

Separation Agreement

Hutt Valley Tennis Incorporated

and

**Corey Love as Trustee and
President for the members of
Mitchell Park Squash Club**

12 October 2018

Agreement dated

12 October 2018

PARTIES

1. **Hutt Valley Tennis Incorporated (HVT)**
2. **Corey Love as trustee for the members of Mitchell Park Squash Club (MPSC)**

BACKGROUND

- A. The parties have agreed various matters relating to the departure by MPSC from the tennis, squash and related facilities at Mitchell Park Lower Hutt and the cessation of MPSC's membership of HVT.
- B. The agreement reached by the parties is in two sections being
 - (i) the Schedule and Appendices (included in pages 7, 8 and 9 and in the separate 16 page marked up version of changes to the HVT constitution) to this agreement which were agreed directly between the parties and their separate legal advisers, and
 - (ii) the more general legal terms (pages 1-6) of this agreement which have been added later to provide a legal base upon which the terms agreed by the parties can sit.

AGREEMENT

1. Definitions and Interpretation

- 1 In this agreement unless the context otherwise requires:

"Agreement Date" means the date this agreement is executed by all parties (such date to be recorded at the top of this page 1).

"Completion" means completion of the obligations of the parties as required in this agreement.

"Completion Date" means such date to be established by the resignation notice being submitted by MPSC to HVT in accordance with HVT rules, such date expected to be in March 2019.

"Condition Date" means the date of completion of the conditions referred to in clause 5.

"Conditions" means the conditions to Completion set out in clause 5 and in the Schedule and in Appendix 2 (Conditions).

"GST" means goods and services tax in terms of the GST Act. **"GST Act"** means the Goods and Services Tax Act 1985.

Interpretation

- 1 In this agreement, unless otherwise stated or the context otherwise requires:
 - (a) references to any “party” mean a party to this agreement and include the successors, executors, administrators and permitted assigns (as the case may be) of that party;
 - (b) where 2 or more persons are listed as a party to this agreement, their liability is joint and several;
 - (c) references to a “person” includes reference to a body corporate, Governmental Agency or unincorporated body of persons;
 - (d) all monetary amounts are stated and are payable plus GST (if any).

2. Separation

- 2.1 On the Completion Date, MPSC shall cease to be a member of HVT.

3. Separation payment

- 3.1 On the Completion Date, MPSC shall make the payments referred to in the Schedule, plus GST if any. The parties agree that GST is payable in relation to the payment of \$50,000 from MPSC to HVT. Prior to the payment by MPSC, HVT must repay to MPSC the amount of previous overpayments made by MPSC to HVT, being the inter-entity balance in the HVT financial statement that stood at \$32,170.00 as at 30th April 2018, and will be updated up and until the Completion Date.
- 3.2 All payments under this agreement must be paid on the due date, free of all withholdings and deductions, by electronic transfer to the bank account nominated by the recipient.
- 3.3 The parties agree that after implementation of this Agreement and provided MPSC meets its payment obligations in Clause 3.1, from and after the Completion Date:
 - (a) Both parties have no further liability to each other, and MPSC has no further liability in relation to the Mitchell Park facility;
 - (b) MPSC has no further interest in the facility at Mitchell Park
 - (c) It is the responsibility of MPSC to pay all liabilities incurred by MPSC up and until the Completion Date, and;
 - (d) HVT will not make any further claims on the funds of MPSC and will leave MPSC free to make further distributions as described in Schedule 1, clause 3 as allowed under its Code of Administration.

2. GST

- 4.1 The Parties each warrant that they are or will be (and will remain) registered persons under the GST Act at the time of payment by MPSC to HVT under this agreement.

- 4.2 Prior to Completion Date HVT shall issue a valid GST invoice to MPSC for \$50,000 plus GST and the narration on the invoice shall record that it is for "building maintenance in relation to the Mitchell Park Squash Centre".

5. Conditions

Conditions Precedent to Completion

- 5.1 This agreement is conditional on the fulfilment of each of the following conditions:
- (a) **HVT member resolution:** The passing by the members of HVT of a resolution approving entry into and performance of this agreement by HVT, and
 - (b) **MPSC member resolution:** The passing by the members of MPSC of a resolution approving entry into and performance of this agreement by MPSC.
 - (c) Completion of all matters recorded by the parties as conditions precedent to completion set out in Appendix 2.

Fulfilment of Conditions

- 5.2 Each party must each use their reasonable endeavours to procure satisfaction of the Conditions and each will from time to time on request from the other keep the other fully informed on progress in procuring the satisfaction of the Conditions.

Termination due to non-fulfilment of Conditions

- 5.3 If any of the Conditions under this clause are not fulfilled or (to the extent that any such Conditions are capable of being waived) are not waived by the party for whose benefit such Conditions exist, by 30 April 2019 or such other date agreed by the parties then this agreement may be terminated by written notice by either party. On this agreement being terminated pursuant to this clause neither party will have any rights against or obligations to the other under this agreement.

6. Completion

Additional Completion Obligations

- 6.1 On Completion, the parties will transfer such items of plant and equipment between them as may be required by Appendix 3 free from any Encumbrances and with all documents that may be necessary to vest ownership or to provide evidence of transfer of ownership.

Announcements

- 6.2 The parties must consult with each other as to the timing and wording of any announcements about this agreement.

7. Disputes

Discussions

- 7.1 The parties must meet and discuss in good faith with the aim of resolving any dispute between them arising out of this agreement, its interpretation, their rights and obligations under this agreement, or any other matter relating to this agreement.
- 7.2 Neither party may issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken all reasonable steps to resolve the dispute in accordance with this clause.

8. Notices

- 8.1 Every notice to be given under or in connection with this agreement must be in writing and addressed to the party to whom it is being sent at the contact details provided under each party's signature or such contact details as the party gives all other parties notice of in writing from time to time and given by one of the methods below, and will be deemed to be received as follows:
- (a) Personal delivery to the residence of the addressee, at the time of such delivery.
 - (b) Email transmission to the email address provided, at the time the sender's email system confirms that the email was sent to the email address of the recipient (unless the recipient proves that contrary to the sender's email confirmation, the email was not sent or was not properly sent to the recipient's email address).
- (a)
- 8.2 For the purposes of this agreement, any notice transmitted by e-mail or delivered after 5.00 pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9.00 am on the next Business Day.

9. General

Binding agreement

- 9.1 This agreement is binding upon and enforceable by each party.

Further assurances and cooperation

- 9.2 Each party must use its best efforts to do all things and execute all documents necessary or desirable to give full effect to the provisions and intent of this agreement.

Joint and several obligations

- 9.3 Any provision of this agreement that is binding on more than one party will bind

such parties jointly and severally.

Counterparts

- 9.4 This agreement may be executed in one or more counterpart copies which, read together, will constitute one and the same instrument. Any pdf copy of this agreement (including any pdf copy of any document evidencing the execution of this agreement by either party) may be relied on by the other party as though it were an original copy.

Costs

- 9.5 Subject to any express contrary provision in this agreement, each party will bear its own costs in connection with the negotiation, preparation, execution and implementation of this agreement.

Non-waiver

- 9.6 The failure of or delay by a party in requiring performance of any obligation of another party under this agreement is not a waiver of the first party's right:
- (a) to claim damages for breach of that obligation; and
 - (b) to require performance of that or any other obligation under this agreement at any time,
- unless notice to that effect is given in writing signed by the party entitled to the benefit of that provision or right. Any waiver given in accordance with this clause is effective only to the extent expressly set out in such notice.

Non-merger

- 9.7 The undertakings given under or pursuant to this agreement will not merge on Completion, and, to the extent any provision has not been fulfilled, such provision will remain enforceable to the fullest extent, notwithstanding any rule of law to the contrary.

Entire agreement

- 9.8 This agreement, which includes Schedule 1 and Appendices 1, 2 and 3, records the entire arrangement between the parties relating to the matters dealt with in this agreement and supersedes all previous arrangements, whether written, oral, or both, relating to such matters.

Partial invalidity

- 9.9 If any provision of this agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this agreement and such invalidity or unenforceability will not affect the other provisions of this agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

Variations

- 9.10 No variation or amendment to this agreement is effective unless it is in writing and signed by all the parties.

No assignment

- 9.11 Neither party may transfer or assign any of its liabilities or rights under this agreement to any other person without the prior written consent of the other party such consent not to be unreasonably withheld.

Contractual Privity

- 9.12 This agreement will be binding against and for the benefit of each party, its permitted successors and its permitted assigns. Except as expressly provided for in this agreement, a person who is not a party to this agreement will have no rights or remedies under this agreement, including under subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, to enforce any of its terms.

Governing law and jurisdiction

- 9.13

This agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this agreement.

EXECUTION

Signed by **Hutt Valley Tennis Incorporated** by
Jan Milne as President of HVT



Contact details for Jan Milne are:

Janmilne1@gmail.com

Signed by **Corey Love** as Trustee and President
for the members of Mitchell Park Squash Club:



Contact details for Corey Love are:

corey.love@sherwin.com

SCHEDULE 1

Terms agreed between HVT and MPSC

Background

- A. Mitchell Park Squash (MPSC) is to leave Mitchell Park and a new incorporated squash club (Hutt City Squash Club) is to be established to conduct a new squash club at Fraser Park Sportsville;
- B. There is some uncertainty as to the status of MPSC, the ownership of funds in MPSC account and the obligations of MPSC to Hutt Valley Tennis Incorporated (HVT) on departing Mitchell Park ;
- C. A transition committee was formed to negotiate the commercial agreement for separation of HVT and MPSC. Building assessments show that the liabilities, if any, left at Mitchell Park by MPSC were greater than the club could pay to HVT on exit from Mitchell Park;
- D. The parties have agreed the terms below as the basis for the exit of MPSC from Mitchell Park and from the HVT structure:
- E. These terms:
 - a. have been agreed at meetings of HVT Management Committee and MPSC Management Committee, and
 - b. have been discussed with and the process is supported by the Mitchell Park Trustees and the legal representative from HCC, and
 - c. are conditional upon approval via member resolutions at the general meetings of MPSC and HVT.

Requirements for Separation

- 1 The Parties agree that after implementation of this Separation Agreement and provided MPSC meets its payment obligations in Clause 3.1, from and after the Completion Date:
 - a. Both parties have no further liability to each other, and MPSC has no further liability in relation to the centre at Mitchell Park;
 - b. MPSC has no further interest in the facility at the Mitchell Park facility; and
 - c. It is the responsibility of MPSC to pay all liabilities incurred by MPSC up until the Completion Date; and
 - d. HVT will not make any further claims on the funds of MPSC and will leave MPSC free to make further distributions as described in Schedule 1, clause 3 as allowed under its Code of Administration.
- 2 The steps required to achieve this objective will, unless otherwise agreed between the parties , include:
 - a. the amendments to the constitution of HVT set out in Appendix 1 (in order to remove the rights and responsibilities of MPSC with effect from

- the Completion Date (as defined below); and
- b. The further steps outlined in Schedule 2 to this Agreement.
- 3 On, or after the Completion Date, and after the settlement of all outstanding creditors, the liquidation of the residual funds held in the MPSC bank accounts will be paid out in the following preference order:
- a) \$50,000 to HVT, being the Separation Payment outlined in clause 3.1 of the Separation Agreement to cover expenses for building maintenance and other liabilities mainly related to the Mitchell Park facility.
 - b) \$20,000 to a new club to be incorporated under the name Hutt City Squash Club (HCSC)
 - c) Up to \$50,000 to be paid to the Community Facilities Trust (CFT) to go toward the new Sportsville initiative at Fraser Park.

Any moneys left will be paid to the new club to be incorporated under the name Hutt City Squash Club (HCSC)

APPENDIX 1: REQUIRED AMENDMENTS TO HVT CONSITUTION

See version of "Hutt Valley Tennis Incorporated" Constitution (attached as a separate document) showing marked-up amendments to HVT constitution.

APPENDIX 2: Agreed undertakings by HVT and MPSC

At the appropriate time, MPSC to resign its membership of HVT by giving no less than one month's notice in writing to the Management Committee as per HVT Rule 9: Termination of Membership (the resignation date specified in such notice being the **Completion Date**).

Upon:

- a) expiration of the notice period; and
- b) provided MPSC has paid all Executive Account Levies due and payable by MPSC; and
- c) MPSC complying with all other requirements relating to the Separation (including under this Agreement);
- d) MPSC shall cease to be a member. (Estimated March 2019)

Conditions precedent to Separation

- a) MPSC to give an undertaking and guarantee to HVT that the club has settled all debts and liabilities.
- b) MPSC acknowledges that HVT will no longer provide a guarantee of MPSC liabilities should it be unable to meet its obligations.

- c) MPSC agrees to leave the property in a tidy condition.
- d) Chattels required for the normal operation of the bar and squash court and environs e.g. bar fittings, equipment and furniture to remain at Mitchell Park as outlined in the assets register in Appendix 3. The book value of these assets will be zero, and the finalisation as per the 'Notes' in Appendix 3 between MPSC and HVT will happen at Completion Date.
- e) Key tags and master keys are returned.
- f) MPSC suppliers, contractors and key contacts are notified of the change of contact details.
- g) The MPSC website is pointed to the Hutt City Squash Club website and reference to Mitchell Park removed.
- h) The Mitchell Park complex will remain the property of HVT after the Completion Date.

Once all of the above has been confirmed and settled, MPSC Bank Accounts will be closed.

APPENDIX 3: Plan for MPSC assets (to be finalised)

ITEM	\$	Where	Notes
Fixtures and Fittings	72,912	HVT	Includes tables, chairs in bar/ common areas
Sauna	2,387	HVT	Based on goodwill, MPSC will leave at HVT
TVs	4,779	HVT	TV's situated in the bar
DVD Player	62	TBC	
Fridge	156	HVT	
Barbeque	330	MPSC take	This will be removed prior to settlement
Microwave	156	HVT	
Court Ventilation	14,556	MPSC to sell	On the basis it was sold and a make good on the building was agreed to.
Court Lights	12,955	HVT	
Court safety Glass	13,300	HVT	
Dehumidifier	9,251	MPSC to sell	On the basis it was sold and make good on the building was agreed to.
Bar Fridge	1,700	TBC	To be discussed with bar manager
Vacuum Cleaner	329	HVT	
Cameras	420	TBC (HVT)	It is thought it would stay, however we need to check with the operator
Television - Tournament Control	469	MPSC take	This will be removed prior to settlement
Defibrillator		MPSC take	As this was a squash grant, it will be taken for squash in the new facility