreement;

- (j) where the Licensor requires a guarantor under this Agreement, it is a condition of the grant of the Licence and the Licensee shall procure that the Guarantor also enters into this Agreement; and
- (k) the Licence is a non-exclusive licence and may be sub-let by the Licensor in accordance with clause 11.

2.3 This Licence is a personal right to the Licensee and the Licensee acknowledges that this Agreement grants a licence and not a lease, under which the Licensee enjoys the occupation rights granted by this Licence but is not and shall not be entitled to any proprietary rights or interest in the Berth.

3. Nominated Boat and Permitted Use

3.1 The Berth shall be available to and shall only be used by the Licensee while the Licensee personally, legally and beneficially owns the Nominated Boat. Subject to clause 3.3, the Licensee shall only use the Berth for the Nominated Boat and not for any other boat.

3.2 The Licensee may, with the prior written consent of the Licensor (not to be unreasonably withheld) substitute a different boat provided that the Licensee continues to own and use that boat and it meets the maximum dimensions of the Berth set out in Schedule 1. From the date of the Licensor's consent under this clause 3.2 the substitute boat shall be the Nominated Boat for the purposes of this Agreement.

3.3 This Licence may, with the consent of the Licensor, be held by a number of persons jointly provided such persons legally and beneficially own the Nominated Boat jointly and proof of such ownership may be required by the Licensor at any time.

3.4 The Licensee shall use the Berth only for berthing the Nominated Boat whilst the Nominated Boat is used for pleasure boating purposes and not for any commercial, charter or other use or purpose (**commercial use**) unless the Licensor, at its sole discretion, has approved such commercial use in writing and the Licensee has paid any Commercial Use Fee levied in accordance with clause 3.6.

3.5 The Licensor may require the Licensee to sign a statutory declaration at any time as to the ownership of the Nominated Boat and/or the use or proposed use of the Berth.

3.6 The Licensor may, at its discretion and as a condition of its approval of any commercial use of the Berth in accordance with clause 3.4, require the Licensee to pay the Licensor an additional levy calculated as a percentage of the Operating Expenses, and an additional contribution to the Refurbishment Fund (together a **Commercial Use Fee**). In addition to the Commercial Use Fee, the Licensor reserves the right to charge (and the Licensee will pay on demand) any reasonable charges required to cover any other costs or expenses arising directly from the use of the Berth by the Licensee for an approved commercial use.

3.7 The Licensor may require that any commercial use vessel be loaded or unloaded at a facility in Port Nikau Marina nominated by the Licensor from time to time.

4. Water Space, access and use of facilities

4.1 The Licence relates only to the allocated water space of the Berth. In common with others, the Licensee shall have a right of making fast to the Structures at the allocated Berth and shall have

the right of access in, and use of, the common waterways and pathways of the Marina Area, subject to such rules as to access and during such hours as the Licensor may from time to time specify for the safety, security and preservation of good order in the Marina Area.

- 4.2 Mooring ropes shall be provided by the Licensee at its cost and shall be of a standard approved by the Licensor and shall be used and maintained to the Licensor's satisfaction. If the Licensor identifies any mooring ropes as being inadequate, the Licensor may (but is not obliged to and is not liable to the Licensee in any way if it does not) replace any mooring ropes and recover its reasonable costs from the Licensee. If the Licensor does replace the mooring ropes, the Licensor shall not be liable to the Licensee in any way (including for any damage to the Nominated Boat) provided that the Licensor took reasonable care in the circumstances.
- 4.3 The Licensee shall not alter or modify the Berth or adjacent Structures. Any addition or alteration, such as fendering and dinghy supports, shall be first approved by the Licensor and fitted by an installer approved by the Licensor.
- 4.4 The Licensee, and any other person permitted by the Licensor, may use water, power and any other facilities provided on the Structures in common with other License Holders. This clause entitles the Licensee to casual use only of those facilities. If a Licensee requires more regular use of common facilities, special arrangements may be made with the Licensor and the Licensor may impose an additional charge to cover any extra expenses associated with such use.

5. Maintenance of vessels

- 5.1 Without limiting anything in the Marina Rules, the Licensee shall keep any vessel occupying the Berth in good serviceable condition and repair so as not to obstruct, interfere with or endanger other vessels navigating or berthed in Port Nikau Marina or damage any Structures.
- 5.2 If the Licensee breaches clause 5.1, the Licensor may serve a notice on the Licensee requiring the Licensee to repair any vessel occupying the Berth as required by clause 5.1 or remove the vessel from the Berth, within a specified time not less than 30 days. A failure by the Licensee to comply with that notice shall be a breach entitling the Licensor to terminate this Licence under clause 18.1(a).

6. Resource Consent

- 6.1 The Licence is subject to the terms of the Resource Consent. The Licensee acknowledges that the Licensor has been granted the Resource Consent and has in turn granted this Licence in reliance on that consent. If at any time the Resource Consent is varied, terminated or revoked, then the Licence shall be contemporaneously and commensurately varied, terminated or revoked and the Licensee shall have no right or claim against the Licensor, provided that the Licensor must always use all reasonable endeavours to ensure compliance with and the continuance of the Resource Consent.

7. Payment of Operating Expenses

- 7.1 During the Term, and subject to clause 7.7 (user pays), the Licensee shall pay to the Licensor the Licensee's proportion of Operating Expenses. The term **Operating Expenses** means all actual or

budgeted costs incurred by the Licensor in the occupation, operation, management and maintenance of Port Nikau Marina as set out in Schedule 3.

- 7.2 The Licensee's proportion of the Operating Expenses referred to in clause 7.1 shall be the Licensee's reasonable and equitable proportion as set by the Licensor and notified to the Licensee in writing from time to time.
- 7.3 For the first period of the Term from the Commencement Date until 31 March next occurring, the Licensee shall pay to the Licensor a proportionate amount of the sum specified in Schedule 1 as the Licensee's initial proportion of Operating Expenses for that period. The proportionate amount shall be calculated by the Licensor having regard to the number of days between the Commencement Date and 31 March next occurring. Payment shall be made by one instalment, payable in advance on or before the Commencement Date.
- 7.4 For each subsequent Operational Period (and for the Last Part Period), as soon as practicable after 1 March the Licensor shall advise the Licensee in writing of the amount of the Licensor's estimate of the Licensee's proportion of the Operating Expenses for the forthcoming Operational Period. The Licensee shall pay to the Licensor its proportion of Operating Expenses no later than 31 March of that period.
- 7.5 In determining the Operating Expenses payable by Licence Holders (including the Licensee) for an Operational Period, the Licensor shall have regard to the actual Operating Expenses incurred and the Operating Expenses collected from Licence Holders in relation to the previous Operational Period. The Licensor shall be entitled to carry forward any actual Operating Expenses surplus or deficit for one Operational Period into the calculation of Operating Expenses payable by Licence Holders for the next Operational Period. No Licence Holder shall be entitled to receive any refund of surplus Operating Expenses for a previous Operational Period. A Licence Holder may be required to pay an Operating Expenses deficit for a previous Operational Period at the request of the Licensor.
- 7.6 The Licensor may withhold the amount of any excess payments received from the Licensee and apply such amounts in satisfaction of, or on account of, any other moneys owing by the Licensee to the Licensor under this Licence.
- 7.7 The Licensor may at any time during the Term implement any systems and/or infrastructure that it considers necessary or desirable to enable the Licensor to charge the Licensee on a 'user pays' basis for some or all of the utilities or other services provided to the Licensee that are within the meaning of Operating Expenses.
- 7.8 The payments referred to in this clause 7 shall be made exclusive of any taxes, duties, assessments, impositions, levies of every kind which during the Term shall be imposed or become payable, to the intent that any levies so imposed shall be paid by the Licensee in addition to the moneys payable under this clause 7.
- 7.9 If the Licensor incurs Operating Expenses solely for the benefit of the Licensee, or for the benefit of the Licensee to a greater extent than other Licence Holders, the Licensor shall be entitled to attribute those costs (or a fair proportion) to the Licensee. The Licensor's determination of such proportion shall be final and binding on the Licensee.

- 7.10 If any Operating Expenses are not incurred solely in respect of Port Nikau Marina or are incurred for the benefit of parties other than the Licensee but with an associated benefit for the Licence Holders, the Licensor shall make an apportionment of the expenses to attribute a fair proportion of those expenses to Port Nikau Marina, such proportion being deemed for the purposes of this Agreement as costs incurred by the Licensor in operating and maintaining Port Nikau Marina. The Licensor's determination of such proportion shall be final and binding on the Licensee.
- 7.11 The Licensor shall use all reasonable endeavours to limit annual increases to Operating Expenses, whilst meeting all costs associated with the prudent and sustainable management of Port Nikau Marina, including any increases to such costs incurred by the Licensor. The Parties acknowledge that an annual increase in Operating Expenses may be needed to meet unforeseen circumstances or costs.

8. Refurbishment Fund

- 8.1 During the Term, the Licensee shall pay to the Licensor contributions to the Refurbishment Fund, to be used to fund or contribute to the funding of refurbishment works, including prospective repairs and maintenance, renovations, replacements and matters of an infrequent or irregular nature in respect of Port Nikau Marina (**Refurbishment Expenses**).
- 8.2 For the first Operational Period from the Commencement Date until 31 March next occurring, the Licensee shall pay to the Licensor on the Commencement Date the sum specified in Schedule 1 as the Licensee's initial contribution to the Refurbishment Fund for that Operational Period, to be paid in one instalment in advance on or before the Commencement Date.
- 8.3 For each subsequent Operational Period (and for the Last Part Period), the Licensee shall pay to the Licensor a contribution to the Refurbishment Fund, payable in advance at such rate as the Licensor shall determine in respect of the relevant Operational Period. The Licensor shall advise the Licensee in writing of its contribution as soon as practical after 1 March. The sum to be levied under this clause 8.3 shall not be more than:
- (a) 10% of the Operating Expenses payable by the Licensee under clause 7 for that Operational Period (excluding the Management Fee on those Operating Expenses); plus
 - (b) a Management Fee calculated on the Refurbishment Expenses contribution (as contemplated by clause 9.1).
- 8.4 The Licensee shall pay to the Licensor its contribution to the Refurbishment Fund for an Operational Period on the same day that the Licensee pays its proportion of Operating Expenses for that Operational Period, and in any case by no later than 31 March of that Operational Period.
- 8.5 The Refurbishment Fund shall be held in trust by the Licensor in a separate bank account for the benefit of all Licence Holders and applied by the Licensor solely for the purpose of funding Refurbishment Expenses.
- 8.6 The Licensor agrees that in setting the amount of the Refurbishment Fund contributions to be levied for the last Operational Period during the Term it will take into account the current state of Port Nikau Marina at the time the contributions to the Refurbishment Funds are set, and the anticipated level of refurbishment required, on the Expiry Date, for the Marina to:

- (a) be in good repair and condition (subject to normal wear and tear through ordinary use);
- (b) be fit for purpose without further refurbishment for not less than two years (as reasonably determined by the Licensor, having regard to anticipated wear and tear); and;
- (c) continue to comply with all applicable standards and Laws.

8.7 The benefit of all Refurbishment Fund contributions paid or payable in respect of a Berth shall run with the Berth and no Licensee shall be entitled to any refund, credit or other compensation in respect of any contributions so paid as a result of ceasing to be the Licensee (including as a result of the Expiry Date occurring, or the earlier termination of this Agreement).

9. Management Fee

9.1 In consideration for its services the Licensor shall be entitled to charge an annual management fee of up to 10% of all amounts payable under clauses 3.6 and 7 (but excluding the Management Fee itself), and clause 8 of this Agreement. The Licensor shall ensure that payments made by the Licensor from the Refurbishment Fund for Refurbishment Expenses do not attract a further Management Fee with the intent that Management Fees are not double charged to Licence Holders in respect of the Refurbishment Expenses.

10. Payments – General provisions

10.1 The Licensee shall pay all amounts due to the Licensor under this Agreement by the due date in full and without any withholding, deduction or set off.

10.2 If required by the Licensor, the Licensee shall do all things necessary to set up and authorise a direct debit bank authority in favour of the Licensor for the payment of all amounts payable to the Licensor under this Agreement.

10.3 The Licensee shall, if required by the Licensor, pay default interest at a rate of 12% per annum on any amounts payable under this Agreement that remain unpaid after the due date for payment. Interest shall be calculated on a daily basis from the due date for payment until the actual date of payment and shall be payable on demand. The Licensor's right to recover interest shall be without prejudice to any other rights, powers and remedies of the Licensor under this Agreement or at Law.

11. Non-Exclusive Licence

11.1 The Licensee shall use the Berth continuously for the Nominated Boat, and otherwise make the Berth available under this clause. The Licensee may not sublet the Berth.

11.2 Where the Nominated Boat is absent from the Berth, the Licensor may rent the Berth to a third party (**Renter**) in accordance with this clause. However, the Licensor is under no obligation to arrange rental of the Berth.

11.3 Where the Nominated Boat is to be away from the Berth for five (5) consecutive Working Days or more and the Licensee notifies the Licensor in writing no less than two (2) Working Days in advance of any such absence, confirming the anticipated period of absence, the Licensor may elect to rent the Berth in accordance with clauses 11.4 and 11.5.

- 11.4 The Licensor may rent the Berth out to any person, and on any terms, that the Licensor sees fit (in its sole discretion). The Licensor makes no warranties or representations that the Berth will be rented for any or all of the period of vacancy notified under clause 11.3, or regarding the amount of revenue that may be received by the Licensee under clause 11.5. Nothing shall compel the Licensor to rent the Berth to any person in priority over any other available berth.
- 11.5 The Licensor shall pay to the Licensee 80% of the rate charged to and paid by a Renter to the Licensor for every night the Berth is rented (**Rent**), with such payment credited towards the Licensee's Operating Expenses for the coming year at the end of each Operational Period. If the Rent exceeds the Operating Expenses, then the excess shall be paid to a New Zealand bank account nominated by the Licensee in writing. The Licensor shall retain the 20% balance of the Rent received from the Renter.
- 11.6 The Licensee acknowledges and agrees that the Licence Fee and the Operating Expenses are priced at a level to allow the Licensor to use and rent the Berth when the Licensee vacates the Berth.
- 11.7 Where clause 11.3 applies, the Licensee shall give the Licensor five (5) Working Days' notice prior to the return of the Nominated Boat to the Berth. If the Licensee fails to give the required notice, or the period of absence changes from that notified in clause 11.3, the Licensor will use all reasonable endeavours to reallocate the Nominated Boat to another berth in Port Nikau Marina, but the Licensor shall not be responsible for any failure to do so.
- 11.8 Notwithstanding clause 11.3 and without prejudice to the Licensor's other rights under this Agreement, at any time where the Nominated Boat has been absent from the Berth for a single continuous period of more than 28 consecutive days without notice to the Licensor, the Licensor may, acting reasonably, elect to rent the Berth and clauses 11.5 and 11.7 shall apply in relation to any such rental.

12. Relocation of Berth

- 12.1 The Licensor may require the Licensee to temporarily or permanently vacate the Berth in an emergency or to preserve property or public safety, to allow maintenance or repairs to be carried out or to permit construction or reconfiguration work for Port Nikau Marina and the Licensor may use the Berth in those circumstances provided that:
- (a) In the case of a temporary vacation of the Berth, the Licensor shall provide to the Licensee an alternative berth within Port Nikau Marina for the duration of the temporary relocation, the terms of this Agreement shall continue to apply to such alternative berth or mooring with such modifications as are necessary and the Licensor shall not be required to pay any compensation to the Licensee in respect of any such temporary vacation of the Berth; and
 - (b) In the case of a permanent vacation of the Berth, the Licensor shall grant to the Licensee a substitute licence for the balance of the unexpired term of this Agreement for a berth of substantially similar characteristics to the Berth, including berth dimensions, within Port Nikau Marina and the Licensor shall not be required to pay any compensation to the Licensee in respect of any such permanent vacation of the Berth.

13. Expiry Date and Holding Over

- 13.1 This Agreement shall expire on the Expiry Date, at which time clause 18.2 shall apply.
- 13.2 If the Licensee is permitted to continue using the Berth after the Expiry Date, then the Licensee does so strictly on the basis of a temporary licence on the terms and conditions applying immediately prior to the Expiry Date. This temporary license is subject to termination upon one month's prior written notice given by either party. The monthly fee payable by the Licensee for that continued use will be the fee determined by the Licensor, at its sole discretion, paid monthly and in advance of each month. The first payment shall be due on the day after the Expiry Date.

14. First Right to Negotiate

- 14.1 If, during the Term, the Licensor elects, in its sole discretion to licence all or any of the berths at Port Nikau Marina beyond the Expiry Date it will promptly give notice of this to the Licensee and provide the Licensee with an offer of a licence of one of the berths (which may, but does not have to be the Berth) (**Specific Berth**) for a further period or periods ending no later than 31 March 2054 and otherwise on the terms to be determined by the Licensor (**Offer**). To avoid doubt, the Specific Berth and the terms of the Licensor's Offer will be at the Licensor's discretion. The Licensee must confirm by written notice that it wishes to accept the Licensor's Offer within 20 Working Days of receiving the Licensor's Offer (**Offer Period**). The Licensor's Offer is accepted when the Licensor receives the Licensee's written notice confirming acceptance within the Offer Period.
- 14.2 If the Licensee does not accept the Licensor's Offer during the Offer Period in accordance with clause 14.1, then the Licensee will be deemed to have rejected the Offer, the Offer will be deemed to have expired and this clause 14 will have no further effect.
- 14.3 If the Licensee accepts the Licensor's Offer during the Offer Period, the Licensor will grant and the Licensee will accept a licence of the Specific Berth on the terms of the Licensor's Offer, which will be prepared by the Licensor's solicitor.

15. Transfer of Licence: Approval and Licensor First Right of Refusal

- 15.1 The License is personal to and shall at all times be held beneficially by the Licensee and the Licensee agrees not to Transfer the Licence except in accordance with this clause. No Transfer shall have the effect of extending the Term.
- 15.2 **Internal Transfers:** In the following circumstances clause 15.3 will not apply:
- (a) where the Transfer is to a spouse or child of the Licensee;
 - (b) where the Transfer is to the legal representatives of a deceased estate or to a beneficiary or beneficiaries under an estate;
 - (c) where the Licence is held by trustees of a trust, and there is a change of trustee; or
 - (d) where the Licence is held by joint holders and the transfer is to a lesser number of the same holders;

provided that the obligations under clause 15.4(b), (c) and (f) shall continue to apply and the Licensor may charge the Transfer Fee to the Licensee on the Transfer.

15.3 First Right of Refusal: Subject to clause 15.2, if at any time the Licensee decides to Transfer the Licence or receives an offer to purchase the Licence and wishes to accept that offer, the Licensee must immediately give written notice to the Licensor (**Licensee Notice**) setting out the terms on which the Licensee wishes to Transfer the Licence, or the terms of the offer received (as the case may be) (**Sale Offer**). Then the following shall apply:

- (a) **Exercise of Option:** The Licensor will have fifteen (15) Working Days from receipt of the Licensee Notice in which to exercise the Licensor's right to purchase the Berth, by serving written notice on the Licensee (**Licensor Notice**) accepting the Sale Offer contained in the Licensee Notice.
- (b) **Formation of Contract:** On the Licensor serving a valid Licensor Notice the Parties will be taken to have entered into a contract for the sale and purchase of the Licensee's interest in the Berth on the terms contained in the Sale Offer.
- (c) **Lapse of Option:** If the Licensor does not serve the Licensor Notice on the Licensee within the timeframe specified in clause 15.3(a), then, subject to clause 15.4, the Licensee may Transfer the Licence to any other person on the same terms contained in the Sale Offer. If the Licensee wishes to offer the Licence on different terms to the Sale Offer, then the Licensee must again first make the offer available to the Licensor and the process under this clause 15.3 shall be repeated.

15.4 Subject to clause 15.3, the Licensee shall not Transfer the Berth without first obtaining the written consent of the Licensor, which the Licensor shall not unreasonably withhold or delay if the following conditions are fulfilled:

- (a) the Licensee proves to the reasonable satisfaction of the Licensor, at its sole discretion, that the proposed transferee (**transferee**) is respectable, responsible, solvent and able to meet the Licensee's commitments under this Agreement, and that the proposed vessel is appropriate for the Berth. The Licensee shall give the Licensor any additional information relating to the transferee as is reasonably requested by the Licensor;
- (b) all Operating Expenses and other moneys for the time being due or payable by the Licensee under this Agreement have been paid and there is no subsisting breach of any of the Licensee's obligations under this Agreement up to the date of Transfer;
- (c) a deed of surrender in customary form approved or prepared by the Licensor is duly executed and delivered to the Licensor by the Licensee, and the transferee enters into a new licence agreement for the Berth for the unexpired residue of the Term, but otherwise on the terms and conditions set out in the Licensor's then current marina berth licence agreement (**New Licence Agreement**);
- (d) the Transfer Fee has been paid to the Licensor by the Licensee;
- (e) if the transferee is a company, as security for the performance by the company of its obligations under the New Licence Agreement:

- (i) the principal shareholders of that company have entered into the New Licence Agreement in the capacity as guarantors; or
 - (ii) where the principal shareholders of that company are not New Zealand citizens or residents, a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Licensor is provided to the Licensor; and
- (f) the transferee has delivered the insurance policies and certificates of currency required under clause 17.3 of this Agreement to the Licensor.

15.5 The Licensee acknowledges that the Transfer Fee shall be payable whether or not the relevant Transfer proceeds in consideration for the costs incurred by the Licensor in administering the transfer process under this clause 15.

15.6 The Licensor shall, at the request of the Licensee (as transferor), facilitate the apportionment as between the Licensee (as transferor) and the transferee of all amounts paid or payable under this Agreement (including Operating Expenses and contributions to the Refurbishment Fund), as at the date of the Transfer.

15.7 The Licensee agrees that upon any Transfer under clause 15.4 being effective, the Licensee releases the Licensor and the Manager, and their directors, officers, employees and contractors (together **Released Parties**), from any and all claims (and the Licensee shall not bring any new claims) arising directly or indirectly in connection with this Agreement, the Licensee's use or occupation of the Berth or Port Nikau Marina, or any act or omission of those Released Parties in relation to the management or operation of Port Nikau Marina. The Licensee acknowledges and accepts that this clause confers a benefit on each Released Party and that obligation is enforceable by each Released Party under section 12 of the Contract and Commercial law Act 2017.

15.8 For the purposes of clause 15.1, if the Licensee is a body corporate, any change in the effective management or control of the Licensee during the Term shall be deemed to be a Transfer.

16. Licensor's Insurance

16.1 The Licensor will take all reasonable steps to insure the Structures to their full replacement value against loss, damage, or destruction by fire, earthquake, fire subsequent upon earthquake, flood, lightning, storm or other natural event, the premiums for which shall be met from the Operating Expenses.

16.2 The Licensee shall not do, permit, or fail to do anything that may render void or voidable any policy of insurance effected by the Licensor, or result in any increased or extra premium becoming payable in respect of such insurance. If the Licensee does, permits or fails to do anything that results in any increased or extra premium becoming payable in respect of the Licensor's insurance the Licensee agrees to forthwith on demand from the Licensor pay to the Licensor such increased or extra premium or premiums.

16.3 Subject to clause 16.5, if:

- (a) during the Term, the Berth or any material Structure(s) (**Assets**) are destroyed or damaged (whether remaining partially available for use by the Licensee or incapable of use); and

- (b) there are sufficient insurance moneys recovered by the Licensor to fully repair and reinstate the Assets,-

the Licensor will, with all reasonable speed, repair and reinstate the Assets and will apply all insurance moneys recovered to do so: and

- (i) the Licensor shall be entitled to require the Licensee to vacate the Berth for the period necessary to effect such repair and reinstatement;
- (ii) the Licensee shall not be entitled to any refund of the Licence Fee or the Operating Expenses or to any compensation for the lack of availability of the Berth or otherwise; and
- (iii) the Licensor shall be entitled to complete such reinstatement using such materials and form of construction as the Licensor deems appropriate.

16.4 If the Licensor recovers insufficient insurance moneys to repair and reinstate the Asset fully then the Licensor will elect, by giving written notice to the Licensee within one month of the date of such damage or destruction, (**Licensor's notice**) either:

- (a) to proceed (subject to clause 16.5) with all reasonable speed to repair and reinstate the Asset, in which event it will apply all insurance moneys recovered to do so as soon as practicable and shall meet the cost of such repair and reinstatement to the extent that such costs exceed the insurance moneys recovered; or
- (b) elect to determine the Licence, in which event this Agreement will be at an end and the insurance moneys recovered by the Licensor will be payable in accordance with clause 16.5.

16.5 If any required permit or consent to rebuild the Asset cannot reasonably be obtained by the Licensor, or if the Licensor elects to determine the Licence in accordance with clause 16.4(b) then:

- (a) the insurance moneys recoverable by the Licensor will be applied first towards meeting the cost of compliance with any Law or resource consent terms or conditions and the costs of clearing the damaged structures from the Marina Area;
- (b) any surplus insurance money after payment of the costs referred to in clause 16.5(a) will be dispersed to the Licensee on a fair and equitable basis; and
- (c) this Agreement will be deemed to have ceased and determined as from the date the relevant damage or destruction occurred, but without prejudice to the rights of either party against the other in respect of any antecedent breach of any of the covenants, conditions or agreements contained or implied in this Agreement.

17. Licensee's Insurance

17.1 The Licensee shall at all times keep all boats, craft and any other property owned or bought into Port Nikau Marina by the Licensee and/or any sub-licensee or invitee fully insured while in or near to Port Nikau Marina. Such insurance shall cover loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accident or damage, burglary, Act of God and all other usual maritime risks.

- 17.2 The Licensee shall also effect adequate public liability insurance against death and/or bodily injury to persons and loss or damage to the property of others arising out of the use of water craft within Port Nikau Marina or occupation of the Berth. The amount of such public liability insurance shall be as specified by the Licensor from time to time.
- 17.3 The Licensee shall, if requested by Licensor, provide the Licensor with copies of the policies effected pursuant to this clause 17 together with a certificate of currency for such policies.

18. Termination

- 18.1 The Licensor may, by written notice to the Licensee, terminate and revoke this Agreement and the Licence with immediate effect if:
- (a) the Licensee fails within ten (10) Working Days after notice of a default and intention to revoke the Licence is given to the Licensee, to remedy the relevant default;
 - (b) on two or more occasions within a 12-month period the Licensee fails to perform any obligation under this Agreement (including a payment obligation) whether or not such failure was remedied by the Licensee;
 - (c) without the Licensor's consent, the Licensee Transfers or otherwise deals with (or attempts to do so) its interest under this Agreement or the Licence; or
 - (d) the Licensee becomes insolvent.
- 18.2 If the Licensor exercises its rights of termination or, for any reason, this Agreement expires then:
- (a) such termination or expiry shall not release the Licensee from performance of any obligation that had accrued prior to such termination or expiry;
 - (b) such termination or expiry shall not prejudice the rights of the Licensor against the Licensee in respect of any breaches subsisting at the date of such termination or expiry;
 - (c) the Licensee shall forthwith remove the Nominated Boat from the Berth and from Port Nikau Marina;
 - (d) if the Licensee fails to remove the Nominated Boat pursuant to clause 18.2(c), then the Licensor may remove the Nominated Boat and/or store it at the risk and cost of the Licensee after giving the Licensee not less than 10 Working Days prior notice of the removal. In such case the Licensor shall have a lien over the Nominated Boat for all moneys due from the Licensee under this Licence, including all costs of termination of this Licence, and of removal, salvage (if applicable) and storage of the Nominated Boat. To avoid doubt, the Licensee hereby indemnifies the Licensor for all costs incurred in connection with the Licensor exercising its rights under the lien, including the costs of removal, salvage (if applicable) and storage of the Nominated Boat;
 - (e) after expiry of one month from the date of notice from the Licensor to the Licensee that it is claiming a lien on the Nominated Boat pursuant to clause 18.2(d), the Licensor shall be free to sell the Nominated Boat and appropriate the net proceeds of sale in satisfaction of moneys due to it from the Licensee. Any surplus shall be paid to the Licensee. The Licensee shall remain liable to the Licensor for any shortfall;

- (f) the Licensor may proceed against the Licensee for any moneys then owing and any moneys already paid by the Licensee shall be deemed forfeited to the Licensor as liquidated damages;
- (g) the Licensor shall be entitled to grant a new Licence in respect of the Berth to such person as the Licensor in its sole discretion may determine. Any licence fees or proceeds obtained by the Licensor from any new licensee for the new Licence shall first be applied to the reduction of any moneys due to it from the Licensee, including any expenses relating to termination of this Licence and granting a new licence. Any surplus shall be payable to the Licensee, up to an amount equal to the pro-rata portion of the Licence Fee for the balance of the Term, and the balance of any surplus shall be retained by the Licensor. The Licensee shall remain liable to the Licensor for any shortfall.

18.3 In consideration of the Licensor's grant of the Licence, the Licensee appoints the Licensor and every officer for the time being of the Licensor as its attorney to act in its name and on its behalf to carry out any of the obligations of the Licensee under clause 18.2, to the extent that the Licensee is unable or unwilling to do so.

19. Liability and Indemnity

- 19.1 None of the Licensor, the Manager, or their directors, officers, employees or contractors (**Indemnified Persons**) shall be liable for the death or any personal injury to the Licensee or other persons using Port Nikau Marina incurred or suffered within or about Port Nikau Marina, howsoever such death or injury occurs and whether or not such death or injury is directly or indirectly attributable to the acts or defaults of any Indemnified Person or otherwise.
- 19.2 To the fullest extent possible at Law, no Indemnified Person accepts any responsibility for the adequacy of Port Nikau Marina, or the Berth, or the Structures, or facilities comprising Port Nikau Marina, or for loss or damage to the Nominated Boat or any other property of the Licensee or any other persons using Port Nikau Marina, howsoever such loss or damage occurs, and whether or not such loss or damage is directly or indirectly attributable to the acts or defaults of any Indemnified Person.
- 19.3 The Licensee indemnifies each of the Indemnified Persons against any loss, expense, liability, claims and costs (including legal costs) incurred by that Indemnified Person in relation to Port Nikau Marina and arising as a direct result of the:
- (a) Licensee's acts or omissions;
 - (b) acts or omissions of others to which the Licensee has contributed; or
 - (c) acts or omissions of any persons invited into Port Nikau Marina by the Licensee.
- 19.4 The Licensee indemnifies the Licensor against all costs (including legal costs) and expenses incurred by the Licensor in taking action to demand and/or recover any part of the Licence Fee or any other sums payable by the Licensee under this Agreement.
- 19.5 The Licensee acknowledges and accepts that this clause confers a benefit on each Indemnified Person and that obligation is enforceable by the Indemnified Person(s) pursuant to section 12 of the Contract and Commercial law Act 2017.

20. Licensee

- 20.1 A Licence may be granted jointly to a collection of individuals, as approved by the Licensor, but not as tenants in common. The maximum number of persons comprising the Licensee at any one time shall not exceed three (3). If a party comprises more than one person, then each person comprising that party shall be bound jointly and severally.
- 20.2 Where the Licensee is a trust, and the trust has an independent trustee, the liability of that independent trustee under this Agreement is limited to the assets of that trust available from time to time.

21. Further Development

- 21.1 In consideration for the Licensor entering into this Agreement with the Licensee, the Licensee covenants and warrants to the Licensor that it will not (nor procure or permit any third party to) object in any way whatsoever to any application or process for resource consent, building consent, or other consents, permits or approvals that the Licensor seeks from any Authority in relation to Port Nikau Marina or any future marina development. The Licensee acknowledges and accepts that where this clause confers a benefit on another party, that obligation is enforceable by such party pursuant to section 12 of the Contract and Commercial Law Act 2017.

22. Appointment of Manager

- 22.1 The Licensor shall be entitled to appoint from time to time, a manager to perform any one or more of the obligations of the Licensor under this Agreement. Such manager shall act for and on behalf of the Licensor, and shall have all the rights and powers of the Licensor under this Agreement.
- 22.2 The Licensee shall obey all lawful directions of the Manager, whether or not the specific instruction is covered by the terms and conditions of this Licence.

23. Amendment of this Agreement

- 23.1 The Licensor may make the following amendments to this Agreement by giving the Licensee 30 days prior written notice of such amendment, which shall take effect from the later of the date specified in the notice or the expiry of the notice period:
- (a) amendments to any provision that is reasonably necessary or desirable for the Licensor to comply with its obligations under the terms of any Resource Consent, or any applicable Law;
 - (b) any amendment that is immaterial, administrative or procedural in nature, or that corrects an administrative or typographical error.
- 23.2 The Licensor may make the following amendments to this Agreement by giving the Licensee 60 days prior written notice of such amendment, which shall take effect from the later of the date specified in the notice or the expiry of the notice period:
- (a) the additional levies and contributions payable under clause 3.6; and
 - (b) the default interest rate payable under clause 10.3.

23.3 The Licensee acknowledges and agrees that, in addition to the amendment provisions in clauses 23.1 and 23.2, the terms of this Agreement may be altered, modified or added to with the agreement of the Licensor, the Manager (if appointed) and following the written approval of not less than 80% of the Licence Holders, and any such alteration, modification or addition shall be binding upon the Licensor and the Licensee on and from the later of the date that the approval was obtained and the date that the amendment was notified to all Licence Holders. This clause may not be used to amend the licence fee payable by another Licence Holder under their licence, or to amend any special conditions that have been agreed with any Licence Holder and recorded in that person's agreement with the Licensor.

24. Novation and transfer

24.1 The Licensee hereby acknowledges and accepts that the Licensor may, at any time:

- (a) transfer any of its rights or obligations under this Agreement without consent; and/or
- (b) novate this Agreement to a third party by giving notice in writing to the Licensee and the third party that it Novates this Agreement. The Novation notice will contain the date that the Novation will take effect and the Licensor is discharged and released from this Agreement with effect from that date; and/or
- (c) sell, alienate, transfer or otherwise effectively dispose or otherwise part with all or some of the assets comprising Port Nikau Marina.

25. Dispute Resolution

25.1 If a dispute arises between the Parties in relation to any matter concerning this Agreement, the following procedure shall be followed:

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) if the Parties are unable to resolve the dispute within twenty (20) Working Days, either party may refer the dispute to mediation, with a mediator agreed by the Parties within ten (10) Working Days of the referral or, failing that, by the Arbitrators' and Mediators' Institute of New Zealand Inc.

26. Notices

26.1 The Licensee shall at all times keep the Licensor informed of any change of address from that stated in Schedule 1 or alternatively the name and address of any agent to whom the Licensee has granted unlimited authority to act for the Licensee in all matters concerned with or arising out of this Agreement.

26.2 The nominated address shall be the address for service of all notices of default, or otherwise, issued in respect of this Licence and the address for the posting of demands for annual fees or such other costs as may arise from time to time.

26.3 Any notice required to be served under this Agreement is sufficiently served if: attached to the Nominated Boat, or sent by post or email to the Address for Service at Item 1 or 2 of Schedule 1 (as applicable).

26.4 Service of any notice shall be deemed received:

- (a) if delivered personally, when delivered;
- (b) if sent to the Licensee's notified address, five Working Days after it is posted;
- (c) if affixed upon the Nominated Boat (if to the Licensee), five Working Days after it is affixed (with a photo confirming the time and date of attachment);
- (d) if by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause 26), provided that no automatically generated 'out of office' response from the addressee is received,-

provided that any notice received or deemed received after 5.00pm or on a day that is not a Working Day shall be deemed to have been delivered on the following day.

26.5 Where the Licensee is a trust or the Nominated Boat is otherwise jointly owned, a notice affixed to the Nominated Boat or given to the Licensee's address or email address as set out in Item 2 of Schedule 1 shall be deemed to have been given to all trustees or joint owners.

27. General Terms

27.1 Where there is any conflict between this Agreement and the Marina Rules, the former shall prevail.

27.2 All monetary amounts in this Agreement are stated and are payable in New Zealand dollars.

27.3 Any obligation on the Licensee not to do anything shall be deemed also to be an obligation not to suffer, permit or cause that thing to be done.

27.4 Nothing in this Agreement makes either party a partner, agent, or legal representative of the other.

27.5 Subject to clause 23, no variations to this Agreement will be effective unless they are in writing and signed by both Parties.

27.6 Each party warrants that it has obtained every necessary approval to enter this Agreement and bind the party.

27.7 No waiver of any breach, or failure to enforce any provision of this Agreement at any time by either party shall in any way limit or waive the right of that party to subsequently enforce and compel strict compliance with this Agreement.

27.8 If any provision of this Agreement becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent

permitted by Law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

- 27.9 The Parties acknowledge that this Agreement and the Marina Rules contain the entire agreement between the Parties, notwithstanding any negotiations or discussions prior to the execution of this Agreement and notwithstanding anything contained in any brochure, report or other document. The Licensee acknowledges that the Licensee has not been induced to execute this Agreement by any representation, verbal or otherwise, made by or on behalf of the Licensor or the Licensor's agents or any third party, which is not set out in this Agreement.
- 27.10 The Licensor may withhold and retain any moneys due or owing to the Licensee on any account and apply such moneys in reduction of moneys due or owing by the Licensee to the Licensor. The Licensee acknowledges and agrees that its obligation to pay all sums due to the Licensor under this Agreement and the rights of the Licensor in and to such moneys shall be absolute and unconditional and shall not be subject to any reduction, set-off, defence, counter-claim or recoupment whatsoever including, without limitation, reductions, set-offs, defences, counter-claims or recoupment due or alleged to be due to or by reason of any past, present or future claims, if any, which the Licensee has against the Licensor.
- 27.11 If the Licensee is in trade, the Parties expressly agree that:
- (a) the services supplied by the Licensor to the Licensee under this Agreement are supplied in trade for the purposes of sections 2 and 43 of the Consumer Guarantees Act 1993 (**CGA**);
 - (b) the provisions of the CGA do not apply to the supply of such services; and
 - (c) it is fair and reasonable for each of the Licensor and the Licensee to contract out of the CGA.
- 27.12 This Agreement shall be governed by New Zealand Law and the Parties submit to the exclusive jurisdiction of the courts of New Zealand.
- 27.13 This Agreement may be signed in counterparts, (including facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one (1) counterpart. This Agreement may be executed by a party using an electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.

28. Guarantor

- 28.1 In consideration of the Licensor agreeing to enter into this Agreement (at the request of the Licensee and the Guarantor, as is hereby admitted and declared) each Guarantor (and if more than one, jointly and severally): guarantees to the Licensor:
- (a) due and punctual payment by the Licensee of all moneys from the time payable under this Agreement; and
 - (b) due and faithful performance by the Licensee of all its other obligations, duties, liabilities and covenants under this Agreement;
- and agrees, upon demand, to indemnify and hold harmless the Licensor against all losses, costs, liabilities, or action suffered or incurred consequent upon any default by the Licensee in making

due and timely payments and/or performance of these obligations; and agrees that no variation, waiver, settlement, indulgence or agreement with the Licensor will operate to release such person or persons from liability under this clause; and confirms that the Guarantor had the opportunity to obtain independent legal advice prior to executing this Agreement.

EXECUTION:

SIGNED for and on behalf of)
MARINE PARK LIMITED (together with
Port Road Limited trading as Port Nikau
Joint Venture) by

) _____
Signature

[Print Name]

) _____
Position

SIGNED for and on behalf of)
PORT ROAD LIMITED (together with
Marine Park Limited trading as Port
Nikau Joint Venture) by

) _____
Signature

[Print Name]

) _____
Position

Signed by **[Licensee Name]**)
as **Licensee**)

_____ Date:

Signed by **[Guarantor Name]**)
as **Guarantor** in the presence of:)

_____ Date:

Witness: _____

Witness Name: _____

Witness Occupation: _____

Witness Address: _____

SCHEDULE 1: ITEMS

1. The **Licensor:** Marine Park Limited and Port Road Limited trading as Port Nikau Joint
Address: Venture
325 Port Road, Whangarei
Email: info@portnikau.co.nz

2. The **Licensee:** [Licensee Name]
[where a Company: insert full company name and company number]
[where a Trust: insert the full names of each trustee of the trust, followed by the words "as trustees of the [insert name] Trust"
Postal Address: [where a company, insert registered office address of relevant company]
Phone:
Email:

3. **Ownership structure:** [Specify or insert "N/A"]
Company / Trust
Name:

4. The **Guarantor**
[Guarantor Name]
Address: _____
Phone: _ Email:

5. **Berth**
No.: ___ and as
outlined on Berth
Plan at Schedule 2.

6. **Size of Berth**

7. **Nominated Boat**
Name:
If currently no vessel
to occupy the berth
state your intentions,
e.g. Investment only.

8. **Nominated Boat**

Make and Model:

Obtain a photo from
Licensee

9. **Type of Nominated Boat:** Sailing Multihull
circle Launch Steel
-

10. **Length of Nominated Beam:** Draft:
Boat:

**Overall Length
including
Appendages:** [insert]

11. **Licence Fee/Purchase Price** \$[---] incl. GST
-

12. **Initial Operating Expenses** \$[---] incl. GST
-

13. **Initial Refurbishment contribution** \$[---] incl. GST
-

14. **Commencement Date** [insert]
-

15. **Expiry Date** 31 March 2039
-

16. **Specific Conditions (if any)**
-

SCHEDULE 2: BERTH PLAN

SCHEDULE 3: OPERATING EXPENSES

The term **Operating Expenses** means all actual or budgeted costs incurred by the Licensor in the occupation, operation, management and maintenance of Port Nikau Marina including, but not limited to, the following expenses:

1. all rates, charges, assessments, duties, impositions, royalties, levies, taxes and fees of any local body or government body, authority or department (including the Licensor's land tax, if any, and levies payable by the Licensor under the Accident Compensation Act 2001 or royalties or fees under the Resource Management Act 1991, and GST):
 - (a) in respect of Port Nikau Marina;
 - (b) in respect of this Agreement; and
 - (c) in consequence of the Licensor having any estate or interest in Port Nikau Marina (but excluding income tax or any other tax assessed in respect of the Licensor's income or profits);
2. all insurance premiums, valuation fees and other charges or levies payable by the Licensor to effect the insurance required under clause 16 and to insure against such other risks as the Licensor may deem necessary or desirable in relation to Port Nikau Marina or the Licensor's interest in the marina or in relation to any liability or potential liability of the Licensor in respect of Port Nikau Marina or the management or use of the marina;
3. all costs and expenses of providing, operating, repairing, servicing and maintaining utilities and services or other requirements whatsoever furnished or supplied to Port Nikau Marina;
4. all running costs and costs of repairs and maintenance to, and replacement of, all utilities, services, Structures, vehicles, machinery and equipment in Port Nikau Marina, including the cost of all service contracts in respect of such utilities, services, Structures, vehicles, machinery and equipment, and depreciation at normal rates on all Structures, vehicles, machinery and equipment acquired by the Licensor for Port Nikau Marina;
5. all costs of repairs (including structural repairs), painting, dredging, channels, maintenance, renovations and replacements of and to the Marina;
6. all costs and expenses associated with the repair, maintenance and improvement of common public facilities, parking areas, fencing, direction and information signs and drains, and the regular maintenance and improvement of lawns and planted areas including the replacement of plants and shrubs in the Marina Area (but to avoid doubt, excluding new major development activity or major capital expenditure for additional assets);
7. all costs and expenses in operating (including, but not limited to, all taxes, levies and assessments of every nature and kind including GST) the Port Nikau Marina equipment, vessels, vehicles and other facilities and including all costs and expenses of insuring, repairing, maintaining and replacing the equipment, vehicles and other facilities relating to or serving Port Nikau Marina;
8. the cost of cleaning the Marina Area including the common public facilities, parking areas, landscaped areas and the cost of garbage disposal and any charges or remuneration paid to any contractor for any such purpose;
9. all costs or an appropriate share thereof (as determined by the Licensor), incurred in maintaining structures and improvements outside Port Nikau Marina but which benefit Port Nikau Marina or the users of Port Nikau Marina;
10. all bank charges and other financial costs, including interest on any financial accommodation necessary to manage the cash flows associated with the operation of Port Nikau Marina;
11. all costs (including wages, remuneration, overheads and other emoluments) of administration, occupancy, information technology software and hardware (and upgrades thereof), operation,

supervision, supply, caretaking, night-watchmen, security personnel or contractors, security monitoring, parking attendants, cleaning, gardening and provision of any other services to Port Nikau Marina which the Licensor may actually and reasonably incur;

12. such other costs and expenses including professional fees and as may from time to time arise and be properly and reasonably assessed, charged, chargeable, paid, payable or otherwise incurred by, against or upon the Licensor in relation to the ownership, management and maintenance of Port Nikau Marina and all other costs incurred in complying with the terms of any licences granted to the Licensor in respect of Port Nikau Marina;
13. all costs incurred by the Licensor in defending or settling any claims made against the Licensor by a user of Port Nikau Marina in connection with the operation of Port Nikau Marina, including the costs of any judgment made against the Licensor in respect of any such claim;
14. all costs incurred by the Licensor in commencing or continuing any legal action against any person where such action is taken by the Licensor for and on behalf of, or principally for the benefit of, the Licence Holders (which may include the preservation of Port Nikau Marina assets), except that the Licensor will bear such costs to the extent that they arise directly as a result of the Licensor's gross negligence or fraudulent activity;
15. all extraordinary costs, not normally associated with, or contemplated by the Parties as, management or operational costs being costs which are not incurred in the normal course of the management or operation of Port Nikau Marina but nevertheless incurred by the Licensor or by the Manager appointed under clause 22 as extraordinary costs in respect of Port Nikau Marina;
16. all licence, access or other fees payable by the Licensor in relation to Port Nikau Marina under any Resource Consent, coastal permit, head lease, licence or other arrangement from time to time in force in relation to Port Nikau Marina, or to otherwise meet its obligations under any enactment (including the Health and Safety at Work Act 2015); and
17. the Management Fee (plus GST).

SCHEDULE 4: MARINA RULES

The marina operational rules can be found at:

<https://www.portnikau.co.nz/marine/rules-regulations/>

Please ensure you read the Rules as they will apply to this Agreement as if set out in full in this Agreement.