

LIMITED PARTNERSHIP AGREEMENT

between

McQuade Forest Limited

and

the Establishment Limited Partner

and

McQuade Forest Limited Partnership

and

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Limited Partnership Agreement

Date:

2015

Parties

1. **McQuade Forest Limited** (Registration Number 346247), 219 Victoria Avenue, Wanganui (the "**General Partner**")
2. **Arbor Management Limited** (Registration Number 357733), 219 Victoria Avenue, Wanganui (the "**Establishment Limited Partner**")
3. **McQuade Forest Limited Partnership** a limited partnership to be registered under the Limited Partnerships Act and to be a party to this Agreement under section 9(3) of the Limited Partnerships Act (the "**Limited Partnership**")

Background

- A. The limited partnership to be governed by this Agreement will be registered under the Limited Partnerships Act with the name **McQuade Forest Limited Partnership** and with the General Partner and the Establishment Limited Partner pending the completion of the transition process described in clause 20 (after which the Establishment Limited Partner will retire and withdraw from the Limited Partnership).
- B. The Limited Partnership will carry on the Business in accordance with this Agreement.

It is agreed

1. Definitions and interpretation

Definitions

- 1.1 In this Agreement, unless the context requires otherwise, the following terms shall bear the following meanings:

"**Affiliate**" means in respect of a person:

- a. any person which is a related company of that first person in terms of section 2(3) of the Companies Act 1993;
- b. any person which controls that first person, is controlled by that first person, or is controlled by the same person which controls that same person; or
- c. where the first person is an individual:
 - i. the spouse of that first person or any person with whom is living in a relationship in the nature of marriage;
 - ii. any parent, child or grandchild of that first person;
 - iii. any trust established exclusively or principally for the benefit of that first person or for the benefit of one or more of the persons specified in paragraphs c.i. or c.ii of this definition; or
 - iv. a company in which all of the shares are held by or on behalf of that first person or by or on behalf of any of the persons specified in paragraphs c.i, c.ii or c.iii of this definition.

"**Agreement**" means this Limited Partnership Agreement, as amended from time to time.

"**Auditors**" means such firm of chartered accountants as may be appointed pursuant to clause 12.3 to act as auditors to the Limited Partnership.

"**Base Rate**" means for any calendar month, the 90 day Bank Bill Bid Rate displayed at or about 10.45am on the first Business Day of that month on page "BKBM" (or its successor or equivalent page) on the Reuter Monitor Service or, if there is no such rate displayed for bank bills having that term, the average of the rate per annum quoted by a registered bank to the General Partner for bank bills having a term of 90 days on the Interest Rate Setting Date for that month.

"**Business**" means carrying out the business described in clause 2.7.

"**Business Day**" means a day (other than a Saturday, Sunday or statutory public holiday) on which registered banks are open for ordinary over-the-counter banking business in Auckland.

"**Capital**" means amounts properly determined by the General Partner to be in the nature of capital (including capital gains) and available for distribution by the Limited Partnership or already distributed by the Limited Partnership, including the value (calculated in accordance with this Agreement) of any assets of the Limited Partnership distributed in kind.

"**Commitment Date**" means the later of the date of registration of the Limited Partnership with the Registrar or the date of completion of the transfer of the Business from a special partnership registered under the Partnership Act 1908 pursuant to the transition process described in clause 20.

"**Committed Capital**" means:

- a. in respect of all the Partners, the amount contributed and agreed to be contributed to the capital of the Limited Partnership by those Partners from time to time; and
- b. in respect of a Limited Partner, the amounts contributed and agreed to be contributed to the capital of the Limited Partnership by that Partner from time to time.

"**Custodian**" has the meaning in clause 21.1.

"**Deed of Participation**" means the Deed entered into by the General Partner, Limited Partnership and the Statutory Supervisor on or about the date of this Agreement.

"**Defaulting Partner**" has the meaning in clause 3.7.

"**Default Rate**" means the Base Rate plus 5%.

"**Drawdown Notice**" means a notice served on a Partner by the General Partner pursuant to clause 3.2, generally in the form set out in Schedule 3.

"**Fees**" means the fees payable to the General Partner by the Limited Partnership as set forth in Schedule 5.

"**Financial Year**" means a period ending on and including 31 March in each year and, in the case of the first Financial Year beginning on the date of registration of the Limited Partnership means the period ending on and including initially 31 March 2016 or, in the case of the final Financial Year, ending on the date when the Limited Partnership is terminated in accordance with the Limited Partnerships Act.

"**General Partner**" means the general partner of the Limited Partnership from time to time, being on the date of this Agreement, McQuade Forest Limited and thereafter any general partner approved under clause 13.2 acting on behalf of the Limited Partnership.

"**GST**" means goods and services tax charged under the Goods and Services Tax Act 1985.

"**holding company**" has the meaning given in section 5 of the Companies Act 1993.

"**Income**" means all profits, interests, dividends and other benefits of the Limited Partnership properly determined by the General Partner to be in the nature of income (but excluding Capital).

"**Independent Trustee**" has the meaning in clause 22.1.

"**Initial Limited Partners**" means the persons listed in Schedule 1 who will be issued their Partnership Interest pursuant to the transition process described in clause 20.

"**Limited Partner**" means any person admitted to the Limited Partnership and registered as a limited partner for so long as they remain a limited partner of the Limited Partnership.

"**Limited Partnership**" means the limited partnership to be registered pursuant to, and governed by, the Limited Partnerships Act and this Agreement.

"**LP Unit**" means each Limited Partner's respective Partnership Interest, including its capital contributions, expressed as an number of units calculated in accordance with Schedule 1 and is specified in Schedule 1 on the date of this Agreement and specified from time to time in the Partnership Unit Register during the term of this Agreement.

"**Limited Partnerships Act**" means the Limited Partnerships Act 2008.

"**Losses**" means a loss of Income or Capital.

"**New Limited Partner**" means any person who becomes a Limited Partner after the date of this Agreement.

"**Partner or Partners**" means the General Partner and/or all or any of the Limited Partners as the context may require.

"**Partnership Assets**" means all of the assets of the Limited Partnership (including undrawn Committed Capital).

"**Partnership Interest**" has the meaning set out in section 38 of the Limited Partnerships Act.

"**Partnership Unit Register**" means the register establish in accordance with clause 4.18.

"**Predecessor Special Partnership**" has the meaning in clause 20.1.

"**Registrar**" means the Registrar of Companies in New Zealand.

"**Remaining Partners**" means the Partners other than the Defaulting Partner.

"**Resolution of the Limited Partnership**" means a resolution of the Limited Partnership consisting of one or more documents in similar form, each signed by one or more of the Partners, and together representing at least 50% of total LP Units (excluding LP Units of a Defaulting Partner) or passed at a meeting of the Limited Partners in accordance with clause 13.1 by Limited Partners holding at least 50% of total LP Units (excluding LP Units of a Defaulting Partner).

"Special Resolution of the Limited Partnership" means a resolution of the Limited Partnership consisting of one or more documents in similar form, each signed by one or more of the Partners, and together representing at least 75% of total LP Units (excluding LP Units of a Defaulting Partner) or passed at a meeting of the Limited Partners in accordance with clause 13.1 by Limited Partners holding at least 75% of total LP Units (excluding LP Units of a Defaulting Partner).

"Specified Limited Partners" has the meaning in clause 9.2d.

"Subsidiary" has the meaning given in section 5 of the Companies Act 1993.

"Substitute Partner" means a person admitted pursuant to clause 8.1 as the successor to all or part of the rights and liabilities of a Partner in respect of such Partner's Partnership Interest.

"Terminating Event" means any of the events set out in clause 11.1.

Interpretation

1.2 The following provisions shall apply in the construction and interpretation of this Agreement except to the extent that the context requires modification:

- a. words importing the singular number include the plural and vice versa and the masculine gender includes the feminine and neuter genders and vice versa;
- b. 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 un-incorporate;
- c. where under or pursuant to any deed or agreement to which this provision applies, or in respect of any act, matter or thing to be done thereunder, the day on or by which it is to be done is not a Business Day, such act, matter or thing may be done on the next succeeding Business Day;
- d. references to any statute or regulation shall, with all necessary modifications, apply to any modification or re-enactment or substitution or replacement of or for that statute or regulation;
- e. references to "**written**" and "**in writing**" includes any means of visible representation;
- f. any obligation not to do something includes an obligation not to suffer, permit or cause that thing to be done;
- g. reference to any document (however described) includes references to that document as novated or supplemented and all modifications and replacement documents from time to time and in any form, whether on paper or in an electronic form; and
- h. references to a party to this Agreement (including any new party) shall include references to all successors in title, executors and permitted assigns.

2. Objectives

Commencement

2.1 The Limited Partnership will commence upon the registration of the Limited Partnership with the Registrar.

Commencement and Duration

- 2.2 Prior to the registration of the Limited Partnership the parties agree that this Agreement with the exception of clauses 2.1 and 2.2 shall be of no legal effect and there will be no partnership between any or all of them. The Limited Partners are to be limited partners in the Limited Partnership as from the date that the Limited Partnership is registered with the Registrar. The Limited Partnership will continue in accordance with the Limited Partnerships Act until it is removed from the register by the Registrar at which point there will cease to be a partnership between the Partners.

Name

- 2.3 The name of the Limited Partnership will be **McQuade Forest Limited Partnership** or, subject to section 35 of the Limited Partnerships Act, such other name as the General Partner from time to time determines.

Registered Office

- 2.4 The registered office of the Limited Partnership is to be at the offices of Arbor Management Limited, 219 Victoria Ave, Wanganui or, subject to section 68(3) of the Limited Partnerships Act, such other place as the General Partner from time to time determines.

Address for Service

- 2.5 The address for service of the Limited Partnership is the offices of Arbor Management Limited, 219 Victoria Ave, Wanganui or, subject to section 71(3) of the Limited Partnerships Act, such other place as the General Partner from time to time determines.

Compliance with the Law

- 2.6 The General Partner must procure that particulars of any relevant changes in the composition, terms or details of the Limited Partnership are notified to the Registrar in accordance with the Limited Partnerships Act. The General Partner must procure that the requirements of the Limited Partnerships Act and of any other legislation or regulations applicable to the Limited Partnership are met appropriately.

Business

- 2.7 The business of the Limited Partnership is to comprise:
- a. the carrying on of the business of forestry, including the tendering and maintenance of trees, silviculture, and the ownership, management, operation, harvesting, processing and marketing of forests and forestry investments of all kinds;
 - b. maintaining, leasing, selling or otherwise dealing with or disposing of any property, either real or personal, acquired by the Limited Partnership; and
 - c. investing in other properties or securities or in the shares, bonds, mortgages or debentures of other partnerships or companies, entry into any partnership or joint venture arrangements with any other person, partnership or company;
 - d. otherwise doing all such things that may seem conducive to the benefit of the Limited Partnership provided that such activity is not prohibited by the Limited Partnerships Act or this Agreement; and
 - e. the performance of all statutory or other legal requirements relating to the above activities.
- 2.8 The Limited Partnership may execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable in order for it to carry out the Business.

- 2.9 Unless agreed by a Special Resolution of the Limited Partnership, the Limited Partnership must not engage in any business or activity other than the Business.

General Partner

- 2.10 The General Partner is the general partner under section 19 of the Limited Partnerships Act. The General Partner is responsible for all the debts, liabilities and obligations of the Limited Partnership as set out in the Limited Partnerships Act and this Agreement.

Limited Partners

- 2.11 The Limited Partners are limited partners under section 20 of the Limited Partnerships Act. A Limited Partner has no personal obligation for the debts, liabilities or obligations of the Limited Partnership except to the extent provided in the Limited Partnerships Act, and other applicable laws (if any) or to the extent that a Limited Partner has at any time expressly in writing assumed any part of any debt, liability or obligation of the Limited Partnership, including a guarantee but excluding any right to carry out management functions except as permitted under the Limited Partnerships Act or this Agreement.

3. Committed Capital and Partnership Interest

Initial contribution

- 3.1 On the date specified by the General Partner in writing, each Initial Limited Partner shall be deemed to have contributed the full amount of its Committed Capital as set forth as such Initial Limited Partner's contribution of Committed Capital as set out in Schedule 1, following the completion of the transition process described in clause 20.

Further contribution

- 3.2 Any additional contributions of Committed Capital, is to be contributed by each Limited Partner, by payment in cleared funds without set-off or deduction, by the General Partner giving not less than 15 Business Days' prior written notice (each a "**Drawdown Notice**") calling for payment. Any such additional contribution of Committed Capital is to be called by the General Partner, pro rata in proportion to the LP Units held by each Limited Partner.

LP Units

- 3.3 The number of LP Units held by each Initial Limited Partner on the Commitment Date is calculated in accordance with, and set out against that Initial Limited Partner's name in Schedule 1.

Partnership Unit Register

- 3.4 Each Initial Limited Partner and any new Limited Partner committing to contribute Committed Capital, will be granted LP Units and the General Partner shall arrange to update the Partnership Unit Register in accordance with clause 4.18.

New Limited Partners

- 3.5 After completion of the transition process contemplated by clause 20, New Limited Partners may be admitted to the Limited Partnership with their details added to the Partnership Unit Register provided that such New Limited Partner contributes the required Committed Capital and executes a Deed of Adherence in the form set out in Schedule 2.

Failure to Comply with Drawdown Notice

- 3.6 If any Partner fails to contribute to the Limited Partnership any part of its Committed Capital or the amount specified in a Drawdown Notice on or before the date of expiry of such Drawdown Notice then, without limiting any legal rights of the Partners and the

Limited Partnership, that Partner must, on demand, pay default interest on that amount, from the due date until payment is received, at the Default Rate.

- 3.7 If any Partner fails to pay its Committed Capital, or any other amount due and payable to the Limited Partnership, when due within 10 Business Days of such a Limited Partner being notified in writing of a failure to make payment, then that Partner is to be treated as a "**Defaulting Partner**" for the purposes of this Agreement and:
- a. Until actual payment including default interest is received by the Limited Partnership or the compulsory sale of the Partnership Interest in accordance with this clause 3.7 is completed, all rights of that Partner under this Agreement and the Limited Partnerships Act (including voting rights and distribution rights) are suspended.
 - b. Notwithstanding clause 7, the Partnership Interest of the Defaulting Partner is to be either:
 - i. forfeited by the General Partner in which case the Partnership Interest of the Defaulting Partner shall be cancelled and the Limited Partnership shall pay the Defaulting Partner an amount that the General Partner considers (in its sole discretion) to be the then current market value (if any) of the Partnership Interest from which there shall be deducted all default interest due together with any costs reasonably incurred as result of the Defaulting Partner defaulting on its obligations; or
 - ii. offered for sale to each of the Remaining Partners by the General Partner in proportion to the number of LP Units held by them (excluding the LP Units offered for sale under this clause 3.7) at a price determined by the General Partner in its sole discretion, having regard to the General Partner's view of the value of the Partnership Interest and the necessity to discount such value in order to facilitate a timely sale of such Partnership Interest.
 - c. Where the General Partner elects to sell the Partnership Interest of the Defaulting Partner, any offer made pursuant to clause 3.7bii must:
 - i. state the period of time (being not less than 10 nor more than 20 Business Days) within which the offer, if not accepted, will be deemed to be declined;
 - ii. state that any Limited Partner who wishes to purchase the Partnership Interest in excess of that proportion must state in the Limited Partner's reply to the General Partner the proportion of the Partnership Interest that Limited Partner wishes to purchase; and
 - iii. state that time for payment being not later than 15 Business Days after acceptance of the offer.
 - d. If any Remaining Partner declines this offer, its portion of the Defaulting Partner's Partnership Interest must be offered for sale to each of the other Remaining Partners by the General Partner in proportion to the LP Units held by them.
 - e. If any other Partner does not claim its proportion of the Defaulting Partner's Partnership Interest such proportion must be used as satisfying any claims in excess.
 - f. If there are insufficient unclaimed Defaulting Partner Partnership Interests to satisfy the claims in excess, the unclaimed Defaulting Partner's Partnership Interest must be divided amongst the Partners claiming excess in the same proportion as the LP

- Units held by them (excluding the Defaulting Partner's Partnership Interest specified in the offer given under clause 3.7b).
- g. If following the procedure set out in this clause 3.7 any part of a Defaulting Partner's Partnership Interest has not been accepted, the General Partner may sell or otherwise dispose of the balance on terms no more favourable to a purchaser than those offered to the Remaining Partners under clauses 3.7c and 3.7d, subject to the New Limited Partner signing a Deed of the Adherence in the form set out in Schedule 2.
 - h. The General Partner may (at its discretion) withdraw from the sale of the Partnership Interest of the Defaulting Partner by notice to the Partners where the outstanding amount specified in the Drawdown Notice and any default interest is paid in full.
 - i. The Defaulting Partner irrevocably appoints the General Partner as its attorney to do all things reasonably necessary to sell and transfer its Partnership Interest under this clause 3.7 and the Defaulting Partner will on demand ratify any actions of the General Partner as its attorney under this clause 3.7.
- 3.8 Any proceeds of sale of a Partnership Interest under clause 3.7 will be applied in descending priority to:
- a. the costs of sale and any attempted sale;
 - b. payment of the unpaid amount specified in the Drawdown Notice;
 - c. default interest due;
 - d. any costs reasonably incurred as a result of the default or owing from the Defaulting Partner to the Limited Partnership; and then
 - e. the Defaulting Partner.
- 3.9 The General Partner is not liable to any other Partner (including the Defaulting Partner) in respect of any sale under clause 3.7.
- 3.10 A Defaulting Partner whose Partnership Interest has been compulsorily sold in accordance with this Agreement (including any registration requirement under section 59 of the Limited Partnerships Act (if any)) immediately ceases to be a Partner notwithstanding any other provision of this Agreement and remains liable to pay any shortfall between the amount received on sale and the amount outstanding under a Drawdown Notice, including any default interest to the date of payment of the amount due under the Drawdown Notice.
- 3.11 A Defaulting Partner may not make any claim as to the adequacy of consideration received on the compulsory sale in good faith under clause 3.7 and good title to any transferred Partnership Interest will pass in accordance with clause 3.7.
- 3.12 The General Partner may exercise the rights of forfeiture under clause 3.7bi at any time before the Partnership Interest of the Defaulting Partner has been sold notwithstanding that the General Partner has commenced the sale process under clause 3.7bii.
- No interest payable**
- 3.13 No interest is payable to Limited Partners on their Committed Capital.

4. Rights and Duties of the Partners

Management

- 4.1 The General Partner has exclusive responsibility for the management and control of the business and affairs of the Limited Partnership and (subject to the terms of this Agreement):
- a. has the power and authority to do all things necessary to carry out the Business of the Limited Partnership;
 - b. must devote as much of its time and attention as is reasonably required for the management of the business of the Limited Partnership;
 - c. must procure that all filings and registrations required in relation to the Limited Partnership pursuant to the Limited Partnerships Act are promptly made; and
 - d. must operate the Limited Partnership in accordance with the Limited Partnerships Act and this Agreement.

Delegated authority

- 4.2 Subject to clauses 4.3 and 7.1, and the Limited Partnerships Act, the General Partner may delegate its authority and powers given to it pursuant to this Agreement to such person or persons as it may reasonably select and appoint. The General Partner remains liable for the acts and omissions of its delegates as if those acts and/or omissions were those of the General Partner.

Limits on authority

- 4.3 No Limited Partner shall without the consent of the other Limited Partners (such consent not to be unreasonably withheld) mortgage or charge or create any security interest in that Limited Partner's LP Units or Partnership Interest. No Limited Partner shall give any security, or draw, accept or endorse any bill of exchange, promissory note or other negotiable instrument on behalf of the Limited Partnership.

Authority and Powers

- 4.4 Without prejudice to the generality of clause 4.1, in respect of the Business, the General Partner and its agents and delegates and their respective delegates have the full powers and authority of the Limited Partnership and the power to bind the Limited Partnership without prior consultation with any of the Limited Partners including (without limitation) the powers set out in Schedule 4.

Fees and Expenses

- 4.5 The Limited Partnership is to bear all fees, costs and expenses (including GST) associated with operating the Limited Partnership including reporting, regulatory, accounting and legal costs, audit and certification fees and the costs of the Limited Partnership's administration together with any legal and other professional costs (including the fees for reporting accountants) (including GST) relating to the evaluation, making or disposal of any investment, insofar as they are not recoverable from any other person. In addition, except as otherwise provided, all taxes, duties and all fees or other charges levied by any governmental agency against the Limited Partnership in connection with its activities are to be borne by the Limited Partnership
- 4.6 The Limited Partnership is responsible for meeting all costs and expenses (including GST) incurred in relation to the production and distribution of the reports and accounts referred to in clause 12 and any other valuations or certifications required pursuant to this Agreement including the fees of the Auditors.

- 4.7 To the extent any of the fees referred to in clauses 4.5 and 4.6 are payable by any other Partner on behalf of the Limited Partnership, the Limited Partnership will only be entitled to reimburse that Partner if the General Partner is satisfied that the Limited Partnership will meet the requirements for distribution set out in clause 6.2.
- 4.8 The Limited Partnership will reimburse the General Partner for its reasonable costs and expenses incurred in connection with the business of the Limited Partnership including third party expenses but excluding director's remuneration.
- 4.9 The Limited Partnership must pay the General Partner the Fees to be calculated and paid in the manner set forth in Schedule 5.

Limited Partners

- 4.10 Notwithstanding any other provisions of this Agreement, the Limited Partners must not take part in the management or control of the business and affairs of the Limited Partnership, and have no right or authority to act for the Limited Partnership or to take any part in or in any way to interfere in the conduct or management of the Limited Partnership or to vote on matters relating to the Limited Partnership except as expressly provided for in this Agreement and where that is not prohibited by the Limited Partnerships Act.
- 4.11 The General Partner must take account of resolutions, advice and recommendations made by the Limited Partners pursuant to a Resolution.
- 4.12 The Limited Partners may, through a Special Resolution of the Limited Partnership, which shall be adhered to by the General Partner, take part in a decision about whether to dispose of the Business.
- 4.13 The Limited Partners must on request promptly provide all information to the General Partner as may be reasonably necessary for the operation of the Limited Partnership including any registration, regulatory and taxation requirements.

Permitted Activities

- 4.14 Limited Partners may participate in the following activities without infringing clauses 4.10 to 4.13:
- a. A decision about the variation or replacement of this Agreement;
 - b. A decision about whether to approve or veto investments proposed to be made by the Limited Partnership if the value of the investments would be more than half the value of the Limited Partnership's assets before the investment;
 - c. A decision about whether to approve:
 - i. a change in the senior employees of a General Partner or of the Limited Partnership; or
 - ii. a change of contractors engaged by a General Partner or the Limited Partnership;
 - d. A decision about whether to approve a change to the manner of operation of a General Partner;
 - e. A decision about whether the general nature of the Business should change;
 - f. A decision about whether to dispose of the Business or to acquire another business;
 - g. A decision about whether a person should become or cease to be a Partner;
 - h. A decision about whether the Limited Partnership should end or be terminated;

- i. Enforcing rights under this Agreement (unless those rights are to carry out management functions);
- j. Reviewing and approving the accounts of the Limited Partnership;
- k. Being engaged under a contract by the Limited Partnership or by a General Partner of the Limited Partnership (unless the contract is to carry out management functions);
- l. Discussing the strategic direction or financial prospects of the Business;
- m. Consulting or advising a General Partner about the activities of the Limited Partnership or about its financial statements;
- n. Acting as a director or employee of, or contractor to, any person in which the Limited Partnership has an interest;
- o. Bringing a derivative action on behalf of the Limited Partnership in accordance with the Limited Partnerships Act;
- p. Acting in the capacity as a director or employee of, or consultant or contractor to, or a shareholder in, a General Partner that is a body corporate (including any right, to appoint or remove directors and employees, attached to shares held by a shareholder); or
- q. Taking part in a decision to determine an actual or potential conflict of interest involving a Partner (or Partners) and the Limited Partnership.

Exclusion of fiduciary duties

- 4.15 Except as specifically outlined in this Agreement, no Partner owes fiduciary duties or any other duties at law or in equity to another Partner or the Limited Partnership, and the application of section 49 of the Limited Partnerships Act is excluded.

Best Interests

Subject to clause 4.14, the General Partner must act in the best interests of the Limited Partnership in conducting the Business. The General Partner may not compete with the interests of the Limited Partnership.

Exclusivity

- 4.16 The functions and duties which the General Partner undertakes on behalf of the Limited Partnership are not exclusive to the Limited Partnership and the General Partner may perform similar functions and duties for themselves and for others.

Withdrawal from Limited Partnership

- 4.17 A Partner is not entitled to withdraw any or all of its Committed Capital until the earlier of:
- a. that Partner carrying out an assignment or transfer of its Partnership Interest in accordance with clause 7;
 - b. the termination of the Limited Partnership in accordance with clause 11; or
 - c. a sale of that Partner's Partnership Interest in accordance with clause 3.7.

Establishment of Partnership Unit Register

- 4.18 The General Partner must maintain a register of LP Units that records the LP Units held by the Partners. The Partnership Unit Register must state:

- a. the name of each Partner;
- b. the number of LP Units held by each Partner;
- c. whether the LP Units are fully or partly paid (and if partly paid the amount that has been paid and the amount outstanding); and
- d. the date of issue or transfer of any LP Units by or to a Partner and, in relation to any transfer of LP Units, the name of the Partner to whom the LP Units were transferred

Register as evidence of legal title

- 4.19 Subject to section 22 of the Limited Partnerships Act, the entry of the name of a person in the Partnership Unit Register as holder of a LP Unit is prima facie evidence that legal title to that LP Units vests in that person.

5. Allocations of liabilities, profits and losses

Determining Amounts of Income, Capital and Losses to be allocated

- 5.1 For the purposes of determining the amount of Income, Capital and Losses to be allocated among the Partners after the payment of or provision for fees, costs and expenses referred to in clause 4.5, all Income and Capital arising and Losses accruing must be allocated to the Partners who are not Defaulting Partners, on a pro rata basis (by reference to their respective holdings of LP Units), unless otherwise determined by a Special Resolution of the Limited Partners.

Allocation of Liabilities

- 5.2 The Limited Partners have no personal obligation for the debts, liabilities or obligations of the Limited Partnership, except to the extent provided in the Limited Partnerships Act, this Agreement or in other applicable laws, if any.
- 5.3 The General Partner is responsible for all the debts, liabilities and obligations of the Limited Partnership to the extent set out in the Limited Partnerships Act.

Accounts

- 5.4 Subject to the Limited Partnerships Act, the Limited Partnership must establish and maintain such accounts and records for each of the Partners as the General Partner determines and amounts must be credited or debited to and from these accounts as appropriate to reflect the allocation of Income, Capital and Losses of the Limited Partnership amongst the Limited Partners and the General Partner on the basis set out in clause 5.1.

6. Distributions

Nature of Distributions

- 6.1 For the purpose of this Agreement, distributions of Income and Capital include:
- a. all sums actually paid or distributed to the Partners from the Limited Partnership out of Capital or Income (without any deduction for any withholding tax payable by any person in respect of the amount paid or distribution costs or expenses incurred by or taxation payable by any Limited Partner in relation to such payments or distributions) and such payments or distributions are deemed to be made on the date of payment or distribution;
 - b. all distributions in kind to the Partners; and

- c. all distributions in cash or in kind to the Partners following termination of the Limited Partnership.

Limitations on Distributions

- 6.2 The General Partner is not obliged to cause the Limited Partnership to make any distribution pursuant to this clause 6, but it shall not do so:
- a. unless, in the case of a distribution in cash, there is cash available for such distribution after ensuring a reasonable amount of cash is retained for the working capital needs of the Limited Partnership;
 - b. unless, in the case of the distribution in kind, there is relevant property available for such distribution;
 - c. unless the Limited Partnership and the General Partner will comply with the provisions of the Limited Partnerships Act relating to such distributions;
 - d. to the extent to which the General Partner has made a final determination to issue a Drawdown Notice in respect of an amount equal to or greater than the amount of such distribution (in which case the undrawn Committed Capital of the Limited Partners will be deemed to be reduced by the amount of such distribution) provided that the General Partner will nevertheless issue a Drawdown Notice with respect to the amount;
 - e. if, in the reasonable opinion of the General Partner, such a distribution would or might leave the Limited Partnership with insufficient funds to meet any present or future contemplated obligations, liabilities or contingencies including obligations to the General Partner or otherwise to protect the interests of the Limited Partners; or
 - f. if such a distribution would be in breach of any covenant or requirement under a financing or security arrangement entered into by the Limited Partnership.

Allocation

- 6.3 Distributions made pursuant to this Agreement must not exceed the allocation of Income and Capital made to a Partner under clause 5 and must be made pro rata to the Limited Partners (other than any Defaulting Partner) in proportion to the LP Units held by each Limited Partner.

7. Assignment and resignation of Interest of the General Partner

Sale of General Partner Interest

- 7.1 Subject to clause 7.6, the General Partner must not (save for an assignment of its interest as General Partner to an Affiliate) sell, assign, transfer, exchange, pledge, encumber, grant security over or otherwise dispose of or grant any participation in all or any part of its Partnership Interest (if any) or voluntarily dissolve or withdraw as the General Partner without the approval of a Special Resolution of the Limited Partnership.

Resignation

- 7.2 The General Partner may resign or withdraw as the General Partner by giving 90 days' notice in writing to the Limited Partners. The General Partner shall use reasonable endeavours to identify a replacement General Partner for appointment by the Limited Partners before the effective date of its resignation or withdrawal. Any replacement General Partner must be appointed by the Limited Partners by a Special Resolution of the Limited Partnership, with effect from registration of the appointment with the Registrar in accordance with the Limited Partnerships Act.

Removal

- 7.3 Subject to the provisions of clause 13.2, the General Partner may be removed without cause by a Special Resolution of the Limited Partnership, followed by notification to the Registrar of the removal in accordance with the Limited Partnerships Act.
- 7.4 The Statutory Supervisor shall also have the right at its sole discretion to remove the General Partner by notice in writing in the event that the General Partner:
- a. commits a material or substantial breach of any of its duties under this Agreement or the Deed of Participation or materially or substantially fails to carry out its duties to the reasonable satisfaction of the Statutory Supervisor and fails to remedy such breach or failure within 28 days of the service of a written notice on it by the Statutory Supervisor requiring the breach or failure to be remedied; or
 - b. is or becomes bankrupt, insolvent, or is dissolved or liquidated, or resigns or withdraws; or
 - c. undergoes a change in its effective management or control without the prior written consent of the Statutory Supervisor.

Replacement

- 7.5 Any replacement General Partner must be appointed by the Limited Partners by a Special Resolution of the Limited Partnership, with effect from registration of the appointment with the Registrar in accordance with the Limited Partnerships Act. If the Limited Partners fail to appoint a new General Partner, the Statutory Supervisor shall be entitled to appoint a new General Partner of the Limited Partnership, with effect from registration of the appointment with the Registrar in accordance with the Limited Partnerships Act.

New General Partner

- 7.6 Any new General Partner shall sign a Deed of Adherence in the form set out in Schedule 2 (or such other form as may be specified by the General Partner) evidencing that General Partner's admittance to the Limited Partnership and the provisions of this Agreement shall otherwise continue to apply.

Security

- 7.7 The General Partner shall be entitled to grant security over its assets and undertaking (including its Partnership Interest) where it does so to provide security in connection with lending to, or obligations of, the Limited Partnership.

8. Assignment of Interests of Limited Partners

Transfer of Limited Partner Interest

- 8.1 Notwithstanding section 38(2) of the Limited Partnerships Act, any Limited Partner wishing to transfer all or part of its Partnership Interest must apply to the General Partner for consent to the transfer by giving not less than 20 Business Days' prior written notice and shall furnish such information in relation to the proposed transfer and the proposed transferee as may be required by the General Partner provided that no such transferee of a Partner's Partnership Interest shall become a Substitute Partner without the further written consent of the General Partner, which consent is to be provided where:
- a. where the transfer is to an Affiliate (subject to clause 8.3); and
 - b. where the transfer is other than to an Affiliate (subject to clause 8.3) unless the General Partner considers (on reasonable grounds) that:

- i. the transfer of the Partnership Interest would not be in the best interests of the Limited Partnership; or
- ii. the transfer would not comply with the requirements of this Agreement.

The transferring Partner must pay all costs and expenses of the Limited Partnership arising in connection with any such proposed transfer, including (without limitation) reasonable legal fees.

- 8.2 Neither the Limited Partnership nor the General Partner will incur any liability for allocations and distributions made in good faith to the transferring Limited Partner until the written instrument of transfer has been received by the Limited Partnership and recorded in the Partnership Unit Register.

Deed of Adherence

- 8.3 Any New Limited Partner is bound by this Agreement and, as a condition of giving its consent to any transfer to be made in accordance with the provisions of this clause 8, the General Partner must require that the proposed New Limited Partner acknowledge its assumption (in whole or in part) of the obligations and liabilities (including all liabilities to contribute any undrawn Committed Capital) of the transferring Limited Partner by entering into this Agreement as a signatory or by executing a Deed of Adherence in the form set out in Schedule 2. The General Partner is authorised to enter into and execute any such Deed of Adherence on behalf of the Limited Partners.

Assignment of Interests in Violation of this clause

- 8.4 The Limited Partnership will not recognise the transfer of any Partner's Partnership Interest made in violation of this clause 8 for the purposes of making allocations or distributions of Income, Capital or Losses (as the case may be), or otherwise with respect to interests in the Limited Partnership and any transfer of an interest to a Substitute Partner on the basis of any representation by or conduct of such Partner which is void and of no effect.

Change of control deemed to be a Transfer

- 8.5 Where a Limited Partner is a company, the Limited Partner shall be deemed to be effecting a transfer of its Partnership Interest where there occurs any transfer of the legal or beneficial ownership of, or any interest in, any shares in the Limited Partner or any holding company of the Limited Partner which:
- a. alters the beneficial ownership of 50% or more of the shares in the Limited Partner or its holding company; or
 - b. alters the beneficial ownership of shares in the Limited Partner or its holding company that carry 50% or more of the voting rights at any general meeting; or
 - c. alters the beneficial ownership of shares in the Limited Partner or its holding company allowing the holder of them to appoint a director or directors having 50% or more of the voting rights at any directors' meeting; or
 - d. alters the beneficial ownership of shares in the Limited Partner or its holding company carrying an entitlement to receive 50% or more of any dividend or distribution.

9. Issue of LP Units

Issue of LP Units

- 9.1 Subject to clause 20, the General Partner may only create and issue LP Units if the proposal to issue those LP Units (together with Committed Capital) has been approved by

a Special Resolution of the Limited Partnership and the procedure in clause 9.2 is followed.

Procedure for issue of LP Units

- 9.2 Except in the case of the issue of LP Units pursuant to the transition process described in clause 20, an issue of LP Units must be made in accordance with the following procedure:
- a. the General Partner must first offer the LP Units to the existing Limited Partners in proportion to the number of the existing LP Units held by those Limited Partners;
 - b. each existing Limited Partner may accept or decline the offer;
 - c. the offer must be made in writing and must specify the number of LP Units offered, the price and a time within which the offer, if not accepted, will be treated as having been declined. The offer must also invite Limited Partners to indicate whether they wish to acquire more LP Units than the number to which they are entitled if all offers to Limited Partners are not accepted;
 - d. after the expiry of the time specified in the offer (if the offer is not accepted or is accepted only in part), or on receipt of notice from any Limited Partner to whom the offer is made that it declines to accept the LP Units offered then if the General Partner has received indications from any Limited Partners that they wish to acquire more than their entitlement at the price, it must first issue the LP Units in respect of which the offers have not been accepted to those Limited Partners ("**Specified Limited Partners**"). If demand exceeds supply, the LP Units must be issued to the Specified Limited Partners in proportion to the number of their existing LP Units;
 - e. on the issue of new LP Units, an existing Limited Partner must pay or otherwise contribute to the Limited Partnership, the full amount of Committed Capital it has agreed to contribute, without set off or deduction (and the Partnership Unit Register will be updated accordingly);
 - f. in the case of the issue of LP Units to a New Limited Partner, the General Partner must (if required to do so by the Limited Partnerships Act) promptly notify the Registrar of the appointment of any New Limited Partners; and
 - g. on registration as a Limited Partner by the Registrar, a New Limited Partner must pay or otherwise contribute to the Limited Partnership the full amount of Committed Capital it has agreed to contribute, without set off or deduction (and the Partnership Unit Register will be updated accordingly).

10. Conflicts of Interest and Non-Compete

Conflicts of Interest

- 10.1 The Limited Partnership's conflict of interest policy is that if a Partner or the Limited Partnership experiences a Conflict of Interest it must immediately disclose the existence of that Conflict of Interest to the other Partners and the General Partner.

11. Termination and Liquidation

Termination

- 11.1 Subject to clauses 11.2 and 11.3, the Limited Partnership and this Agreement will terminate on the occurrence of any of the following events:

- a. subject to the Limited Partnerships Act, if the General Partner is removed under this Agreement then this Agreement will terminate on the expiry of 10 Business Days from the date of such notice unless a replacement General Partner is appointed under this Agreement and the Limited Partnerships Act prior to the expiry of that 10 Business Day period;
 - b. a notice being served by the General Partner on the Limited Partners following any change in the law as a result of which, in the reasonable opinion of the General Partner, the continuation of the Limited Partnership becomes unlawful, impractical or inadvisable;
 - c. a notice being served by the General Partner on the Limited Partners that all investments and assets of the Limited Partnership have been disposed of and all liabilities of the Limited Partnership have been satisfied and the proceeds have been distributed pursuant to clause 6;
 - d. any event otherwise specified as a terminating event in the Limited Partnerships Act; or
 - e. if approved by the Limited Partners by a Special Resolution,
- each a (“**Terminating Event**”).

Provisions Surviving Termination

- 11.2 In the event that this Agreement is terminated pursuant to this clause 11 then, notwithstanding any other provisions of this Agreement, the provisions of clauses 2, 5, 6, 11.2, 11.3, 17, 18, 19, 22 and 23 and any other provisions of this Agreement which shall be necessary for the performance of obligations set out under those clauses, are to survive such termination.

Liquidation of Interests of Partners

- 11.3 On the occurrence of a Terminating Event, no further Business is to be conducted except for such action as necessary for completing a transaction unfinished at the time of termination, winding-up of the affairs of the Limited Partnership and the distribution of the Partnership Assets amongst the Partners in proportion to the LP Units held by them.

12. Financial Statements, Reports and Auditors

Financial Statements

- 12.1 The General Partner must prepare and approve financial statements of the Limited Partnership in accordance with the Limited Partnerships Act and any applicable legal obligation of the Limited Partnership. A set of the financial statements and a statement of accounting policies together with any relevant tax information in connection with the Limited Partnership shall be furnished to each Limited Partner as soon as practicable (but in any event within the timeframe required by any applicable legal obligation of the Limited Partnership) following the end of each financial year of the Limited Partnership.

Reports

- 12.2 In addition to clause 12.1, the General Partner must provide each Partner with a Partner tax statement setting out the Limited Partner’s share of any income or deductions of the Limited Partnership for the preceding financial year as soon as practicable (but in any event within the timeframe required by any applicable legal obligation of the Limited Partnership) of the end of each financial year and other information reasonably required to complete any New Zealand taxation returns in respect of their income or loss from the Limited Partnership.

Auditors

- 12.3 The General Partner will cause the financial statements of the Limited Partnership, prepared in accordance with clause 12.1, to be audited by the Auditors.

13. Meetings of Partners**Procedure**

- 13.1 General Meetings of the Partners shall be held at least once in every calendar year and at the time and place as the General Partner determines. Alternatively, on:

- a. the General Partner requiring a meeting; or
- b. the written request of Partners representing 10% or more of total LP Units,

the General Partner is to call a meeting of the Partners. Notice of such meeting is to be given to each Partner by the General Partner within 10 Business Days of receipt by the General Partner of such request and such meeting will be held within 60 Business Days of the date on which such notice is received by the Partners but not earlier than 10 Business Days from that date.

Notice of Meeting

- 13.2 Each notice of a meeting of the Partners must state the time and the place at which such meeting will be held (such time and place, to be reasonably selected by the General Partner and, at the discretion of the General Partner after consultation with the Statutory Supervisor, may allow persons who are not able to be personally present at the meeting to participate in the meeting by means of audio, audio and visual, or electronic communication) and must state briefly the purpose of and the business to be transacted at the meeting. Motions to remove the General Partner, approve a replacement General Partner and transfer of the General Partner's Partnership Interests (if any), will bind the General Partner if they are determined by Special Resolution.

Alternative Forum

- 13.3 Any decision that requires a Special Resolution may alternatively be decided at a Partners' meeting in accordance with this clause 13.

Special Resolutions:

- 13.4 The following decisions shall only occur with the approval of a Special Resolution (in respect of which the Limited Partners may approve but must not exercise any rights to carry out management functions):
- a. A decision about the variation or replacement of this Agreement;
 - b. Except in the case of the transition process described in clause 20, a decision about whether to approve or veto investments proposed to be made by the Limited Partnership if the value of the investments would be more than half the value of the Limited Partnership's assets before the investment;
 - c. A decision about whether the general nature of the Business should change;
 - d. A decision about whether to dispose of the Business, or to acquire another business;
 - e. A decision about whether the Limited Partnership should end or be terminated;
 - f. A decision to appoint or remove a General Partner; or

- g. Any other matter that otherwise requires a Special Resolution under this Agreement.

Quorum

- 13.5 No business shall be transacted at any meeting of the Partners unless a quorum of Partners is present at the time when the meeting proceeds to business. Except as otherwise provided in this Agreement, representatives of Partners representing not less than 20% or more of total LP Units (excluding LP Units of Defaulting Partners) at the time of the meeting of the Partners present in person or represented by proxy or by attorney shall form a quorum.

No Quorum

- 13.6 If within 30 minutes from the time appointed for the meeting a quorum is not present then the meeting, if convened by any of the Limited Partners (other than the General Partner), shall be dissolved. In any other case the meeting will be held and the Partner or Partners, if present in person or represented by proxy or by attorney, shall be a quorum.

Chairperson

- 13.7 The Statutory Supervisor may appoint a person to be chairperson of the meeting. In the event that no such chairperson is appointed, the Limited Partners present at any meeting shall choose one of their number or the proxy or attorney of a Limited Partner to be chairperson of the meeting.

Votes

- 13.8 Subject to clause 3.7, at any meeting of the Partners, each Partner shall be entitled to one vote for each LP Unit that Partner holds. Votes and any consent or signature required by this Agreement may be given or signed either in person or by proxy or attorney. All questions at a meeting shall be decided by a majority of the votes of the Partners unless in any particular case this Agreement shall otherwise provide.

Evidence of Resolution

- 13.9 A declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact without proof of the votes recorded in favour of or against that resolution.

Resolution in writing

- 13.10 A resolution or consent in writing constituting one or more documents in a similar form, each signed by one or more of the Partners, who together represent not less than 75% of the Partners who would be entitled to vote on that resolution at a meeting of Partners (excluding Defaulting Partners) who together represent at least 75% of the total LP Units at the time that the resolution is passed (excluding the LP Units of a Defaulting Partner) shall be as valid and effectual as if it had been passed or given at a meeting of the Partners duly called and constituted. The General Partner must send a copy of a resolution passed in accordance with this clause 13.11 to any Partner who did not sign the resolution within 5 Business Days of the resolution being passed.

Representatives

- 13.11 The representative of a corporate Partner or a trustee Limited Partner is entitled to attend and be heard at a meeting of the Limited Partnership as if the representative were the Partner or trustee Limited Partner.

14. Insurance

- 14.1 The Limited Partnership shall effect and maintain all such insurance policies (if any) as would be maintained by prudent persons carrying on a business similar to that of the Limited Partnership.

15. Attorneys and Proxies of Limited Partners

Attorney

- 15.1 Any Limited Partner may appoint any person to be that Limited Partner's attorney. The appointee, while the appointee remains the attorney of the Limited Partner, shall be entitled to notice of meetings of Limited Partners and to attend in the place of the appointor and take part in any meeting and to vote at any meeting.

Appointee term of office

- 15.2 The appointee shall vacate any office held in the Limited Partnership if and when the Limited Partner appointing the appointee:
- a. ceases to be a Limited Partner; or
 - b. removes the appointee from office.

Notice of Appointment

- 15.3 Any appointment and removal of an attorney by the appointor under this clause 15 shall be effected by notice in writing under the hand of the appointor given to or sent to the General Partner.

Proxy

- 15.4 Any Limited Partner may appoint any person to be that Limited Partner's proxy:
- a. to vote for that Limited Partner at any meeting of the Partners, or meetings, or at any meetings of the Partners held during any period, if the meeting of the Partners or meetings or period are specified in the instrument of appointment; and
 - b. to give consent to any resolution that may be signed by Limited Partners without holding a meeting of the Partners during any period specified in the instrument or relating to any subject specified in the instrument.

16. Statutory Supervisor

- 16.1 The parties acknowledge and agree that, except where the Statutory Supervisory decides that it would be impracticable to do so, the Statutory Supervisor is to be registered as the proprietor of the Limited Partnership's land in trust for the Limited Partners as tenants in common in the same proportion that the number of LP Units held by each Limited Partner bears to the total number of LP Units in the Limited Partnership.
- 16.2 The Partners delegate to the Statutory Supervisor all the powers, authorities and discretion vested in them as beneficial owners of the Partnership's land to be exercised by the Statutory Supervisor on behalf of the Limited Partnership.
- 16.3 The Statutory Supervisor covenants and agrees with the Partners to execute as the legal owner of the Partnership's land any document, deed, mortgage, pledge, encumbrance or transfer of any property of the Partnership or any part thereof at the request of the General Partner.
- 16.4 The Statutory Supervisor shall hold all income, profits, accretion and capital arising from the ownership of the Partnership's land for the Partners absolutely in accordance with their respective Partnership Interests.

17. **Dispute Resolution**

Dispute Procedure

- 17.1 In the event of a dispute arising between the parties about interpreting or implementing this Agreement's provisions:
- a. The parties will use their best endeavours to resolve the dispute by negotiation in good faith. The parties will attend at least one meeting to discuss an attempt to resolve the dispute as a condition precedent to taking any other steps concerning the dispute (including but not limited to commencing any legal proceedings other than an application for injunctive relief); and
 - b. If the dispute is not resolved within 20 Business Days of the parties' first meeting pursuant to clause 17.1a, then the parties will refer the dispute to arbitration by a single arbitrator agreed on by both parties or, failing agreement, to a single arbitrator appointed by the President (or equivalent officer) for the time being of the New Zealand Law Society. The dispute referred to arbitration will be determined in accordance with the Arbitration Act 1996. The determination of the arbitrator will be final and binding on the parties. Arbitration costs will be apportioned between the parties in the manner determined by the arbitrator.

18. **Indemnification**

Indemnification of the General Partner

- 18.1 Subject to clause 18.2, to the extent allowed by law, the General Partner and its Affiliates and officers (including employees and directors) have no liability for any loss incurred by the Limited Partnership or any Limited Partner howsoever arising in connection with the services provided by any of them pursuant to this Agreement and each of them is, on demand, indemnified out of the Partnership Assets against any and all claims, liabilities (including liabilities in contract or tort), costs or expenses (including legal fees) incurred or threatened to the extent relating to their role (direct or indirect) in respect of the Limited Partnership.
- 18.2 A person will not be indemnified under clause 18.1 with respect to any matter to the extent it results from that person's gross negligence, dishonesty, fraud, misconduct, illegal act or material breach of this Agreement.
- 18.3 In particular, but without prejudice to clause 18.1, the General Partner is, on demand, indemnified against any tax liability (including withholding taxes) in respect of tax on income or capital gains paid or allocated to any Limited Partner, such indemnity to be satisfied in the first instance by the Limited Partner concerned but, if not so satisfied, out of the Partnership Assets in which event the Limited Partnership shall be subrogated to the rights of the General Partner against such Limited Partner.
- 18.4 The General Partner is not liable to the Limited Partnership or any Limited Partner for the negligence, dishonesty, wilful default or bad faith of any agent or delegate acting on behalf of the General Partner or the Limited Partnership, provided that such agent or delegate was selected and appointed applying reasonable care.

Third Party Rights

- 18.5 The Partners and the Limited Partnership acknowledge that the provisions of this clause 18 provide a benefit for the relevant third parties as set out in this clause 18 for the purposes of the Contracts (Privity) Act 1982.

19. **Confidentiality and Announcements**

Confidentiality

- 19.1 The Partners and the Limited Partnership must not, and must use all reasonable endeavours to procure that they do not, disclose to any person or firm, or use to the detriment of the Limited Partnership or any of the Partners any confidential information which may have come to its knowledge as a result of being a Partner of the Limited Partnership except:
- a. to their professional advisors for the purpose of obtaining their advice;
 - b. to the extent required by law; or
 - c. where the confidential information is already in the public domain other than as the result of the breach of a Partner's obligations under this clause 19.
- 19.2 Each of the Partners must use their best endeavours to make sure that their respective Affiliates, employees, agents and contractors comply with these confidentiality requirements.

Continuing Obligations

- 19.3 The obligations of this clause 19 will remain in force after the termination of this Agreement.

20. Transition Arrangements

- 20.1 In order to facilitate the transition from a special partnership registered under Part 2 of the Partnership Act 1908 to the Limited Partnership (the "**Predecessor Special Partnership**"), so that the Limited Partnership succeeds to all of the assets, interests, debts and liabilities of the Predecessor Special Partnership, the parties contemplate that:
- a. as soon as practicable after the commencement of the Limited Partnership it will enter into an agreement to purchase all of the business and assets (and assume all of the liabilities) of the Predecessor Special Partnership as a going concern;
 - b. the consideration for the acquisition from the Predecessor Special Partnership will be the issue or transfer of the relevant number of LP Units (which may be held by or on behalf of the Establishment Limited Partner pending transfer to the Initial Limited Partners); and
 - c. to give effect to the transition for the interests of the Initial Limited Partners from the Predecessor Special Partnership to the Limited Partnership, the LP Units issued or transferred as consideration for the the acquisition from the Predecessor Special Partnership will be transferred to the Initial Limited Partners.
- 20.2 To implement the transition process described in clause 20.1, it is contemplated that, as soon as practicable after the commencement of the Limited Partnership, the Initial Limited Partners will be admitted to the Limited Partnership as a result of the transfer process. Upon the Initial Limited Partners joining the Limited Partnership, the Establishment Limited Partner will retire and will be paid the amount of its Committed Capital (being \$1.00). The Establishment Limited Partner will enter into a deed of retirement recording its retirement from the Limited Partnership.
- 20.3 The General Partner is authorised to do all things required to effect the retirement of the Establishment Limited Partner and the admission of the Initial Limited Partners and to update the Partnership Units Register accordingly. Without limitation, the General Partner is authorised to sign the deed of retirement on behalf of the Limited Partnership.

21. **Limitation of Liability of Custodians**

Custodian Capacity

- 21.1 In the case of any Limited Partner who at the time of becoming a limited partner satisfies the General Partner that it holds its LP Units as Custodian ("**Custodian**"), that Custodian's liability arising under or in connection with this Agreement is limited to, and can be enforced against that Custodian only to the extent to which it can be satisfied out of the LP Units held by that Custodian. This limitation of a Custodian's liability applies despite any other provision of this Agreement other than clause 21.4 and extends to all liabilities and obligations of a Custodian in any way connected with any representation, warranty, indemnity, conduct, omission, agreement or transaction related to this Agreement.

Disclosure of Identity

- 21.2 A Custodian must at any time upon request by the General Partner disclose to the General Partner in writing the name and address of every person on whose behalf it holds LP Units.

Change in Beneficial ownership

- 21.3 A Custodian will not permit any change in the beneficial ownership of its interests without the prior written consent of the General Partner and will notify the General Partner of the name and address of its beneficial owners.

Specific Performance

- 21.4 Nothing in this clause 21 prevents any party seeking injunctive relief or an order for specific performance against a Custodian in respect of its obligations under this Agreement.

22. **Independent Trustees - Limitation on Liability**

- 22.1 The liability of any person who has entered this Agreement solely in the capacity as an independent trustee of a trust and receives no benefit other than any agreed fee for professional service as an independent trustee (the "**Independent Trustee**") shall be limited to the assets for the time being of that trust, provided that this limitation shall not apply to any loss suffered or incurred by the Limited Partnership, the Partners or the General Partner (or any of its subsidiaries) as a direct or indirect result of any breach of trust, fraud, dishonesty, gross negligence or wilful breach of this Agreement by the Independent Trustee (in which case the Independent Trustee will be personally liable to the Limited Partnership, or the Partners or the General Partner or any of its subsidiaries to the extent the trust's assets do not satisfy all the Independent Trustee's obligations to the Limited Partnership, or the Partners or the General Partner or any of its subsidiaries).

23. **General Provisions**

Waiver

- 23.1 No waiver by a Partner of a breach of any provision of this Agreement shall constitute a waiver of any subsequent or continuing breach of such provision, or of the breach of any other provision, of this Agreement by that Partner.

Variation of Limited Partnership Agreement

- 23.2 Any of the provisions of this Agreement may be altered from time to time by Special Resolution, and this Agreement as so altered shall continue to have effect and shall bind all the Partners, whether they voted in favour of the Special Resolution or not.

Charges and Security Interests

- 23.3 No Limited Partner will, without the prior written consent of the General Partner, (such consent not be to unreasonably withheld) mortgage, charge, create any security interest in, or otherwise encumber the whole or any part of its Committed Capital or assign or otherwise purport to deal with its Partnership Interest or any right relating thereto separate from the legal ownership of such Partnership Interest otherwise than in accordance with this Agreement. This clause 23.3 does not apply to any mortgage, charge or other encumbrance created by any current or future security document used in the ordinary course of a Limited Partner's respective business operations.

Notices

- 23.4 Every notice to be given under, or in connection with this Agreement must be in writing and must be given by one of the methods below, and will be deemed to be received as follows:
- a. personal delivery to the address from time to time advised to the Limited Partnership, at the time of such delivery;
 - b. mailing by pre-paid post to the address from time to time advised to the Limited Partnership, 2 Business Days after the date of mailing; and
 - c. email or facsimile transmission to the email address or facsimile number from time to time to the Limited Partnership, at the time the sender's email or facsimile system confirms that the email or facsimile was sent to the email address or facsimile number of the recipient (unless the recipient proves that contrary to the sender's email or facsimile confirmation, the email was not sent or was not properly sent to the recipient's email address or facsimile number).

For the purposes of this Agreement, any notice transmitted or delivered after 5.00 pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9.00 am on the next Business Day.

Agreement Binding Upon Successors and Assigns

- 23.5 Except as otherwise specified in this Agreement, this Agreement is binding upon the heirs, executors, administrators or other representatives, successors and assigns of the parties to it.

No Assignment

- 23.6 The benefit of this Agreement may not be assigned by any Partner except as specifically provided under this Agreement.

Governing Law

- 23.7 This Agreement and the rights of the parties are governed by and construed in accordance with the laws of New Zealand.
- 23.8 Each of the parties irrevocably agrees that the courts of New Zealand have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

Execution in Counterpart

- 23.9 This Agreement may be executed in counterparts (including by facsimile or pdf transmission) each of which is deemed to be an original, and is deemed to have been signed by, or on behalf of, a Limited Partner if the Limited Partner signs an application

form or similar document evidencing a subscription for a Partnership Interest in a form accepted by the General Partner.

Application of the Limited Partnerships Act

23.10 Where this Agreement is inconsistent with the Limited Partnerships Act and such inconsistency is not permitted or contemplated by the Limited Partnerships Act, the terms of the Limited Partnerships Act apply.

Signed by

Signed by **McQuade Forest Limited** as the General Partner:

Director's signature

Director's signature

Director's full name

Director's full name

Signed by **Arbor Management Limited** as the Establishment Limited Partner:

Director's signature

Director's signature

Director's full name

Director's full name

Signed by **McQuade Forest Limited** as General Partner on behalf of Limited Partnership:

Director's signature

Director's signature

Director's full name

Director's full name

SCHEDULE 1**Committed Capital of the Partners**

Partner	Address	Committed Capital	LP Units
Establishment Limited Partner	219 Victoria Avenue, Wanganui	\$1.00	One (1)
Total		\$1.00	One (1)

Initial Limited Partners

The special partners (unit holders) in the Predecessor Special Partnership as specified in the attached unit register.

Note: To implement the transition process described in clause 20, as soon as practicable after the commencement of the Limited Partnership:

- the Initial Limited Partners will be admitted to the Limited Partnership as a result of the transition process which is based on the assumption that the transition is designed to ensure that business and ownership of the partnership remains the same – with the result that each Limited Partner's Partnership Interest will be substantially the same as that which they held in the Predecessor Special Partnership; and
- the Establishment Limited Partner will retire and will be paid the amount of its Committed Capital (being \$1.00).

SCHEDULE 2**Deed of Adherence**

DEED dated

20[_]

Parties

1. **McQuade Forest Limited Partnership** (the “**Limited Partnership**”);
 2. **McQuade Forest Limited** (the “**General Partner**”);
 3. [] (the “**Exiting [General / Limited] Partner**”);
 4. [] (the “**New Partner**”),
- (together the “**parties**”).

Background

- A. From [x] date (the “**Effective Date**”) the New Partner is intending to become a [General / Limited] Partner as defined in the Limited Partnership Agreement dated [] establishing the Limited Partnership in accordance with the Limited Partnerships Act 2008.
- B. The parties have agreed to enter into this Deed to record the terms of the New Partner being admitted as [General / Limited] Partner pursuant to the terms of the Limited Partnership Agreement.

Covenants

In consideration of, and subject to the New Partner being admitted as a [General] [Limited] Partner (as defined in the Limited Partnership Agreement) from the Effective Date:

- A. The New Partner agrees that the New Partner is to have the benefit and obligations of and be bound by the terms of the Limited Partnership Agreement as if the New Partner were [the] [an] Exiting [General][Limited] Partner.
- B. The parties agree that the New Partner is to have the benefit of and be bound by the terms and conditions of the Limited Partnership Agreement as if the New Partner were named as a [General / Limited] Partner (as defined in the Limited Partnership Agreement).

This Deed is governed in all respects by the laws of New Zealand and each of the parties irrevocably submits to the non-exclusive jurisdiction of the New Zealand Courts as regards any claim, dispute or matter arising out or relating to this Deed

SIGNED as a deed:

SCHEDULE 3**Drawdown Notice (clause 3.2)**

To: (the Limited Partners)

From (the General Partner)

Date

Dear

McQuade Forest Limited Partnership (the Limited Partnership)

1. We refer to the Limited Partnership Agreement dated [date] in relation to the McQuade Forest Limited Partnership (as amended from time to time) and to your Capital Commitment to the Limited Partnership of \$[]. Terms and expressions defined in the Limited Partnership Agreement have the same meaning we are used in this notice except where the context requires otherwise.
2. This is a Drawdown Notice as referred to in the Limited Partnership Agreement and notice that, pursuant to clause 3.2 of the Limited Partnership Agreement, the Limited Partnership is calling for and you are required to pay \$[] of your Capital Commitment on or before [date].
3. The amount to be advanced pursuant to clause 2 of this Drawdown Notice must be transferred to the following **bank account**:

Bank

Address

Account Number

Yours faithfully

for and on the half of McQuade Forest Limited,
as general partner for McQuade Forest Limited Partnership

SCHEDULE 4

Powers of General Partner (clause 4.4)

The powers of the General Partner in carrying on the Business and managing the Limited Partnership include the following rights, powers and authority (such rights, powers and authority being subject to the terms of this Agreement and the Limited Partnerships Act where applicable):

- a. to open, maintain and close bank accounts and custodian accounts in the name of the Limited Partnership and to draw cheques and other orders for the payment of moneys on behalf of the Limited Partnership;
- b. to enter into, make and perform such contracts, agreements and other undertakings and to do all such other acts as it may deem necessary and advisable for or as may be incidental to the conduct of the business of the Limited Partnership;
- c. to cause the Limited Partnership to borrow money. In connection with such borrowings, the General Partner may cause the Limited Partnership to make interest payments and may make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange, guarantees and other instruments and evidences of indebtedness, and secure payment by mortgage, charge, pledge or assignment of any interest in all or any part of the Partnership Assets including any undrawn Committed Capital. Unless and until Partners are required pursuant to a Drawdown Notice to contribute Committed Capital to the Limited Partnership to enable it to satisfy its obligations in respect of any such borrowing, no Committed Capital shall be regarded as having been drawn down by the Limited Partnership from Partners in relation to such borrowings for the purposes of this Agreement;
- d. to cause the Limited Partnership to give guarantees, indemnities, covenants and undertakings in favour of third parties in connection with the Business. Any such guarantees, indemnities, covenants or undertakings may be secured on any of the Partnership Assets (including undrawn Committed Capital);
- e. to cause the Limited Partnership to make loans;
- f. to cause the Limited Partnership to meet payments of expenses payable by the Limited Partnership under clauses 4.5 and 4.6, including the expenses of acquiring and disposing of any investments to the extent that such expenses have not or will not be paid by any other person;
- g. to cause the Limited Partnership to commence or defend any litigation relating to the Limited Partnership or to any of the Partnership Assets;
- h. to cause the Limited Partnership to maintain the Limited Partnership's records and books of account at the Limited Partnership's principal place of business and to allow any Limited Partner or its representative access to them at any time during ordinary business hours for the purpose of inspecting or copying the same provided that such Limited Partner shall reimburse to the Limited Partnership any expenses incurred by the Limited Partnership in connection with such inspection or copying;
- i. to make payments and distributions to the Partners in accordance with the terms of this Agreement;

- j. to carry out periodic valuations of the Partnership Assets and to furnish such valuations to the Limited Partners in accordance with the reporting provisions of clause 12;
- k. to grant assignments in accordance with the provisions of clause 8;
- l. to cause the Limited Partnership to engage employees, agents, lawyers, accountants, custodians, brokers, investment and financial advisers and consultants as it may deem necessary or advisable in relation to the affairs of the Limited Partnership;
- m. to deposit funds of the Limited Partnership in an interest bearing bank account pending the making of distributions in accordance with clause 6;
- n. subject to clauses 12 and 13, to communicate with the Limited Partners and to report to the Limited Partners at such times as it shall think fit and to represent the Limited Partnership in all things;
- o. to cause the Limited Partnership to disclose to any tax or other regulatory authority having jurisdiction over the Limited Partnership and requesting such information identifying details regarding the holder of any direct or indirect beneficial interest in the Limited Partnership or any Partner;
- p. to prepare and file any tax returns required to be filed by the Limited Partnership (the content of such returns to be determined by the General Partner in its absolute discretion) and take any other action necessary or desirable for the purpose of complying with any tax law or regulation;
- q. to require the prompt provision of information from the Partners as may reasonably be necessary for the operation of the Limited Partnership including any registration, regulatory and/or any taxation requirements; and
- r. generally to do all other things on behalf of the Limited Partnership as may in the General Partner's opinion be reasonably required or advisable in connection with or ancillary to the purposes or objectives of the Limited Partnership set out in this Agreement.

SCHEDULE 5

General Partner's Fees (clause 4.9)

The General Partner will be paid out of the Partnership Assets in respect of its services to the Limited Partnership, the following fees:

The fees payable to its Affiliate, Arbor Management Limited, pursuant to the Management Services Agreement signed on or about the same date as this Agreement (as amended from time to time).

The General Partner may at any time and from time to time alter the amount or terms of the fees payable to the General Partner by giving at least one month's prior written notice to that effect to be Limited Partners.

The fees payable to the General Partner are GST exclusive so that the Limited Partnership will pay to the General Partner all GST in addition to the fees.