

Potts & Hodgson

BARRISTERS & SOLICITORS

18 May 2007

Our Ref: 445/1

Rangitauira & Co
Solicitors
PO Box 1693
Rotorua

Attention: **Jason Pou**

Re: Ngateretere – Rewetu – Whakapaupakihi

We **enclose** the Joint Venture Agreement which has been revised to show the new apportionment of interests between Whakapaupakihi 2 and 5 Blocks.

We have also amended clause 8 of the Joint Venture Agreement restoring \$500,000.00 in clause 8.1(c) but providing that further advances can be secured with agreement that further advances of funds from Rewetu to the Company require the consent of all the directors of the Joint Venture Company.

Yours faithfully
POTTS & HODGSON



IAN PETERSON
EMAIL: ian@pottshodgson.co.nz
IRP:15m2/1

Encls:

RANGITAUIRA & CO.

BARRISTERS & SOLICITORS

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Westpac Trust Building
1154 Hinemoa Street (P.O. Box 1693),
DX JP30025
ROTORUA
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29 May 2007

Pehimana Brown
213 Kaitara Road
RD 4
TE KARAKA

Tarati Carrington ✓
53 King Street
OPOTIKI

Tena koutou

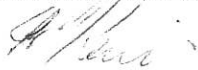
RE: JOINT VENTURE AGREEMENT - WHAKAPAUPAKIHI 2 & 5 BLOCKS

Please find enclosed herewith a copy of a letter together with documentation we have received from Potts & Hodgson for your perusal and for retaining by you for disclosure purposes. We have a time available at 11.am on Thursday, 7th June next for you to attend at our offices with Mr Rangitauira in order to execute the documents if that is suitable for you. In the case of Mr Brown we can arrange to forward the documents to a lawyer closer to your residence if that is more convenient for you.

Could you please contact our offices to confirm your appointment or if an alternative date is required. Please ask for Mary who handling this matter.

We look forward to hearing from you shortly.

Yours faithfully
RANGITAUIRA & CO



E M Peina

Email: rangitauira.office@clear.net.nz

"Original Parties" means **REWETU STATION LIMITED** and **THE TRUSTEES OF WHAKAPAUPAKIHI 2 BLOCK** and **THE TRUSTEES OF WHAKAPAUPAKIHI 5 BLOCK** being trustees appointed in terms of s215 of Te Ture Whenua Maori Act 1993.

"Party" or "Parties" means such one or more of the Original Parties as are for the time being Shareholders and any other person who pursuant to the terms and conditions of this Agreement becomes a Shareholder and bound by the terms of this Agreement or such one or more of those persons as the context requires.

"Settlement Date" means [REDACTED].

"Shareholder" means a person who is for the time being a registered shareholder of the Company.

"Territory" means the whole of New Zealand and such other areas or countries as the Parties may unanimously agree upon from time to time.

"this Agreement" means this document and unless the context otherwise requires the Schedules.

"Venture" means the business referred to in Background A and all additional business activities entered into by the Company complying with this Agreement.

- 1.2 Words which refer to the singular include the plural and vice versa; and words importing one gender include the other genders.
 - 1.3 Headings are used in this Agreement for convenience only and shall not affect the interpretation of this Agreement.
 - 1.4 References in this Agreement to currency are references to New Zealand currency unless otherwise specified.
 - 1.5 The word "person" includes any individual, company, corporation, corporation sole, trust, firm, partnership, joint venture, syndicate, the Crown, any central or local government department, authority, association or group, and any other entity, or any other association of persons either corporate or unincorporate.
- 2 Establishment of Joint Venture**
- 2.1 The Original Parties hereby establish the Joint Venture to accomplish the establishment and the ongoing operation and development of the Venture in accordance with the terms and conditions of this Agreement.
 - 2.2 The Joint Venture will be undertaken through the Company, which will be acquired or incorporated by the Original Parties.
 - 2.3 The business of the Company shall be conducted in the best interests of the Company on sound commercial profit making principles and shall be developed so as to maximise commercial opportunities available to the Company.
 - 2.4 The Parties shall act in all matters so that the Company shall not engage in activities outside the Venture.

3 Joint venture company structure

- 3.1** The parties shall cause the name of the Company to be, Ngateretere Limited or such other name as the Registrar of Companies may approve and the Original Parties may mutually agree in writing.
- 3.2** The initial capital of the Company will be 10,000 ordinary shares to be issued for the consideration specified in clause 3.4.
- 3.3** The shares in the Company shall be issued as follows:
- (a) 5000 A shares issued to **REWETU** and referred to in this Agreement as Group A shares.
 - (b) 3345 B shares issued to **WHAKAPAUPAKIHI 2** and being the first tranche of the shares referred to in this Agreement as Group B shares.
 - (c) 1655 C shares issued to **WHAKAPAUPAKIHI 5** being the balance of the shares referred in this agreement as Group C shares.
- 3.4** On the Settlement Date, **REWETU** shall subscribe for and pay up in full in cash all the Group A shares at an issue price of \$1 per share and **WHAKAPAUPAKIHI 2** shall subscribe for all the Group B shares at an issue price of \$1 per share **WHAKAPAUPAKIHI 5** shall subscribe for all the Group C shares at an issue price of \$1 per share.
- 3.5** The Constitution of the Company shall be substantially in the form attached as the Second Schedule.
- 3.6** The financial year of the Company shall end on 31 March in each year.
- 3.7** The Company shall bear all the costs of establishing the Joint Venture including the legal, accounting and other out of pocket costs incurred by the Parties in connection with this Agreement, including the incorporation of the Company, and the preparation of the lease and loan security documents.

4.0 Transfer of Shares

- 4.1** The transfer of shares shall be limited in accordance with the draft constitution attached as the second schedule.

5 Company structure: Directors

- 5.1** The Board of the Company shall comprise four Directors of whom:
- (a) Two shall be appointed by the holders of Group A shares; and
 - (b) One shall be appointed by the holders of Group B shares.
 - (c) One shall be appointed by the holders of Group C shares.
- 5.2** The quorum for any meeting of the Board shall be three Directors present at the commencement of the meeting in person or by alternate of whom:
- (a) One must be an appointee of the holder of the Group A shares; and
 - (b) One must be an appointee of the holder of the Group B shares.

- (c) One must be an appointee of the holder of the Group C shares.
- 5.3 If additional shares are issued in accordance with clause 3.8 the quorum and number of Directors shall be changed so as to result in each party holding a proportion of the shares having a proportionate right of appointment to the Board and that at least one Director appointed by each group of shares shall be necessary to be present at a meeting of Directors to constitute a quorum.
- 5.4 Except as otherwise specifically provided in this Agreement the Board shall have full authority to make all decisions and to take all actions concerning the Company, and the Joint Venture.
- 5.5 Notwithstanding clause 5.4 or the provisions of the Constitution, the Company may not engage in any of the following activities or determine any of the following matters without the unanimous approval of the Directors of the Company:
- (a) Any material change in the nature, scope or size of the Venture;
 - (b) The issue of shares or other voting securities in the Company;
 - (c) The licensing of Trade Marks;
 - (d) The determination of Directors' remuneration;
 - (e) The making of loans by the Company to any Party or any Affiliate of any Party;
 - (f) The delegation to any person or persons of any powers of the Directors;
 - (g) The sale, charge, creation of a security interest in, or other disposition of any property of the Company having a value in excess of an amount equal to 10 per cent of net shareholders funds as shown in the latest balance sheet of the Company (such amount in this clause being referred to as "the Shareholders Funds Percentage")
 - (h) The acquisition by purchase, lease, licence or otherwise of any property having a value in excess of the Shareholders Funds Percentage;
 - (i) The lending of any moneys to, or suffering the indebtedness of any person, otherwise than in the ordinary course of the ordinary business of the Company or its administration;
 - (j) The entering into any transaction or series of related transactions which involve expenditure, or the incurring of liability in excess of 20 per cent of shareholders' funds of the Company at the time of the transaction (but excluding agreements entered into in the ordinary course of the ordinary business of the Company);
 - (k) The entering into of any new undertaking by the Company outside the Venture; or
 - (l) The Company ceasing to carry on all or any substantial part of its business.
- 5.6 The Directors shall elect from their members a chairperson of the board who shall hold office for one year and shall be eligible to be re-appointed.
- 5.7 Except as provided elsewhere in this Agreement any question arising at any meeting of the Board shall be decided by a majority of votes of the Directors present. Each Director shall be entitled to one vote. The Chairperson shall have a deliberative but not a casting vote.

- 5.8 Each Party may appoint alternate directors to act in place of any Director or Directors appointed by it. Any alternate director may receive notices of and attend any meeting of Directors of the Company together with the Director or Directors in respect of whom the alternate director has been appointed as an alternate provided that where a Director and his alternate or alternates shall attend a meeting of Directors together the alternate director or directors shall not be entitled to vote at that meeting as alternate for such Director.
- 5.9 Meetings of the Board shall be held from time to time but not less than three times in each year at four-monthly intervals.
- 5.10 The Directors and each of them when acting as a Director may, subject to this Agreement, in good faith consider and act in the best interests of the shareholder who has appointed them.

6 Company structure: management

- 6.1 The business of the company shall be managed by Rewetu. The Manager shall report to the Chairperson. The form of management contract shall be more or less in the terms attached as schedule three.
- 6.2 The Manager shall be responsible to the Board for the day to day management of the Company in accordance with and subject to the policies, budgets and directions laid down by the Board.
- 6.3 Promptly after the end of each reporting period, the management of the Company shall submit to each of the Parties financial statements in respect of that reporting period. The statements shall be in conformity with the Financial Reporting Act 1993.
- 6.4 The Parties shall each have full and complete access to Company operations at all reasonable times for the purpose of inspection or audit but so as not unreasonably to interfere with the operations of the Company.
- 6.5 The Parties and/or their auditors shall each have full and complete access to the books of account, registers and other records (including all other information in whatever form) of the Company at all reasonable times for the purpose of inspection or audit but so as not unreasonably to interfere with the operations of the Company.
- 6.6 The Company shall appoint its own staff, either as employees or on a contract basis, to provide for its management and operations.

7 Company operations: finance and administration

- 7.1 The administrative management and book keeping of the Company shall be undertaken by _____ (referred to in this clause as "Management")
- 7.2 An Annual Operational Plan and Budget for the Joint Venture (both capital and revenue) for each financial year shall be developed and prepared by management of the Company for consideration by the Board. Proposals for the financing of the budgets shall also be developed for the Board's consideration. Each Operational Plan shall set out in detail the business to be undertaken by the Company during the year.
- 7.3 The Company shall review the rent payable to owners, the farm management fee to Rewetu Station Limited and the interest rate payable on funds required from Rewetu Station Limited on a three yearly basis but the funds borrowed shall never be below the minimum bank rural lending rate available from Rewetu Station Limited's bank.

- 7.4 The Annual Operational Plan and Budget shall be submitted to the Board at least 1 month prior to the end of the preceding financial year. The Company shall ensure that the Annual Operational Plan and Budget together with all necessary supporting material are forwarded to the Directors at least two weeks prior to the Board meeting at which they are to be considered. No Annual Operational Plan and Budget will be implemented until approved by the Board.
- 7.5 If necessary the Company may from time to time develop and prepare supplementary or revised Operational Plans and Budgets. These Plans and Budgets will also be forwarded to Directors at least two weeks prior to the Board meeting at which they are to be considered. Any supplementary or revised Operational Plan or Budget will not be implemented until approved by the Board.
- 7.6 The Company will supply each Party with
- (a) Four-monthly financial statements within 60 days after the end of each period being 31st July, 30th November and 31st March in each year; and
 - (b) Audited financial statements for each financial year within 120 days of the end of the financial year.
- 7.8 The financial statements for each four-monthly period shall include a statement of financial position as of the end of such period, a statement of financial performance, and a statement of changes in financial condition for such period, each prepared in accordance with the Financial Reporting Act 1993. The annual financial statements shall be accompanied by the Company's auditors report.

8 **Company operations: dividend policy and funding**

8.1 The Parties agree to the following general policies:

- (a) The Board will, subject to the company meeting the solvency test in section 52 of the Companies Act 1993, review the Company's financial security, need for funds to maintain it as a viable business and with due regard to the need to building company assets and meet growth strategies, may at its discretion, make a distribution, by way of a dividend, from its after tax profit for each financial year. Such dividends allocated to the Parties shall be paid or credited to their respective separate shareholder's current accounts with the Company.
- (b) In assessing the Company's need for funds to maintain a viable business the Company shall consider the desirability of repaying the shareholders' loan advanced by **REWETU** and such repayments shall take priority over the payment of dividend for the first five years of the joint venture.
- (c) **REWETU** agrees to advance \$500,000.00 on the provision of adequate security to fund the company's operations and to advance such further amounts as it agrees with the company is necessary for the viability of the business for so long as the funds are required and it remains manager of the Company's business. The Company shall not agree to borrow any further funds from Rewetu without the unanimous agreement of all directors. The Agreement to Finance shall be more or less in the form attached as Schedule Four.

If at any time the Parties are unable to agree as to whether or not the above general policies should be carried out, or as to the extent to which or the manner in which they should be carried out, then clause 15 shall apply.

8.2 The company shall grant security to Rewetu for the loan moneys as set out in Schedule 4.

9 Confidentiality

9.1 The Parties each agree that Joint Venture accounts, records, reports and other documents and information relating to the Joint Venture and the terms and conditions of this Agreement (such accounts, records, reports information and the terms and conditions of this Agreement being referred to in this clause as "Confidential Information"), provided or disclosed by one Party (in this clause called the "Disclosing Party") to the other Party or Parties, or to the Company is confidential, whether oral, written or embodied in other physical form, except that information is not to be considered confidential if the Party receiving the Confidential Information proves:

- (a) That the information was known to that Party on the date of its receipt from the Disclosing Party without an obligation of confidence; or
- (b) The information was in the public domain on the date of its receipt from the Disclosing Party; or
- (c) The information had entered the public domain after the date of its receipt from the Disclosing Party other than by unauthorised disclosure by a Party, the Company or any other person.

9.2 Neither any Party receiving Confidential Information nor the Company will disclose, in whole or in part, to any third person Confidential Information received from a Disclosing Party except as approved in writing by the Disclosing Party or where necessary to carry out the Venture. Neither any Party nor the Company shall have the right to use or disclose Confidential Information disclosed by a Disclosing Party except in furtherance of the Venture. Before making a disclosure of Confidential Information to a third person, the Party concerned or the Company shall inform the Disclosing Party of its intention to disclose and shall inform such third persons of the confidential obligations under this Agreement and require such third person to be bound by the confidentiality obligations.

9.3 The obligations of confidentiality under this clause shall continue beyond the termination of this Agreement. A Party shall continue to be bound by this clause notwithstanding that it may have ceased to be a shareholder or ceased to be a party to this Agreement.

10 Mortgage of shares in company

10.1 No Party shall mortgage, pledge, charge, create a security interest in, or otherwise encumber (whether by way of assignment or otherwise) all or any portion of its shares in the Company or its interest under this Agreement without the written consent of the other Parties (which consent shall not be unreasonably withheld), except that this clause shall not apply to a mortgage, charge, or security interest over the assets and undertaking of a Party pursuant to a trust deed, debenture or like security document which contains a covenant to the effect that the mortgagee, chargee, or secured party, in the event of its entering into possession or appointing a receiver or receiver and manager or exercising a power of sale under the terms of the mortgage, charge, or security, shall not exercise any power of sale or other right, power or remedy over or in respect of the shares in the Company except in accordance with the provisions of this Agreement.

11 Liquidation

11.1 If pursuant to this Agreement the Company is required to be liquidated then all Shareholders shall sign or procure the signing of all necessary matters or resolutions and take all necessary

steps to have the Company liquidated without delay, but having regard to the provisions of this Agreement.

11.2 In the event of the liquidation of the Company and subject to the rights of creditors, the Parties shall be entitled to bid or to submit tenders for any of the plant, equipment and other assets of the Company. Notwithstanding the foregoing, the liquidator(s) shall be at liberty to sell all or any part of the plant, equipment or other assets by private treaty, private or public auction or by tender and to divide the plant, equipment and other assets into such lots as the liquidator(s) think(s) most advantageous for the realisation of the Company's assets and to accept a bid for all or any of the plant, equipment or other assets or for two or more lots even though a higher bid may have been made for one lot or more items in any lot if the liquidator(s) is/are satisfied in his or her or their absolute discretion that by so doing the total amount realised is likely to be increased, provided however that the liquidator(s) shall not sell any plant, equipment or other assets to any of the Parties without giving each Party an equal opportunity to purchase the same.

11.3 Unless otherwise resolved by the Parties, the liquidator or liquidators of the Company shall be one or more persons nominated by the auditors of the Company who are willing and able so to act.

12 Status and effect of this agreement

12.1 The terms and conditions of this Agreement shall prevail over anything to the contrary or inconsistent with that contained in the Constitution.

12.2 All Parties shall procure the Company to perform and observe all of the covenants on the part of the Company contained in this Agreement (and in any agreement entered into in terms of this Agreement).

12.3 Each Party warrants to the other Party or Parties that, prior to entering into this Agreement or the Deed of Covenant required by clause 4.10 it has obtained all corporate and other authorities necessary for that purpose, and that there are no restrictions or other obligations known to it which would or might impede it in giving full effect to its part in the Joint Venture.

12.4 The Parties shall use their best endeavours to develop and maintain the Joint Venture and in the event of any disagreement regarding the Joint Venture, the business of the Company or the provisions of this Agreement they shall in good faith seek mediation in order to resolve their differences.

13 Term

13.1 This Agreement shall have effect as from the date it is signed and shall remain in force and effect for a minimum of ten years and then until terminated in accordance with clause 13.2.

13.2 This Agreement shall terminate on the earlier of:

- (a) The date upon which the Parties agree that this Agreement shall be terminated; or
- (b) The date upon which an order is made appointing a liquidator of the Company; or
- (c) Such other date upon which this Agreement shall be terminated pursuant to its terms.

14 Termination upon default or change of control of a party

14.1 In the event of any Party:

- (a) Having a petition presented, or an order made, or an effective resolution passed, or analogous proceedings taken for its bankruptcy, liquidation, dissolution or winding

up (except for the purpose of solvent reconstruction, reorganisation or amalgamation); or

- (b) Having an encumbrancer, receiver, liquidator, trustee or similar officer take possession of, or be appointed with respect to all, or any part of its business, assets or undertaking; or
- (c) Ceasing, or threatening to cease to carry on its business or making an assignment for the benefit of creditors or entering into any general arrangements or composition with, or for the benefits of its creditors; or
- (d) A change taking place in the shareholding of any Party or of the shareholding of any company (other than a company listed on an officially recognised Stock Exchange in New Zealand or Australia) beneficially holding shares in a Party (either directly or through one or more intermediate companies) and the effect of the change is that the ultimate effective power to appoint a majority of the directors of that Party passes to some person or group of persons acting in concert (other than any person or persons by whom that power may be exercised in the case of Original Parties at the date of this Agreement and in the case of other Parties the date they become Shareholders) and that change is unacceptable to any other Party; or
- (e) Any Party persistently failing or refusing to observe or perform any of the duties or obligations required of it, or made by it under this Agreement or under any agreement with the Company and such default has not been remedied within 30 days of that Party receiving notice from any other Party requiring that the default be remedied, (copies of the notice shall be sent by the Party giving notice to any other non defaulting Party);

the following subclauses shall apply.

- 14.2** Any other Party may at its option by notice in writing to the Party to whom the relevant event under clauses 14.1(a), (b), (c) or (d) has happened or who has failed to remedy a default under clause 14.1(e) (in each case in this and the following subclauses called the "Defaulting Party" with the other Party or Parties being called the "Non Defaulting Parties") with copies of the notice to be sent also by the Party giving notice to any other Non Defaulting Parties, within 3 months after, in the case of clauses 14.1(a), (b), (c) and (d) the happening of the relevant event becomes known to the Non Defaulting Parties and, in the case of clause 14.1(e) the expiry of the 30-day notice period, require the Defaulting Party to forthwith offer all its shares in the Company to the Non Defaulting Parties. In that event the Defaulting Party will be deemed to be a Proposing Transferor and to have served a Transfer Notice (as defined in clause 4.2) on the Company in respect of all shares held in the Company by the Defaulting Party and the provisions of clause 4 shall apply with such change as the context or the circumstances require, and on the basis that the purchase price for the shares shall be the fair value thereof fixed as follows:
- (a) The fair value shall be fixed by an independent person jointly appointed by the Defaulting Party and the Non Defaulting Parties, or if they cannot agree on a mutually acceptable person within 7 days of the difference arising then by an independent person to be nominated by the president for the time being of the New Zealand Society of Accountants.
 - (b) Such person when appointed or nominated and in certifying the sum which in his or her opinion is the fair value of the shares shall be considered to be acting as an expert and not as arbitrator and accordingly the Arbitration Act 1996 shall not apply.

- (c) The value so fixed shall be the fair value, determined on the basis that:
 - (i) the Company is to continue as a going concern;
 - (ii) that the sale is from a willing seller to a willing buyer;
 - (iii) that restrictions on the transfer of shares contained in the Constitution are to be ignored.
- 14.3** Notwithstanding any provision of clause 4, if the Non Defaulting Parties either individually or between them are not willing to purchase the Defaulting Party's shares within the 3-month period referred to in clause 14.2 then any one of the Non Defaulting Parties may at its option by notice in writing to the Other Party or Parties require that the Company be liquidated, whereupon the Parties shall take all necessary steps to cause the Company to be liquidated.
- 14.4** Should the Defaulting Party fail or refuse to sign any notice or winding up resolution pursuant to clause 14.3 above, the Non Defaulting Parties shall be entitled to act as the agent, proxy or representative of the Defaulting Party for the purpose of signing any such notice or passing any such resolution, as the case may be, notwithstanding anything in the Constitution.
- 15 Termination by reason of fundamental disagreement**
- 15.1** If a Fundamental Disagreement as to a major matter shall occur as stipulated in clause 15.2, or if the Parties shall after having sought mediation as provided in clause 12.4 be unable to agree on:
- (a) Any matter which this Agreement states is to be resolved in accordance with this clause 15; or
 - (b) Any other matter which any of them (or the Directors appointed by any of them) shall stipulate on reasonable grounds as being fundamental to the Joint Venture inasmuch as substantial permanent injury to the Company as a going concern is being suffered or is threatened, and the failure to agree appears on reasonable grounds to be incapable of satisfactory long term resolution by negotiation;
- any Party shall be entitled to give to the other notice in writing ("Notice of Termination") that unless the matter in dispute is agreed within the period specified in the Notice of Termination (not being less than 3 months) the Joint Venture shall be terminated. If such matter is not agreed within the period so specified, then unless it shall otherwise be agreed in writing, the following provisions shall apply:
- (c) The Parties shall endeavour to reach agreement whereby one of them or its nominee shall buy out all of the shares of the other in the Company at an agreed price;
 - (d) If no such agreement is reached within the period of 1 month after expiration of the Notice of Termination, then the Company shall be placed in liquidation and clause 11 shall apply.
- 15.2** A Fundamental Disagreement as to a major matter includes any of the following disagreements whereas a consequence of such disagreement substantial permanent injury to the Company as a going concern is being suffered or is threatened and the failure to agree appears on reasonable grounds to be incapable of satisfactory long term resolution by mediation or negotiation:
- (a) A disagreement as to the need to increase the funding of the Company by the Parties or as to the method by which such funding should be made;
 - (b) A disagreement as to the issue of further shares in the Company or the acquisition by the Company of its own shares;

- (c) A disagreement as to the incurring or repayment of any significant loan finance;
- (d) A disagreement as to the making of a distribution or the dividend policy;
- (e) A disagreement as to the directions or expansion of the Venture;
- (f) A disagreement as to the sale or other disposition of the business or part of the business of the Company;
- (g) A disagreement as to the appointment of senior management of the Company.

16 Settlement procedures

16.1 Any sale and purchase pursuant to clauses 14 and 15 shall be completed as soon as practicable and the Party or Parties selling shares shall deliver to the Party or Parties purchasing shares a duly executed transfer in respect of the shares in question and letters of resignation of the Directors appointed to represent the holders of such shares against payment by the purchaser or purchasers, of the sale price.

16.2 Any sale and purchase of shares pursuant to clauses 14 or 15 shall be on terms that the relevant shares shall be sold free from all liens, charges, encumbrances, security interests, or other adverse rights and together with all rights and benefits attaching to them on the date of sale, that all loan accounts shall be repaid as between the Company and the Party or Parties selling shares and that the Party or Parties selling shares shall be released from any guarantees given for the benefit of the Company or the Joint Venture or shall be indemnified against liability under such guarantees by the Party or Parties purchasing shares.

17 Consequences of termination

17.1 Termination of this Agreement shall not affect such rights and obligations of the Parties as are intended to survive the termination and in particular, but without limitation, the provisions of this clause and of clauses 9 and 16 shall continue to apply, and the termination shall be without prejudice to, and shall not be deemed a waiver of any claims which any Party may have against any other Party in respect of any breach or other failure to comply with any term or condition of this Agreement prior to the date of termination.

18 Miscellaneous

18.1 Exclusion of partnership and agency

Nothing in this Agreement shall create, or constitute or be deemed to create or constitute a partnership between the Parties or any of them and the Company nor to constitute or create or be deemed to create or constitute a Party as an agent of any other Party for any purpose whatsoever. No Party shall have any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other Party or Parties to any obligations. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or collective.

18.2 Governing law

This Agreement shall be governed by and interpreted according to the laws of New Zealand. Each Party irrevocably submits itself to the jurisdiction of the Courts of New Zealand over any proceedings arising out of, or relating to this Agreement or the Joint Venture.

18.3 No waiver

No failure or delay on the part of any Party in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power hereunder.

18.4 Assignment

This Agreement and all rights and obligations hereunder are personal to the Original Parties and to any other persons who became Parties and therefore bound by its provisions by virtue of clause 4.10. The rights under this Agreement are not assignable except in accordance with the specific provisions of this Agreement.

18.5 Notices

- (a) All demands, consents and notices authorised or required to be made under this Agreement shall be in writing and may be given to, or served upon a Party by:
- (i) being left at the Party's address as stated below or as notified pursuant to paragraph (c) below or at their respective registered offices; or
 - (ii) by facsimile, to the recipient Party's notified facsimile number stated below or as notified pursuant to paragraph (c) below.
- (b) When a demand, consent or notice is served at the notified address, it shall be deemed duly served and received on the day of delivery. Where a demand, consent or notice is transmitted by facsimile it shall be deemed to have been served and received on the day of transmission. The print out or other hard copy record of the transmission produced by the transmitting facsimile machine of the sender which records the transmission of the demand, consent or notice to the notified number of the recipient Party shall comprise evidence that the demand, consent or notice has been duly served on and received by the addressee on the date recorded on the print out or other record.

The notified addresses and facsimile numbers of the Original Parties are as follows:

Rewetu Station Limited	<i>Address</i> <i>Facsimile No.</i>
Whakapaupakihi 2 Trust	<i>Address</i> <i>Facsimile No.</i>
Whakapaupakihi 2 Trust	<i>Address</i> <i>Facsimile No.</i>

- (c) A person on becoming a Party shall notify the other Parties of its notified address and its notified facsimile number in New Zealand for service of all demands, consents and notices. A Party may change its notified address and its notified facsimile number by notice in writing served on all the other Parties. Service shall be effected in accordance with this clause.

18.6 Variation

No modification or alteration of, or addition to any of the provisions of this Agreement shall be made unless agreed to by the Parties in writing.

18.7 Further assurances

The Parties shall execute and deliver all documents and do anything else necessary for the proper and complete performance of all their respective obligations under this Agreement.

18.8 Specific performance

If any Party or the Company should fail or refuse to comply with any of the terms or provisions of this Agreement, the other Parties shall each have, in addition to any other of

their respective rights and remedies, the right to have any one or more of those terms or provisions specifically enforced.

SIGNED for and on behalf of)
REWETU STATION LIMITED)
by two of its Directors)

Raymond Bruce Sharp – Director

Jeffery Steven Bakalich – Director

SIGNED by **THE TRUSTEES OF
WHAKAPAUPAKIHI 2 BLOCK:**

Henry Russell Hollis – Trustee
in the presence of:

John James Hata – Trustee
in the presence of:

Signature of Witness

Signature of Witness

Witness name:

Witness name:

Occupation:

Occupation:

Address:

Address::

Leonard Apanui Brown – Trustee
in the presence of:

Signature of Witness

Witness name:

Occupation:

Address:

SIGNED by **THE TRUSTEES OF
WHAKAPAUPAKIHI 5 BLOCK:**

Henry Russell Hollis – Trustee
in the presence of:

John James Hata – Trustee
in the presence of:

Signature of Witness

Signature of Witness

Witness name:

Witness name:

Occupation:

Occupation:

Address:

Address::

Leonard Apanui Brown – Trustee
in the presence of:

Signature of Witness

Witness name:

Occupation:

Address:

Pehimana Haapu Brown – Trustee
in the presence of:

Signature of Witness

Witness name:

Occupation:

Address::

Tarati Carrington – Trustee
in the presence of:

Signature of Witness

Witness name:

Occupation:

Address:

Memorandum No. 1995/4008

Land Transfer Act 1952

Provisions intended for inclusion in Lease of Rural Land

**Registered pursuant to Section 155A
Land Transfer Act 1952**

**District Land Registrar
Land Registry**

(Abstract number/date)

**Annexure Schedule****Lease**

dated

page

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of

pages

Guarantor Surnames must be underlined**Attestation**Signed in my presence by the Guarantor
Signature of Witness_____
Witness to complete in BLOCK letters below
(unless typewritten or legibly stamped)

Witness name

Occupation

Address

Signature(s), or common seal of Guarantor

Clause 1.01 — Payment of Costs of Lease

Tenant to Pay Costs

Clause 1.03 — First Rental Payment Date:

5th February 2007

Clause 1.03 — Subsequent Rental Payment Dates:

The 5th day of the months of August and February in each and every year

Clause 1.03 — Where rental payable and manner of payment:

Direct to the Landlord by direct credit to the Bank account of the Landlord from the Bank account of the Tenant, unless the Landlord notifies the Tenant in writing to the contrary, in which case the Tenant must comply with any reasonable notice.

Clause 1.06(1) — Maximum Cropping Rate:

Clause 1.11(3) — Minimum Fertiliser Rate:

250 kilogram per annum "Ballance" equivalent super phosphate per hectare

Clause 1.11(3) — Minimum Topdressing Rate:

Clause 1.13(1)(a) — Period of time within which pasture to be laid down:

Clause 1.13(1)(c) — Part of Leased Land to be left in pasture:

Clause 1.14 — Minimum number of standard hay bales:

Clause 1.17 — Minimum Public Liability Insurance Cover:

\$2,000,000.00

*Annexure schedule continued on page 3***If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here**

Annexure Schedule

Lease dated page **3** of pages

Clause 1.20(2) — Maximum area of pig-proof enclosures:

Clause 1.27 — Specified Permitted Use:

Clause 2.01(1) — Percentage of value of the Tenant's Improvements:

Clause 2.01(2)(b) — Class of Tenant's Improvements for which Compensation Payable:

Clause 3.02 — Improvements Rent Percentage:

Clause 3.08 — Default Interest Rate:

Clause 3.10 (1) — Landlord's Insured Risks:

Clause 3.12 (2) — Rent review to be conducted by: [Delete one option.] If neither option is deleted, then the expert option is deemed to be deleted.

~~Arbitration is selected.~~ or Valuation by an expert is selected.

Clause 3.12(3) — Type of rent payable on a rent review: [Delete one option.] If neither option is deleted; then the Objective Rent is deemed to be deleted.

Subjective Rent is selected. or ~~Objective Rent is selected.~~

Clause 3.12(1) — Rent Review Dates:

Clause 3.21(1) — Term of Right of Renewal to which Tenant entitled:

Clause 3.21(3) — Maximum total number of renewed terms:

Clause 3.21(4) — Final Expiry Date (no renewed term extends beyond this date):

Schedule of Outgoings [Pursuant to Clause 1.02]

- | | |
|---|---|
| (a) Rates and assessments payable to any territorial or other local authority. | (d) Charges for other utilities or services. Without limiting the generality of "charges", they include water catchment and pest destruction charges. |
| (b) Telephone, gas, and electricity charges. | (e) Insurance premiums, valuation fees, and other expenses payable by the Landlord in respect of all insurance. |
| (c) Charges imposed by any competent authority in connection with water or rubbish. | |

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here

Annexure Schedule



Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Dated

Page

of

pages

(Continue in additional Annexure Schedule, if required.)

- 5.0 The lessee shall carry out a capital development programme within the first two years of the lease including for initial cultivation, fencing, drainage, culverts and stump clearance as proposed in the Joint Venture Agreement between the shareholders of the lessee.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

MEMORANDUM

Land Transfer Act 1952

Class of instrument in which provisions intended to be included:

Lease

Person executing Memorandum:

Avon Forms
CCH New Zealand Ltd

The following provisions are intended for inclusion in instruments of the above class:

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Reservation and Exception from Demise (*Continued from Operative Clause in this Lease*)

1. Notwithstanding anything elsewhere contained the Landlord reserves and excepts from this demise all: milling timber, merchantable timber, flax, coal, lignite, stone, clay, kauri-gum, and all other metals and minerals.
2. The Landlord, his or her agents, servants, grantees, or licensees have full power:
 - (a) to enter on the said land for the purpose of searching for, working, winning, getting, and carrying away all those things reserved to the Landlord in this lease.
 - (b) for those purposes to make whatever roads, to erect whatever buildings, to sink whatever shafts, and to do whatever things are necessary.
3. In the exercise of those rights the Landlord must cause as little interference as possible with the use by the Tenant of the said land.
4. The Landlord must pay a fair compensation to the Tenant for all loss or damage sustained by the Tenant by the exercise of any of those powers by the Landlord.
5. The amount of that compensation must (in default of agreement) be determined by arbitration in accordance with clause 3.09.
6. This provision is deemed to be a submission under that Act.

Covenants by Tenant

1.00. The Tenant Covenants with the Landlord:

PAYMENT BY TENANT

Costs

1.01. If this lease provides for Tenant to Pay Costs, then this clause applies:

- (1) The Tenant must forthwith pay the costs of the negotiation, preparation, stamping, and registration of:
 - (a) This Lease and counterpart; and
 - (b) The memorandum of variation recording the revised rent pursuant to Clause 3.12; and
 - (c) The new memorandum of lease or the memorandum of variation recording the renewal of lease pursuant to Clause 3.21.
- (2) Should the Tenant default, then the Tenant must pay the legal

costs of the Landlord, on a solicitor and client basis, of (and incidental to) the enforcement, or attempted enforcement, by the Landlord of the Rights under this Lease.

Outgoings

1.02. (1) The Tenant must duly and punctually pay as additional rental to the Landlord or to the duly authorised agent of the Landlord (upon demand by the Landlord or his or her agent) the outgoings specified in this lease as Outgoings.

(2) The outgoings must be apportioned between the Landlord and the Tenant in respect of the periods current at the commencement and termination of this Lease.

(3) The Landlord may require the Tenant to pay the outgoings by instalments on each Rental Payment Date. The instalments are to be of whatever reasonable amount the Landlord decides, calculated on a yearly basis. Any outgoing which has not been added to the instalment is payable on demand.

(4) The Landlord must supply the Tenant (at such reasonable date as the Landlord specifies and at the end of this Lease) with reasonable details of the actual outgoings for the period which has ended.

(5) The Tenant's liability to pay Outgoings during the term of this Lease remains even though this Lease has ended or has been earlier terminated.

(6) The Tenant is liable to pay only the Outgoings in the Schedule of Outgoings together with payments resulting from the Building Act 1991 in Clauses 1.05 [Alterations] and 3.02 [Compulsory Work; Building Act].

(7) The Landlord may give the Tenant's name to the local authority for inclusion on the rating roll, and in this case the Tenant must pay the rates direct to the authority.

Rent and GST

1.03. (1) The Tenant must duly and punctually pay to the Landlord (or as the Landlord specifies) the rent provided for in this Lease at the times and in the manner provided in this Lease, free of any deduction or set-off.

(2) The first payment of rent includes rent which is calculated daily commencing on the Commencement of Term and ending on the day before the next Rental Payment Date.

(3) The Tenant must duly and punctually pay to the Landlord (or as the Landlord specifies) GST payable by the Landlord in respect of all payments payable by the Tenant pursuant to this Lease. The Tenant must pay GST for rent together with each rent payment, and for other payments must pay them on demand.

(4) If the Tenant defaults in payment of GST so that the Landlord becomes liable for penalties, then the Tenant must, on demand, pay those penalties.

MAINTENANCE AND FARMING PRACTICE

Agricultural Pests

1.04. (1) The Tenant must, at the sole cost of the Tenant, comply

with the Biosecurity Act 1993 and all other statutes which deal with pests.

(2) The Tenant must keep the Leased Land free of rabbits and all other agricultural pests.

(3) The Tenant must indemnify the Landlord against all money which the Landlord is required to pay pursuant to the said Act.

Alterations

1.05. (1) The Tenant must not (except pursuant to Clause 1.23 [Statutes and By-laws]) without the consent of the Landlord add to or alter the Improvements.

(2) If the Landlord consents to any additions or alterations, then the Tenant must (if required by the Landlord) at the expiration, or sooner termination of this Lease, remove all the additions or alterations, and must restore the Improvements to the state in which they were before the additions or alterations were made.

(3) If the Tenant carries out to the Leased Land any building work within the meaning of the Building Act 1991, then the Tenant must comply with all requirements including building consents and code compliance certificates.

Cropping

1.06. (1) The Tenant must not take from the Leased Land (or any part of the Leased Land) more crops (other than grass) in successive years, than the Maximum Cropping Rate specified in this Lease.

(2) The Tenant must furnish to the Landlord each year a statement in a form to be submitted by the Landlord to the Tenant.

(3) The form must show:

(a) The nature of the crop which the Tenant is growing in each subdivision of the Leased Land during the current year.

(b) The nature of the crop which the Tenant proposes to grow in the next year in each subdivision.

(c) The amount and kind of manure used on the Leased Land.

(d) The name and address of the merchant from whom the Tenant purchased the manure.

Dairy Farm

1.07. (1) When using the Leased Land as a dairy farm, the Tenant must comply with the Dairy Industry Act 1952, in so far as it relates to the Leased Land.

(2) Notwithstanding section 8 of the said Act, the Landlord is not liable to pay for, or to contribute towards, any expenditure made by the Tenant upon any Improvements.

(3) The Tenant must not allow manure or cattle droppings to accumulate in or near the milking shed or cattle race, but instead must cart them out and spread them over the Leased Land.

Defects, Notification of

1.08 If there is any accident to, or defect in, the Leased Land (in particular but without limitation to) the water, drainage, electrical, or gas services, then the Tenant must promptly give written notice of it to the Landlord.

Drainage

1.09 (1) At least once per year, the Tenant must clean and open all the ditches, drains, and watercourses on the Leased Land.

(2) The Tenant must keep them clear and free from obstruction at all times.

(3) The Tenant must not pollute them.

Fences, Live

1.10. (1) At least once each year the Tenant must trim in a proper manner all gorse or other live fences. The Tenant must trim one side one year and the other side the following year.

(2) Whenever any part of the fences dies, or openings or gaps appear in them (whether caused by natural decay or otherwise) then the Tenant must forthwith replant and fill up those openings or gaps, so as to correspond with the other part of the fence.

(3) Except as provided in subclause (2), the Tenant must not (without the consent of the Landlord) plant any live fences upon the Leased Land.

Fertilising and Topdressing

1.11. (1) The Tenant must each year (at the proper season for so doing, and in a proper husbandlike way) fertilise and topdress that part of the Leased Land which is in pasture.

(2) The Tenant must use such artificial manure as suits the nature of the soil, and is appropriate to the district in which the leased land is located.

(3) The rates of application must be those rates which are normally applied in the best farming practice in the district in which the Leased Land is situated, but in any event must be not less than the rates specified in this Lease.

Fires

1.12. When burning off or lighting fires the Tenant must:

(a) Comply with the Forest and Rural Fires Act 1977; and
(b) Take all care and precautions to prevent fire from spreading to other properties; and

(c) Indemnify the Landlord against:

i. All Liabilities caused by any fire lit on the Leased Land spreading to other properties; and

ii. All payments which the Landlord is compelled to pay whether pursuant to the said Act or otherwise.

Grassing

1.13. (1) The Tenant must:

(a) Within the period from the Commencement of Term specified in this Lease, lay down in good grass pasture that part of the Leased Land which is specified in this Lease; and

(b) Cultivate, use, and manage as pasture in a proper, husbandlike manner that part of the Leased Land which at any time during this Lease was in grass. The Tenant must keep that part in good heart and condition. The Tenant must not impoverish or waste any part of the Leased Land; and

(c) At the termination of the term the Tenant must leave in Good Grass Pasture, of at least six months' standing, that part of the Leased Land which is specified in this Lease.

(2) "Good Grass Pasture" means pasture which consists of good English grasses and clovers, and which are of the descriptions, and in the proportions that are usually sown in the district, and which are suitable for the Leased Land.

Hay

1.14. The Tenant must not sell any hay which has been grown on the Leased Land. At the termination of this Lease the Tenant must leave in the hay barns not less than the number specified in this Lease of good quality standard hay bales, or the equivalent in large hay bales.

Insurance Premiums, Increase in

1.15. If the Tenant does (or omits to do) anything, or uses the Leased Land for any purposes which *ipso facto* increases the premium payable for insurance (whether with the consent or knowledge of the Landlord or otherwise), then the Tenant must, on demand, forthwith pay to the Landlord the amount of the increase in premium.

Insurance, Not Vitiate

1.16. The Tenant must not (without the consent of the Landlord, and then only on those conditions which the Landlord decides) permit anything upon the Leased Land:

(a) by which any policy of insurance on the Leased Land or on any fixtures, fittings, or goods in the Leased Land (whether the property of the Landlord or another) may be rendered void or voidable; or

(b) by which the premiums payable in respect of the policy are liable to be increased.

Insurance, Public Liability

1.17. The Tenant must keep public liability insurance for the Leased Land and the Tenant's use of the Leased Land for the sum specified in this Lease for any one event. The insurance must be with a substantial, reputable insurer approved by the Landlord.

Noxious Plants

1.18. (1) The Tenant must (without contribution from the Landlord) by using the most approved modern methods suppress and eradicate (and keep suppressed and eradicated) all blackberry, sweetbriar, couchgrass, Californian thistle, nassella tussock, privet, hemlock, gorse (except gorse planted on true fence lines) and other noxious plants or weeds which are growing:

(a) On the Leased Land; or

(b) On the roads contiguous to the Leased Land up to the middle line of the roads.

(2) The Tenant must, at the sole cost of the Tenant, duly and punctually comply with the Biosecurity Act 1993, and all other Statutes which deal with noxious weeds.

(3) The Tenant has no claim against the Landlord for expenses incurred pursuant to the Statutes.

(4) The Tenant must indemnify the Landlord against all Liabilities under the Statutes.

Orchards and Horticulture

1.19 The Tenant must:

(a) Keep properly planted, cultivated, stocked, and manured, and

in neat condition: the gardens, plant beds, nurseries, orchards, and shrubberies; and

(b) Preserve and keep well pruned and trained: all fruit trees, plants, bushes, shrubs, and vines; and

(c) Replant with replacement stock (of no lower quality) any which have died.

Pig Farming

1.20. (1) The Tenant must not allow pigs to roam at large over the Leased Land.

(2) The Tenant must keep all pigs properly ringed in the snout, and secure within proper pig-proof enclosures. The enclosures must not exceed in total the area specified in this Lease.

Repair

1.21. (1) Subject to subclause (2) of this clause the Tenant:

(a) Must keep the Improvements in good and tenable repair, and without limiting that generality, must apply oil and grease to machinery; and

(b) Must renew all parts of the Improvements as they become decayed or unserviceable.

(2) The liability of the Tenant does not extend to:

(a) Damage caused by an inherent defect in the Improvements; or

(b) Risks which the Landlord has covenanted to insure against (except where the insurance money has been rendered irrecoverable as a result of any act or default of the Tenant or the Tenant's Invitees); or

(c) Any Improvements which the Landlord has covenanted to keep in repair; or

(d) Damage caused by fair wear and tear, earthquake, flood, fire, or storm, provided:

(i) the damage is not attributable to the acts or omissions of the Tenant or the Tenant's Invitees; and

(ii) fair wear and tear is not an exception to repair in the case of fences and in the case of other improvements which are not buildings.

(3) The Tenant must (in respect of all buildings) within five years from Commencement of Lease, and afterwards at intervals of not more than five years:

(a) Paint in a workmanlike manner all the outside woodwork and ironwork with two coats of proper oil or synthetic paint, suitable for use in the district; and

(b) Paint in a workmanlike manner the inside wood, iron, and other works, which are then or usually painted, with two coats of proper and suitable oil or synthetic paint; and

(c) Paper with proper and suitable paper those parts which are then or usually papered.

Risk of Occupation

1.22. The Tenant must occupy the Leased Land at the sole risk of the Tenant. The Tenant releases the Landlord and the Landlord's Invitees from all Liabilities.

Statutes and By-laws

1.23. (1) The Tenant must comply with:

All statutes, regulations, ordinances, and by-laws (present or future) affecting the Leased Land or any activity carried on upon the Leased

Land, and (in so far as they affect the Leased Land) the requirements of all licences, requisitions, and notices lawfully issued, made, or given by any authority of competent jurisdiction.

(2) Nothing in this clause renders the Tenant liable to carry out any work which is other than of a maintenance nature, unless the requirement to carry out that work is the outcome of the particular nature of the activity carried on by the Tenant, or of the manner in which that activity is carried on, or of the number or sex of the persons employed in or using the Leased Land.

Statutory Charges

1.24. The Tenant must not (without the consent of the Landlord) do anything whereby a statutory charge may be created.

Stocking

1.25. The Tenant must not:

(a) Overstock the Leased Land; or

(b) During the last year of the term, depasture upon the Leased Land more stock than were depasturing during the preceding year.

Trees

1.26. (1) Subject to sub-clause (2) of this clause, despite any other Term:

(a) The Tenant must keep in good order and condition all native bush, shrubbery, shelter, ornamental, or other Trees (called the "said Trees"); and

(b) The Tenant must not (without the consent of the Landlord) cut down, destroy, or damage any of the said Trees; and

(c) The Tenant must employ all proper and reasonable means to preserve the said Trees; and

(d) The Tenant must not remove from the Leased Land any fencing posts, timber, or firewood.

(2) The Tenant may use for the requirements of the Tenant upon the Leased Land, for the purposes of repairing or erecting fences, any logs or dead timber which are on the Leased Land. Any of these logs or dead timber which are not suitable for fencing may be used by the Tenant for firewood.

(3) Despite any other Term, should the Tenant cut down on the Leased Land any of the said Trees which are living (whether for fencing or otherwise):

(a) The Tenant is liable in damages to the Landlord for cutting down those trees; and

(b) Those trees remain the property of the Landlord.

Use, Permitted

1.27. The Tenant must not (without the consent of the Landlord) use the Leased Land (or any part of the Leased Land) except for the "Specified Permitted Use" specified in this Lease.

Use, Restrictions on

1.28. (1) The Tenant must not:

(a) Store dangerous substances on the Leased Land, except for those which are reasonably required for the specified Permitted Use; or

(b) Cause a nuisance, disturbance, obstruction, or damage either to the Landlord or to neighbouring owners or occupiers; or

(c) Use the Leased Land for any illegal purpose, or in any illegal, noisy, noxious, or offensive manner.

(2) The Tenant must occupy and farm the land in a proper and husbandlike manner.

RIGHTS AND DUTIES OF THE LANDLORD AND THE TENANT

Access for Repairs

1.29. The Tenant must allow the Landlord (and the Invitees of the Landlord) at all reasonable times to enter the Leased Land to carry out repairs, and to inspect, install, repair, renew, and replace any services. This must be carried out with the minimum possible inconvenience to the Tenant.

Assignment

1.30. (1) The Tenant must not Dispose of the Leased Land or any part of it:

- (a) without (in the case of an assignment) having first delivered to the Landlord a deed of covenant executed by the proposed assignee in favour of the Landlord by which the proposed assignee covenants to observe all the Tenant's Terms; and
- (b) without (in the case of an assignment to a non-listed company) having first delivered to the Landlord (in addition to the deed of covenant referred to in the last preceding paragraph) a deed of covenant executed by the shareholders or stockholders in the company (or such of them as the Landlord directs) by which the shareholders or stockholders guarantee to the Landlord (jointly and severally, if more than one) the observance by the company of the Tenant's Terms; and
- (c) without (in all cases) having first submitted to the Landlord the name, address, and occupation of the proposed assignee, subtenant, or other occupier, together with such information and evidence as the Landlord reasonably requires to ascertain whether his or her consent should be given to the proposed Disposition; and
- (d) without (in all cases) the consent of the Landlord.

(2) The deeds of covenant must be prepared and stamped by the Landlord at the cost of the Tenant. The execution of the deeds does not release or discharge the Tenant from liability under this Lease.

(3) When the Tenant is a non-listed company, then any Disposition of shares or stock, or any new issue of shares or stock, in favour of any person who is not, at the date of the transaction, a holder of shares or stock in the company requires:

- (a) the delivery to the Landlord of a deed of covenant in terms of subclause (1) paragraph (b) of this clause by the new shareholders or stockholders (or such of them as the Landlord directs); and
- (b) the consent of the Landlord.

(4) The consent of the Landlord is not required to any Disposition or issue of shares or stock to a husband, wife, father, mother, son, or daughter of an existing deceased shareholder or stockholder in the company.

(5) Any Disposition of the Leased Land (or any part of the Leased Land) by the Official Assignee, or by the liquidator of a company, or by the Sheriff under an execution is subject to this covenant.

(6) Any Disposition is (notwithstanding section 109(2) of the Property Law Act 1952) a breach of this covenant, if it would have been a breach had the Disposition been effected by a person other than the Assignee in Bankruptcy, liquidator, or Sheriff.

(7) "Dispose" of the Leased Land includes assign, sublet, or part with possession. Disposition of the Leased Land has a similar meaning.

Essentiality of Payments

1.31. (1) Any breach of the following clauses by the Tenant is a breach of an essential Term which goes to the essence:

- (a) If the Tenant fails to pay any money due under this Lease on the due date; and
- (b) The Terms relating to Disposition of the Leased Property; and
- (c) The Clauses dealing with maintenance and farming practice.

(2) A breach of any of those Clauses has the following consequences:

- (a) The Tenant must compensate the Landlord for the breach; and
- (b) The Landlord is entitled to damages from the Tenant for the breach; and
- (c) These Rights of the Landlord remain despite this Lease being terminated; and
- (d) These Rights are in addition to the other Rights of the Landlord.

(3) If the Landlord accepts arrears, then this acceptance is not a waiver of the continuing obligation of the Tenant to make payments.

Indemnity

1.32. (1) To the extent to which the Landlord is not fully indemnified under an insurance policy, the Tenant must indemnify the Landlord against all Liability which results from any negligence of the Tenant, or of the Invitees of the Tenant.

(2) The indemnity includes the cost of making good any damage to the Leased Land which results from the negligence.

Inspection for Maintenance

1.33. (1) The Tenant must permit the Landlord and his or her Invitees at all reasonable times to enter the Leased Land and examine its state and condition.

(2) The Tenant must (with all reasonable dispatch after service of notice from the Landlord) make good all defects and want of repair according to the notice, so far as the Tenant is liable so to do under this Lease.

Inspection on Sale of Reversion

1.34. The Tenant must permit, upon reasonable notice and at any reasonable time, prospective purchasers of, or dealers in, or agents instructed in connection with, the sale either of the Landlord's reversion or of any interest superior to this Lease, to view the Leased Land without interruption, provided that they are authorised in writing by or on behalf of the Landlord.

Repudiation and Compensation

1.35. (1) The Landlord is entitled to damages for losses resulting from the Tenant's acts or omissions:

- (a) which constitute repudiation of this Lease or the Tenant's obligations; or
- (b) which result from breach of any of the Tenant's obligations.

(2) These Rights of the Landlord remain despite:

- (a) this Lease being terminated; or
- (b) the Tenant abandoning or otherwise vacating the Leased Land;

- or
(c) the Landlord accepting the Tenant's repudiation; or
(d) a termination of this Lease by operation of law.

(3) The Landlord is entitled to damages in regard to the whole term of this Lease, including those periods before and after the Tenant has vacated, and before and after the events in subclause (2), and regardless of whether proceedings are commenced before or after that conduct.

(4) These Rights are in addition to the other Rights of the Landlord.

Covenants by Landlord

2.00. The Landlord Covenants with the Tenant:

COMPENSATION FOR IMPROVEMENTS

2.01. (1) If there is no subsisting breach by the Tenant, then the Tenant is entitled to that sum of compensation (if any) which equals the percentage (specified in this Lease) of the value of the Tenant's improvements.

(2) The "Value of the Tenant's Improvements" means:

- (a) The value of the improvements effected by the Tenant to the Leased Land which exist at the expiration of the term or the last renewal of term; and
(b) Only improvements which are of the class of improvements specified in this Lease as "Class of Tenant's Improvements for which Compensation Payable"; and
(c) In the case of buildings, only those which comply with plans and specifications which were approved by the Landlord; and
(d) The value of these improvements as agreed between the parties.

Consent, Reasonable

2.02. If the Tenant requests the consent of the Landlord pursuant to any clause in this Lease which provides for consent by the Landlord, then the Landlord must not unreasonably withhold that consent.

Quiet Enjoyment

2.03. The Tenant paying the rent and observing the Tenant's Terms must during this Lease (except as is otherwise expressly provided in this Lease) peaceably enjoy the Leased Land without interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord. The obligation of the Landlord in that behalf is limited to this express covenant.

Rates, Taxes

2.04. (1) The Landlord must duly and punctually pay all rates, taxes, and assessments affecting the Leased Land which are not the responsibility of the Tenant.

(2) The Landlord must duly and punctually observe all the terms in any mortgage of the Landlord's interest in the Leased Land, except in so far as they impose obligations which are by this Lease imposed upon the Tenant.

Mutual Covenants

3.00. The Landlord and the Tenant Mutually Covenant:

Compulsory Work or Damage Compulsory Work

3.01. (1) "Compulsory Work" means any work required to be done to the Leased Land in order:

(a) To comply with any statute, regulation, ordinance, or by-law affecting the Leased Land or any activity carried on upon the Leased Land; or

(b) To comply with the provisions or requirements of any licence, requisition, or notice lawfully issued, made, or given by any authority of competent jurisdiction, — not being in either case work which is the responsibility of the Tenant under this Lease.

(2) Whenever it becomes apparent that any Compulsory Work is required to be carried out, then the Landlord and Tenant must decide:

(a) Which party (if either) should (in all the circumstances) fairly be responsible for carrying out the Compulsory Work and, if both parties should fairly be responsible for the Compulsory Work, then which work should fairly be the responsibility of each party; and

(b) Whether (having regard to the work [if any] which is fairly the responsibility of the Landlord) the Landlord should be entitled to an increase in the rent payable by the Tenant and if so by what amount and from what date; and

(c) Whether (having regard to all the circumstances and in particular to the extent and cost of the Compulsory Work) this Lease should instead terminate, and if so from what date.

Compulsory Work — Building Act

3.02. If the Landlord is required by the Building Act 1991 or by similar legislation or requirements to spend money upon improvements or alterations, then the following provisions apply:

(a) The Landlord is entitled (either alone or with Invitees and with all necessary equipment and materials) at all reasonable times to enter upon the Leased Land to execute the improvements and alterations; and

(b) The Landlord is entitled to charge (as additional rent) a yearly sum equivalent to the Improvements Rent Percentage specified in this Lease being a percentage of the money spent by the Landlord; and

(c) The payments of rent due must be increased accordingly to include this Improvements Rent Percentage, calculated from the first day of the month during which the improvement or alteration is completed; and

(d) If the Landlord would be obliged to spend an unreasonable amount to comply with the legislation or requirements, then the Landlord is entitled to give the Tenant at any time three months' written notice of termination of this Lease.

Damage or Destruction

3.03. (1) If any of the Improvements are destroyed or damaged by fire (or other Landlord's Insured Risks) then:

(a) The Landlord must (with all convenient speed) take such steps as are requisite and proper to obtain any necessary permits and consents to enable rebuilding and reinstatement; and

(b) The Landlord must (as soon as those permits and consents have been obtained) spend all the money received in respect of the insurance (except that for loss of rent) in rebuilding or reinstating the Improvements so destroyed or damaged. The Landlord need not spend more money than the insurance money (except that for loss of rent) received; and

(c) If the rebuilding or reinstatement is prevented or frustrated, then the insurance money becomes the absolute property of the Landlord; and

(d) If any of the Improvements are so damaged or destroyed as to be rendered unfit for occupation or use, then the Rent and Outgoings (or a fair and just proportion of them, according to the nature of the damage or destruction) ceases to be payable until the Improvements have been rebuilt or reinstated and again rendered fit for occupation or use.

(2) The repair or reinstatement:

(a) Will be carried out using those materials and that form of construction, and that plan which the Landlord thinks fit; and

(b) Is sufficient provided it is reasonably adequate for the Tenant's occupation and use of the Leased Land; and

(c) Must be carried out so as to cause as little disturbance to the Tenant as is reasonably possible.

(3) The provisions as to application of proceeds of insurance are subject to the rights of the mortgagee (if any).

(4) If the insurance proceeds are paid to the mortgagee, then the Landlord may elect:

(a) To treat those proceeds as having been received by the Landlord; and

(b) To repair and reinstate to the extent of those proceeds.

(5) The provisions of this clause (3.03) are in addition to and shall be construed so as not to derogate from the provisions of Section 83 of the Fires Prevention (Metropolis) Act 1774.

BREACH OF OBLIGATIONS

Distrait

3.04 Whenever any part of the rent (or other money payable by the Tenant) is in arrears for 14 days (whether it has been legally demanded or not), the Landlord is entitled to levy distress.

Re-entry

3.05 (1) Whenever:

(a) any part of the rent is in arrears for 28 days (whether it has been lawfully demanded or not); or

(b) there is any other non-observance by the Tenant of any of the Tenant's Terms

— then (subject to section 118 of the Property Law Act 1952) the Landlord is entitled forthwith (or at any time afterwards) to terminate this Lease and to re-enter and repossess the Leased Land in the name of the whole and to expel and remove the Tenant (and all persons claiming through or under the Tenant) without any process of law.

(2) These actions do not release the Tenant from liability and are without prejudice to the Rights of the Landlord in respect of any antecedent breach of any Term.

(3) Upon re-entry under this clause, no compensation is payable by the Landlord to the Tenant for any improvements effected by the Tenant.

Re-entry, Loss on

3.06. (1) The Landlord is not liable for any loss which happens to any property of the Tenant arising out of the re-entry.

(2) When the Landlord has re-entered, the Landlord may remove from the Leased Land any chattels and may place them outside the

Leased Land, without being liable for any loss.

(3) The Tenant must indemnify the Landlord against any Liability to any other person in respect of those chattels.

Repair if Default by Tenant

3.07. (1) If the Tenant fails to comply with any notice served by the Landlord pursuant to Clause 1.33 [Inspection for Maintenance], then the Landlord (without prejudice to the Landlord's other Rights) is at the Landlord's option entitled (either alone or with Invitees with all necessary equipment and materials) at all reasonable times to enter upon the Leased Land to execute the works specified in the notice.

(2) All money expended by the Landlord by reason of the default of the Tenant is payable by the Tenant to the Landlord upon demand, together with interest on it at the Default Interest Rate until repayment. It is recoverable as rent in arrears.

Unpaid Money, Interest on

3.08. (1) If any money owed to the Landlord by the Tenant, on any account pursuant to this Lease, is in arrears for 14 days, then that money bears interest at the Default Interest Rate, calculated from the due date until the date it is paid in full.

(2) The interest is recoverable in the same way as rent in arrears.

(3) This provision is without prejudice to the other Rights of the Landlord.

GENERAL

Arbitration

3.09. (1) Every dispute which arises under, out of, or in connection with this Lease must be decided by an arbitrator. This subclause does not apply:

(a) Where the method of dispute resolution is specifically set out in this Lease; or

(b) Where the dispute relates to forfeiture; or

(c) Where the Landlord sues the Tenant for rent or other payments due under this Lease.

(2) The arbitrator will be appointed by the parties. If they do not agree, then the arbitrator will be nominated (on the application of either party, at any time):

(a) By the President of the New Zealand Law Society; or

(b) If the President declines to make the nomination, or at the option of either party, then by the President of the Arbitrator's Institute of New Zealand Incorporated.

(c) The references to the Presidents include the duly appointed deputy of the President, and any person authorised by either of the Presidents to make appointments on his or her behalf.

(3) If the arbitrator dies, declines to act, or becomes incapable of acting, then the respective president may appoint another.

(4) Upon any such reference the arbitrator has power:

(a) To take the opinion of any counsel he or she thinks fit upon any question of law that arises and to adopt (at his or her discretion) any opinion taken; and

(b) To obtain the assistance of any expert he or she thinks fit and to act (at his or her discretion) upon any statement of accounts, survey, valuation, or other expert assistance thus obtained.

(5) Each of the parties must do all things, and execute all instruments to give effect to the award.

Insurance

3.10 (1) The Landlord must insure, and keep insured, in the joint names of the Landlord, the Tenant, and whatever other persons the Landlord reasonably requires (unless the insurance is vitiated by any act of the Tenant, or of the Tenant's Invitees) to the extent of the "Landlord's Insured Risks" specified in this Lease.

(2) The Landlord must produce to the Tenant, on demand, either the insurance policy or reasonable evidence from the insurers of the terms of the policy and of the fact it is still in effect, and of the amount of the premium.

(3) Nothing in this Lease requires the Landlord to insure against earthquake.

Land Settlement Promotion

3.11 (1) This Lease is subject to any consent which is necessary pursuant to the Land Settlement Promotion and Land Acquisition Act 1952. Each party must within a reasonable time:

- (a) Comply with the Act; and
- (b) Obtain all consents; or
- (c) Make and lodge with the District Land Registrar the requisite statutory declaration to avoid the need for consents.

(2) If consent is required, then this Lease is subject to:

- (a) That consent being granted by the Commencement of Term; and
- (b) That consent being either unconditional or conditional solely on any of:
 - (i) Payment of outgoings in respect of the Leased Land; or
 - (ii) Payment of fees for the grant of consent; or
 - (iii) Termination of concessional rates of rent or interest.

(3) The filing fee for the application must be paid by the Tenant.

Rent Review

Periods and Dates

- 3.12 (1) (a) "Review Period" means either;
- (i) The period beginning with a Review Date and ending on the day before the next Review Date; or
 - (ii) The period beginning on the last or only Review Date and ending at the expiry of this Lease.
- (b) Relevant Review Date means the Review Date at the beginning of that Review Period.

Arbitration or Expert

(2) The Landlord and the Tenant may (at any time) agree in writing upon the revised rent for any Review Period. If they do not agree, then the revised rent will be decided (but not earlier than the relevant Review Date) by arbitration or by expert as provided in this Lease.

Calculation of Revised Rent

- (3) The revised rent will be whatever the arbitrator or expert decides is the rent at which the Leased Land might reasonably be expected to be let in the open market at the relevant Review Date based on:
- (a) Whether the Objective Rent or the Subjective Rent has been selected in this Lease; and
 - (b) On the factors in the Schedule of Rent Review Assumptions and Disregards.

Schedule of Rent Review Assumptions and Disregards Assumptions

The assumptions which are to be made as at the Relevant Review Date regardless of whether the Objective Rent or the Subjective Rent has been selected are:

1. The Tenant, his or her subtenants, and their predecessors in title have carried out no work which has diminished the rental value of the Leased Land.
2. If the Leased Land has been destroyed or damaged, then it has been fully restored.
3. The Terms in this Lease have been observed.
4. The Leased Land is available to be leased by a willing landlord to a willing tenant under one lease and with vacant possession.
5. The Leased Land is equipped for immediate use by the incoming tenant.
6. The hypothetical lease under which the Leased Land will be leased:
 - (a) contains the same Terms as this Lease (except the amount of rent and any rent-free period); and
 - (b) contains the same provisions for rent review, at the same intervals — as those in this Lease.
7. The duration of the hypothetical lease is the same as that of this Lease, the hypothetical lease commences on the Relevant Review Date, and the rent runs from that date.

"Subjective Rent" Disregards or "Objective Rent" Assumptions

8. The current "Subjective Rent" means that the rent at which the Leased Land might reasonably be expected to be let in the open market does not include the value of the following items (i) to (iv).
9. The current "Objective Rent" means that the rent at which the Leased Land might reasonably be expected to be let in the open market does include the value of the following items (i) to (iv).
 - (i) Improvements carried out to the Leased Land by the Tenant or by the Tenant's sub-tenants; or
 - (ii) Fixtures and fittings affixed to the Leased Land by the Tenant or by the Tenant's sub-tenants; or
 - (iii) Any effect on the rent resulting from the Tenant or the Tenant's sub-tenants having been in occupation; or
 - (iv) Goodwill resulting from the Tenant or the Tenant's sub-tenants having carried on business at the Leased Land.

Selection and Application

(4) The arbitrator or expert must be selected as in Clause 3.09 [Arbitration]. The application of either the Landlord or the Tenant must be made not earlier than six months before the relevant Review Date.

Procedure Where Expert

(5) Where the review is conducted by an expert instead of an arbitrator:

- (a) The expert must allow each party to make written representations and written counter representations to him or her; and
- (b) The expert is not bound by the representations and counter representations, but must instead rely on his or her own judgment.

Access

(6) The Tenant must allow the arbitrator or expert access to the Leased Land in order to do anything that the arbitrator or expert considers necessary to carry out his or her function.

Costs

(7) The fees and expenses of the arbitrator or expert (including the cost of his or her appointment) must be borne:

- (a) In the case of arbitration, as the arbitrator directs; and
- (b) In the case of an expert, equally by the parties.

(8) If one party pays the fees and expenses of the arbitration or expert's valuation which are owing by the other party, then that party may recover any part of them:

- (a) by the Landlord against the Tenant, as rent in arrears; and
- (b) by the Tenant against the Landlord, as deduction against rent.

(9) Once the revised rent has been fixed in this way, the parties will sign a memorandum of variation recording the revised rent. The landlord and the tenant will do all things necessary or expedient on their respective parts to be done to enable the Memorandum to be registered,

Arrangements Pending Revised Rent

(10) If the revised rent which is payable during any Review Period has not been ascertained by the Relevant Review Date, then the current rent continues to be payable on account of the rent for that Review Period.

(11) If the revised rent is ascertained on or before the Relevant Review Date and if that date is not a Rental Payment Date, then the Tenant must on that Review Date pay to the Landlord the difference between the rent due for that period and the rent actually paid for it.

(12) If the revised rent payable during any Review Period has not been ascertained by the Relevant Review Date, then immediately after the date it has been ascertained the Tenant must pay to the Landlord:

- (a) Any shortfall between the rent which would have been paid if the revised rent had been ascertained by the Relevant Review Date and the payments made on account; and
- (b) Interest at the Default Interest Rate on the shortfall between the amount that would have been paid if the revised rent had been ascertained by the Relevant Review Date and the payments made on account for the period beginning on the day on which each payment was due and ending on the date on which payment of the shortfall is made.

Rent Increase Prevented

(13) (a) If on any Rent Review Date any Statute restricts the Landlord's right to review the rental, then the Landlord may (any time after the restriction is removed, relaxed, or modified) by giving one month's notice to the Tenant commence a rent review as at the

date of removal, relaxation, or modification; and

- (b) Subsequent reviews of rent will then fall due as provided by this Lease, despite the review pursuant to this subclause; and
- (c) The Landlord is entitled to recover the increase in rent from the removal, relaxation, or modification.

Ratchet Rent Clause

(14) The new rent must not be less than the rent payable during the year ending on the Rent Review Date.

Service

3.13. (1) Any notice or document relating to this Lease required or authorised to be served by one party on the other, and whether required or authorised to be served by this Lease, or by any Act of Parliament, or statutory regulation may be served in the manner prescribed by section 152(1) of the Property Law Act 1952, whether the person to be served is present in or absent from New Zealand and if absent from New Zealand whether or not the person has a known agent in New Zealand.

(2) Any notice posted by registered letter is deemed to have been served at the time when the letter would in the ordinary course of post be delivered.

(3) Any notice served on behalf of either party by that party's solicitor is deemed to have been served by that party personally.

Suitability

3.14. The Tenant acknowledges that no warranty, whether express or implied, has been made, or is made:

- (a) That the Leased Land is now, or will remain, suitable or adequate for use by the Tenant; or
- (b) That any use of the Leased Land will comply with the requirements of any authority having jurisdiction.

Variation

3.15. The Terms are not varied unless the variation is reduced to writing, executed by the Landlord and the Tenant, and registered.

Waiver

3.16. Waiver of any breach (or the Landlord failing to act regarding a breach by the Tenant of any Term) is not a waiver of another breach of any Term.

RIGHTS ON TERMINATION

Access for Reletting

3.17. For six months before this Lease terminates the Tenant must permit those holding the Landlord's written approval to inspect the Leased Land at reasonable times.

Fittings and Fixtures, Removal of

3.18 (1) The Tenant may (at the expiration or sooner termination of this Lease or any extensions) remove all fittings and fixtures brought by the Tenant upon the Leased Land.

(2) The Tenant must repair and make good at the expense of the Tenant all damage which is done to the Leased Land by the removal of the fittings and fixtures.

Holding Over

3.19. If this Lease expires or is earlier terminated, and if the Landlord continues to permit the Tenant to occupy the Leased Land,

then that occupation is a monthly tenancy which may be terminated at any time by one month's notice in writing. The rent is that rent applicable under this Lease. The terms of the occupation are the same as under this Lease, so far as they apply to a monthly tenancy.

Possessions, Removal of

3.20. (1) If after the Tenant has vacated the Leased Land, any of the Tenant's possessions remain, and if the Tenant fails to remove them after the Landlord has served written notice requesting removal, or if the Landlord (after using his or her best endeavours) is unable to make the request within 14 days from the first endeavour, then the Landlord may (as agent of the Tenant) sell the possessions.

(2) The Tenant indemnifies the Landlord against liability incurred by him or her to any third party whose possessions have been sold by the Landlord in the mistaken belief (which is presumed) that the possessions belonged to the tenant.

(3) If the Landlord has made reasonable efforts but is unable to locate the Tenant, then the Landlord is entitled to retain the proceeds, unless the Tenant claims them within 90 days of vacating.

(4) The Tenant must indemnify the Landlord against Liabilities suffered directly or indirectly resulting from the possessions being on the Leased Land after the Tenant has vacated.

Renewal, Right of

3.21. (1) If the Tenant has not been in breach and gives notice to the Landlord at least six months before the expiration of the term, then the Landlord must (at the cost of the Tenant) grant to the Tenant a renewed lease for a further term of the period specified in this Lease. The renewal commences upon the expiry of the term granted by this Lease.

(2) The rental for the renewed lease will be as agreed between the Landlord and the Tenant. If they cannot agree, then at a rental to be fixed in accordance with Clause 3.12 [Rent review]

(3) The renewed lease is otherwise subject to the same Terms as in this Lease except that the total number of renewed terms must not exceed the Maximum Total Number of Renewed Terms specified in this Lease.

(4) In any event the first term of this Lease together with all further terms must expire not later than the Final Expiry Date specified in this Lease.

(5) The rental during the further term is subject to review on the Rent Review Dates specified in this Lease. If no dates are set out, then the rent is subject to review at the same intervals as are provided for in the first term.

(6) Instead of a renewed lease, the parties may agree to evidence the transaction by a registered memorandum of extension or variation of lease.

Yield up on Termination, Tenant to

3.22. The Tenant must (at the expiration or sooner termination of this Lease or any extensions) yield up the Leased Land and with all locks, keys, and fastenings.

Interpretation

3.23. Where the context admits:

Buildings — "Buildings" includes houses, barns, sheds, and other buildings on the Leased Land.

Consent — (a) References to the consent or approval of the Landlord for any purpose require that consent or approval for each separate occasion, notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion; and

(b) The consent or approval refers to the prior written consent or approval; and

(c) The references are subject to the proviso that the consent or approval must not be unreasonably withheld.

Covenantors — Where more persons than one are covenantors, the covenants bind the covenantors and any two or greater number of them jointly and each of them severally.

Gender — Words importing one gender include the other genders as the case may require.

GST — GST means goods and services tax.

Implied terms — Implied terms are for the purposes of this Lease negated or modified in so far as they or any of them are contradictory to or inconsistent with the covenants, conditions, and provisions of this Lease.

Improvements — "Improvements" means:

(a) All Buildings; and

(b) Milking plant, pumps, fences, gates, hedges, culverts, dams, drains, crossings, fixtures, stockyards, dips, and other improvements.

Invitees — Invitees means all persons under the control of the party, and includes servants, employees, agents, contractors, advisers, and customers.

Landlord — "Landlord" means the Lessor.

Lease — "This Lease" means the executed lease incorporating the provisions of this memorandum.

Liabilities — Liabilities include damages, losses, claims, and proceedings.

Negative covenants — A term not to do something includes the obligation not to suffer, permit, or cause that thing to be done.

Observe — "Observe" includes perform. "Non observance" has a similar meaning.

Person — The word "person" includes a corporation and unincorporated association. Without limiting that generality, and by way of examples only, "person" includes: trust, the State, agency of state, State Enterprise, government department, and local authority.

Present tense includes future — This lease is always speaking. Whenever anything is expressed in the present tense it is applied to the circumstances as they arise, so that effect may be given to this lease and every part of it according to its spirit, true intent, and meaning.

Rights — Rights may be exercised from time to time and at any time, unless expressed to the contrary. Rights include powers and remedies.

Singular — Words importing the singular or plural number include the plural and singular number respectively.

Statutes — References to statutes and regulations include references to:

- (a) Statutes and regulations which amend, consolidate, or re-enact them.
- (b) Regulations, by-laws, orders, and notices which are made under them.

Subheadings — Headings to clauses do not affect the interpretation.

Successors — The benefits and burdens benefit and bind the parties, their successors, and personal representatives, and their permitted transferees.

Tenant — “Tenant” means the Lessee.

Terms — “Terms” includes covenants, conditions, and provisions. References to terms includes both express and implied terms.

Covenants by Guarantor

4.00. The Guarantor Covenants with the Landlord:

Guarantee

4.01. In consideration of the Landlord entering into this Lease at the request of the Guarantor (as the Guarantor acknowledges) the

Guarantor:

(1) Guarantees to the Landlord the due and punctual payment of rent and other payments and the due and punctual observance of all the other terms to be observed by the Tenant under this Lease (including under renewals).

(2) Covenants to indemnify the Landlord against all Liabilities (including, but not limited to, losses of rent) which the Landlord suffers should this Lease (including any renewal) be disclaimed or abandoned on behalf of the Tenant, whether by the Tenant’s receiver, liquidator, statutory manager, or Official Assignee, or otherwise.

(3) Covenants upon demand by the Landlord:

(a) To execute all instruments which evidence any variation, rent renewal, and renewal; and

(b) (If this Lease is lawfully disclaimed or abandoned by the Tenant’s receiver, liquidator, statutory manager, or Official Assignee or otherwise) to execute a new lease as Tenant on the terms of this Lease for the unexpired term of this Lease.

(4) Covenants that no release, delay, or other indulgence, or any variation of this Lease, or any other thing which may have released the Guarantor had the Guarantor been a surety only, releases, prejudices, or affects the liability of the Guarantors whether as guarantors or as indemnifiers.

(5) Covenants (without limiting the generality of subclause (4)), that none of the following events releases the guarantor from liability:

(a) The death, bankruptcy, or liquidation of the Tenant or of any other guarantor; or

(b) The assignment of this Lease, or changes in the Tenant’s shareholding; or

(c) This Lease (or the liability of the Tenant) being invalid, illegal, or unenforceable; or

(d) Any rent review or renewal pursuant to this Lease.

(6) Covenants that, although as between the Tenant and the Guarantor the Guarantor may be a surety only, the Landlord may look to the Guarantor as Tenant, and the Landlord need not proceed against the Guarantor.

Dated		day of
20		
Execution		