

**SUPPLEMENTARY DEED OF AGREEMENT**

**BETWEEN  
HER MAJESTY THE QUEEN**

**AND  
TE AUTE TRUST BOARD**

**Ministry of Education**

**45-47 Pipitea Street**

**Wellington**

DEED dated this 29<sup>th</sup> day of May 2002

BETWEEN

HER MAJESTY THE QUEEN acting by and through the Minister of Education ("the Minister")

*AMB*  
W.B.I. INCORPORATED

AND

TE AUTE TRUST BOARD ("the Proprietor")

### Background

- A. By Deed of Agreement dated 28<sup>th</sup> day of April 1995 as varied by Supplementary Deeds of Agreement (hereinafter together called "the Integration Agreement") the Minister and the Proprietor pursuant to s 7(2) of the Private Schools Conditional Integration Act 1975 ("the PSCI Act") established Hukarere School (hereinafter referred to as "the School") as an integrated school.
- B. The Proprietor intends to relocate the school premises at the start of the year 2002 to France House, Esk Valley and has entered into a lease with the owners of the premises.
- C. The Proprietor has obtained the prior consent of the Minister to enter into the lease in terms of section 40A of the PSCI Act, and the Minister has agreed to install certain relocatable educational building facilities ("the Facilities") on the leased site
- D. The parties have agreed to vary the Integration Agreement in respect of the school premises, and to undertake certain obligations with regard to the Facilities.
- E. Pursuant to s 7(9) of the Private Schools Conditional Integration Act 1975, the Minister and the Proprietor have now agreed to enter into a supplementary agreement to give effect to their agreement

*M.B.I. AMB*  
2<sup>nd</sup>

The Parties agree as follows:

**1 Effective Date**

- 1.1 This Supplementary Deed of Agreement will come into effect on the date on which the Proprietor relocates the school premises to the leased premises under the lease.

**2 Proprietor to Lease**

Clause 3 of the Integration Agreement is amended by deleting this clause and the First Schedule and substituting the following clause:

*3. The Proprietor as Lessee has leased the land and buildings as set out in the First Schedule to this Supplementary Deed of Agreement ("the Lease")*

**3. Integrated School Premises**

Clause 4 of the Integration Agreement is amended by deleting this clause, the Second and Third Schedules and substituting the following clauses:

- 4.1 The Integrated School premises for the purposes of the Integration Agreement are the land and improvements more particularly described in the Plan attached to the Second Schedule of this Supplementary Deed of Agreement ("the School premises").*
- 4.2. After the effective date the Minister will install the Facilities on the School premises as detailed and as set out in the Plan attached to the Second Schedule of this Supplementary Deed of Agreement.*
- 4.3. The Proprietor acknowledges that the Minister retains the ownership of the Facilities, and will undertake to ensure that there are provisions in the Lease to protect the Minister's ownership interest in the Facilities.*
- 4.4. The Proprietor further acknowledges that it will keep the Facilities on the School premises insured in the name of the Crown to its full replacement value.*
- 4.5. It is agreed by the Proprietor and the Minister that the Board of Trustees of Hukarere School will be responsible for the maintenance of the Facilities.*
- 4.6. The Proprietor acknowledges that the Minister has the authority as owner of the Facilities to remove the Facilities at any time after giving three months written notice to the Proprietor.*
- 4.7. The Third Schedule of the Integration Agreement is hereby deleted and replaced by the Third Schedule of this Supplementary Deed of Agreement.*

W.B.T. 3  
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4. **Consequential Revocations**

*Clauses 6 to 15 (both inclusive) of the Integration Agreement are hereby deleted.*

5 **Suspension of Supplementary Agreement.**

*The respective obligations of the parties under the Supplementary Agreement entered into by the parties on 23<sup>rd</sup> February 2000 will be suspended as from the effective date.*

*M.H. Z. Auda*  
4 *af*

IN WITNESS WHEREOF this Deed has been executed on the day and year hereinbefore written.

THE COMMON SEAL of

TE AUTE TRUST BOARD INCORPORATED

was hereunto affixed in the

presence of:



*M. B. Train* Trustee

*Ambullock*  
Trustee

Signed by KATHY PHILIPS

Senior Manager, National Operations,

Ministry of Education pursuant to

authority delegated by the

Minister of Education acting on behalf of

HER MAJESTY THE QUEEN in the

presence of:

*Kathy Phillips*

*[Signature]*  
Warren Henson  
Public Servant  
13a Feist Street  
Naenae

*M. B. Train* 5

## FIRST SCHEDULE

Description of total land, buildings and other improvements which comprises the Proprietor's leased land which the School premises form part.

### THE PROPRIETOR'S LEASED LAND

All that land, buildings and other improvements leased by the Te Aute Trustboard, more or less situated in Shaw Road, Eskdale, being particularly described in the attached Lease and delineated in red on the plan forming part of the Second Schedule hereto.

*AMB 12.6.9. ul.*

# DEED OF LEASE

THIRD EDITION 1993 (2)

DEED made the                      day of

LANDLORD            RUSSELL EDWARD BUCHANAN and ANNETTE JILL BUCHANAN

TENANT                TE AUTE TRUST BOARD INCORPORATED

~~GUARANTOR~~

THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises described in the First Schedule together with the right to use:

- a) The Landlord's fixtures and fittings contained in the premises.
- b) The common areas of the property.
- c) The car parks described in the First Schedule.

FOR the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND THE TENANT covenant as set out in the Second Schedule.

~~THE GUARANTOR~~ covenants with the Landlord as set out in the Guarantee in the Third Schedule

SIGNED by the Landlord

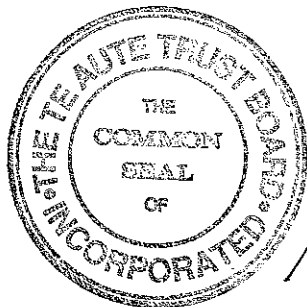
(~~by affixing its  
common seal~~)

in the presence of:

SIGNED by the Tenant

(by affixing its  
common seal)

in the presence of:



*Am Bullock*  
Trustee  
*M. B. Y. Y. Y. Y.*  
Trustee.

~~SIGNED by the Guarantor~~

~~in the presence of:~~

## FIRST SCHEDULE

**PREMISES:** That part of the land comprised in Certificate of Title V1/71 (Hawkes Bay Registry) as delineated on the Plan attached hereto and outlined in red and together with all buildings and other improvements on that part of the land together with reasonable exit and entry thereto by vehicles and by foot.

**CARPARKS:** As provided on the premises.

**TERM:** Three (3) years

**COMMENCEMENT DATE:** 21<sup>st</sup> May 2002

**FURTHER TERMS:** Two (2) consecutive rights of renewal, each for one year

**RENEWAL DATES:** 21<sup>st</sup> May 2005 and 21 May 2006

**FINAL EXPIRY DATE:** 20<sup>th</sup> May 2007

**ANNUAL RENT:** \$60,000.00 plus GST  
(Subject to review if applicable)

**MONTHLY PAYMENTS OF RENT:** \$5,000.00 plus GST (\$5625.00 including GST)

**RENT PAYMENT DATES:** The 21st day of each month commencing on the 21st day of May 2002

**REVIEW DATES:** 21<sup>st</sup> May 2005 and 21 May 2006

**PROPORTION OF OUTGOINGS:** 100%  
(Clause 3.1)

**DEFAULT INTEREST RATE:** 14 % per annum

**BUSINESS USE:** Secondary school and school boarding establishment

**IMPROVEMENTS RENT PERCENTAGE:** 12 %  
(Clause 23)

**INSURANCE:** - Full replacement and reinstatement  
(Delete one)

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W. H. Y.

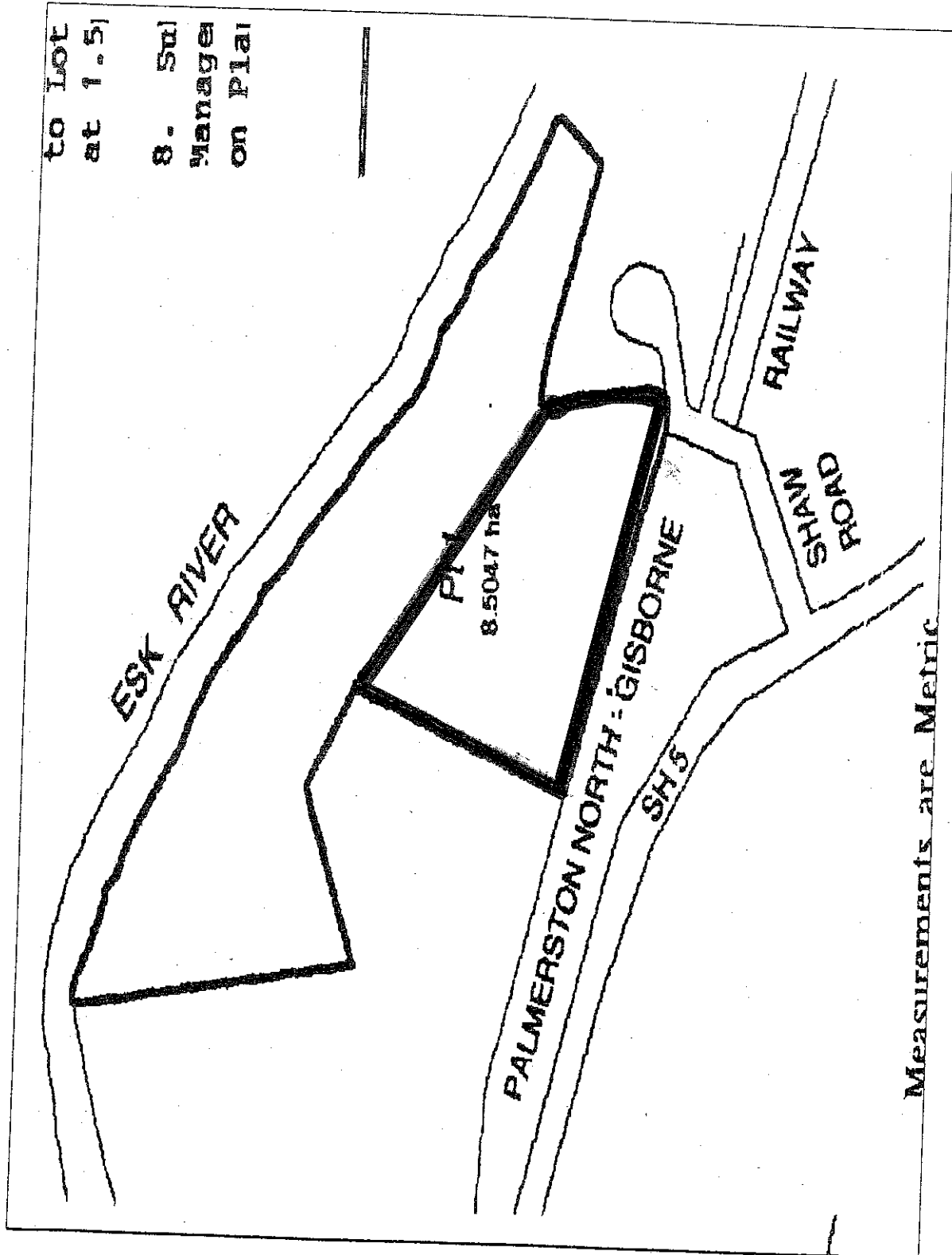
AMB



Identifier

HBV1/71

to Lot  
at 1.5  
8. Su  
Manager  
on Plai



Measurements are Metric

Transaction Id

Client Reference ibwhrns

Search Copy Dated 12/11/01 9:22 am, Page 3 of 3

Current Certificate of Title Version No. 1

M.B.Y.

AMB

## OUTGOINGS

(Clause 3)

1. Rates or levies payable to any local or territorial authority.
2. Charges for water gas electricity telephones and other utilities or services.
3. Rubbish collection charges.
4. New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
5. Such portion of the Landlord's land tax as the value of the land forming part of the property bears to the total value of all land included in the Landlord's assessment for land tax.
6. Insurance premiums and related valuation fees. (Clause 9).
7. Service contract charges for air conditioning, lifts and other building services.
8. Cleaning maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair).
9. The provisioning of toilets and other shared facilities.
10. The cost of ground maintenance i.e. lawns, gardens and planted areas including plant hire and replacement.
11. Yard and carparking area maintenance and repair charges but excluding charges for structural repairs to the building.
12. ~~Body Corporate charges for insurance premiums and related valuation fees and reasonable management administration expenses.~~
13. The costs incurred and payable by the landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by Section 45 of the Building Act 1991.
14. Eskdale Water Company Limited charges. *And N.B.G.*

## SECOND SCHEDULE

### TENANT'S PAYMENTS

#### Rent

- 1.1** THE Tenant shall pay the annual rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions by direct payment to the Landlord or as the Landlord may direct.

#### Rent Review

- 2.1** THE annual rent may be reviewed by the Landlord as follows:
- (a) The Landlord shall commence a review by not earlier than three (3) months prior to a review date or at any time up to the next following review date giving written notice to the Tenant specifying the annual rent considered by the Landlord to be the current market rent as at that review date.
  - (b) If, by written notice to the Landlord within twenty-eight (28) days after receipt of the Landlord's notice, the Tenant disputes that the proposed new annual rent is the current market rent then the new rent shall be determined in accordance with clause 2.2. **BUT** the new rent shall not be less than the annual rent payable during the period of twelve (12) months immediately preceding the relevant review date.
  - (c) If the Tenant fails to give such notice (time being of the essence) the Tenant shall be deemed to have accepted the annual rent specified in the Landlord's notice.
  - (d) The annual rent so determined or accepted shall be the annual rent from the review date or the date of the Landlord's notice if such notice is given later than three (3) months after the review date.
  - (e) Pending the determination of the new rent, the Tenant shall pay the rent specified in the Landlord's notice provided that the rent is substantiated by a registered valuer's report. Upon determination of the new rent an appropriate adjustment shall be made.
  - (f) The rent review at the option of either party may be recorded in a Deed, the cost of which and the stamp duty thereon shall be payable by the Tenant.
- me to go. And N.B.G.*

2.2

**IMMEDIATELY** following receipt by the Landlord of the Tenant's notice the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within fourteen (14) days then the new rent may be determined either:

- (a) By one party giving written notice to the other requiring the new rent to be determined by arbitration, or
- (b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
  - (1) Each party shall appoint a valuer and give written notice of the appointment to the other party within fourteen (14) days of the parties agreeing to so determine the new rent.
  - (2) If the party receiving a notice fails to appoint a valuer within the fourteen (14) day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.
  - (3) The valuers appointed before commencing their determination shall appoint an umpire who need not be a registered valuer.
  - (4) The valuers shall determine the current market rent of the premises and if they fail to agree then the rent shall be determined by the umpire.
  - (5) Each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and they shall have regard to any such representations but not be bound thereby.

When the new rent has been determined the arbitrators or the valuers shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and such provision shall be binding on the parties.

- AmB*  
*11.8.9*
- (c) The parties acknowledge and agree that the value of lessee improvements shall be excluded for rent review purposes.

#### **Outgoings**

- 3.1 **THE** Tenant shall pay the outgoings in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion thereof as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.
  - 3.2 **THE** Landlord may vary the proportion of any outgoing payable to ensure that the tenant pays a fair proportion of the outgoing.
  - 3.3 **IF** any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then such outgoing shall not be payable by the Tenant.
  - 3.4 **THE** outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.
  - 3.5 **THE** outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of such reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.
  - 3.6 **AFTER** the 31st March in each year of the term or such other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand.
  - 3.7 **THE** Tenant's liability to pay outgoings during the term shall subsist notwithstanding the end or earlier termination of the term.
  - 3.8 **NOTWITHSTANDING** any other provision in this lease, but with the exception of clause 18.2, the Tenant shall only be liable to pay the outgoings specified in the first schedule.
- 11.8.9* *AmB*

### **Goods and Services Tax**

- 4.1 **THE** Tenant shall pay to the Landlord or as the Landlord shall direct the Goods and Services Tax payable by the Landlord in respect of the rental and other payments payable by the Tenant hereunder. The tax in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.
- 4.2 **IF** the Tenant shall make default in payment of the rental or other moneys payable hereunder and the Landlord becomes liable to pay additional Goods and Services Tax then the Tenant shall on demand pay to the Landlord the additional tax.

### **Interest on Unpaid Money**

5. **IF** the Tenant defaults in payment of the rent or other moneys payable hereunder for fourteen (14) days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment down to the date of payment.

### **Costs**

6. **THE** Tenant shall pay the Landlord's solicitors costs of and incidental to the preparation of this lease and any variation or renewal or any Deed recording a rent review and the stamp duty payable, and the Landlord's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Landlord's rights remedies and powers under this lease.

### **Indemnity**

7. **THE** Tenant shall indemnify the Landlord against all damage or loss resulting from any act or omission on the part of the Tenant or the Tenant's employees contractors or invitees. The Tenant shall recompense the Landlord for all expenses incurred by the Landlord in making good any damage to the property resulting from any such act or omission. The Tenant shall be liable to indemnify only to the extent that the Landlord is not fully indemnified under any policy of insurance.

## **LANDLORD'S PAYMENTS**

### **Outgoings**

8. **SUBJECT** to the Tenant's compliance with the provisions of Clause 3 the Landlord shall pay all outgoing in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

### **Insurance**

9. **THE** Landlord shall at all times during the term keep and maintain any buildings on the property insured under a policy of the type shown in the First Schedule against loss damage or destruction by fire and such other risks as the Landlord may reasonably determine and such cover may extend to —
- (a) a twelve (12) month indemnity in respect of consequential loss of rent,
  - (b) loss damage or destruction of windows and other glass and all the Landlord's fixtures fittings and chattels, and
  - (c) adequate public risk cover.

*[Handwritten signature]*  
26/4

## MAINTENANCE AND CARE OF PREMISES

### Tenant's Obligations

**10.1** THE Tenant shall (subject to any maintenance covenant by the landlord) in a proper and workmanlike manner and to the reasonable requirements of the Landlord:

(a) **Maintain the premises**

Keep and maintain the interior of the premises including the Landlord's fixtures and fittings in the same clean order repair and condition as they were in at the commencement of this lease and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use or damage by fire earthquake flood storm act of God inevitable accident or any risk against which the Landlord is insured unless the insurance moneys are rendered irrecoverable in consequence of any act or default of the Tenant or the Tenant's agents employees contractors or invitees.

(b) **Repair minor breakages**

Repair all glass breakages and breakage or damage to all doors windows light fittings and power points of the premises and shall keep that portion of the electrical system of the premises from the switchboard to all power outlets in good operating condition. This provision shall apply notwithstanding any other provision in this lease.

(c) **Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated when the same reasonably require repainting and redecoration.

(d) **Floor coverings**

Keep all floor coverings in the premises clean and replace all worn or damaged floor coverings with floor coverings of a similar quality when reasonably required by the Landlord.

(e) **Make good defects**

Make good any damage to the property caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible.

**10.2** WHERE the Tenant is leasing all of the property the Tenant shall:

(a) **Maintain yards**

Keep and maintain any car parks pavings and other sealed or surfaced areas in good order and repair.

(b) **Care of grounds**

Keep any grounds yards and surfaced areas in a tidy condition and maintain any garden or lawn areas in a tidy and cared for condition.

(c) **Water and drainage**

Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.

(d) **Other works**

Carry out such works to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.

**10.3** THE Tenant shall not be liable for the maintenance or repair of any building service the subject of a service maintenance contract but this clause shall not release the Tenant from any obligation to pay for the cost of any such contract or charges in respect of any such maintenance or repair.

**10.4** WHERE the Tenant is obligated to make good damage to the property of the Landlord then the Landlord shall reimburse the Tenant for the cost of making good the damage to the extent of any insurance moneys receivable by the Landlord in respect of such damage.

**10.2 (e)** Take all reasonable steps to clear and keep clear the property from all noxious weeds and vermin.

**10.5** The tenant agrees with the landlord not to fell any trees on the property nor remove any limbs without the prior written consent of the landlord.

Toilets

**11.** THE toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

*M.B.Y. AMB*

provided that such access does not unduly interfere with the business use of the premises.

- W.B. 10.27.

W.H. Auld

- W1/H1. 26  
W.B.7. *AmBul*

## Landlord's Right of Inspection

- ## Landlord may Repair

- ### Access for Repairs

- 17A. Access to adjoining land. The tenant shall permit the landlord and the landlord's employees and contractors, at all reasonable times, access through the premises with and without vehicles, plant, machinery and equipment to the adjoining land owned by the landlord being the balance of the land in CT VI/71. \*\* 4

## USE OF PREMISES

### Business Use

- 18.1 **THE** Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any use other than the business use. The Landlord's consent shall not be unreasonably or arbitrarily withheld in respect of any proposed use
- (a) not in substantial competition with the business of any other occupant of the property which might be affected by the use,
  - (b) reasonably suitable for the premises and
  - (c) conforming with all town planning ordinances, provisions and consents.
- If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium.
- 18.2 **IF** any change in use requires compliance with Section 46 of the Building Act 1991 the Landlord, as a condition of granting consent, may require the Tenant to comply with Section 46 of the Act and to pay all compliance costs.
- 18.3 **IF** the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.

### Lease of Premises Only

19. **THE** tenancy shall relate only to the premises and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation thereto other than the rights of use herein provided.

### Neglect of Other Tenant

20. **THE** Landlord shall not be responsible to the Tenant for any act of default or neglect of any other tenant of the property.

### Signage

21. **THE** Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building or the appurtenances thereof without the prior approval in writing of the Landlord but such approval shall not be unreasonably or arbitrarily withheld in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned thereby.

### Additions and Alterations

- 22.1 **THE** Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld) for that purpose. If the Landlord shall authorise any alterations or additions the Tenant will at the Tenant's own expense if required by the Landlord at the end of the term reinstate the premises. The Tenant will promptly discharge and procure the withdrawal of any liens or charges of which notice may be given to the Tenant or the Landlord in respect of any work carried out by the Tenant. **The Tenant shall not be entitled to any compensation for improvements, structural or otherwise.**

- 22.2 **THE** Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 1991), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act.

12.6.9.  
AMB

12.6.9.  
AMB

## Compliance with Statutes and Regulations

- 23.1 **THE** Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant **PROVIDED THAT:**
- (a) The Tenant shall not be required to make any structural repairs or alterations other than those required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.
  - (b) The Tenant shall not be liable to discharge the Landlord's obligations as owner under the Building Act 1991 unless any particular obligation is the responsibility of the Tenant as an occupier of the premises.
- 23.2 If the Landlord is obliged by any such legislation or requirement to expend moneys on any improvement addition or alteration to the premises then the Landlord shall be entitled to charge in addition to the rent an annual sum equal to the Improvements Rent Percentage of the amount so expended by the Landlord and the monthly payments of rent shall increase accordingly from the first day of the month in which such improvement addition or alteration is completed. If the Landlord would be obliged to expend an unreasonable amount then the Landlord may determine this lease and any dispute as to whether or not the amount is unreasonable shall be determined by arbitration.

## No Noxious Use

24. **THE** Tenant shall not
- (a) bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of such weight size or shape as is likely to cause damage to the building or any surfaced area,
  - (b) use the premises or allow them to be used for any noisome noxious illegal or offensive trade or business, or
  - (c) allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

## Tenant not to Void Insurances

25. **THE** Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which
- (a) shall make void or voidable any policy of insurance on the property or
  - (b) may render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

In any case where in breach of this clause the Tenant has rendered any insurance less effective or void and the Landlord has suffered loss or damage thereby the Tenant shall forthwith compensate the Landlord in full for such loss or damage.

## 25A. Water Supply

*M.B.Y.*  
*AMB* The landlord gives no assurances or undertakings in respect of water supply to the property and the Tenant acknowledges that it is the Tenant's responsibility to arrange at its own expense a water supply suitable for the Tenant's purposes with Eskdale Water Company Limited or other relevant party.

*M.B.Y.* *AMB*



## **DAMAGE TO OR DESTRUCTION OF PREMISES**

### **Total Destruction**

26. **IF** the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged
- (a) as to render the premises untenable then the term shall at once terminate or
  - (b) in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within three (3) months of the date of damage or destruction give the Tenant one (1) months written notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable according to the nature and extent of the damage.

Any termination pursuant to this clause shall be without prejudice to the rights of either party against the other.

### **Partial Destruction**

- 27.1 **IF** the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenable and
- (a) the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant and
  - (b) all the necessary permits and consents shall be obtainable,
- THEN** the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises and/or the building but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.
- 27.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable according to the nature and extent of the damage.
- 27.4 If any necessary permit or consent shall not be obtainable or the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

## **DEFAULT**

### **Distress**

28. **THE** Landlord may distrain for rent or other moneys payable under this lease remaining unpaid fourteen (14) days after due date.

*M.H. 9. Aug 11*

### **Re-entry**

29. **THE** Landlord may re-enter the premises at the time or at any time thereafter
- (a) if the rent shall be in arrear fourteen (14) days after any of the rent payment dates,
  - (b) in case of breach by the Tenant of any covenant or agreement on the Tenant's part herein expressed or implied,
  - (c) if the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors,
  - (d) in the event of the insolvency bankruptcy or liquidation of the Tenant,
  - (e) if the Tenant shall suffer distress or execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of five thousand dollars (\$5000.00)
- and the term shall terminate on such re-entry but without prejudice to the rights of either party against the other.

### **Loss on Re-entry**

30. **UPON** re-entry the Landlord may remove from the premises any chattels in the apparent possession of the Tenant and place them outside the premises and the Landlord shall not be answerable for any loss resulting from the exercise of the power of re-entry.

### **Essentiality of Payments**

- 31.1 **FAILURE** to pay rent or other moneys payable hereunder on the due date shall be a breach going to the essence of the Tenant's obligations under the Lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.
- 31.2 **THE** acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

### **Repudiation**

32. **THE** Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

### **REMOVAL OF TENANT'S FIXTURES**

33. **THE** Tenant not being in breach may at any time before and will if required by the Landlord at the end or earlier termination of the term remove all the Tenant's fixtures and fittings and make good at the Tenant's own expense all resulting damage and if not removed within seven (7) days of the Landlord's request ownership of the Tenant's fixtures and fittings passes to the Landlord.

W.B.T. *[Signature]*

## QUIET ENJOYMENT

34. **THE** Tenant paying the rent and performing and observing all the covenants and agreements herein expressed and implied shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

## RENEWAL OF TERM

35. **IF** the Tenant has not been in breach of this lease and has given to the Landlord written notice to renew the lease at least three (3) calendar months before the end of the term then the Landlord will at the cost of the Tenant renew the lease for the next further term from the renewal date as follows:
- (a) The annual rent shall be agreed upon or failing agreement shall be determined in accordance with clause 2.2 but such annual rent shall not be less than the rent payable during the period of twelve (12) months immediately preceding the renewal date.
  - (b) Such annual rent shall be subject to review during the further term on the review dates or if no dates are specified then after the lapse of the equivalent periods of time as are provided herein for rent reviews.
  - (c) The renewed lease shall otherwise be upon and subject to the covenants and agreements herein expressed and implied except that the term of this lease plus all further terms shall expire on or before the final expiry date.
  - (d) Pending the determination of the renewal rent the Tenant shall pay the rent proposed by the Landlord provided that the rent is substantiated by a registered valuer's report. Upon determination an appropriate adjustment shall be made.

## ASSIGNMENT OR SUBLETTING

### SUBJECT TO CLAUSE 46.1

- 36.1 **THE** Tenant shall not assign sublet or otherwise part with the possession of the premises or any part thereof ~~without first obtaining the written consent of the Landlord which the Landlord shall give if the~~ following conditions are fulfilled:

- (a) The Tenant proves to the satisfaction of the Landlord that the proposed assignee or subtenant is (or in the case of a company the shareholders of the proposed assignee or subtenant are) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease.
- (b) All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.
- (c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord.
- (d) In the case of an assignment to a company (other than a listed public company) a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and (if required by the Landlord) by the Directors and delivered to the Landlord.
- (e) The Tenant pays the Landlord's proper costs and disbursements in respect of the approval or preparation and stamping of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor.

- 36.2. **WHERE** the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.

- 36.3 **ANY** assignment or subletting of the type or in the manner referred to in Section 109 (2) of the Property Law Act 1952 shall be a breach of the provisions of this lease.

- 36.4 **WHERE** any Tenant is an unlisted company then any change in the legal or beneficial ownership of any of its shares or issue of new capital whereby in either case there is a change in the effective management or ~~control of the company is deemed to be an assignment of this lease.~~

## **UNIT TITLE COVENANTS**

### **Body Corporate**

- 37.1 ~~THE~~ expression "Body Corporate" means the Body Corporate incorporated under the Unit Titles Act 1972 ("the Act") in respect of the property.

### **Act and Rules Paramount**

- 37.2 **THIS** lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

### **Insurance**

- 37.3 ~~THE~~ Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance covers in accordance with the Act.

### **Indemnity**

- 37.4 ~~THE~~ Tenant's obligation to indemnify the Landlord as herein expressed is extended to include the Body Corporate but only to the extent that the Body Corporate is not fully indemnified under any policy of insurance.

### **Lessor's Obligations**

- 37.5 ~~THE~~ Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

### **Consents**

- 37.6 ~~WHERE~~ in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to any such matter ~~would be necessary under its rules or the Act.~~

*M. E. J. Aubrey*

## **GENERAL**

### **Holding Over**

38. **IF** the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, such occupation shall be a monthly tenancy only terminable by one month's written notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a monthly tenancy) as herein expressed or implied.

### **Access for Re-Letting**

39. **THE** Tenant will at all reasonable times during the period of three months immediately preceding expiration of the term permit intending tenants and others with written authority from the Landlord or the Landlord's agents at all reasonable times to view the premises.

### **Suitability**

40. **NO** warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

*M. E. J. Aubrey*

## Waiver

41. **NO** waiver or failure to act by the Landlord in respect of any breach by the Tenant shall operate as a waiver of another breach.

## Land Transfer Title or Mortgagee's consent

42. **THE** Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the premises to this lease and the Tenant will not register a caveat in respect of the Tenant's interest hereunder.

## Notice

43. **SUBJECT** to the provisions of the Property Law Act 1952 any notice to be given to the Landlord or the Tenant hereunder shall be deemed sufficiently served if
- (a) sent by registered post to the addressee's last known address in New Zealand, or
  - (b) in the case of a body corporate sent to its registered office, or
  - (c) if there is no last known address or registered office, placed conspicuously on any part of the premises.

Any notice so posted or placed shall be deemed to have been served on the day following the posting or placing thereof. Anything served or given by the Landlord shall be valid if served or given under the hand of the Managing Director, General Manager, Secretary or a director or other authorised representative of the Landlord.

## Arbitration

- 44.1 **UNLESS** any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- 44.2 **IF** the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the President or Vice President for the time being of the District Law Society of the district within which the premises are situated. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- 44.3 **THE** procedures prescribed in this clause shall not prevent the landlord from taking proceedings for the recovery of any rent or other monies payable hereunder which remain unpaid or from exercising the rights and remedies in the event of such default prescribed in clauses 28 and 29 hereof.

## Interpretation

45. **IN** this lease
- (a) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant
  - (b) "the property" and "the building" mean the land and building(s) of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.
  - (c) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers.
  - (d) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
  - (e) Where the context requires or admits, words importing the singular shall import the plural and vice versa.

*M.B.G.* *Ambs*

## ~~THIRD SCHEDULE~~

## ~~GUARANTEE~~

~~IN CONSIDERATION of the Landlord entering into the lease at the Guarantor's request the Guarantor:~~

- ~~(a) guarantees payment of the rent and the performance by the Tenant of the covenants in the lease, and~~
- ~~(b) indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.~~

~~THE GUARANTOR covenants with the Landlord that:~~

- ~~1. NO release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.~~
- ~~2. AS between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.~~
- ~~3. THE guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.~~
- ~~4. AN assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.~~
- ~~5. SHOULD there be more than one Guarantor their liability under this guarantee shall be joint and several.~~

### Acknowledgement

The Landlord acknowledges as follows:

- (a) The Tenant has entered into an integration agreement with the Crown acting through the Minister of Education on pursuant to the Private Schools Conditional Integration Act 1975 for the establishment of Hukarere College on the premises.
- (b) The integration agreement provides for a Board of Trustees ("the Board") to be established under the provisions of the Education Act 1989 which will be responsible for the management of Hukarere College.
- (c) The occupancy by the Board of the premises will not be an assignment or subletting to which Clause 36.1 relates, and shall be permitted as of right.
- (d) Pursuant to the integration agreement (as noted in ~~Schedule~~ <sup>the Second and Third Schedule</sup> of the agreement) the Crown is permitted to establish relocatable educational facilities onto the premises, and that such educational facilities will remain in the ownership of the Crown.
- (e) The crown has the right to remove all the relocatable educational facilities on the premises within three months of a written notice being given to the Landlord and Tenant at any time during the term or at the end of the term.
- (f) The Board will be responsible for the maintenance of the relocatable educational facilities, and the Tenant will be responsible for keeping the relocatable educational facilities fully insured.

## SECOND SCHEDULE

Description of land, buildings and other improvements comprising the School premises.

### THE SCHOOL PREMISES

All that part of the Proprietor's land as described in the First Schedule hereto delineated in green on the annexed plan of the Proprietor's land, which forms part of this schedule, TOGETHER WITH, all the School buildings and other improvements thereon SAVE AND EXCEPT those buildings more particularly delineated in blue on the annexed Plan hereto.

All buildings delineated in purple are owned by the Ministry of Education and are subject to Clauses 4.3 to 4.6 (both inclusive) of this Supplementary Deed of Agreement.

*W.H.Y. M.B. ul.*

### THIRD SCHEDULE

Work to be carried out by the Ministry of Education to relocate and establish Hukarere College onto the France House site in Eskdale north of Napier as prepared by Judd Fenwick Team Architecture Limited attached.

*W.B.Y. Aubrey*



# HUKARERE SCHOOL – RELOCATION TO THE FRANCE HOUSE SITE MOE PROJECT WORKS

## 1. SCOPE OF CONTRACT

1.1. **THE GENERAL SCOPE OF THIS CONTRACT:** Involves the relocation of 5 no. existing Prefabs currently located in storage at Havelock North, onto the France House site, all as indicated on the attached drawings. This contract also involves the R & M work to the existing Classrooms including cleaning, etc.

1.2. **SCOPE OF WORK:** The basic scope of work in this contract:

### EXISTING AND NEW (RELOCATABLES) CLASSROOM BLOCK

- R & M work to the existing Classrooms, including floor coverings, cleaning. Refer to the scope of work outlined under the Carpentry Section of the Specification.
- Re commissioning of the existing Toilet facilities within the existing Classroom Block.
- Relocation of 5 no. existing Prefabs currently located on a nominated site, held by Hastings House Removals Ltd – Carl Baker 027 437 974.
- Construction of a new covered Verandah linking the Prefabs, including a new Covered Way connecting the new Classroom Block to the existing Classroom Block, or possibly reusing the existing covered way verandahs removed from the EIT, dully modified to suit.
- Construction of 5 no. (2 doubles and 1 single) new Resource Rooms located **between** the Prefabs (all on the end of the Prefabs) all as indicated on the drawings.
- Construction and connection of new sewage disposal system to the existing manhole currently located in front of the existing France House.
- Installation of a stormwater disposal system to be connected to the existing grate located adjacent to the new Classroom Block.
- Installation of new mains cables from the existing transformer located near the entry of France House to the existing switch board located in the existing Classroom Block, and further associated electrical work.
- Supply and installation of data reticulation system between the Classrooms and the proposed location for the new hub, including interconnection back to the France House building.
- Installation of water supply system from the existing sump (containing control valves) located approximately 5 - 7 metres from the existing France House building, and further modifications to the water supply system as required by the Mechanical Engineer.
- Formation of site works including paths, parking area.

1.3. **PROGRAMME OF WORKS:** The duration of this project is from the time of access to the site (nominated to be not later than 7 Jan 2002) and completion of the works by 29 March 2002. The tight programme is imperative insofar as if this date is not met, then the School cannot relocate from its current site to the France House site.

**PREFAB CLASSROOMS:** Land classrooms onto the site and locate in the positions as indicated. Make allowance to fabricate/construct the Resource areas between in the nominated locations. Refer to the drawing indicating the specific requirement for the foundations and piling layout. The contractor shall take care to set out the piles in the correct location for the specific units. (these vary in accordance with the specifically nominated unit). Lower the units onto the new piles and fix strictly in accordance with drawings and the requirements of NZS 3604.

**MAINTENANCE TO THE EXISTING CLASSROOMS AND THE GYM:** Refer to the following bullet points which outlines the approximate scope of work, to be completed within the existing buildings:

#### Classroom One

- Paint ceiling.
- Additional lighting.
- Whiteboard insert in current blackboard.
- Remove existing pinboards off end wall, cover with pinex softboard and prelude.
- Clean floor.
- Paint balance of walls.
- Review state of vinyl on floor.

Classroom Two

- Paint ceiling.
- Additional lighting.
- Whiteboard insert in current blackboard.
- Remove existing pinboards off end wall, cover with pinex softboard and prelude.
- Clean floor.
- Paint balance of walls.

Classroom Three (Western Classroom)

- Paint ceiling.
- Additional lighting.
- Whiteboard insert in current blackboard.
- Remove existing pinboards off end wall, cover with pinex softboard and prelude.
- Clean floor.
- Paint balance of walls.

Main Hallway

- Paint ceiling.
- Paint walls.
- Lift vinyl and allow to part replace vinyl.

Old Kitchen on South Side

- New floor covering.

Old Gymnasium

- Review lighting (existing fittings appear to have been vandalised).
- Thorough clean out of floor, etc.

South Western Classroom

- Paint ceiling.
- New light fittings.
- New floor covering.
- Pinex and prelude.
- Remove damaged window sashes and replace with aluminium.

Exterior of Same Building

- Repair gutters.
- Repaint exterior.

Tennis Court

- Review cleaning and resurfacing tennis court.

Administration Wing - Existing Building

- Review costs of upgrading Administration Wing.

**1.1.5 FITTING OUT OF PREFAB CLASSROOMS:** Two Classrooms shall be fitted out as follows.

As a Science Lab.  
As an IT Suite.  
As an Art Room.  
As an Food Technology Suite.

Details for the fitting out of these Classrooms are currently being developed and will be forwarded to the Contractor as soon as is practicably possible for fitting out of these Classrooms.

**1.1.5 EXISTING RELOCATABLE TOILET BLOCK:** Remove the existing doors and refix through 90 deg as indicated on the drawings.

**2. SCOPE OF WORK - SEWER DRAINAGE:**

**2.1. EXISTING DRAINAGE:** There are limited drainage records or information about drains around this Building. Existing drainage runs have been taken from records.. No guarantee can be provided as to their accuracy..

- 2.2. **EXISTING DRAINS:** Terminate existing drains and leave in ground, except where necessary to either remove and/or where new drains cross at similar levels. Terminate all existing drains in accordance with the local TA requirements.
- 2.5. **NEW DRAINS:** Supply and install new drains, new sewer drains and stormwater drains in positions indicated. Assume depth of connection at new man-holes at 1500 below average ground level. Construct new drainage with minimum falls as required by the building code. Reconnect the relocated toilet block (from EIT) to the main sewerage drain as indicated. Provide rodding eyes at all changes in direction. Provide future connection points for future classroom extensions as indicated on the drawings.
- 2.5. **SEWERAGE PUMP CHAMBER (ALL PROVISIONAL):** Supply and install new 1800 dia x 1800 deep Humes or equal concrete pipe on end complete with concrete base, concrete lid and two cast iron manhole covers for access. Supply and install and commission 2 no Flygt or equal sewage pumps in the chamber to discharge into the existing manhole located in front of the existing Beck House. Pumps shall have alternative service controls, high level alarms and fail alarms systems, Install alarms adjacent to the existing switchboard in the existing classroom block.

