

Dated

2018

DEED OF LEASE

Lessor
SELWYN DISTRICT COUNCIL

Lessee
[TBA]

Guarantor
[TBA]

CONTENTS

BACKGROUND	1
TERMS OF THIS DEED - GRANT OF LEASE	1
FIRST SCHEDULE (REFERENCE SCHEDULE)	3
SECOND SCHEDULE (GENERAL TERMS AND CONDITIONS)	4
1. DEFINITIONS, INTERPRETATIONS AND EXCLUSIONS	4
2. TERM	5
3. RIGHT OF RENEWAL	5
4. RENT	5
5. MARKET RENT REVIEW	6
6. CPI RENT REVIEW	6
7. OUTGOINGS AND OTHER CHARGES	7
8. LESSEE'S OBLIGATIONS	7
9. PERMITTED USE	11
10. FARM ENVIRONMENT PLAN	11
11. SIX MONTHLY REPORTING	11
12. LESSEE'S INDEMNITY	11
13. COMPLIANCE WITH STATUTES	11
14. NO NOXIOUS USE	12
15. THE LESSOR ACTING AS TERRITORIAL AUTHORITY	12
16. NO ASSIGNMENT OR SUB-LETTING	12
17. INSURANCE	12
18. LESSOR'S COVENANTS	13
19. REMOVAL OF CHATTELS AND STOCK	13
20. EARLY TERMINATION	13
21. LESSOR'S RIGHTS	13
22. RESERVES ACT 1977	14
23. MISCELLANEOUS	14
THIRD SCHEDULE (GUARANTEE)	17

DATED

2018

PARTIES

- (1) **SELWYN DISTRICT COUNCIL** (the "**Lessor**")
- (2) **[TBA]** (the "**Lessee**")
- (3) **[TBA]** (the "**Guarantor**")

BACKGROUND

The Lessor administers the Land pursuant to the Reserves Act 1977 (the "**Reserves Act**") as a recreation reserve and has agreed to grant a lease of the Land pursuant to Section 73 of the Reserves Act on the basis that the Land is not, for the time being, required for use as a recreation reserve.

TERMS OF THIS DEED - GRANT OF LEASE

- A. The Lessor leases to the Lessee, and the Lessee takes on a lease of the Land described in the First Schedule for the Term from the Commencement Date and at the Annual Rent subject to review as set out in the First Schedule.
- B. The Lessor and the Lessee covenant as set out in the Second Schedule.
- C. The Guarantor covenants with the Lessor as set out in the Third Schedule.

EXECUTION

THE COMMON SEAL of
SELWYN DISTRICT COUNCIL was
 hereto affixed by and
 in the presence of:

 Mayor

 Chief Executive

EXECUTED as a DEED for and on behalf
 of **[TBA]**

 Director

 Director

EXECUTED as a DEED by)
[TBA])
in the presence of) Signature _____

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a DEED by)
[TBA])
in the presence of) Signature _____

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

**FIRST SCHEDULE
(REFERENCE SCHEDULE)**

Land:	The Land located at Hororata Domain, Hororata Road, Hororata containing []ha or thereabouts, outlined in blue on the Plan attached and marked "A".
Term:	Five (5) years
Commencement Date:	[To be completed]
Right of Renewal:	Nil
Renewal Date:	The 5 th anniversary of the Commencement Date
Final Expiry Date:	Five (5) years from the Commencement Date
Annual Rent:	\$() plus GST (being \$() plus GST per hectare) (subject to clauses 5 and 6)
Rent Payment Dates:	The 1 st day of each month commencing on the 1 st day of [to be completed] 2018
Market Rent Review Date:	The third anniversary of the Commencement Date
CPI Rent Review Dates:	Annually (except in years that are Market Rent Review) with the first CPI Rent Review Date to be the first anniversary of the Commencement Date
Permitted Use:	Dairy Farming
Default Interest Rate:	A rate of interest per cent per annum equal to the Bank of New Zealand commercial overdraft base rate at the date of such default, plus 5%.

SECOND SCHEDULE (GENERAL TERMS AND CONDITIONS)

1. DEFINITIONS, INTERPRETATIONS AND EXCLUSIONS

1.1 In this Lease unless a contrary intention appears:

- (a) **"Authority"** means any local body, government or other authority having jurisdiction or authority in respect of the Land or any business or use carried on in the Land.
- (b) **"Contaminant"** has the meaning given to it in section 2 of the Resource Management Act 1991 and **"Contaminate"** and **"Contamination"** have corresponding meanings.
- (c) **"Farm Environment Plan"** means the plan to be prepared by the Lessee in accordance with clause 10.
- (d) **"GST"** means goods and services tax payable in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a goods and services tax.
- (e) **"Irrigation Infrastructure"** means the below and above ground irrigation infrastructure including pivots installed by the Lessor on or around the commencement of this Lease to allow irrigation from the Central Plains Water Limited Scheme.
- (f) **"the Lessee"** and **"the Lessor"** include their respective successors and shall extend in the case of the **Lessee** to include the Lessee's employees, agents, contractors, invitees and any other person under the Lessee's control.
- (g) **"Lessor's Improvements"** means:
 - (i) The Irrigation Infrastructure; and
 - (ii) Water mains, stock water lines and troughs and any other similar improvements installed on the Land by the Lessor during the term of this Lease.
- (h) **"Service Contract"** means the service contract that has been entered into between the Lessor and service provider in respect of the maintenance, servicing and capital upgrades of the Irrigation Infrastructure during the Term.
- (i) **"working day"** means a day, other than a Saturday or Sunday, a public holiday, Canterbury **Anniversary** Day and any day in the period commencing on 24 December in one year and ending with 5 January in the following.
- (j) **"Year"** means any year or part of the year ending on 30 June or on the expiration or sooner determination of this Lease as the case may require.

1.2 Interpretations

- (a) Any reference in this Lease to the terms described in the First Schedule will have the meanings set out in the First Schedule.
- (b) Words importing the singular shall include the plural. Words importing the masculine gender shall include the feminine or neuter and vice versa. Words importing persons shall include legal persons.

- (c) An obligation not to do something includes an obligation not to allow or cause that thing to be done.
- (d) The word "including" and other similar words do not imply a limitation.
- (e) Any covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.
- (f) The table of Contents and any headings and marginal notations in this Lease have been inserted for convenience only and shall not limit or govern the construction of the terms of this Lease.
- (g) Any reference in this Lease to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation and any re-enactments thereof.
- (h) Where the Lessor's consent or approval is required pursuant to any provision of this Lease such consent or approval shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.

2. TERM

- 2.1 This Lease shall be for the Term commencing on the Commencement Date.

3. RIGHT OF RENEWAL

3.1 If:

- (a) the Lessee has duly observed the terms of this Lease; and
- (b) has given to the Lessor not less than 6 months' written notice prior to the Renewal Date (which notice shall be irrevocable),

THEN the Lessor will at the cost of the Lessee grant a renewed Lease of the Land for the further term of years fixed in the First Schedule commencing from the relevant Renewal Date, and otherwise on the same terms and conditions contained in this Lease, except that the term of this Lease shall expire on or before the Final Expiry Date.

4. RENT

- 4.1 The Lessee covenants to pay the Annual Rent to the Lessor in accordance with the terms of this Lease. All payments of rent under this Lease shall be paid without deduction or set off of any kind to the Lessor.
- 4.2 The Lessee shall pay to the Lessor the Annual Rent by equal monthly payments in advance on the Rent Payment Dates.
- 4.3 The first monthly payment (together with rental calculated on a daily basis for the period from the Commencement Date to the first Rent Payment Date) shall be payable on the first Rent Payment Date. On any review of the Annual Rent, the monthly payments of rent will adjust accordingly.

5. MARKET RENT REVIEW

5.1 On the Market Rent Review Dates the Annual Rent may be reviewed by the Lessor as follows:

- (a) The Lessor shall commence a review by not earlier than 3 months prior to a Market Rent Review Date or at any time up to the next following Market Rent Review Date giving written notice to the Lessee specifying the rent considered by the Lessor to be the current market rent as at that Market Rent Review Date.
- (b) If, by written notice to the Lessor within 28 days after receipt of the Lessor's notice, the Lessee disputes the proposed new rent then the new rent shall be determined in accordance with clause 23.9 **BUT** the new rent shall not be less than the rent payable during the period of twelve 12 months immediately preceding the relevant Market Rent Review Date or the rent payable immediately prior to the relevant Lessor's notice, whichever is the higher.
- (c) If the Lessee fails to give such notice (time being of the essence) the Lessee shall be deemed to have accepted the rent specified in the Lessor's notice.
- (d) The rent so determined or accepted shall be the Annual Rent from the Market Rent Review Date or the date of the Lessor's notice if such notice is given later than 3 months after the relevant Market Rent Review Date.
- (e) Pending the determination of the new rent the Lessee shall pay the rent specified in the Lessor's notice provided that rent is substantiated by a registered valuer's report. Upon determination of the new rent an appropriate adjustment shall be made.
- (f) The Market Rent Review at the option of either party may be recorded in a Deed, the cost of which shall be payable by the Lessee.

6. CPI RENT REVIEW

6.1 On the CPI Rent Review Dates the Lessor and the Lessee agree that (subject to clause 6.3) the Annual Rent shall be adjusted on every CPI Rent Review Date to an amount which is equal to \$A, where:

$$A = \frac{B \times C}{D}$$

And where

"B" = the Annual Rent payable immediately prior to the relevant CPI Rent Review Date,

"C" = the Consumer Price Index (All Groups) expressed as a percentage last published prior to the relevant CPI Rent Review Date,

"D" = the Consumer Price Index (All Groups) last published prior to the last preceding CPI Rent Review Date or the Commencement Date (as the case may be).

6.2 If at any time during the Term the Consumer Prices Index (All Groups) is no longer published, the references to that index will be deemed to be references to the index that most closely replaces the same.

- 6.3 In no circumstances following a review under clause 6.1 shall the rental payable be less than the rental payable immediately preceding the relevant CPI Rent Review Date.

7. OUTGOINGS AND OTHER CHARGES

- 7.1 The Lessee shall pay all charges and outgoings in respect of the Land. Without limiting the generality of the preceding sentence, the charges and outgoings shall include:
- (a) All rates, land tax and any other charge or imposition made upon the Lessor as owner of the Land.
 - (b) The Lessee shall promptly pay the charges in respect of the Service Contract to the Lessor on receipt of an invoice(s) from the Lessor.
 - (c) All insurance premiums and excess and relevant valuation fees in respect of insurance policies held by the Lessor under this Lease.
 - (d) All GST paid or payable by the Lessor as a consequence of the receipt by the Lessor of any rent or other money payable under this Lease.
 - (e) All charges associated with the supply of water to the Land including, but not limited to, any charges (including stored water charges) from Central Plains Water Limited.
- 7.2 The outgoings referred to in clause 7.1 shall be payable on demand without deduction or set-off and if required by the Lessor, the Lessor may estimate in advance the annual amount of the outgoings and require payment of such amount by monthly instalments together with Annual Rent in advance. The Lessor's estimate may be revised by the Lessor from time to time and the Lessee's monthly instalments adjusted accordingly. When the actual annual amount of outgoings payable is known any deficiency shall be paid by the Lessee promptly on demand and any excess shall be promptly refunded by the Lessor or credited towards future outgoings or rent at the Lessor's discretion. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable by the Lessee on demand from the Lessor.
- 7.3 In any case where the charges and expenses referred to in clause 7.1 are not separately assessed for the Land, the Lessee shall pay a fair and reasonable proportion of those charges and expenses.
- 7.4 The Lessee shall not be liable for any proportion of the amounts payable under clause 7.1 and 7.3 which relate to any period falling outside the term of this Lease.

8. LESSEE'S OBLIGATIONS

- 8.1 **Maintenance and Husbandry of the Land:** The Lessee shall at the Lessee's expense and in accordance with the Lessor's reasonable requirements (as advised to the Lessee from time to time by the Lessor):
- (a) Employ the best modern farming practice in respect of the Land.
 - (b) Manage the Land in accordance with the Farm Environment Pla.;
 - (c) Keep the exterior and interior of any buildings and all fences, ditches, bridges, culverts, stockyards, gates, the Lessee's Improvements (excluding the Irrigation Infrastructure which

will be covered by the Service Contract) and things on or to be erected on the Land in good repair and condition and at the expiration or sooner determination of the Lease shall yield them up in good repair and condition002E

- (d) Crop the Land in good grass pasture. "Good grass pasture" shall mean good perennial rye grass/white clover pasture and/or other suitable pasture species unless otherwise stated suitable for the Land and of the description and proportions usually sown in the area in which the Land is situated. Any dispute arising out of this clause shall be referred for final and binding resolution to the nearest farm advisory office of Livestock Improvement Corporation. In no circumstances will Lucerne be sown on the Land.
- (e) Punctually:
 - (i) comply with the Forest and Rural Fires Act 1977 in respect of the Land; and
 - (ii) comply with all statutes concerning the business of farming and with any order or requisition of any dairy or other inspector having authority;
- (f) Fertiliser/Nutrients Application
 - (i) Apply fertiliser, lime and other nutrients as is appropriate for the Land so as to maintain the nutrient levels of the Land to achieve the outputs of the Farm Environment Plan.
 - (ii) So long as the following fertiliser and lime applications do not conflict with the Farm Environment Plan then the Lessee will apply the following nutrients to the Land on an annual per hectare basis:
 - (1) 50 kilos of nitrogen;
 - (2) 50 kilos of soluble phosphorus;
 - (3) 3 kilos of potassium;
 - (4) 25 units of sulphur.

In addition the Lessee shall apply *[1,000 kilograms of Springfield (or similar)]* Lime per hectare to the Land every three (3) years.
 - (iii) Procure an independent, suitably qualified advisor to test the soils and fertilisation of the Land annually and compile a report containing the results of such tests to show compliance with (f)(i) and (f)(ii) above.
 - (iv) The Lessee shall, at the expiration of the Lease, leave the Land capable of cultivation and in good grass pasture (as defined above) of at least two (2) months standing and ensure that the average pasture cover as at the 1st day of June prior to the expiration of the Lease will be 1,800kg DM/ha.
- (g) The Lessee shall not, at any time, sell or remove any hay grown on the Land.

- (h) Stock the pasture on the Land in accordance with the rules of good husbandry generally recognised in the area in which the Land is situated and in accordance with the Farm Environment Plan, while maximising the productive potential of the Land for the Permitted Use. The Lessee shall not:
- (i) overstock the Land or depasture more stock than it will reasonably carry; and
 - (ii) during the last twelve (12) months of the Term depasture upon the Land a greater number of stock than during the previous twelve (12) months.
- (i) Not less than once every year and otherwise when necessary clean out and open all ditches, drains and other water courses on the Land and take all proper steps to keep such ditches, drains and water courses clear and unobstructed.
- (j) Take all reasonable steps in accordance with good farming practices to clear and keep clear the Land from all noxious weeds, rabbits and vermin.
- (k) Keep all hedges, trees, shelterbelts on the Land properly cultivated, pruned and in neat order.
- (l) Comply with the provisions of the Biosecurity Act 1993, and any regional or national pest management strategy implemented under the Biosecurity Act 1993 and all other Acts dealing with noxious weeds and vermin.
- (m) Comply with all lawful notices and demands given or made by any Authority.
- (n) Make good any damage to the Land caused by animals or by improper careless or abnormal use by the Lessee or those for whom the Lessee is responsible.
- (o) Promptly remove all rubbish, fallen trees, tree trimmings and any dead stock from the Land.
- (p) Not remove or permit the removal of any metal, stone, gravel or soil from the Land.
- (q) Not excavate, or permit any excavations upon the Land.
- (r) If the Lessee breaks up or crops (for livestock feed) any part of the Land, reinstate that part of the Land in grass pasture prior to the end of the term of the Lease.
- (s) Erect, repair and maintain in good and stock-proof condition all ry fences and gates which: may be required on any boundary of the Land to comply with the provisions of the Fencing Act 1978 or any re-enactment of that Act insofar as the same shall affect the Land and will keep the Lessor indemnified against all liability under that Act; and/or, which may be necessary upon the Land for the proper and safe use of the Land for the Permitted Use.
- (t) Not call upon the Lessor to erect or contribute towards the cost of the erection, maintenance or repair of any fences or gates on the Land or on any boundary of the Land.
- (u) Provide suitable electrified wires to all fences.
- (v) Provide notices on all electrified fences in accordance with the Fencing Act 1978.
- (w) Immediately give notice to the Lessor of any damage to or defects in the Land and/or the Lessor's Improvements and any circumstances occurring within the Land likely to cause damage.

8.2 Improvements by Lessee

- (a) The Lessee shall not erect any building or improvements on the Land or remove any buildings or improvements (including any of the Lessee's buildings or improvements) without the prior written consent of the Lessor, which may be given subject to such conditions as the Lessor thinks fit.
- (b) The Lessee shall, if required by the Lessor, prior to or on the expiry of the term of this Lease, remove all of the Lessee's buildings or improvements and make good damage to the Land caused by such removal. Where the term of this Lease is determined for any reason the Lessee shall, if required by the Lessor, effect such removal and making good of damage immediately forthwith after such determination. The purpose of this clause is to permit the Lessor to require the Lessee to return the Land as near as possible to the condition which it was in at the Commencement Date.
- (c) Subject to the provisions of clause (b), all or any buildings or improvements brought upon the Land by the Lessee (whether in the nature of a trade fixture or not) and which are on the Land at the expiration of the term of this Lease whether by termination or effluxion of time shall immediately upon such expiration or termination vest in the Lessor without right of payment or compensation to the Lessee by the Lessor.

8.3 Except as provided in clause 8.1 the Lessee will not cut down or fell any trees or shrubs growing upon the Land without first obtaining the Lessor's written consent.

8.4 Contamination:

- (a) The Lessee will, throughout the term of the Lease, adopt practices with respect to avoiding and mitigating Contamination to the Land consistent with any mandatory code of practice and any statutory or regulatory requirements in existence from time to time. On the expiry or earlier termination of the Lease, the Lessee must remove the adverse effects of any Contamination which it, or its employees or contractors has caused to:
 - (i) the Land; and
 - (ii) any other land or water (whether over or under the ground) surrounding the Land which may have become contaminated directly or indirectly due to the Lessee's occupation and use of the Land,

by carrying out all necessary work required (after full consultation with the Lessor and the appropriate Authorities) to return the Land and the surrounding land/water to the same condition as at the Commencement Date.

- (b) The Lessee's obligations contained in clause 8.4(a)(i) are, in relation to the Resource Management Act 1991, limited to responsibility for any Contamination or other activity or activity directly or indirectly caused or carried out by the Lessee or arising out of the use and occupation of the Land by the Lessee during the term of the Lease, and extends to doing all things required to remove the Land from the Listed Land Use Register where the Lessee's actions have resulted in the Land being added to that register.

9. PERMITTED USE

- 9.1 The Lessee shall not use or permit the whole or any part of the Land to be used for any purpose other than the Permitted Use.

10. FARM ENVIRONMENT PLAN

- 10.1 The Lessee will, within three (3) months of the Commencement Date and in consultation with the Lessor, prepare and maintain a Farm Environment Plan with respect to the Land. The Farm Environment Plan will comply with all relevant Authorities and planning requirements, resource consents, mandatory code of practice or any statutory or regulatory requirements in existence from time to time. The Farm Environment Plan shall be tailored to reflect the long term sustainability of the Land while maximising the productive potential of the Land for the Permitted Use and shall incorporate any details reasonably required by the Lessor.

11. SIX MONTHLY REPORTING

- 11.1 The Lessee shall prepare and submit to the Lessor for its review on the expiry each six month period of the Term (to be known as "the Six Monthly Report") giving sufficient details of the farming operation undertaken by the Lessee during the previous six months and detailing the Lessee's compliance with the key terms of the Lease. Without limiting the generality of this provision, the Six Monthly Report shall include the following information:
- (a) the number of stock grazed on the Land and what the stock consisted of;
 - (b) details to show compliance with the maintenance obligations in clause 8.1 (including, but not limited to, actions taken to control weeds and agricultural pests, to keep trees and hedges in tidy condition, actions to achieve and maintain required soil fertility and nutritional levels and details of the sowing of pasture);
 - (c) a nutrient report (annually only) showing compliance with the Lessee's obligations; and
 - (d) such other details as the Lessor may reasonably require relating to the farming operation on the Land.

12. LESSEE'S INDEMNITY

- 12.1 The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor its servants and agents from all claims and demands of any kind and from all liability which may arise in relation to the Land and the use of the Land.
- 12.2 The Lessee shall keep the Lessor indemnified to the fullest extent permitted by law against all claims, demands, actions, losses, damages, costs, and expenses of any kind which the Lessor is or may become liable for in respect of or arising out of or in relation to the Lessee's use and occupation of the Land, or any breach of this Lease

13. COMPLIANCE WITH STATUTES

- 13.1 The Lessee shall comply with the provisions of all statutes, all ordinances, regulations and by-laws relating to the use of the Land by the Lessee or other occupant and will also comply with the

provisions of any licences, requisitions and notices issued by any Authority in respect of the Land or its use by the Lessee or other occupant of the Land.

14. NO NOXIOUS USE

14.1 The Lessee shall not:

- (a) Bring upon or store on the Land nor allow to be brought upon or stored on the Land any machinery goods or things of an offensive noxious illegal or dangerous nature;
- (b) Use the Land or allow it to be used for any noisome noxious illegal or offensive trade or business; or
- (c) Allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Lessor or any other person, and generally the Lessee shall utilise its rights under this Lease in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons.

15. THE LESSOR ACTING AS TERRITORIAL AUTHORITY

15.1 The Lessee acknowledges that the Lessor is bound to exercise its various powers and duties under statute without regard to any relationship with the Lessee under this Lease, and vice versa.

16. NO ASSIGNMENT OR SUB-LETTING

16.1 The Lessee will not assign or otherwise depart with possession of the Land or any part thereof.

17. INSURANCE

17.1 The Lessor will insure the Lessor's Improvements against such risks as the Lessor may reasonably determine.

17.2 The Lessee shall, at its own cost, at all times during the term maintain public liability (including rural fire) cover of \$1,000,000.00 and contents insurance in the joint names of the Lessor and the Lessee and shall make a copy of the policy in respect of such insurance available to the Lessor on demand.

17.3 The Lessee shall not do or permit anything to be done on the Land whereby any insurance effected by the Lessor or by the Lessee may be rendered void or voidable.

17.4 If any or all of the Lessor's Improvements are damaged or destroyed during the Term (including any renewal), the Lessor will, with all reasonable speed, repair the damage or replace the improvement and in doing so will expend all insurance money paid by the insurer under the policy of insurance. In undertaking the repair, replacement or reinstatement the Lessor shall use such materials and form of construction as most closely replicates the materials and construction prior to the damage occurring. The Lessor shall not be liable to expend any sum of money greater than the amount of insurance money received.

17.5 If any permit or consent necessary to carry out the obligations 17.4 is not obtainable, or the insurance monies received by the Lessor are, in the Lessor's opinion, inadequate for the repair or

reinstatement then the term of this Lease will immediately terminate but without prejudice to the rights of either party against the other.

18. LESSOR'S COVENANTS

- 18.1 The Lessee upon paying the rent and other moneys payable to the Lessor and upon performing the Lessee's obligations under this Lease shall and may peaceably possess and enjoy the Land during the term of this Lease without any undue interruption or disturbance from the Lessor.

19. REMOVAL OF CHATTELS AND STOCK

- 19.1 At any time before the expiry of the Term, the Lessee not being in breach may, and if required by the Lessor shall, remove all of the Lessee's chattels from the Land. If the Lessee fails to effect such removal within 7 days of a written request by the Lessor then, at the election of the Lessor:
- (a) Ownership of the items not so removed shall vest in the Lessor; or
 - (b) The Lessor may remove those chattels and store the same, at the Lessee's expense in all respects.
- 19.2 If upon a re-entry or at the end of the term there is stock depasturing on the Land, the Lessee shall remove the same forthwith. If the Lessee fails to remove the stock within 24 hours that stock shall be deemed to be trespassing stock and the provisions of the Impounding Act 1955 shall apply.

20. EARLY TERMINATION

- 20.1 Where the Land is required by the Lessor for a particular public work, the Lessor may at any time during the Term or the further term if renewed and without any compensation being payable to the Lessee, terminate the Lease provided that the Lessor gives the Lessee at least one (1) year's written notice of its intention to terminate.

21. LESSOR'S RIGHTS

21.1 Right to Enter

The Lessor shall have the right to enter upon the Land with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) To inspect the Land to ascertain whether or not there has been any breach of the terms of this Lease; or
- (b) To undertake works required under the Service Contract; or
- (c) To execute any work required to remedy a defect which is the Lessee's duty to repair if the Lessee has not, within a reasonable period after the date of receipt by the Lessee of written notice from the Lessor requiring such defect to be repaired, taken steps to remedy that defect; or

- (d) For the purpose of complying with the terms of any present or future legislation affecting the Land or of any notice served on the Lessor or Lessee by any competent authority for which the Lessee is not responsible under this Lease,

BUT in exercising such rights the Lessor shall use its best endeavours to minimise any disturbance caused to the Lessee in its occupation and use of the Land.

21.2 Lessor may Remedy

The Lessor may elect to remedy at any time, without notice, any default by the Lessee under this Lease and all costs and expenses incurred by the Lessor (including all legal costs and expenses on a solicitor/client basis) in remedying such defaults shall be paid by the Lessee to the Lessor forthwith on demand.

21.3 Default

In any case where:

- (a) The Annual Rent, any part of the rent or any other amount payable by the Lessee under this Lease (including GST and any payment required on default by the Lessee of its obligations under this Lease) is unpaid on any day on which it ought to be paid and remains unpaid for ten (10) working days thereafter whether lawfully demanded or not; or
- (b) The Lessee is bankrupt or placed in receivership or is the subject of a resolution or order for liquidation (except for the purpose of a reconstruction of the Lessee approved by the Lessor); or
- (c) Execution is levied against any of the assets of the Lessee and remains unsatisfied;
- (d) The Lessee, being in breach of its obligations under this Lease, fails to remedy that breach within any period specified by the Lessor in a written notice requiring the remedy of that breach,

(each such case constituting an act of default under this Lease) THEN it will be lawful for the Lessor to re-enter the Land and determine the estate of the Lessee **WITHOUT** releasing the Lessee from any liability in respect of any antecedent breach.

22. RESERVES ACT 1977

- 22.1 This Lease is intended to take effect as a lease of recreation reserve pursuant to section 73 of the Reserves Act 1977, and the provision of that Act and of the regulations made there under applicable to such a lease shall, except as modified by the provisions of this Lease, be binding in all respects upon the parties hereto and the same manner as if such provisions had been fully set out herein.

23. MISCELLANEOUS

23.1 Suitability

No warranty or representation expressed or implied has been or is made by the Lessor that the Land is now suitable or will remain suitable or adequate for use by the Lessee or that any use of

the Land by the Lessee will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

23.2 Holding Over

If the Lessor permits the Lessee to occupy the Land after the expiry or sooner determination of the Term or the Further Term (if Lease renewed) beyond the Final Expiry Date the Lessee shall do so as a monthly tenant only at a rent calculated daily but payable monthly in advance, determinable at any time by either party by 1 month's written notice but otherwise the tenancy shall continue on the same terms and conditions (so far as applicable to a monthly tenancy) contained in the Lease.

23.3 Costs

The Lessee shall pay all costs and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms of this Lease, including costs and expenses incurred by the Lessor in the enforcement or attempted enforcement by the Lessor of its remedies under this Lease.

Where the costs incurred by the Lessor are in respect of fees incurred by the Lessor with its solicitors, those costs shall be paid on a solicitor/client basis.

23.4 Interest

If the Lessee shall fail to pay any instalment of rent or other sum of money payable to the Lessor under this Lease on the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease, then any amount not so paid shall bear interest at the Default Interest Rate accruing on a daily basis from the due date for payment or the date of payment by the Lessor (as the case may be) down to the date that such amount is paid to the Lessor by the Lessee. Interest shall continue to accrue both before and after judgment, and before and after any termination.

23.5 Exclusion of Implied Covenants and Statutory Provisions

Any covenants and powers implied in leases by virtue of the provisions of any Act to the maximum extent permitted by law are excluded from this lease.

23.6 No Caveat

The Lessee shall not register a caveat against the title for the Land.

23.7 Lessor not be required to Register

The Lessor shall not be obliged to do any act or thing or grant any consent or co-operate in any way with the Lessee to register this Lease under the Land Transfer Act 1952.

23.8 Notices

- (a) Any notice, demand or consent to be given by the Lessor under this Lease will be given for and on behalf of the Lessor in writing signed by an authorised officer of the Lessor.

- (b) Any notice required to be given by the Lessor under this Lease may be delivered or posted to the Lessee at the usual or last known place of business of the Lessee. Any notice required to be given by the Lessee to the Lessor under this Lease may be delivered or posted to the Lessor at:

Selwyn District Council
2 Norman Kirk Drive
Rolleston 7614
P O Box 90
Rolleston 7643
Attention: Property Manager

- (c) If the address of the Lessee changes, the Lessee will forthwith notify the Lessor of the new address details.

23.9 Dispute Resolution

- (a) In the event of any dispute or difference between the parties in relation to or arising out of this Lease then, if the parties so agree, the dispute or difference may be referred to mediation and/or expert determination, with such mediation and/or expert determination to be conducted on such basis as the parties may agree.
- (b) In the event of the dispute or difference not being resolved by mediation, then it shall be determined by a single arbitrator. That arbitrator shall be agreed between the parties, or failing agreement shall be appointed by the President for the time being of the Canterbury Branch of the New Zealand Law Society. Clause 1 of the Second Schedule to the Arbitration Act 1996 shall not apply but otherwise the arbitration shall be conducted in accordance with the Arbitration Act 1996 or any statute enacted in substitution for the time being in force.

**THIRD SCHEDULE
(GUARANTEE)**

In consideration of the Lessor at the request of the Guarantor entering into this Lease with the Lessee the Guarantor (if more than one jointly and severally) covenants and agrees with the Lessor that:

1. The Guarantor will duly and punctually pay all rent interest and other moneys now or at any time in the future payable pursuant to this Lease or renewal of this Lease as and when the same will become payable and will observe and perform each and every one of the covenants expressed or implied in this Lease and any renewal.
2. Although as between the Guarantor and the Lessee, the Guarantor may be a surety only, yet as between the Guarantor and the Lessor the Guarantor will be a principal party and will not be released by any act or omission on the part of the Lessor which would release one liable only as a surety. Without limiting the generality of the above the Guarantor will not be released from these covenants by any of the following:
 - (a) By the receivership or liquidation of the Lessee.
 - (b) By any action taken by any person in realisation of any security held by such person affecting the Lease.
 - (c) By any variation of the Lease including any review of rent made between the Lessor and the Lessee whether or not the Guarantor has consented to such variation.
 - (d) By any assignment or parting with the possession of the Land by the Lessee or by the consent of the Lessor being obtained to such assignment or parting with the possession of the Land.
 - (e) By any extension of the term of the Lease or by any renewed term being granted to the Lessee by the Lessor, whether or not the Guarantor has consented to such renewal or extension.
 - (f) By any waiver or forbearance to sue by the Lessor in respect of the breach of any of the covenants contained or implied in the Lease.
3. The Guarantor will not transfer assign mortgage or in any like manner charge or convey the Guarantor's shares in the Lessee company without first obtaining the Lessor's prior written consent (which will not be unreasonably withheld).
4. The Guarantor will not on a liquidation of the Lessee, prove in respect of any amount owing to the Guarantor in competition with the Lessor. The Guarantor hereby authorises the Lessor:
 - (a) To prove for all money which the Guarantor has paid hereunder or is otherwise owing to the Guarantor by the Lessee and has not been repaid to the Guarantor by the Lessee; and
 - (b) To retain and at the discretion of the Lessor to appropriate any amount secured by it until the Lessor has received 100 cents in the dollar in respect of all money owing under this Lease.