

Dated __ Monday 27 October_____

2024

**FACILITY MANAGEMENT
AGREEMENT**

BETWEEN

SELWYN DISTRICT COUNCIL

AND

**CASTLE HILL COMMUNITY
ASSOCIATION INCORPORATED
(686884)**

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FACILITY MANAGEMENT AGREEMENT

DATED the 27th _____ day of October _____ 2024

PARTIES

- 1) **SELWYN DISTRICT COUNCIL** (the **Council**)
- 2) **CASTLE HILL COMMUNITY ASSOCIATION INCORPORATED** (Incorporation no 686884) (**Castle Hill**)

INTRODUCTION

- A. The Council is the owner of the land and buildings comprising the "Facility".
- B. The Council and Castle Hill have agreed upon the terms whereby Castle Hill undertakes the management of the Facility for the purpose of Booking by Hirers, and for Casual Use.
- C. The Council is entering into this contract with a separate legal entity to operationally manage one of its facilities due to five factors:
 - 1) the Facility itself is located in a rurally remote part of Selwyn;
 - 2) the Facility itself is not located within 25 kilometres of another Council owned facility for public hire;
 - 3) the building itself has some limitations due to design and/or condition;
 - 4) the building has had historically low level of usage and this is not anticipated to change in the short to medium term; and
 - 5) the Council has resolved to disestablish Castle Hill from being recognised or treated as a Community Committee of Council and from any responsibilities associated with managing the Facility with effect from 1 September 2021 as a Community Committee of Council.

TERMS OF THIS AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this agreement, unless the context otherwise requires:

- (a) **Booking** means the booking made by the Hirer and agreed to by Castle Hill for the Hirer to use the Facility;
- (b) **Business Day** means a day on which banks are open for business in Christchurch, New Zealand;
- (c) **Castle Hill** means the entity named as a party to this agreement and, where the context permits, includes the employees, agents, subcontractors and any other authorised representatives of Castle Hill;
- (d) **Castle Hill's Fee** means the sum of NZ\$4,500.00 per annum payable to Castle Hill's nominated bank account in one instalment comprising of:

- (i) \$1,500 to cover expenses associated with managing Bookings, use by Casual Users, general cleaning and basic maintenance associated with operating the Facility including cleaning products, toilet paper, hand towels and firewood; and
 - (ii) \$3,000 to contribute to indemnity insurance;
- (e) **Casual user** means a village resident using the Facility if/when the Facility has not been previously booked by a Hirer, free of charge;
- (f) **Commencement Date** means the date this agreement is signed by both parties;
- (g) **Confidential Information** means all of each party's confidential information identified as such that comes into the other party's possession or knowledge, and includes without limitation the terms of this agreement, all information relating to business secrets, commercial information, processes, methods and other confidential information produced or obtained in connection with or related to the Services;
- (h) **Council Contact** means the person appointed by the Council and notified to Castle Hill in writing from time to time whose responsibility it is to liaise with Castle Hill in respect of this agreement;
- (i) **Council** means the Selwyn District Council or its successor in title or any body incorporated by statute to own the Facility and, where the context permits, includes the employees, agents, contractors and any other authorised representatives of the Council;
- (j) **Facility** means the land and buildings comprising the facility known as the Castle Hill Community Centre located at Castle Hill Domain, Castle Hill Drive, Castle Hill, Canterbury 7580;
- (k) **Financial Year** means the period from 1 July to 30 June;
- (l) **Expiry Date** means the date five (5) years from the Commencement Date;
- (m) **GST** means goods and services tax;
- (n) **Hirer** means the person or organisation making the Booking;
- (o) **Initial Term** means a term of one (1) year from the Commencement Date;
- (p) **Performance Targets** means the performance targets to be achieved by Castle Hill in accordance with clause 7.2;
- (q) **Renewal Periods** means one (1) year period(s);
- (r) **Services** means the functions and services to be carried out by Castle Hill under this agreement in operating and managing the Facility, including without limitation:
 - (i) management of the Facility, including arranging and supervising Bookings and use by Casual Users;
 - (ii) liaison with the Council via the Council Contact in relation to the management of the Facility; and
 - (iii) any function reasonably delegated to Castle Hill in relation to the operation of the Facility.

- (s) **Term** means the Initial Term and any extension of the Initial Term agreed in accordance with this agreement.

1.2 **Interpretation:** In the interpretation of this agreement, unless the context otherwise requires:

- (a) references to the **Parties** include their respective executors, administrators, successors and permitted assigns;
- (b) references to **persons** include natural persons, companies, partnerships, limited partnerships, joint ventures, firms, associations, unincorporated bodies of persons, government or semi-government or local body or municipal bodies (and agencies or political subdivisions of them) and any other association of persons (in each case whether or not having a separate legal personality);
- (c) **including** and similar words do not imply any limitation;
- (d) headings have been inserted for convenience only and will not affect the construction of this agreement;
- (e) derivations of any defined word or term shall have a corresponding meaning;
- (f) references to a statute or statutory provision shall include all statutes or statutory provisions amending, consolidating or replacing that statute or statutory provision referred to, and any regulations, orders in council and other instruments issued or made under that statute or statutory provision;
- (g) references to time and dates are to New Zealand time and dates;
- (h) references to **written** or **in writing** include email communications;
- (i) references to \$ or dollars are to New Zealand dollars;
- (j) a gender includes the other gender and the singular includes the plural and vice versa;
- (k) references to clauses and Schedules will be construed as references to clauses in, and the Schedules to, this agreement; and
- (l) the Schedules and Introduction to this agreement form part of this agreement and have the same force and effect as if expressly set out in the body of this agreement, and any references to this agreement will include the Schedules and Introduction.

2. **APPOINTMENT AND TERM**

- 2.1 **Appointment:** The Council appoints Castle Hill to carry out the Services stipulated for the Initial Term commencing on the Commencement Date and, subject to clause 11.1(b), automatically renewed for Renewal Periods, at Council's sole discretion.

3. **CASTLE HILL'S OBLIGATIONS**

- 3.1 **Obligations:** Castle Hill shall:

- (a) use its best endeavours to ensure the Facility is operated in a manner that protects the health and safety of users;

- (b) carry out inspections when the Facility is in use to ensure that the door-locking devices are clearly visible, and easily operated without a key or other security device; and
- (c) arrange for and pay for, if necessary, all internal Facility cleaning (including dusting, vacuuming, and cleaning of floors, bathroom, fire place and kitchen facilities);
- (d) carry out the Services in accordance with sound commercial practice and in accordance with any reasonable directions which the Council may give to Castle Hill from time to time;
- (e) ensure the Terms and Conditions with Hirers comply with those issued by the Council (as per **attached** Schedule Two);
- (f) use its best endeavours to promote the interests and welfare of the Council and the community;
- (g) record and provide to Council a full report on Bookings, charges, dates and revenue ;
- (h) provide material content to the Council to support the Council's marketing and promotion of Council owned facilities available for community / corporate / private hire;
- (i) promote Facility usage locally and ensure it is available for public hire and use; and
- (j) assist in any necessary trial evacuations required for the Facility on a six monthly basis or as requested by Council and forward any necessary information/ paperwork to Council.

3.2 Building warrant of fitness (BWOFF) and other compliance requirements: Using its best endeavours, Castle Hill shall:

- (a) prior to each Hirer and Casual User commencing use of the Facility,
 - (i) ensure they have completed and recorded the BWOFF's required compliance checks, or
 - (ii) Castle Hill has completed and recorded the BWOFF's required compliance checks on their behalf.
- (b) ensure that Hirers and Casual Users complete all other compliance requirements; and
- (c) completed and recorded weekly compliance checks and requirements.

3.3 Revenue from the Facility: Castle Hill shall be responsible for collecting all revenue from the Facility and to report on all revenue received in relation to the Facility in its annual report to Council.

3.4 Urgent Repairs / maintenance: In relation to any extraordinary or urgent expense in relation to the Facility, Castle Hill shall liaise directly with the Council Contact. If there is a situation whereby an urgent repair or remediation is required to ensure the Facility is safe to operate as a venue for hire, this will be arranged with the Council Contact and if the Council agrees it is a legitimate safety matter, the Council will arrange for the urgent repair or remediation and the associated cost, as per clause 4.1(e)

3.5 Capital projects and / or expenses: Castle Hill may make submissions to the Council on an annual basis as part of the Council's Annual Plan or Long Term Plan for capital projects or capital costs in relation to the Facility in accordance with clause 4.1(c). The Council reserves the right to make all decisions in relation to such submissions.

- 3.6 For the absolute avoidance of doubt, nothing in this agreement constitutes Castle Hill the Council's agent or permits Castle Hill to commit the Council to any expenditure.

4. THE COUNCIL'S OBLIGATIONS

4.1 The Council shall:

- (a) Actively contribute to the marketing and promotion of the Facility
- (b) Make the decisions, arrange for, and meet the costs of:
 - (i) insurance in accordance with clause 5.1, rates, electricity and, attaining a BWOFF and ensuring ongoing compliance; and
 - (ii) installing LED lights and heater timers.
- (c) Make the decisions, arrange for and meet the costs related to scheduling of building repairs and maintenance in accordance with clause 3.5 and the Council's Annual Plan or Long Term Plan (including chattel replacement).
- (d) Arrange for an annual schedule of repairs and maintenance for the Facility to be communicated to Castle Hill in accordance with the **attached** Schedule Four. For a substantive change to the annual schedule, clause 4.1(c) will apply. For minor variations, Castle Hill may apply to the Council to vary the schedule of repairs and maintenance. Council will consider such a request from Castle Hill and make and communicate a decision.
- (e) Consider any requests from Castle Hill for an urgent repair or remediation to ensure the safety of the Facility as a venue for hire, as per clause 3.4. If the Council agrees to the urgent repair or remediation this will be arranged and paid for by the Council.
- (f) Arrange for specified lawn mowing and general garden maintenance services as per **attached** Schedule Three. For a change to garden maintenance services, there is an annual opportunity to provide feedback on such to Council. Any requests for variations to lawn mowing and/ or general garden maintenance service arrangements will be received as part of the feedback from Castle Hill. Council will make any decisions related to feedback and / or requests, within the parameters of existing contractual arrangements with other parties, and / or as part of its annual / long term planning process.
- (g) During the Term, the Council shall pay Castle Hill's Fee to Castle Hill as follows:
 - (i) 30 days after the execution of this agreement in relation to the first anniversary (counting from the Commencement Date);
 - (ii) on or before any subsequent annual anniversaries.
- (h) Permit Castle Hill to manage the Facility in accordance with the terms of this agreement.
- (i) Allow Castle Hill and all persons authorised by Castle Hill the right to access the Facility at all times in connection with the fulfilment of Castle Hill's obligations.
- (j) Promptly do all things which may reasonably be necessary to enable Castle Hill to fully and effectively manage the Facility and provide the Services in the manner contemplated by this agreement, including (without limitation) executing all notices, papers and documents

reasonably required by Castle Hill to enable Castle Hill to carry out its obligations under this agreement.

- (k) Council will provide and maintain any evacuation scheme if required for the Facility pursuant to the Fire and Emergency New Zealand Act 2017.
- (l) arrange and pay for the Facility Compliance set out in Schedule Five.

5. INSURANCE

5.1 The Council to Insure: The Council:

- (a) shall insure and keep insured the Facility to its full replacement value or, at the sole discretion of the Council, to its full insurable value on an indemnity cover basis against loss, damage or destruction by fire, earthquake, fire consequent upon earthquake, and against such other risks as the Council may deem necessary or desirable; and
- (b) may, at its sole discretion, insure and keep insured chattels at the Facility on a full replacement or indemnity cover basis against loss, damage or destruction by fire, earthquake, fire consequent upon earthquake, and against such other risks as the Council may deem necessary or desirable.

5.2 Castle Hill to notify the Council: For insurance purposes, Castle Hill shall provide the Council with an annual list of all chattels at the Facility including furniture, appliances, and miscellaneous items including artwork and photos. Castle Hill must notify the Council when new chattels are installed at the Facility.

6. HEALTH AND SAFETY

6.1 Castle Hill will use its best endeavours that it, its employees, agents, subcontractors, volunteers and volunteer workers, as well as any other authorised representatives (if any), comply at all times with all relevant legislation and regulations in force including, but not limited to:

- (a) the Health and Safety at Work Act 2015 and any health and safety instructions, known bodies of knowledge or health and safety policies and procedures specified by the Council to Castle Hill from time to time; and
- (b) the Hazardous Substances and New Organisms Act 1996, including in relation to the storage of hazardous substances

6.2 Castle Hill shall use their best endeavours to ensure:

- (a) compliance with the Council's Health and Safety Manual, as provided to Castle Hill from time to time;
- (b) so far as reasonably practicable, that its actions and omissions do not affect the health and safety of any personnel of the Council, Castle Hill, or any third parties in connection with the performance of the Services;

- (c) that all hazards that pose any risk to health and safety are identified and reported to the Council as soon as practicable and that such risks or hazards are eliminated or minimised so far as reasonably practicable;
- (d) that any accident, injury, notifiable event (as defined in the Health and Safety at Work Act 2015) or near-miss occurring while providing the Services is reported to the Council within 24 hours of the event occurring and that, where applicable, the event is also reported to WorkSafe New Zealand in accordance with all statutory requirements;
- (e) that it actively participates in any post event follow up or investigation;
- (f) that it immediately provides to the Council a copy of any notice issued by WorkSafe New Zealand or a health and safety representative;
- (g) that it immediately notifies the Council of any action taken by WorkSafe against it, including any investigation or prosecution;
- (h) that it provides to the Council information on any steps it identifies and considers should be taken to improve health and safety, including by proposing improvements to health and safety policies, plans and procedures;
- (i) that it consults, cooperates with and coordinates activities with the Council, and any other party that has a statutory health and safety obligation, in relation to health and safety matters, including the Council's evacuation scheme so that health and safety obligations are met; and
- i) that it engages directly with the Council in connection with any supervision and reporting requirements in connection with the Council's evacuation scheme.

6.3 Castle Hill shall at any time allow the Council to inspect or audit any aspect of Castle Hill's operations relating to Castle Hill's health and safety obligations under this agreement and health and safety legislation. If failures to comply with any obligations in this clause 6 are identified, these must be rectified immediately to the Council's satisfaction.

6.4 The Council may at its discretion refuse access to the Facility to any person, including Castle Hill, who does not comply with the required standards for health and safety owing to their action or inaction, behaviour, lack of skill or insufficient training or experience.

7. REPORTING AND KEY PERFORMANCE MEASURES

7.1 **Negotiation:** Prior to the Commencement Date, Castle Hill shall meet with the nominated Council Contact to negotiate this agreement.

7.2 **Performance Targets:** During the Term, Castle Hill shall comply with the Performance Targets set out in the **attached** Schedule One and report annually in accordance with clause 7.3, subject to any variations to the Performance Targets as agreed in writing between the parties.

7.3 **Annual Report:** By every 30 June during the Term, the Contractor shall provide to the Council Contact on the template supplied to the Contractor by the Council, an annual report regarding the Contractor's performance against the Performance Targets for the carrying out of the Services for the current Financial Year (the **Annual Report**).

- 7.4 **Annual Performance Review:** By every 30 June during the Term (or such other period agreed in writing between the parties), the Council will conduct a review of Castle Hill's performance of its obligations under this agreement (**Performance Review**).
- 7.5 **Review Meeting:** By every 30 June during the Term the parties will meet and discuss the matters under review (including Castle Hill's compliance with the Performance Targets, and whether the agreement will be renewed for a further term) at a review meeting where each party may make a presentation to the other party on the matters under review. Prior to the review meeting, each party will provide the other party with any information that it considers relevant to the review, including any adverse information which may result in a decision not to continue this agreement in accordance with clause 11.1.
- 7.6 **Agreed Amendments:** As part of a Performance Review, the parties will agree Performance Targets for the forthcoming year of the Term and will consider whether to make any other amendments to the agreement, which revised Performance Targets and amendments (if any) shall be made in accordance with clause 14.7. If the parties cannot agree on such amendments within twenty (20) Business Days of the review meeting under clause 7.5 the Council shall be entitled to terminate this agreement by notice to Castle Hill and clause 11.1 shall apply.

8. RELATIONSHIP OF THE PARTIES

- 8.1 **No partnership or agency:** None of the provisions of this agreement will create or constitute, or be deemed to create or constitute (for any purpose whatsoever):
- (a) a partnership between the Parties (in the legal sense of being partners in a partnership involving profit sharing and joint and several liability); or
 - (b) any Party as an agent of any other Party.
- 8.2 **No authority to bind:** Except as provided in this agreement or by written agreement between one or more Parties, no Party will have any authority or power to bind or commit, act on behalf of, represent, or hold itself out as having authority to act as an agent of, the other Parties in relation to any obligations.
- 8.3 **Indemnity:** Castle Hill shall indemnify the Council against all losses, damages, costs and expenses which arise out of, or can be attributed to, the breach of this agreement by Castle Hill or wilful misconduct of Castle Hill or Castle Hill's employees or agents.

9. CONFIDENTIALITY

- 9.1 **Confidentiality:** Except in the proper performance of this agreement neither party shall at any time (whether during or after the termination of this agreement), either directly or indirectly, use or divulge the Confidential Information to any person or entity except:
- (a) with the other party's written consent; or
 - (b) where such Confidential Information has become public knowledge other than as a result of unauthorised disclosure by either of the parties or their directors, officers, employees, agents, contractors or representatives.

9.2 **Third Party Disclosure:** Each party shall use its best endeavours to ensure that its directors, officers, employees, agents, contractors or representatives who are at any time in possession of Confidential Information do not disclose or allow the disclosure or use of such Confidential Information except as specifically set out above.

9.3 **Information required to be disclosed by law:** Notwithstanding clause 9.1, no party shall be required to keep confidential any Confidential Information that it is required to disclose by statute, including the Local Government Official Information and Meetings Act 1987.

10. COUNCIL AS TERRITORIAL AUTHORITY

10.1 The parties acknowledge that:

- (a) the Council, in its capacity as territorial authority, is required to carry out its statutory consent functions under the Resource Management Act 1991, the Building Acts 1991 and 2004, the Sale of Liquor Act 1989 and the Local Government Act 2002 in accordance with the provisions of those statutes and:
 - (i) the granting by the Council of any consent or approval as territorial authority under those Acts will not of itself be deemed to be a consent or approval by the Council under this agreement; and
 - (ii) the Council is bound by statutory obligations to exercise its powers, including discretionary powers and duties under those Acts, without regard to any relationship it may have with the other parties under this agreement;
- (b) the Council is subject to the requirements of the Local Government Act 2002 in relation to the making of any decision required under this agreement or otherwise and all obligations imposed on the Council by this agreement shall be subject to these requirements; and
- (c) nothing in this agreement shall require the Council to take any steps which are inconsistent with its obligations as a local authority under any applicable statute including but not limited to the Local Government Official Information and Meetings Act 1987, the Resource Management Act 1991 and the Local Government Act 2002.

11. TERMINATION

11.1 **By the Council:** The Council may:

- (a) immediately terminate (or suspend Castle Hill's performance of) this agreement in whole or in part by written notice to Castle Hill if Castle Hill commits a material breach of this agreement and fails to remedy the breach within ten (10) Business Days of written notice of the breach from the Council. Without limiting the definition of material breach, breach of any of clauses 6, 7, 8, and 9 is a material breach for the purposes of this clause 11.1.
- (b) at any time after the Initial Term, in its absolute discretion, terminate this agreement for convenience by giving Castle Hill a 90-days previous notice in writing.

- 11.2 For the avoidance of doubt, if the Council suspends the agreement for an event set out in clause 11.1 above, this will not prejudice the Council's ability to subsequently terminate for that same event.
- 11.3 **Without prejudice:** Termination or expiry of this agreement is without prejudice to either party's rights and remedies in respect of any breach of this agreement by the other party where the breach occurred prior to the termination of this agreement.
- 11.4 **Delivery of Records:** Upon termination Castle Hill shall as soon as possible deliver to the Council all contracts, documents, papers and records pertaining to the Council and shall take such action as the Council may reasonably require in order to ensure an orderly and systematic termination of Castle Hill's duties and activities under this agreement.
- 11.5 **Previous Breach:** Upon termination neither party shall be released from liability to pay any money owing but unpaid up to the date of termination or from liability for any previous breach of this agreement.
- 11.6 **Confidentiality Persists:** The Confidential Information provisions of this agreement shall remain in full force and effect after the termination of this agreement and shall not be, or be deemed to be, waived, merged or extinguished upon such termination.

12. DISPUTE RESOLUTION

- 12.1 **Negotiations:** The Parties agree to meet and negotiate in good faith to resolve any and all disputes relating to or arising out of this agreement.
- 12.2 **Mediation:** If the Parties cannot resolve a dispute by negotiations under clause 12.1 within 20 Business Days, any Party may by written notice to the others require that the dispute be dealt with by mediation (a **Mediation Notice**) under the following terms:
- (a) the mediation shall be conducted in terms of the LEADR New Zealand Incorporated (**LEADR**) standard mediation agreement; and
 - (b) the mediation shall be conducted by a mediator and at a fee agreed by the Parties. Failing agreement between the Parties within 10 Business Days of the giving of the Mediation Notice, the mediator will be selected and his/ her fee determined by the chairperson for the time being of LEADR (or his or her nominee).
- 12.3 **Arbitration:** If a binding agreement has not been reached as a result of the mediation process set out in clause 12.2, the Dispute shall be referred to a single arbitrator in the case the Parties can agree upon one within seven (7) days of the completion of the foregoing mediation. Failing that agreement, the arbitrator shall be a person appointed on application of any party by the then president of the Arbitrators' and Mediators' Institute of New Zealand Incorporated (or his or her nominee). Such arbitration shall be completed in accordance with and subject to the provisions of the Arbitration Act 1996. The decision of the arbitrator (including any decision as to which party shall bear the costs of the arbitration) shall be final and binding on the Parties.
- 12.4 **Interlocutory relief:** Nothing in this clause 12 will prevent a Party from seeking interlocutory relief.

13. NOTICES

13.1 **Written notice:** All notices and other communications to be given under this agreement must be in writing addressed to the Party to whom it is to be sent at the physical address or email address from time to time designated by that Party in writing to the other Party.

13.2 **Delivery:** Any notice given under this agreement shall be deemed to have been received:

- (a) at the time of delivery, if delivered by hand;
- (b) 3 Business Days after the date of mailing, if sent by ordinary post within New Zealand;
- (c) 10 Business Days after the date of mailing, if posted or delivered overseas; or
- (d) at the time at which the sender's information system indicates that the email was successfully sent, if sent by email,

provided that any communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

14. GENERAL PROVISIONS

14.1 **Entire agreement:** This agreement constitutes the entire agreement and understanding of the Parties relating to the matters dealt with in this agreement and supersedes any previous agreement (whether oral or written) between the Parties in relation to such matters.

14.2 **Warranties:** The Parties each warrant and represent that:

- (a) they have full power and authority to enter into this agreement;
- (b) that all authorisations and approvals that are necessary or required in connection with the execution of this agreement, and the assumption of rights and obligations under it, have been obtained or effected; and
- (c) the execution, delivery and performance of this agreement does not constitute a breach of any law or obligation and will not cause or result in any default or breach under any other agreement or arrangement by which it is bound and which would prevent it from entering into or performing its obligations under this agreement.

14.3 **Costs:** Each of the Parties shall be responsible for their own respective legal and other costs in relation to the execution of this agreement.

14.4 **Assignment:** Subject to the terms of this agreement, none of the Parties will assign or transfer or purport to assign or transfer any of their rights or obligations under this agreement without the prior written consent of the other Parties.

14.5 **Successors and permitted assigns:** This agreement will endure for the benefit of, and be binding on, the respective successors in title and permitted assigns of each Party.

14.6 **No waiver:** No Party will be deemed to have waived any right under this agreement unless the waiver is in writing and signed by that Party. A failure to exercise or delay in exercising any right

under this agreement will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this agreement.

- 14.7 **Amendments:** No amendment to this agreement shall be effective unless it is in writing and signed by the Parties.
- 14.8 **Severance:** If any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect, that provision shall be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, deemed severed from this agreement. Such change shall not affect the legality, validity and enforceability of the other provisions of this agreement.
- 14.9 **Rights and remedies:** Unless otherwise expressly provided in this agreement, the rights and remedies set forth in this agreement are in addition to, and not in limitation of, any other rights and remedies under or relating to this agreement (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.
- 14.10 **Specific performance:** If any Party should fail or refuse to comply with any of the terms or provisions of this agreement, the other Parties will have, in addition to any other of their respective rights and remedies, the right to have any one or more of those terms or provisions specifically enforced.
- 14.11 **Privity:** Except as expressly provided otherwise in this agreement, a person who is not a party shall not have any rights under or in connection with this agreement by virtue of the Contract and Commercial Law Act 2017.
- 14.12 **Governing law and jurisdiction:** This agreement will be governed by, and construed in accordance with, the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this agreement.
- 14.13 **Counterparts:** This agreement may be executed and delivered in any number of counterparts (including by way of electronic transmission), all of which when taken together shall constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the date of this agreement.

EXECUTION

SIGNED for and on behalf of)
CASTLE HILL COMMUNITY)
ASSOCIATION INCORPORATED by)



Signature

Ray Goldring

Chairperson

[Print Name])

Position

SIGNED for and on behalf of)



SELWYN DISTRICT COUNCIL by)

Signature

Catherine Parker

Head of Venues and Events

Position

SCHEDULE ONE

PERFORMANCE TARGETS

It is the responsibility of Castle Hill to meet all the requirements as stated in the agreement, including the Performance Targets. Monitoring by the Council will take place in a number of ways; through inspection, reports, records and customer feedback obtained formally through customer satisfaction and user surveys and through unsolicited customer comments made to the Council.

PERFORMANCE TARGETS

Performance Target	Measure	Target	Primary responsibility
1. Revenue	Council monitoring and Castle Hill's Annual Report to be issued to the Council in accordance with clause 7.3.	The annual revenue and breakdown of Bookings must be reported annually to Council. Castle Hill is <u>not</u> required to charge in accordance with Council fees and charges but must provide Council with a full report on Bookings, charges, dates and revenue in Castle Hill's Annual Report.	Castle Hill
2. Customer satisfaction	Council monitoring and the Annual Customer Survey	Satisfaction from Annual Customer Survey related to the Facility is not less than 90% satisfied / very satisfied (in line with performance measure for all other community centres / halls).	Council
3. Hire	Council monitoring and Castle Hill's annual report to be issued to the Council in accordance with clause 7.3.	100% compliance with Council confirmed Terms and Conditions for Hirers - Schedule Two.	Castle Hill
4. Risk Management	Council monitoring and Castle Hill's annual report to be issued to the Council in accordance with clause 7.3.	100% compliance with the health and safety provisions specified in clause 6.	Castle Hill

SCHEDULE TWO

TERMS AND CONDITIONS

Standard Terms and Conditions for Council Owned Un-Staffed Community Centres and Halls (generally Committee managed)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: Unless the context otherwise requires:

- (a) **Booking** means the booking made by the Hirer and agreed to by the Council or the Castle Hill for the Hirer to use the Facility for the Event on these Terms and Conditions;
- (b) **Castle Hill** means the Castle Hill Community Association Incorporated (686884);
- (c) **Council** means the Selwyn District Council or its successor in title or any body incorporated by statute to own the Facility and, where the context permits, includes the employees, agents, contractors and any other authorised representatives of the Council;
- (d) **Event** means the event/function specified in the Booking;
- (e) **Facility** means the land and buildings comprising the facility known as the Castle Hill Community Centre located at Castle Hill Domain, Castle Hill Drive, Castle Hill, Canterbury 7580; and
- (f) **Hirer** means the person or organisation making the Booking.

2. STAFF

- 2.1 There will be no Council staff on site for this Facility Booking.

3. USE OF FACILITY

- 3.1 The Hirer is required to only use the Facility for the purpose they have described on the Booking form. The Hirer is responsible for reviewing and familiarising themselves with the fire and emergency instructions and the Facility's terms of use. If the fire and emergency instructions and the Facility's terms of use are not displayed at the Facility, the Hirer shall request a copy from Castle Hill or the Council.

4. HOURS OF OPERATION

- 4.1 The Facility is open 7 days per week, times subject to use and availability.
- 4.2 The Hirer may not enter the Facility until the time booked, and all Events must end at the completion of the booked period (the Booking period includes time required to set up, pack down, and clean the Facility). Any use of additional time will be charged at the normal hourly rate. Additional time shall not interfere with other bookings and users.
- 4.3 All Events must finish by 12 am with the facility cleaned and car park cleared by 1 am.
- 4.4 No overnight stays are permitted except in exceptional circumstances. For further information please refer to the Accommodation Policy.

5. OCCUPANCY NUMBERS

- 5.1 The Hirer will ensure that the occupancy numbers do not exceed safety limits. The Hirer must check the relevant safety limit at the time the Booking is confirmed.

6. FINANCIAL RESPONSIBILITY

- 6.1 The Hirer will be personally responsible for the cost of Booking and any additional charges payable in accordance with these Terms and Conditions.
- 6.2 Additional charges may include commercial cleaning and/or charging for a security guard to provide additional security charged for the last 3 hours of the Event. Council reserves the right to on-charge price increases from third party suppliers. For example, if the commercial cleaning company or the security company increases their hourly fees the increase will be charged to the Hirer.
- 6.3 Payment of the Booking fee is required in advance of the Booking.
- 6.4 The Hirer is responsible for all costs incurred in connection with the collection of any unpaid costs or charges, including debt collector's fees, solicitor costs or any additional charges.

7. BOND

- 7.1 A bond may be charged in addition to room hire (**Bond**).
- 7.2 The Bond will be used to cover any damages, loss of equipment or additional commercial cleaning that may be required as a result of the Event.
- 7.3 Subject to clause 7.2, the balance of the Bond (if any) will be refunded to the Hirer's nominated bank account after the Event and is conditional upon these Terms and Conditions being met.
- 7.4 Additional charges may apply if costs exceed the Bond.

8. SMOKEFREE ENVIRONMENTS AND REGULATED PRODUCTS ACT 1990

- 8.1 All Council buildings are smoke free. Smoking inside the facility is not permitted.
- 8.2 The Hirer must take all practical steps to ensure any smoking only occurs outside of the premises and away from any entrance/exit ways.

9. ALCOHOL

- 9.1 For Events where alcohol is sold, the Hirer shall be responsible for ensuring compliance with the provisions of the Sale and Supply of Alcohol Act 2012 by engaging a licensed caterer or by obtaining a special licence. Applications must be applied for within 20 working days of the date of the Event and processing can take at least 20 working days from the date of application. Such applications can be applied for through Food and Health (PH: 03 365 1667). Proof of the required licence is required before the Event can commence.
- 9.2 A special licence or the engagement of a licensed caterer is also required for the following Events:

- (a) fundraisers or Events where tickets are purchased, and a complimentary glass of bubbles or bottle of beer is served during the fundraiser or Event;
 - (b) Castle Hill Events where alcohol is served free, but only subscription-paying members are allowed to attend;
 - (c) Events where attendees reimburse the organisation or group for the cost of any alcohol consumed;
 - (d) Events where attendees are expected or encouraged in any way to donate to a cause and alcohol is served free at the Event; and
 - (e) Events where alcohol is sold – even if no profits are made from the sale.
- 9.3 There are significant penalties for breach of the Sale and Supply of Alcohol Act 2012. In particular it is an offence to sell alcohol without a licence. There is a very wide definition of what amounts to selling alcohol in the Sale and Supply of Alcohol Act 2012. It is a specific term of these Terms and Conditions that no alcohol is sold in the premises without an alcohol licence in place.
- 9.4 'Bring your own (BYO) alcohol' to Council owned premises is not permitted. Events where organisers supply and control the consumption of alcohol is permitted, provided that the primary purpose of the Event is not the consumption of alcohol. Therefore, organisers must have someone on site and present for the duration of the Booking that is not drinking alcohol, and is working as, or under the guidance of a:
- (a) special licence; or
 - (b) licenced caterer; or
 - (c) certified manager; or
 - (d) suitably trained and responsible person.
- 9.5 Supplying and controlling the consumption of alcohol requires the Hirer to:
- (a) not supply alcohol to minors;
 - (b) closely monitor intoxication levels;
 - (c) not supply alcohol to intoxicated persons;
 - (d) display signage in accordance with the Act, which includes:
 - (i) 'No ID, No Service, No Exceptions';
 - (ii) 'Alcohol will not be served to minors';
 - (iii) An option of safe alternate transport options available (e.g. 'Can we call you a taxi');
 - (iv) 'Free Water Here'; and
 - (v) 'Alcohol will not be served to anyone who is intoxicated'.
 - (e) provide and promote a range of food options other than potato chips and peanuts (i.e. savouries and finger-type foods);

- (f) provision of water at the bar and on the tables; and
- (g) provide and promote low alcohol and non-alcoholic drinks.

9.6 Council reserves the right to require security services at any Event involving alcohol at the expense of the Hirer.

10. FIRE SAFETY

10.1 One representative of the Booking group must be nominated as the Fire Warden. This person must ensure:

- (a) that all means of escape are clear at all times; and
- (b) they are familiar with the fire alarm system and safe evacuation of the venue in the event of a fire or alarm.

10.2 In case of fire, immediately evacuate all guests to the designated area and call 111. The Hirer will be responsible for the cost (if any) of charges incurred as a result of a fire alarm.

10.3 **Note in the event of a false alarm being activated the Hirer may be required to pay the call out fee of \$1000 plus GST.**

11. TABLES AND SEATING

11.1 The Hirer is responsible for setting up tables and seating unless prior arrangements have been made with staff.

11.2 All tables and chairs are to be packed away by the Hirer at the end of the Booking.

12. SUPERVISION OF CHILDREN

12.1 Children must be supervised at all times.

13. USE OF APPLIANCES

13.1 The power system will allow for normal usage of appliances.

13.2 Overloading with multiple appliances may cause disruption of power supply and possible damage. Any damage incurred will be on charged to the Hirer.

13.3 The Hirer must ensure all appliances have been tag tested.

14. NOISE

14.1 Noise must be kept to a moderate level at all times.

14.2 The District Plan places restrictions on the levels of noise that are acceptable during the day and night. At night a level of 35dBA L10 applies between 8pm and 7.30am.

- 14.3 Hirers must respond to any requests by Council staff or police to reduce noise levels if requested. Failure to comply with a request will result in the Hirer being directed to vacate the Facility and may result in the Hirer losing their Bond.

15. CANCELLATION OF BOOKING

- 15.1 If the Hirer cancels the Booking the Bond will be retained by Castle Hill unless otherwise agreed in writing.

- 15.2 Castle Hill reserves the right to charge a cancellation fee of:

- (a) 100% if the Booking is cancelled within 24 hours of start time; or
- (b) 25% if the Booking is cancelled within seven (7) days of start time (but excluding the 24 hours immediately prior to start time).

- 15.3 Castle Hill may cancel the Booking if:

- (a) it reasonably considers that the purpose for which the Facility is hired is inappropriate or that the management or control of the Event/and or behaviour of the attendees is such that it could lead to damage to the Facility; or
- (b) the Hirer has breached any provision of these Terms and Conditions including but not limited to any failure to pay the costs of Booking or any other charges invoiced to the Hirer in accordance with these Terms and Conditions.

16. RISK MANAGEMENT

- 16.1 Council is responsible for providing a safe and operational Facility for users, however users must report any incidents, accidents or hazards as soon as feasible to the Council Health and Safety Advisor: health.safety.wellbeing@selwyn.govt.nz.

- 16.2 It is the responsibility of the Hirer to:

- (a) ensure that appropriate risk management issues have been considered;
- (b) properly manage and conduct the use of the facilities and the performance and observance of the Hirer's obligations under these Terms and Conditions;
- (c) take all reasonably practical steps to ensure that all persons using the Facility and equipment for which the Hirer is responsible behave in an appropriate manner and to ensure the safety of persons and property and preservation of order in and around the Facility;
- (d) assure the safety of and be responsible for all activities, demonstrations, displays, promotions, equipment and conduct of the Hirer's staff and personnel; and
- (e) provide a first aid kit.

17. LOSS OR DAMAGE

- 17.1 The Hirer is responsible for the costs of rectifying any damage sustained to the Facility or its contents that occurs while using this Facility, including any damage caused by persons attending the Event.
- 17.2 In the event of damage occurring, the Hirer must notify the key holder/ Castle Hill within 24 hours of the damage occurring.
- 17.3 Where damage could obstruct other users and leaves the Facility in a dangerous state, Council reserves the right to hire contractors to repair damage and claim associated costs from the Hirer.
- 17.4 The Hirer is responsible for any items found to be missing from the Facility.
- 17.5 Council accepts no responsibility for loss or damage to any property of the Hirer or any invited guest which may be brought to the Facility, whether within or outside the premises, and does not provide insurance cover for such property, including property left secured in any storage areas that may be provided.

18. LIABILITY

- 18.1 Council is absolved from any liability that the Hirer is legally liable for. The user indemnifies the Council from all actions, suits, proceedings, claims, costs and demands which may be made or brought against the Council including legal fees and costs incurred by reason of the permission granted to the Hirer and including, neglect or default of the Hirer's agents, employees or sub-contractors for which the Hirer is legally liable.

19. BREACH OF CONDITIONS

- 19.1 Any breach of these Terms and Conditions may result in:
- (a) closure of the Facility;
 - (b) refusal to accept further bookings; and/or
 - (c) extra charges being incurred.
- 19.2 When a Hirer is asked to vacate the Facility as a result of breach of these Terms and Conditions, there will be no refund of Booking fees.

20. CLEANING AND RUBBISH

- 20.1 Each Facility provides the cleaning products and equipment required.
- 20.2 Each Facility has a schedule of the required post-hire cleaning, written on a laminated card and displayed in a prominent position for the Hirer to follow. There are variations between facilities as the rooms and booking spaces are not all the same. Some require professional cleaning only, e.g., stadia flooring. The cleaning is to be completed within the period booked and in general:
- (a) the Hirer must leave the Facility in a clean and tidy state;

- (b) floors must be swept/mopped/vacuumed as necessary before leaving;
- (c) toilets are to be left clean and tidy unless prior arrangement has been made to pay for a commercial clean;
- (d) the Hirer must ensure that the toilets, sinks and drains will be used for their designed purposes only and no substance or matter will be deposited in them which could damage or block them;
- (e) all rubbish is to be taken to the Castle Hill Rubbish and Recycling centre located across the road from the Facility;
- (f) the Hirer must remove all extra rubbish from the Facility after the Booking – this includes the removal of rubbish from the car park area;
- (g) the Hirer will be liable for costs associated with a commercial cleaner if extra cleaning is required; and
- (h) if the Hirer has hired the Facility for an Event that involves food and alcohol, Castle Hill reserves the right to have the Facility and floor cleaned by a commercial cleaner at the Hirer's expense.

21. GENERAL

- 21.1 The Hirer must comply with all applicable regulations, bylaws, consents, these Terms and Conditions and Council policies and procedures for use, occupation, safety and security of the Facility.
- 21.2 The Hirer cannot transfer any of their rights or obligations under these Terms and Conditions.
- 21.3 These Terms and Conditions apply to the Hirer, their employees, agents, contractors, guests and invitees and the Hirer is responsible for ensuring compliance by such persons with these Terms and Conditions.

22. CHECKLIST

- 22.1 The Hirer must complete the checklist **attached** to these Terms and Conditions and return the checklist via email to Castle Hill and ensure the Facility key is returned to the lock box. If this is not returned or items are not checked-off the Hirer will be issued a warning letter. The Hirer will be refused any future booking in the event of a Hirer receiving three letters of non-compliance.
- 22.2 If there are any items that require repair the Hirer must inform Castle Hill immediately.

23. HIRE APPLICATION

- 23.1 This application must be signed by a person 21 years of age and over and returned to Castle Hill.

The Fire Warden must be nominated on this form:

FIRE WARDEN:.....

The Responsible Host must be nominated on this form:

RESPONSIBLE HOST:.....

As signatory of this application, by signing the following you agree to comply with these Terms and Conditions and will ensure that all users of the Facility comply with the Terms and Conditions during your Booking. Your Booking will not be confirmed until this application has been signed and returned.

Signed on behalf of the Hirer

Signed Name

Date

POST BOOKING FINAL CHECKLIST

- all rubbish has been taken to the Castle Hill Rubbish and Recycling centre;
- all equipment put away;
- all exit doors clear;
- all doors securely closed;
- all lights and heaters off;
- cleaning complies with the schedule for the relevant facility;
- all kitchen areas are left clean including ovens and benchtops;
- all toilet areas and basins are clean;
- all floors swept, vacuumed and mopped; and
- the facility has been left in a tidy and clean condition.

Checklist completed by:

.....
Hirer

.....
Date

SCHEDULE THREE

GENERAL GARDEN MAINTENANCE SERVICES

(to be arranged and paid for by Council in accordance with clause 4.1(f))

Around the village green area and retrospective reserve areas adjustment to the facility will be maintained by the Council Reserve Team.

SCHEDULE FOUR

SCHEDULED AND BUDGETED FACILITY REPAIRS AND MAINTENANCE SERVICES

(to be arranged and paid for by Council in accordance with clause 4.1(c))

CASTLE HILL COMMUNITY CENTRE									
Account	Detail	LTP Budget 2023/2024	LTP Budget 2024/2025	LTP Budget 2025/2026	LTP Budget 2026/2027	LTP Budget 2027/2028	LTP Budget 2028/2029	LTP Budget 2029/2030	LTP Budget 2030/2031
Expenditure									
2110 450	Electricity	\$ 2,665.00	\$ 1,726.00	\$ 1,768.00	\$ 1,810.00	\$ 1,856.00	\$ 1,904.00	\$ 1,953.00	\$ 2,000.00
2110 540	Rates	\$ 918.00	\$ 835.00	\$ 855.00	\$ 876.00	\$ 898.00	\$ 921.00	\$ 945.00	\$ 968.00
2110 541	Insurance	\$ 2,217.00	\$ 163.00	\$ 167.00	\$ 171.00	\$ 175.00	\$ 180.00	\$ 184.00	\$ 189.00
2110 586	Maintenance-Buildings	\$ 2,632.00	\$ 2,698.00	\$ 2,762.00	\$ 2,829.00	\$ 2,899.00	\$ 2,975.00	\$ 3,052.00	\$ 3,125.00
2110 592	Car Park maintenance	\$ 526.00	\$ 540.00	\$ 552.00	\$ 7,467.00	\$ 580.00	\$ 595.00	\$ 610.00	\$ 625.00
	Total Expenditure	\$ 8,958.00	\$ 5,962.00	\$ 6,104.00	\$ 13,153.00	\$ 6,408.00	\$ 6,575.00	\$ 6,744.00	\$ 6,907.00
Projects									
2110 008	Building cyclical mtce	\$ -	\$ -	\$ -	\$ 1,810.00	\$ -	\$ 29,044.00	\$ -	\$ 375.00
	Total Projects	\$ -	\$ -	\$ -	\$ 1,810.00	\$ -	\$ 29,044.00	\$ -	\$ 375.00
Capital Projects									
2110 900 02	Extend Building	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2110 900 04	Replace Heating	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,751.00
2110 900 06	Building Fitout Renewal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 16,063.00	\$ -	\$ 5,000.00
2110 900 07	Building Envelope Renewal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,180.00	\$ -	\$ -
	Total Capital Projects	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 37,243.00	\$ -	\$ 12,751.00

SCHEDULE FIVE

REQUIRED FACILITY COMPLIANCE SCHEDULE

(to be arranged and paid for by Council in accordance with clause 4.1(o))

The extension for Castle Hill will trigger a Compliance Schedule once the building is completed. Council will communicate this with Castle Hill post the extension.

The climbing wall will be included in the compliance schedule post the extension.

It is noted that as of June 2023 there were 24 climbing wall Supervisors all of whom have been assessed and qualified either via a nationally accepted qualification authority or locally by a qualified assessor using the national assessment standards (Abseil Assessor). A logbook is maintained to capture the use of the climbing wall and all equipment inspections are carried out by supervisors prior to each climbing session.

Both Castle Hill and the Council have copies of the following documents.

1. Assessment template
2. Climbing wall checklist
3. Climbing wall emergency procedures
4. Climbing wall job description
5. Climbing wall safety plan
6. Incident report form
7. New Hazard report form.

It is the responsibility of Castle Hill to maintain the documents listed above and update Council with any changes, revisions, incidents, and hazard identifications.