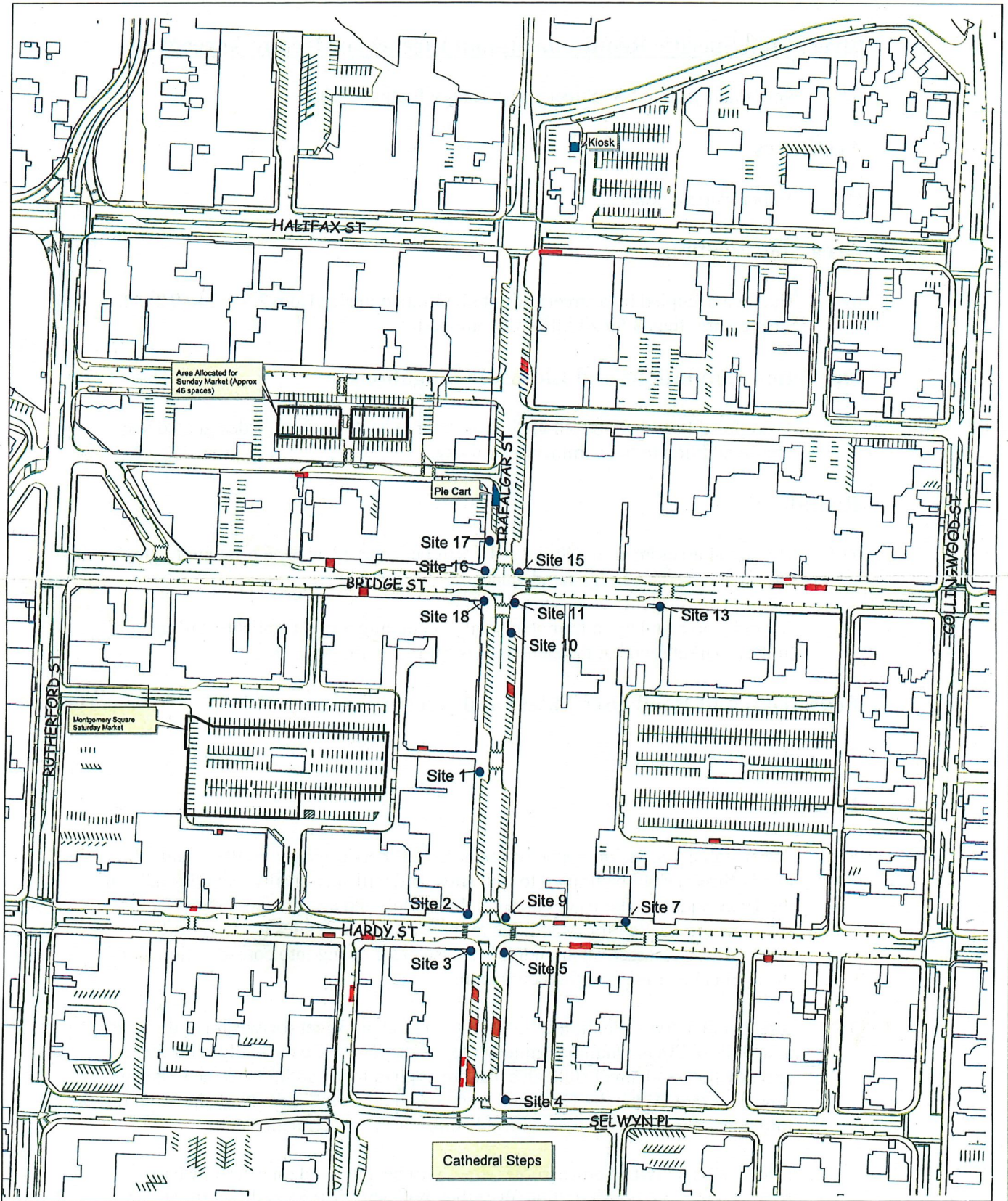


Street Occupation Schedule



KEY

- Street Stalls
- Outdoor Dining
- Other



APPENDIX TWO

Street Stall Specific Requirements and Licence to Occupy Agreement

67 Note that by definition Street Stalls occupy footpaths only.

Aesthetics

68 As per general policies.

Area Specifications

69 The area occupied by a streetstall is to be limited in size from 2.5 m² to 5.3 m². Sites greater than 3.5m² will be discouraged.

Operation Limitations and Licensee Obligations

70 A single table and up to four chairs will be allowable within the designated site area in addition to the commercial activity.

Rental

71 The rental assessment for Street stalls will be "market" rent on a square metre rate as assessed by a registered valuer.

72 A single table and up to four chairs only occupying a street stall site will incur a further market rental at the same rate as set in Clause 70.

Pedestrian and Road User Safety and Access

73 As per general policies.

Location

74 Street stall activities on upper Trafalgar Street (between Selwyn Place and Hardy Street) shall be limited to four sites, and will specifically exclude stalls on the 1903 Square. There are currently three sites, and any potential street stall sites that are applied for in addition to the existing three sites (see Appendix One) will be assessed on an individual case basis taking into consideration all of the applicable criteria and specifications.

75 Street stall activities on middle and lower Trafalgar Street (between Hardy Street and Halifax Street) shall be limited to ten sites. There are currently nine sites, and any potential street stall sites that are applied for in addition to the existing nine sites (see Appendix One) will be assessed on an individual case basis taking into consideration all of the applicable criteria and specifications.

76 Street stalls activities on any other street will be approved on a case by case basis, taking into consideration all of the applicable criteria and specifications.

DATED _____ 20

BETWEEN
NELSON CITY COUNCIL
AND

**STREET STALL LICENCE TO
OCCUPY**

APPENDIX TWO

A DEED made this **First** day of **July** 20

BETWEEN THE NELSON CITY COUNCIL (hereinafter called "the Council") of the one part

A N D «Title» «FirstName» «LastName» trading as «Trading Name» (hereinafter called "the Licensee") of the other part

WHEREAS the Council has agreed to grant a permit to the Licensee to operate a stall in Nelson on the following terms and conditions:

NOW THEREFORE the Council and the Licensee mutually declare and agree as follows:

1. Interpretation

In this Licence:

- (a) Where obligations bind more than one person those obligations shall bind those persons jointly and severally;
- (b) Words importing the singular number include the plural, words importing the masculine gender shall include the feminine and neuter, and vice versa;
- (c) A "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of state, government department or municipal authority in each case whether or not having separate legal personality;
- (d) Any schedules to this Licence shall have the same effect as if set out in the body of this Licence;
- (e) Clause headings are inserted for reference only and shall not affect the interpretation of this Licence;
- (f) Reference to any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and;

APPENDIX TWO

- (i) references to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to; and
- (ii) expressions defined or explained in any statute shall bear those meanings in this Licence; and
- (g) “Persons under the Licensee’s control” includes all employees, agents, contractors, suppliers, customers and other invitees of the Licensee.
- (h) “Licensed area” means the land specified in the Schedule to this licence.
- (i) “Divisional Manager of Asset Management” means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.
- (j) “Divisional Manager of Service Delivery” means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.

2. General

- (a) Site

The Licensee shall generally have the right to occupy the portion of the public footpath identified as Site «Site_No» in «Site_Address» Street as shown generally in Schedule 2 attached hereto, such portion to be limited to «Square_Metres» square metres. The Council may vary the position of the site during the term of the permit for the purpose of Central Business District planning or any other public requirement of the Council and offer an alternative suitable site for occupation by the Licensee, except that any site must be on the footpath adjacent to the kerb only except with the permission of the Nelson City Council.
- (b) Description of Licence

The Licensee shall have the right to sell goods as detailed in Schedule 3 attached hereto from a stall approved by the Council subject to such conditions as are imposed by the Council and set out in this document.

APPENDIX TWO

(c) Days of Operation

The Licensee may operate daily subject however to the provisions of any statute or regulation and subject to the right of the Council on giving seven days' notice to require the site for all or part of a day for Council purposes.

(d) Hours of Operation

(i) The site may be occupied at such reasonable times each day as may be warranted by public patronage of the stall.

(ii) The stall is to be removed from the site each day not later than «Ending Hour» pm, except where approved by the Council for a stay of longer duration.

(e) Permitted Use

The Licensee shall use the site for the operation of a stall and the purpose specified in Schedule 3 of this licence. No other use of the site is permitted as of right.

3. **Obligations of the Licensee**

The Licensee shall:

(a) Install, operate and maintain at their own cost such stall and equipment as is necessary to properly operate the rights hereby granted and such stall and equipment shall at all times be in conformity with the Council's requirements. Where cooking is involved, such stall and equipment will include a fixed drip tray.

(b) Any stained or damaged paving must be cleaned or replaced at no cost to the Council.

(c) Where the stall and equipment are established on the kerbside of the footpath at

APPENDIX TWO

an intersection, the licensee shall ensure that there are no walls, partitions, signs, other fixtures or goods in the airspace between 1.2m and 1.8m above the footpath.

- (d) The licensee shall not display or place any signs, placards, posters or advertising material within the licensed area apart from those fixed permanently to furniture and promoting the specific activity.
- (e) The Licensee shall not make any structural or physical alterations to the site without the approval of Council.
- (f) No storage or display of goods or personal belongings is permitted outside the licensed area.

Litter and Rubbish

- (g) The Licensee shall remove from a ten-meter radius of the site each day during and at the end of the occupation of the site, all litter and rubbish, and shall dispose of such litter and rubbish. Council's street litter bins must not be used for this purpose. Where the Licensee is providing food, litter bins are to be located in the vicinity, which shall be removed each day by the Licensee. Excessive smoke, noise, fumes, objectionable smells and dust should not emanate from the site.

Licence Operation

- (h) The Licensee shall abide with the licence conditions and shall keep the site and stall in a safe, clean, well presented and inviting condition and at all times to the satisfaction of the Council. No stall is to be left unattended at any time, except in a case of emergency.
- (i) The Licensee, and any employee or associate of the Licensee, shall at all times, on the site, be presented in a tidy manner, and shall be competent and qualified to supervise the operation of the Licence and the care of the site. The Licensee

APPENDIX TWO

shall forthwith remove from the site any employee or associate whose conduct the Council feels is prejudicial to the efficient operation of the business or the good name or reputation attaching to the City.

- (j) Failure to comply with Council's policies, regulatory requirements and Health and Safety Policy, including payment of fee for food premises licence, traffic infringement etc will result in immediate cancellation of this licence with no compensation.

Costs Borne by Licensee

- (k) In addition to any fees and payments otherwise provided for herein, the Licensee shall bear at their own expense all costs of and incidental to the preparation and stamping of the Licence and shall pay for and obtain all permits and licences required by authority or law in connection with the operation of the Licence.

4. Term of the Licence

The term of the Licence shall be for a term of three years commencing on the 1st day of July 20 and finishing on the 30th day of June 20

There is no right of renewal. The licensee may apply for a renewal one month prior to the expiry of this licence.

5. Site Fees

- (a) The site fees payable by the Licensee to the Council shall be «Site_Charge» per month, plus GST, and shall be payable monthly in advance by direct debit on the first day of each and every month. The first payment shall be for two months being due on the commencement date set out in Clause 3.
- (b) The site fees shall be accepted by the Council as including the permit fee to occupy the site described in Clause 1(a) hereof, in terms of Nelson City Bylaw No. 190 Clause 27(a). Site fees will reviewed on a three yearly basis by the Divisional Manager Asset Management.

APPENDIX TWO

6. Default

In case of the death or bankruptcy or insolvency of the Licensee or in the case of their entering into an arrangement or composition with their creditors or being a company suffer any receiver or liquidator to be appointed or in the case they shall endeavour to or shall assign, sublet or part with the possession of the site and stall or any part of them or the Licence hereby granted or in the event of the Licensee doing or permitting to be done on the said site and stall any act or thing which shall cause or be the means of causing any Licence duly required, to be imperilled, endorsed or revoked, then in all, either or any of the said cases, it shall be lawful for the Council to re-enter on the said site and stall forthwith or to revoke the said Licence and thereupon this Licence shall cease and determine, except as to the remedies of either party in respect of any previous breach thereof.

7. Cancellation or Termination of Licence

This Licence shall be cancelled by the Council if the Licensee fails to comply with any of the conditions hereof or fails to maintain payment of the rent in the manner described herein. Any default in the payment of the agreed rent for a period longer than 14 days after the due date will result in cancellation of the Licence. Should the Council be of the opinion that the service being rendered by the Licensee is unsatisfactory in any respect, or that the management, control, efficiency, or conduct of the Licensee is unsatisfactory in any respect, and after having given the Licensee seven days' notice in writing requiring the Licensee within such time to remedy such default, and such default not having been remedied, the Council may forthwith terminate this Licence. The licensee may cancel this licence upon giving one month written notice to Council to do so.

8. No Assignment

The Licensee shall not transfer or sublet or share the Licence herein granted or any part thereof, except with the prior written approval of the Chief Executive. Subletting or sharing will not allow more than one stall on any one site at any one time.

9. Inspection of Site and Stall

The Licensee shall permit authorised officers of the Council at all reasonable times to

APPENDIX TWO

inspect the site and stall used by the Licensee for the purpose of examining the condition of such site and stall as to maintenance, general condition, conduct and management. A site plan shall be available at all times for inspection.

10. Council Property

Council property such as bollards, chains, seats, trees, plant protector frames and the like are not to be used by the Licensee for any purpose, including business and personal uses.

11. Use of Site by the Council

If Council decides that the licence will not be renewed, it will endeavour to give three months prior warning to the licensee. The council may vary the position of the site either temporarily or permanently, or offer an alternative site, for the purposes of Public Works, street or footpath or services repair or realignment, or a relevant planning requirement.

12. Goods and Services Tax

The Licensee will pay to the Council all Goods and Services Tax in respect of all goods and services provided by the Council or its agents pursuant to the terms of this Licence and without limiting the generality thereof shall pay all Goods and Services Tax assessable on the site fees payable from time to time in the same manner as provided herein for the payment of the site fees on which tax is assessed.

13. Insurance

The Licensee shall take out a public liability insurance cover of a minimum of \$500,000 and shall indemnify the Council against any claims, demands, suits or actions made upon the Council arising out of the operation by the Licensee of the stall, and shall forward evidence to the Council that this has been complied with.

14. Holding Over

If the Licensee shall hold over and remain in occupation after the expiration of the term of this Licence or any renewal thereof without any further written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of the Licence but only to create a Licence to occupy from month to month which may be terminated at any

time by the Council.

15. Disputes

In the event of any dispute arising, the parties shall, without prejudice to any other right, immediately explore in good faith whether the dispute can be resolved by agreement between them, using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal, or any other alternative dispute resolution technique, and shall only refer the dispute to arbitration pursuant to the Arbitration Act, 1996 if the informal dispute resolution process does not resolve the dispute.

16. Deed Constitutes a Permit

The terms and provisions of this Deed constitute the terms and provisions of a permit pursuant to Part C of Nelson City Bylaw No. 190.

SIGNED by)

)

In the presence of:

..... Name

..... Address

..... Occupation

SIGNED on behalf of)

NELSON CITY COUNCIL)

In the presence of:)

.....
Divisional Manager, Asset Management

..... Name

..... Address

..... Occupation

SCHEDULE 3

PRODUCTS SOLD

Products sold from the stall limited to «**Products_Sold**»

CONDITIONS OF OPERATION

Included in agreement.



APPENDIX THREE

Outdoor Dining on Footpath and Carpark Specific Requirements and Licence to Occupy Agreements

77 Note that by definition Outdoor Dining may occupy footpaths and/or carparks.

Aesthetics

78 The licensee may be required at his/her own expense to install a standard stormwater sump adjacent to the licensed area and connect to an approved outlet.

Area Specifications

79 The maximum extent considered for outdoor dining is the total length of footpath and/or carparks in front of the existing business.

Operation Limitations and Licensee Obligations

80 As per general policies.

Rental

81 The rental assessment for outdoor dining on **footpath** will be "market" rent on a square metre rate as assessed by an independent registered valuer.

82 Outdoor dining on **carparks** will be assessed separately as a fixed rate per carpark for Trafalgar Street and another fixed rate for all other streets. The base annual rental at May 2000 is \$2000 plus GST per carpark in Trafalgar Street and \$1500 plus GST per carpark in all other streets.

83 The licensee shall pay a bond of \$500 per carpark occupied. Such sum will be held by the council and may be used by the council in or towards remedying any breach of licence conditions by the licensee. The sum or balance of the sum shall be refunded to the licensee within one month of the expiry of the licence to occupy agreement. If the licence to occupy is terminated for non-compliance with conditions, the bond will be forfeited by the licensee.

Pedestrian and Road User Safety and Access

84 If outdoor dining uses both footpath and carparks, provision must be made for pedestrians to have at least two metres width of unrestricted passage between the sites. The licensee is required to acknowledge the priority of pedestrian traffic.

Location

- 85 It is a prerequisite that dining facilities must also be available within the current business premises before an outdoor dining licence will be considered.
- 86 On Upper Trafalgar Street (between Selwyn Place and Hardy Street) a maximum of 15 carpark spaces may be allocated for outdoor dining. This will leave 15 carpark spaces for normal use. (see Appendix One).
- 87 On middle and lower Trafalgar Street (between Hardy Street and Halifax Street) a maximum of 20 carpark spaces may be allocated for outdoor dining. This will leave 112 carpark spaces for normal use. (see Appendix One).
- 88 Outdoor dining on any other footpath or carpark will be approved on a case by case basis, taking into consideration all of the applicable criteria and specifications. As a guideline, up to 10% of carpark spaces may be used for outdoor dining on all other streets.

DATED _____ 20__

BETWEEN
NELSON CITY COUNCIL
AND

**OUTDOOR DINING LICENCE
FOOTPATH**

APPENDIX THREE

- (d) Any schedules to this Licence shall have the same effect as if set out in the body of this Licence;
- (e) Clause headings are inserted for reference only and shall not affect the interpretation of this Licence;
- (f) Reference to any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and;
 - (i) references to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to;
 - and
 - (ii) expressions defined or explained in any statute shall bear those meanings in this Licence; and
- (g) "Persons under the Licensee's control" includes all employees, agents, contractors, suppliers, customers and other invitees of the Licensee.
- (h) "Licensed area" means the land specified in the Schedule to this licence.
- (i) "the facility" means the outdoor dining facility permitted in terms of this licence
- (j) "Divisional Manager of Asset Management" means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.
- (k) "Divisional Manager of Service Delivery" means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.

2. Grant of Licence

The Licensor grants and the Licensee accepts a personal and non-transferable licence to occupy the land referred to in the Schedule hereto during the period of this licence for the purposes of providing thereon an outdoor dining facility.

APPENDIX THREE

3. Term

This licence shall be for a term of three years commencing on the day
of 20 and finishing on the day of 20 .

Upon the expiry of the licence the Licensee's rights pursuant to clause 2 hereof shall absolutely cease and determine but the Licensee shall not be released from any liability hereunder for any antecedent breach of the terms of this licence and any rent in arrears.

4. Rental

4.1 The Licensee shall pay to the Licensor by way of rental the sum of
\$ plus GST per annum.

4.2 The monthly rental payable by the Licensee to the Council shall be
\$ per month, plus GST, and shall be payable in advance by direct
debit on the first day of each and every month. The first payment shall be
for two months being due on the commencement date set out in Clause 3.

4.3 If any rental payable by the Licensee remains unpaid for seven calendar
days after due date the Licensee shall pay interest thereon at the rate of
16% per annum calculated from their due date to the date of payment.

4.4 The Divisional Manager Asset Management of the Licensor in his sole
discretion shall be entitled to review on a three yearly basis, the rental
payable hereunder and if it thinks fit increase the same. The amount of
any increased annual rental shall be notified in writing with a GST
invoice to the Licensee on or before the 15th day of June in the relevant
year. The first monthly payment at the increased annual rental rate shall
be due and payable on the date of review.

APPENDIX THREE

5. General Conditions

- 5.1 In providing the facility on a paved or bricked footpath:
- (a) The Licensee shall be entitled to place within the licensed area tables and chairs, potplants and other decorative items.
- 5.2 The design and style of the outdoor furniture to be used thereon shall be in keeping with the existing streetscape and be approved by the Chief Executive or his designated representative.
- 5.3 The Licensee shall not do or permit or suffer anything in or upon this licensed area which may be or become a nuisance or annoyance or cause damage to the owners or occupiers of other property in the vicinity or to the users of the adjoining road and/or parking areas.
- 5.4 The Licensee shall operate the facility in a tidy and efficient manner, and shall be responsible for maintenance of the site, and shall ensure that the licensed area is at all times kept in a safe, clean and tidy condition. Excessive smoke, noise, fumes, objectionable smells or dust should not emanate from the facility.
- 5.5 The Licensee shall at the Licensee's expense immediately make good damage to any part of the licensed area caused by operation or use of the facility. Any stained or damaged paving must be cleaned or replaced by the Licensee at no cost to the Council.
- 5.6 The Licensee shall at the Licensee's expense at all times comply in all respects with the requirements of the Health and Safety in Employment Act 1992, the Health Act 1956, the Sale of Liquor Act 1989 and any act passed in substitution therefor and any other statute, proclamation, order, regulation or by-law including the Licensor's District Plan affecting or relating to the operation and use of the facility.
- 5.7 The Licensee shall at the Licensee's expense comply with any notices or orders given by any competent authority in respect of the licensed area or

APPENDIX THREE

its use and shall keep the Licensor indemnified in respect of all such matters.

- 5.8 The licensee is responsible for control of litter originating from their facility within a ten-meter radius of the defined area. Street litter bins are not to be used for this purpose.
- 5.9 The licensee must provide a full detailed plan of the proposed site, showing any planned works to the site. The plan must be submitted and approved by council before any work on the site commences.
- 5.10 The Chief Executive's designated representative has final approval of the design, materials and layout of any structures.
- 5.11 The licensee cannot extend the shop premises, building structure, permanent walls and verandas etc out, on to, or over the footpath without council approval.
- 5.12 The licensee cannot make any structural changes or additions to the footpath, without prior written approval from the Chief Executive's designated representative.
- 5.13 The area must be returned to its original condition at the cost of the licensee at the conclusion or termination of the licence.
- 5.14 That the area to be occupied is clearly defined and the licensee shall have a site plan available at all times for inspection.
- 5.15 Where the facility is established on the kerbside of the footpath at an intersection, the airspace between 1.2m and 1.8m above the footpath must not be occupied with any walls, partitions, signs, fixtures or goods.
- 5.16 Table umbrellas shall be permitted within the designated site area only, provided they are firmly secured and not obstruct or impede pedestrian or vehicle access or visibility.
- 5.17 The Licensee shall not assign the benefit of this Licence, grant any sublicense, or otherwise deal in any manner with this Licence or the right

APPENDIX THREE

to use the licensed area without the prior written approval of the Chief Executive or his designated representative.

- 5.18 The Licensee shall not display or place any signs, placards, posters or advertising material within the licensed area apart from those fixed permanently to furniture and promoting the outdoor dining activity.
- 5.19 The Licensee shall pay the Licensor an administration fee relating to the legal and administration costs for the preparation of this licence document amounting to \$200.00 plus GST.
- 5.20 The Licensee acquires no right or legal interest in the land which is the subject of this Licence. The legal right to possession and control over the licensed area remains vested in the Licensor throughout the term of this Licence.
- 5.21 The Licensor acknowledges that it has no right or interest in any business of the Licensee.

6. Insurance and indemnity

- 6.1 The Licensee shall not do, or permit to be done, anything in the licensed area causing any insurance effected by the Licensor or by the Licensee to be rendered void or voidable or (except with the Licensor's prior written approval) causing the premiums payable on any such insurance to be liable to increase. The Licensee shall pay all extra premiums payable by the Licensor resulting from any extra risk caused or permitted by the Licensee.
- 6.2 The Licensee agrees to occupy the licensed area at the Licensee's risk and releases to the full extent permitted by law the Licensor and the Licensor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the licensed area.

APPENDIX THREE

- 6.3 The Licensee shall keep the Licensor indemnified against all claims, actions, losses and expenses of any nature which the Licensor may suffer or incur or for which the Licensor may become liable in respect of, or arising out of:
- (a) the neglect or careless use or misuse by the Licensee and persons under the Licensee's control of the licensed area;
 - (b) any accident or damage to property or any person arising from any occurrence in or near the licensed area by reason of any act or omission by the Licensee and persons under the Licensee's control.
- 6.4 The Licensee at the Licensee's expense shall effect, and keep current, in respect of the licensed area and the Licensee's use of the licensed area, a policy of public risk insurance for an amount not less than \$500,000 for any one event with a substantial reputable insurance office or company first approved in writing by the Licensor (such approval not to be unreasonably withheld).

7. Remedies for breach and determination

- 7.1 In the event of a breach by the Licensee of any terms of this licence the Licensor may (without prejudice to any other remedy the Licensor may have) recover all costs, charges and expenses for which the Licensor shall become liable in consequence of or in connection with any breach or default by the Licensee in the performance or observation of any of the terms covenants and conditions of this Licence.
- 7.2 On this licence coming to an end by whatever means and whether pursuant to a provision of this licence or not the Licensee shall forthwith remove anything placed in the licensed area and reinstate the licensed area to its original condition.
- 7.3 In the event of the termination or sooner determination or revocation of this licence for any reason whatsoever the Licensee shall not be entitled to compensation or any payment whatsoever from the Licensor.

DATED _____ 20__

BETWEEN
NELSON CITY COUNCIL
AND

**OUTDOOR DINING LICENCE
CARPARKS**

APPENDIX THREE

- (d) Any schedules to this Licence shall have the same effect as if set out in the body of this Licence;
- (e) Clause headings are inserted for reference only and shall not affect the interpretation of this Licence;
- (f) Reference to any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and;
 - (i) references to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to;and
 - (ii) expressions defined or explained in any statute shall bear those meanings in this Licence; and
- (g) “Persons under the Licensee’s control” includes all employees, agents, contractors, suppliers, customers and other invitees of the Licensee.
- (h) “Licensed area” means the land specified in the Schedule to this licence.
- (i) “the facility” means the outdoor dining facility permitted in terms of this licence
- (j) “Divisional Manager of Asset Management” means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.
- (k) “Divisional Manager of Service Delivery” means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.

2. Grant of Licence

The Licensor grants and the Licensee accepts a personal and non-transferable licence to occupy the land referred to in the Schedule hereto during the period of this licence for the purposes of providing thereon an outdoor dining facility.

APPENDIX THREE

3. Term

This licence shall be for a term of three years commencing on the day
of 20 and finishing on the day of 20 .

Upon the expiry of the licence the Licensee's rights pursuant to clause 2 hereof shall absolutely cease and determine but the Licensee shall not be released from any liability hereunder for any antecedent breach of the terms of this licence and any rent in arrears.

4. Rental

4.1 The Licensee shall pay to the Licensor by way of rental the sum of
\$ plus GST per annum.

4.2 The monthly rental payable by the Licensee to the Council shall be
\$ per month, plus GST, and shall be payable in advance by direct
debit on the first day of each and every month. The first payment shall be
for two months being due on the commencement date set out in Clause 3.

4.3 If any rental payable by the Licensee remains unpaid for seven calendar
days after due date the Licensee shall pay interest thereon at the rate of
16% per annum calculated from their due date to the date of payment.

4.4 The Divisional Manager Asset Management of the Licensor in his sole
discretion shall be entitled to review on a three yearly basis, the rental
payable hereunder and if he thinks fit increase the same. The amount of
any increased annual rental shall be notified in writing with a GST
invoice to the Licensee on or before the 15th day of June in the relevant
year. The first monthly payment at the increased annual rental rate shall
be due and payable on the date of review.

5. General Conditions

- 5.1 In providing the facility on a carpark:
- (a) The Licensee shall be entitled to place within the licensed area tables and chairs, pot plants and other decorative items and shall also be entitled to place removable paving on the licensed area in a manner approved in writing by the Licensor.
 - (b) The Licensee shall at all times maintain a secure barrier between the licensed area and the adjoining road/carpark.
- 5.2 The Licensee shall not do or permit or suffer anything in or upon this licensed area which may be or become a nuisance or annoyance or cause damage to the owners or occupiers of other property in the vicinity or to the users of the adjoining road and/or carparks.
- 5.3 The design and style of the outdoor furniture to be used thereon shall be in keeping with the existing streetscape and be approved by the Chief Executive or his designated representative.
- 5.4 The Licensee shall operate the facility in a tidy and efficient manner, and shall be responsible for maintenance of the site, and shall ensure that the licensed area is at all times kept in a safe, clean and tidy condition. Excessive smoke, noise, fumes, objectionable smells or dust should not emanate from the facility.
- 5.5 The Licensee shall at the Licensee's expense immediately make good damage to any part of the licensed area caused by operation or use of the facility. Any stained or damaged paving must be cleaned or replaced by the Licensee at no cost to the Council.
- 5.6 The Licensee shall at the Licensee's expense at all times comply in all respects with the requirements of the Health and Safety in Employment Act 1992, the Health Act 1956, the Sale of Liquor Act 1989 and any act passed in substitution therefor and any other statute, proclamation, order,

APPENDIX THREE

- regulation or by-law including the Licensor's District Plan affecting or relating to the operation and use of the facility.
- 5.7 The Licensee shall at the Licensee's expense comply with any notices or orders given by any competent authority in respect of the licensed area or its use and shall keep the Licensor indemnified in respect of all such matters.
- 5.8 The licensee is responsible for control of litter originating from their facility within a ten-meter radius of the defined area. Street litter bins are not to be used for this purpose.
- 5.9 The licensee must provide a full detailed plan of the proposed site, showing any planned works to the site. The plan must be submitted and approved by council before any work on the site commences.
- 5.10 The Chief Executive's designated representative has final approval of the design, materials and layout of any structures.
- 5.11 The licensee cannot extend the shop premises, building structure, permanent walls and verandas etc out, on to, or over the footpath without council approval.
- 5.12 The licensee cannot make any structural changes or additions to the carpark, without prior approval from the Chief Executive's designated representative.
- 5.13 The area must be returned to its original condition at the cost of the licensee at the conclusion or termination of the licence.
- 5.14 That the area to be occupied is clearly defined and the licensee shall have a site plan available at all times for inspection.
- 5.15 Where the facility is established on a carpark adjacent to an intersection, the airspace between 1.2m and 1.8m above the carpark must not be occupied with any walls, partitions, signs, fixtures or goods.

APPENDIX THREE

- 5.16 Table umbrellas shall be permitted within the designated site area only, provided they are firmly secured and do not obstruct or impede pedestrian or vehicle access or visibility.
- 5.17 The Licensee shall not assign the benefit of this Licence, grant any sublicense, or otherwise deal in any manner with this Licence or the right to use the licensed area without the prior written approval of the Chief Executive or his designated representative.
- 5.18 The Licensee shall not display or place any signs, placards, posters or advertising material within the licensed area apart from those fixed permanently to furniture and promoting the outdoor dining activity.
- 5.19 The Licensee shall pay the Licensor an administration fee relating to the legal and administration costs for the preparation of this licence document amounting to \$200.00 plus GST and any stamp duty payable thereon.
- 5.20 The Licensee acquires no right or legal interest in the land which is the subject of this Licence. The legal right to possession and control over the licensed area remains vested in the Licensor throughout the term of this Licence.
- 5.21 The Licensor acknowledges that it has no right or interest in any business of the Licensee.
- 5.22 The Licensee acknowledges that in times of heavy rainfall there is the potential for stormwater flooding to be increased due to the outdoor dining structures. The Licensor reserves the right to require the Licensee at the Licensee's expense to install a standard stormwater sump adjacent to the licensed area and connect to an approved outlet.

6. Insurance and indemnity

- 6.1 The Licensee shall not do, or permit to be done, anything in the licensed area causing any insurance effected by the Licensor or by the Licensee to be rendered void or voidable or (except with the Licensor's prior written

APPENDIX THREE

approval) causing the premiums payable on any such insurance to be liable to increase. The Licensee shall pay all extra premiums payable by the Licensor resulting from any extra risk caused or permitted by the Licensee.

6.2 The Licensee agrees to occupy the licensed area at the Licensee's risk and releases to the full extent permitted by law the Licensor and the Licensor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the licensed area.

6.3 The Licensee shall keep the Licensor indemnified against all claims, actions, losses and expenses of any nature which the Licensor may suffer or incur or for which the Licensor may become liable in respect of, or arising out of:

- (a) the neglect or careless use or misuse by the Licensee and persons under the Licensee's control of the licensed area;
- (b) any accident or damage to property or any person arising from any occurrence in or near the licensed area by reason of any act or omission by the Licensee and persons under the Licensee's control.

6.4 The Licensee at the Licensee's expense shall effect, and keep current, in respect of the licensed area and the Licensee's use of the licensed area, a policy of public risk insurance for an amount not less than \$500,000 for any one event with a substantial reputable insurance office or company first approved in writing by the Licensor (such approval not to be unreasonably withheld).

7. Remedies for breach and determination

7.1 In the event of a breach by the Licensee of any terms of this licence the Licensor may (without prejudice to any other remedy the Licensor may have) recover all costs, charges and expenses for which the Licensor

APPENDIX THREE

shall become liable in consequence of or in connection with any breach or default by the Licensee in the performance or observation of any of the terms covenants and conditions of this Licence.

7.2 On this licence coming to an end by whatever means and whether pursuant to a provision of this licence or not the Licensee shall forthwith remove anything placed in the licensed area and reinstate the licensed area to its original condition.

7.3 In the event of the termination or sooner determination or revocation of this licence for any reason whatsoever the Licensee shall not be entitled to compensation or any payment whatsoever from the Licensor.

8. Bond

8.1 The Licensee shall on signing this licence pay to the Licensor a bond of \$500.00 per carpark occupied. Such sum shall be held by the Licensor and may be applied by the Licensor in or towards remedying any breach by the Licensee of any of the obligations of the Licence pursuant to this licence. The said sum or the balance of the said sum whichever the case may be shall be refunded to the Licensee within one month of this licence coming to an end. If this licence is terminated for non-compliance of any of the licence conditions, the bond will be forfeited by the licensee.

APPENDIX FOUR

Sandwich Boards and Retail Displays Specific Requirements and Licence to Occupy Agreement

89 Note that by definition retail displays may only occupy footpath.

Aesthetics

90 As per general policies.

Area Specifications

91 The area occupied by a sandwich board is that it must not protrude more than 600mm from the shop frontage on the footpath, with a height of between 900-1100mm.

92 The area occupied by a retail display is that it must not protrude more than 600mm on the footpath from the shop frontage, and be no longer than 1500mm in length, with a height of between 900-1100mm.

Operation Limitations and Licensee Obligations

93 Only one sandwich board and/or one retail display, located on the footpath is to be allowed per retail shop or business.

94 A sandwich board or retail display may only promote and display products and services specific to the retail shop or business and may only be displayed directly in front of the premises. It may not be a directional signboard.

Rental

95 There will be no rental charged for one sandwich board per retail shop or business.

96 The rental assessment for one retail display per retail shop or business will be "market" rent on a square metre rate, and will reflect the street stall rental in the locality of the retail display.

Pedestrian and Road User Safety and Access

97 As per general policies.

Location

98 As per general policies.

APPENDIX FOUR

DATED _____ 20

BETWEEN
NELSON CITY COUNCIL
AND

**RETAIL DISPLAY LICENCE TO
OCCUPY**

APPENDIX FOUR

A DEED made this **First** day of **July** 20

BETWEEN THE NELSON CITY COUNCIL (hereinafter called "the Council") of the one part

AND «Title» «FirstName» «LastName» trading as «Trading Name» (hereinafter called "the Licensee") of the other part

WHEREAS the Council has agreed to grant a permit to the Licensee to operate a retail display in Nelson on the following terms and conditions:

NOW THEREFORE the Council and the Licensee mutually declare and agree as follows:

1. Interpretation

In this Licence:

- (a) Where obligations bind more than one person those obligations shall bind those persons jointly and severally;
- (b) Words importing the singular number include the plural, words importing the masculine gender shall include the feminine and neuter, and vice versa;
- (c) A "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of state, government department or municipal authority in each case whether or not having separate legal personality;
- (d) Any schedules to this Licence shall have the same effect as if set out in the body of this Licence;
- (e) Clause headings are inserted for reference only and shall not affect the interpretation of this Licence;
- (f) Reference to any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and;

APPENDIX FOUR

- (i) references to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to;
and
- (ii) expressions defined or explained in any statute shall bear those meanings in this Licence; and
- (g) "Persons under the Licensee's control" includes all employees, agents, contractors, suppliers, customers and other invitees of the Licensee.
- (h) "Licensed area" means the land specified in the Schedule to this licence.
- (i) "Divisional Manager of Asset Management" means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.
- (j) "Divisional Manager of Service Delivery" means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.

2. General

(a) **Site**

The Licensee shall generally have the right to occupy the portion of the public footpath in «**Site_Address**» Street as shown generally in Schedule 2 attached hereto, such portion to be limited to «**Square_Metres**» square metres. The Council may vary the position of the site during the term of the permit for the purpose of Central Business District planning or any other public requirement of the Council and offer an alternative suitable site for occupation by the Licensee, except that any site must be on the footpath adjacent to the shop front only except with the permission of the Nelson City Council.

(b) **Description of Licence**

The Licensee shall have the right to sell goods as detailed in Schedule 3 attached hereto from a retail display approved by the Council subject to such conditions as are imposed by the Council and set out in this document.

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(c) Days of Operation

The Licensee may operate daily subject however to the provisions of any statute or regulation and subject to the right of the Council on giving seven days' notice to require the site for all or part of a day for Council purposes.

(d) Hours of Operation

(i) The site may be occupied at such reasonable times each day as may be warranted by public patronage of the retail display.

(ii) The retail display is to be removed from the site each day not later than
«Ending Hour» pm, except where approved by the Council for a stay of longer duration.

(e) Permitted Use

The Licensee shall use the site for the operation of a retail display and the purpose specified in Schedule 3 of this licence. No other use of the site is permitted as of right.

3. Obligations of the Licensee

The Licensee shall:

(a) Operate and maintain at their own cost such retail display to properly operate the rights hereby granted and such retail display shall at all times be in conformity with the Council's requirements.

(b) Any stained or damaged paving must be cleaned or replaced at no cost to the Council.

(c) Where the retail display is established on the footpath adjacent to the shop front at an intersection, the licensee shall ensure that there are no walls, partitions, signs, other fixtures or goods in the airspace between 1.2m and 1.8m above the

APPENDIX FOUR

footpath.

- (d) The licensee shall not display or place any signs, placards, posters or advertising material within the licensed area apart from those fixed permanently promoting the retail display.
- (e) The Licensee shall not make any structural or physical alterations to the site without the approval of Council.
- (f) No storage or display of goods or personal belongings is permitted outside the licensed area.

Litter and Rubbish

- (g) The Licensee shall remove from a ten-meter radius of the site each day during and at the end of the occupation of the site, all litter and rubbish, and shall dispose of such litter and rubbish. Council's street litter bins must not be used for this purpose. Excessive smoke, noise, fumes, objectionable smells and dust should not emanate from the site.

Licence Operation

- (h) The Licensee shall abide with the licence conditions and shall keep the site and retail display in a safe, clean, well presented condition and at all times to the satisfaction of the Council.
- (i) The Licensee shall be competent and qualified to supervise the operation of the Licence and the care of the site. The Licensee shall forthwith remove from the site any employee or associate whose conduct the Council feels is prejudicial to the efficient operation of the business or the good name or reputation attaching to the City.
- (j) Failure to comply with Council's policies, regulatory requirements and Health and Safety Policy, including payment of fee for food premises licence, traffic

APPENDIX FOUR

infringement etc will result in immediate cancellation of this licence with no compensation.

Costs Borne by Licensee

- (k) In addition to any fees and payments otherwise provided for herein, the Licensee shall bear at their own expense all costs of and incidental to the preparation and stamping of the Licence and shall pay for and obtain all permits and licences required by authority or law in connection with the operation of the Licence.

4. Term of the Licence

The term of the Licence shall be for a term of one, two or three years commencing on the 1st day of July 20 and finishing on the 30th day of June 20
There is no right of renewal. The licensee may apply for a renewal one month prior to the expiry of this licence.

5. Site Fees

- (a) The site fees payable by the Licensee to the Council shall be «Site_Charge» per month, plus GST, and shall be payable monthly in advance by direct debit on the first day of each and every month. The first payment shall be for two months being due on the commencement date set out in Clause 3.
- (b) The site fees shall be accepted by the Council as including the permit fee to occupy the site described in Clause 1(a) hereof, in terms of Nelson City Bylaw No. 190 Clause 27(a). Site fees will reviewed on an annual basis by the Divisional Manager Asset Management.

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6. Default

In case of the death or bankruptcy or insolvency of the Licensee or in the case of their entering into an arrangement or composition with their creditors or being a company suffer any receiver or liquidator to be appointed or in the case they shall endeavour to or shall assign, sublet or part with the possession of the site and retail display or any part of them or the Licence hereby granted or in the event of the Licensee doing or permitting to be done on the said site and retail display any act or thing which shall cause or be the means of causing any Licence duly required, to be imperilled, endorsed or revoked, then in all, either or any of the said cases, it shall be lawful for the Council to re-enter on the said site and retail display forthwith or to revoke the said Licence and thereupon this Licence shall cease and determine, except as to the remedies of either party in respect of any previous breach thereof.

7. Cancellation or Termination of Licence

This Licence shall be cancelled by the Council if the Licensee fails to comply with any of the conditions hereof or fails to maintain payment of the rent in the manner described herein. Any default in the payment of the agreed rent for a period longer than 14 days after the due date will result in cancellation of the Licence. Should the Council be of the opinion that the service being rendered by the Licensee is unsatisfactory in any respect, or that the management, control, efficiency, or conduct of the Licensee is unsatisfactory in any respect, and after having given the Licensee seven days' notice in writing requiring the Licensee within such time to remedy such default, and such default not having been remedied, the Council may forthwith terminate this Licence. The licensee may cancel this licence upon giving one month written notice to Council to do so.

8. No Assignment

The Licensee shall not transfer or sublet or share the Licence herein granted or any part thereof, except with the prior written approval of the Chief Executive. Subletting or sharing will not allow more than one retail display on any one site at any one time.

9. Inspection of Site and Retail display

The Licensee shall permit authorised officers of the Council at all reasonable times to

APPENDIX FOUR

inspect the site and retail display used by the Licensee for the purpose of examining the condition of such site and retail display as to maintenance, general condition and management. A site plan shall be available at all times for inspection.

10. Council Property

Council property such as bollards, chains, seats, trees, plant protector frames and the like are not to be used by the Licensee for any purpose, including business and personal uses.

11. Use of Site by the Council

If Council decides that the licence will not be renewed, it will endeavour to give three months prior warning to the licensee. The council may vary the position of the site either temporarily or permanently, or offer an alternative site, for the purposes of Public Works, street or footpath or services repair or realignment, or a relevant planning requirement.

12. Goods and Services Tax

The Licensee will pay to the Council all Goods and Services Tax in respect of all goods and services provided by the Council or its agents pursuant to the terms of this Licence and without limiting the generality thereof shall pay all Goods and Services Tax assessable on the site fees payable from time to time in the same manner as provided herein for the payment of the site fees on which tax is assessed.

13. Insurance

The Licensee shall take out a public liability insurance cover of a minimum of \$500,000 and shall indemnify the Council against any claims, demands, suits or actions made upon the Council arising out of the operation by the Licensee of the retail display, and shall forward evidence to the Council that this has been complied with.

14. Holding Over

If the Licensee shall hold over and remain in occupation after the expiration of the term of this Licence or any renewal thereof without any further written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of the Licence but only to create a Licence to occupy from month to month which may be terminated at any

time by the Council.

15. Disputes

In the event of any dispute arising, the parties shall, without prejudice to any other right, immediately explore in good faith whether the dispute can be resolved by agreement between them, using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal, or any other alternative dispute resolution technique, and shall only refer the dispute to arbitration pursuant to the Arbitration Act, 1996 if the informal dispute resolution process does not resolve the dispute.

16. Deed Constitutes a Permit

The terms and provisions of this Deed constitute the terms and provisions of a permit pursuant to Part C of Nelson City Bylaw No. 190.

SIGNED by)

)

In the presence of:

..... Name

..... Address

..... Occupation

SIGNED on behalf of)

NELSON CITY COUNCIL)

In the presence of:)

.....
Divisional Manager, Asset Management

..... Name

..... Address

..... Occupation

SCHEDULE 3

PRODUCTS SOLD

Products sold from the retail display limited to «Products_Sold»

CONDITIONS OF OPERATION



Included in agreement.



APPENDIX FIVE

Weekend Markets Specific Requirements

Aesthetics

- 99 Parking squares may be used for the operation of weekend markets.

Area Specifications

- 100 The area available for operating a weekend market is to be approved by the Works Committee of Council.

Operation Limitations and Licensee Obligations

- 101 When operating a weekend market the licensee will be responsible for the management and allocation of sites within the licence area.
- 102 When operating a weekend market the licensee must keep a written record of the number of sites occupied.
- 103 The licensee must act in good faith in dealings with all stall occupiers.

Rental

- 104 The operation of a weekend market will incur a rental charge of 20% of the gross rental received by the licensee each week.

Pedestrian and Road User Safety and Access

- 105 As per general policies.

Location

- 106 The operation of weekend markets will be limited to two markets - one on Wakatu Square carpark and one on Montgomery Square carpark (see Appendix One). Any markets applied for in addition to these two sites, or renewal of existing licences will be determined by the Works Committee of Council on an individual case basis taking into consideration the suitability of the location, parking requirements, pedestrian issues and the current demand for that activity.

APPENDIX SIX

Assessment Criteria for Street Stalls and Outdoor Dining

- 107 Structural materials used should be fixed securely to its frame, with no dangerous projections, and no part of the structure extending out of the designated site.
- 108 All waste products must be appropriately disposed of. A receptacle for the disposing of waste products must be included in the original design.
- 109 Drip trays are to be provided where necessary to avoid staining of the footpath.
- 110 Litter is to be provided for with appropriate bins and must not be allowed to overflow.
- 111 Additional street furniture is to be compatible with the style of adjacent street furniture
- 112 If bollards are to be used on the site, they must be Council's standard traffic bollards, painted black.
- 113 Planter designs must be submitted to the Chief Executive, along with planting details for approval, prior to installation. Note. Plants that have prickles, thorns, or are toxic are not appropriate within public precincts.
- 114 Paving must meet Council's engineering standards (1993), and match the official paving patterns and materials used in the street.
- 115 Surface levels must be such that they are not a hazard to pedestrians and have a minimum fall of 3% to allow adequate drainage.
- 116 There shall be no changes in paving grade, or edges to present tripping hazards.
- 117 Pedestrian ways should have a minimum height clearance of 2.0 metres to awnings, hanging baskets etc.
- 118 Provision of power points is the responsibility of the lessee. Cables must be underground, or run unobtrusively along verandahs (with the permission of the affected businesses).
- 119 The design of structures that define the site must not exceed a height of 750mm or present a heavy or imposing landscape feature.
- 120 Street trees or existing landscape features are not to be altered in any way without the permission of the Chief Executive.