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**DEED OF LEASE OF FARMLAND**

**5 & 236 Lees Pakaraka Road**

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**DEED OF LEASE OF FARMLAND** dated the \_\_\_\_\_ day of December 2023

**PARTIES:**

- 1. **Masterton District Council** ("the Lessor")
- 2. ("the Lessee")
- 3. ("the Guarantor")

**BACKGROUND:**

- A. The Lessor is the registered owner of the Property.
- B. The Lessor has agreed to lease to the Lessee the Property for the Term and on the terms and conditions contained in this Deed.
- C. The Guarantor has agreed to guarantee the obligations of the Lessee under this Lease to the Lessor.

**SIGNED** by Phil Evans

.....  
**Acting Manager Assets and Operations**

The Common Seal of **MASTERTON DISTRICT COUNCIL** as Lessor was hereunto affixed in the presence of:

Witness signature: \_\_\_\_\_

Full name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED** by \_\_\_\_\_ as Lessee

If Lessee is a company, by its Director(s), or a Trust, by its Trustees:

....., Director/Trustee .....

....., Director/Trustee .....

....., Director/Trustee .....

....., Director/Trustee .....

in the presence of:

Witness signature: \_\_\_\_\_

Full name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED** by the Guarantors as to their respective proportions to Lessee obligations:

.....

.....

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## FIRST SCHEDULE

**PROPERTY:** means 73.7616 hectares being all the land contained in the following Records of the Title and legal description(s) and identified as the “property” shown on the maps below and includes all buildings\*, erections, improvements and Lessor’s chattels located on the land (but excluding the dwelling and curtilage area located at 236 Lees Pakaraka Road (Tocker Block) as shown on Map 2. below).

Block	Area (Hectares)	Title Reference	Legal Description
<b>Pakaraka</b>	35.3348	756893	Part Taumatakaihuka B2 Block and Lot 2 Deposited Plan 426775
<b>Tocker</b>	38.4268	589795	Lot 1 Deposited Plan 456394
	73.7616		

\*Approximately 0.66 hectares including the woolshed and yards is subject to a separate lease and shared use agreement “Woolshed Agreement”. Refer Map 3 below.

### Map 1 - The legal boundaries of the property:



**Map 2. – Area excluded, 650 square metres (dwelling and curtilage area at 236 Lees Pakaraka Road)**



**Map 3. – Area subject to shared use agreement “Woolshed Agreement”**



**TERM:** Three (3) Years and Five (5) Months and Fourteen (14) Days.

**START DATE:** 18<sup>th</sup> day of December 2023.

**END DATE:** 31<sup>st</sup> May of 2027.

**RIGHT OF RENEWAL:** One further term of three (3) years entirely at the Lessor's discretion.

**FINAL EXPIRY (if renewed):** 31 May 2030 (if renewal granted).

**RENT REVIEW DATES:** 31<sup>st</sup> May 2027 (if renewed).

**RATES PAYABLE BY LESSEE:** 100%

**ANNUAL RENTAL** \$ plus GST per annum.

**MONTHLY RENTAL** \$ plus GST per month, payable always in advance on the first day of each month. The first payment is due on the **1st day of December 2023**.

**BANK ACCOUNT NO. TO WHICH LEASE RENTAL IS TO BE PAID:**

**WESTPAC BANK, MASTERTON**  
**03 0687 0271682 -02**

**LIABILITY SUM: \$2,000,000**  
**(Clause 4.27)**

**LESSOR'S CHATTELS:**

1x Electric fence unit  
 Dog kennels  
 Irrigation plant and equipment (excluding the 95ml pipe and gun irrigator on the lower accretion area)  
 Irrigation pump  
 Stock water pump (Pakaraka block), and stock water pump (Tocker block)

## Terms and Conditions

### **1 Interpretation**

- 1.1 Terms given a meaning in the Schedule will have that meaning where the context permits.
- 1.2 A reference to any party includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both.
- 1.3 The liability of each party where more than one person is involved will be joint and several.
- 1.4 In this Lease reference to any statutory provision includes any provision which amends or replaces it and any legislation made under it.
- 1.5 Clause headings are for reference purposes only.

### **2 Grant of Lease**

- 2.1 The Lessor leases to the Lessee and the Lessee takes on the lease of the Property for the Term from the Start Date and at the Annual Rental on the terms and conditions contained in this Deed.

### **3 Term**

- 3.1 The Term will commence on the Start Date and end on the End Date.
- 3.2 The Lessee will occupy the Property under a monthly tenancy if this Lease is not renewed and the Lessee remains in occupation with the Lessor's consent after the End Date. The provisions of this Lease will otherwise continue to apply.

### **4 The Lessee's Obligations**

The Lessee covenants with the Lessor as follows:

#### **4.1 Rent**

- 4.1.1 The Lessee will pay the Annual Rental on the Rental Payment Dates by direct credit to the Lessor's bank account on due date without deduction in the manner provided in this Deed or as the Lessor shall from time to time in writing direct.

#### **4.2 Rates**

- a) The Lessee will pay to the Lessor the proportion of rates as shown in the First Schedule of all rates levied on the Property during the Term (apportioned if necessary, at the Start Date and End Date) on demand.



#### 4.3 Insurance

- a) The Lessee will pay upon demand:
- (a) All premiums paid or payable during the Term for insurance taken out by the Lessor relating to the Property including (but not by way of limitation) insurance for all buildings, improvements, plant, and equipment owned by the Lessor and loss of rent PROVIDED THAT all such insurance premiums shall be apportioned if necessary between the Lessor and the Lessee at the Start Date and at the End Date.
  - (b) Any reasonable valuation fees the Lessor incurs in obtaining or renewing the insurance.
- b) The insurance will be in the joint names of the Lessor and Lessee for their respective rights and interests.
- c) The Lessee will not do nor to permit to be done anything whereby any policy of insurance against fire or loss in respect of the said buildings, erections or other improvements for the time being forming part of the Property may become void or voidable or the premiums payable therefore increased.

#### 4.4 Payment for Services

- a) The Lessee will pay all charges for water, power, telephone, gas and other services or utilities supplied to the property.

#### 4.5 Power Supply

- a) The Lessee will not allow any charge to be created upon the Property by any Power Authority.

#### 4.6 Farm Maintenance

- a) The Lessee will:
- (a) Keep the land and all buildings and fixtures which are part of the Property in good, clean, substantial, and tenantable order and condition (having regard to their order and condition at the start date). Fair wear and tear and damage by fire flood earthquake Act of God or other inevitable accident which is not caused by any act or omission of the Lessee or of the Lessee's servants, agents, licensees, or invitees alone excepted, and
  - (b) Maintain all fences, gates, and yards in sound order and in similar condition as presented at the Start Date, including the maintenance of electric fence reticulation systems, including keeping electric fences sprayed, electric wires clear of plant growth or broken branches, and maintenance of insulation systems; and
  - (c) Keep all water reticulation systems, tracks and roads, races, crossings, culverts, gateways, trough surrounds and the Lessor's Chattels in good order and repair at all times; and
  - (d) Undertake such specific maintenance, or rectification of damage or deterioration, as set out in the Second Schedule; and

- (e) Indemnify the Lessor against any losses (including costs) incurred by the Lessor if insurance moneys are irrecoverable or premium rates are increased because of any negligent act or omission of the Lessee or the Lessee's servants, agents, licensees, or invitees.
- (f) If applicable for the purpose of (b) or (c) above, the Lessee may extract metal from a pit on the Property if there is one. Metal may not be transferred off the Property.

#### 4.7 Alterations

- a) The Lessee will not make any alterations to any of the buildings or other improvements on the Property or its subsoil or contours without the prior written consent of the Lessor. The Lessor may impose any reasonable conditions whatsoever when giving consent.

#### 4.8 Use of the Property

- a) The Lessee will:
  - (a) Use the Property for the Permitted Use only (refer to Second Schedule); and
  - (b) Use the Lessor's Chattels for their designed use only; and
  - (c) Not store any inflammable or dangerous goods on the Property when they are not reasonably required for the Permitted Use; and
  - (d) Not do anything which in the Lessor's reasonable opinion is a nuisance to the Lessor or neighbours; and
  - (e) Not do anything on the Property which is illegal.

#### 4.9 Management of Plant and Animal Pests

- a) The Lessee is required to comply with the relevant Plan and Animal Pest Management Strategies which are approved by, gazette, and administered by the appropriate overall land management authority, under the Biosecurity Act 1993.
- b) The Lessee is also required to take all necessary steps throughout the Term to keep noxious weeds including but not limited to gorse, thistles, broom, and ragwort controlled so that the level of weed infestation is no worse than at the Start Date. Biological control alone will not be an acceptable method of control.
- c) The Lessee may only use recognised agricultural chemicals first approved by the Lessor acting reasonably.

#### 4.10 Good Husbandry

- a) The Lessee will farm, cultivate, and manage all of the Property in a good and husband-like manner in accordance with the terms of this Lease.

4.11 Fertiliser Use

- a) Refer to Second Schedule.

4.12 Stocking

- a) The Lessee will:

- (a) Stock the Property according to the rules of good husbandry generally recognized in the district; and
- (b) Not graze more stock than the Property will reasonably carry; and
- (c) Not during the last year of the Term graze more stock than were grazed at any equivalent time during the Term without the prior written consent of the Lessor.

4.13 Stock Types – Classes Which May Be Farmed

- a) Refer to Second Schedule.

4.14 Dangerous or Diseased Stock

- a) The Lessee will not allow any stock known to be dangerous or diseased to remain on the Property.

4.15 Drains Etc.

- a) The Lessee will always keep all tile and open drain outlets clear and unobstructed, and clean all ditches, drains and water courses on the Property as necessary to ensure excess water can egress readily at all times.

4.16 Hedges and Shelterbelts

- a) The Lessee will keep all hedges and shelterbelts on the Property in the same or better order and condition as presented at the Start Date.

4.17 Fencing Act

- a) The Lessee will comply with the Fencing Act 1978 and keep the Lessor indemnified against all claims and costs associated with fencing requirements.

4.18 Stock Damage

- a) The Lessee will promptly make good any damage to fences or other improvements and pasture caused by any stock grazing on the property.

4.19 Security

a) The Lessee will:

- (a) Keep all lockable buildings on the Property locked and secure when not in use; and
- (b) Return keys to all locks on the Property to the Lessor at the end of this Lease.

4.20 Comply with Statutes

a) The Lessee will comply with all relevant Acts, regulations, by-laws, or requirements concerning the business of the Lessee and the Property.

4.21 Effluent

a) If relevant, the Lessee will provide and properly maintain an approved method of disposal of all effluent at all times.

4.22 Cropping

a) Refer to Second Schedule.

4.23 Regrassing

a) Refer to Second Schedule.

4.24 Property Feed Position at Takeover and Surrender

a) Refer to Second Schedule.

4.25 Trees

- a) The Lessee will not cut down or damage or allow others to cut down or damage any trees or shrubs on the Property without the prior written consent of the Lessor. The Lessor may withhold consent without giving any reason.
- b) If agreed by the Lessor and Lessee the Lessor and the Lessor's agents or workers may (on providing at least 10 working days prior written notice) enter the Property at all reasonable times to plant, tend, cut, and remove timber and firewood provided that the Lessor would take all reasonable steps to avoid any inconvenience to the Lessee's Permitted Use of the Property. The Lessor will comply and will ensure their employees, agents and contractors comply with their obligations under the Health and Safety at Work Act 2015. The Lessor will consult, co-operate, and co-ordinate with the Lessee in respect of the health and safety of all persons on the Property as it relates to forestry activities as far as reasonably possible. The Lessor will, as soon as reasonably possible, prepare and provide to the Lessee their health and safety plan which will outline the hazards and risks relating to the Lessor's activities on the Property.

- c) Unless the Lessor has specifically granted permission, the Lessee will ensure that livestock do not graze, or have access to graze, any area of planted forestry or area retired from grazing, and in the event of livestock gaining access to such area, shall immediately act to remove such livestock and secure the area against re-entry.

#### 4.26 Assignment or Subletting

- a) The Lessee will not assign, sublet, or otherwise part with possession of any of the Property without the prior written consent of the Lessor.
- b) If the Lessee or any holding company of the Lessee is a company not listed on the New Zealand Stock Exchange, any
  - (a) Ownership of Shares: change in the legal or beneficial ownership of any of the Lessee's shares; or
  - (b) New Capital: issue of new capital;

Which results in a change in the Lessee's effective control or management will be treated as an assignment of this lease requiring the Lessor's prior written approval. The persons acquiring effective control of the Lessee or the Lessee's holding company (as the case may be) as a result of that change will be treated as the assignees.

#### 4.27 Public Liability

- a) The Lessee will take out and maintain a public liability policy in the joint names of the Lessor and the Lessee for the Liability Sum, which is set out in the First Schedule, with a company approved by the Lessor, and the Lessee will provide evidence of such insurance as the Lessor may reasonably require.

#### 4.28 Lessor's Inspection

- a) The Lessee will:
  - (a) Permit the Lessor or the Lessor's agent to enter and inspect the Property at all reasonable times provided that at least 10 working days prior written notice is given to the Lessee; and
  - (b) Repair and make good all defects and lack of repair for which the Lessee is liable within one month of receiving written notice from the Lessor.

#### 4.29 Lessor's Works

- a) The Lessee will, on receipt of at least 10 working days prior written notice permit the Lessor and the Lessor's agents or workers to enter the Property to carry out survey, fix survey pegs or carry out any alterations, repairs or maintenance to the Property or adjacent land required by the Lessor.

#### 4.30 Health & Safety

- a) The Lessee and their employees will at all times during the Term in their occupation and use of the Property comply with and observe all the provisions of the Health Act 1956 and the Health and Safety at Work Act 2015 and any amendment thereto or re-enactment thereof and of all Regulations made there under and of all local body bylaws from time to time in force.
- b) Upon request the Lessee will provide to the Lessor a Health and Safety compliance plan for activities carried out on the Property and during the Term the parties will co-operate to develop and keep current an integrated Health and Safety management plan in relation to the Property and the Lessee's operation.
- c) The Lessee acknowledges that as occupier of the Property they have the greatest ability to influence and control the matter to which any risks relate and have primary responsibility for risk management for all of the Lessee's employees on the Property.
- d) The Lessee will provide the Lessor with information about Health and Safety issues arising in relation to the improvements on the Property including any identified risks and advise if any Notifiable Event (as defined in the Health and Safety at Work Act 2015) occurs.
- e) The Lessee occupies the Property at the Lessee's risk and, to the extent permitted by law, now releases the Lessor and the Lessor's employees and agents from all liability in respect of any accident, damage or injury to any person or property which directly or indirectly relates to the Property.

#### 4.31 Notice of Damage

- a) The Lessee will immediately give the Lessor notice of:
  - (a) Any damage to the Property; and
  - (b) Any circumstances likely to result in damage to the Property.

#### 4.32 Restoration of Property

- a) If requested to do so by the Lessor, the Lessee will:
  - (a) Remove any additions or alterations to any buildings or fixtures on the Property made by the Lessee and reinstate them to their previous condition; and/or
  - (b) Make good any damage to the Property caused by the Lessee's additions or alterations or their removal;
  - (c) before the End Date or earlier termination of the Lease.
- b) If the Lessee fails to remedy any default under this clause within 30 days of being given written notice to do so the Lessor may:
  - (a) Carry out the work at the Lessee's expense; or

- (b) Elect not to in which case the Lessor will become the owner of the Lessee's fixtures still on the Property.

4.33 Inspection by Third Parties

- a) The Lessee will permit third parties to fully inspect the Property during the six months immediately before the End Date for leasing or sale and purchase purposes.
- b) The Lessor may place advertising signs on the Property for the same purpose during the same period.
- c) The Lessor must give the Lessee reasonable notice of any inspection.

4.34 Costs of Lease

- a) Each party will pay their own costs incidental to the negotiation and preparation of this Lease. The Lessee shall pay the Lessor's solicitor's costs in relation to any deed recording a rent review or renewal. The Lessee will also pay the Lessor's reasonable costs incurred in considering any request by the Lessee for the Lessor's consent to any matter contemplated by the Lease and the Lessor's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights, remedies and powers under this Lease.

4.35 Tax Including GST

- a) The Lessee will pay:
  - (a) All levies, duties, and taxes payable by the Lessor as a result of this Lease (including Goods and Services Tax) or the Lessor's having an interest in the Property (but excluding tax assessed for the Lessor's profits or capital gains); and
  - (b) Any default or penalty paid by the Lessor because the Lessee fails to make the above payments on due date. The Lessor will be under no obligation to mitigate any loss incurred under those circumstances. This subclause is without prejudice to the Lessor's other legal or equitable remedies.

4.36 Default Interest

- a) If the Lessee fails to pay any payment due to the Lessor under this Lease on the due date the Lessee will pay interest on the amount in arrears at the rate of 12% calculated from the due date to the date of actual payment.

4.37 Indemnity

- a) The Lessee will indemnify the Lessor against all claims or losses (including costs) directly incurred by the Lessor as the result of any breach of the Lessee's obligations in this lease or any negligent act or omission of the Lessee or persons under the Lessee's control.

#### 4.38 Lessor's Chattels

- a) The Lessee will always keep and maintain the Lessor's Chattels in good order and repair.
- b) The Lessee will not make any modifications or alterations to the Lessor's Chattels without the prior written consent of the Lessor.
- c) The Lessee will not remove any identification features on any of the Lessor's Chattels.
- d) The Lessee will not remove any of the Lessor's Chattels from the Property.
- e) The Lessee will take good care of the Lessor's Chattels and will not use them for any purpose for which they are not designed.
- f) The Lessee will immediately notify the Lessor of any loss of or damage to the Lessor's Chattels.
- g) The provisions in this Lease which relate to the insurance of the Property will also apply to the Lessor's Chattels with any necessary amendments.

### 5 The Lessor's Obligations

The Lessor covenants with the Lessee as follows:

#### 5.1 Quiet Enjoyment

- a) If the Lessee pays the rent and complies with all the Lessee's obligations under this Lease the Lessee may quietly enjoy the Property through the Term without any interruption by the Lessor or anyone claiming under the Lessor.

#### 5.2 Application of Insurance Moneys

- a) If any insured buildings or improvements on the Property are damaged or destroyed any insurance money must be applied in reinstating or re-erecting them (subject to the rights of any mortgagee of the Property). The damage will not affect the duration of the Lease.
- b) Until the completion of the repairs or reinstatement the Lessor will meet the reasonable cost of using alternative facilities.
- c) The Lessor will be under no obligation to spend more than the insurance money received on reinstatement.
- d) Where any of the improvements are destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity, or any risk against which the Lessor is (or has covenanted with the Lessee to be) insured the Lessor will not require the Lessee to meet the cost of making good the destruction or damage to the improvements and will indemnify the Lessee against such cost where the Lessee is obligated to pay for making good such damage or destruction. The Lessor does not have to indemnify the Lessee and the Lessee will not be excused from liability under this clause if and to the extent that:



- (a) The destruction or damage was intentionally caused by the Lessee or those for whom the Lessee is responsible; or
- (b) The destruction or damage was the result of an act or omission by the Lessee or those for whom the Lessee is responsible and that act or omission:
  - (i) occurred on or about the Property; and
  - (ii) constitutes an imprisonable offence; or
- (c) Any insurance moneys that would otherwise have been payable to the Lessor for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Lessee or those for whom the Lessee is responsible.

## 6 **Mutual Agreements**

The Lessor and the Lessee covenant as follows:

### 6.1 Termination

- a) The Lease will terminate:
  - (a) By expiry of the Term or any renewed term (if applicable); or
  - (b) By agreement between the parties; or
  - (c) In accordance with clause b).
- b) The Lessor can (in addition to the Lessor's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 end this Lease by notice in writing to the Lessee if:
  - (a) The rent shall be in arrears 10 working days after any rent payment date and the Lessee has failed to remedy that breach within 10 working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007; or
  - (b) In case of breach by the Lessee of any covenant or agreement on the Lessee's part expressed or implied in this Lease (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with section 246 of the Property Law Act 2007.
  - (c) The Lessee shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Lessee's creditors.
  - (d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership, or liquidation of the Lessee.

(e) The Lessee shall suffer execution to issue against the Lessee's property goods or effects under any judgement against the Lessee in any Court for a sum in excess of five thousand dollars (\$5,000.00).

c) Nothing in clause 6.1 affects the operation of any clauses in this Lease which are expressed or implied to have effect after its termination.

#### 6.2 Consequences of Termination

a) Any termination of this Lease will be without prejudice to the rights of either party arising prior to termination.

b) The Lessor's rights to damages will not be limited by:

(a) The Lessee abandoning the Property;

(b) The Lessor electing to re-enter or terminate this Lease;

(c) The Lessor accepting the Lessee's repudiation;

(d) The parties conduct if it constitutes a surrender by operation of law.

c) Nothing in this clause 6.2 affects any other legal or equitable rights of the Lessor.

#### 6.3 Default by Lessee

a) If the Lessee does not carry out the Lessee's obligations contained or implied in this Lease then the Lessor may carry them out either wholly or in part without prejudice to any other rights, powers, or remedies of the Lessor; and

b) The Lessee will pay the cost incurred to the Lessor on demand.

#### 6.4 Right of Renewal

a) If the Lessee has always fulfilled the Lessee's obligations under this Lease, the Lessee will have the right to renew it for the Renewal Period which is set out in the First Schedule.

b) The Lessee must give the Lessor written notice of intention to renew at least 2 months before the End Date.

c) The rental for the renewed term will be agreed or failing agreement fixed in accordance with clause 6.5.

d) The terms of the renewed Lease will otherwise be the same (with any necessary alterations) including this right of renewal unless by exercising the right the Lessee would be entitled to occupy the Property after the Final End Date.

## 6.5 Rent Review

- a) The Lessor may review the rental on the Rent Review Dates set out in the First Schedule. The following procedures in this clause for rent reviews will be adopted.
- b) The Lessor will give written notice to the Lessee fixing the amount considered by the Lessor to be the current market rent of the Property at the relevant Rent Review Date (“the Lessor’s notice”).
- c) If the Lessee wishes to dispute the amount the Lessee must advise the Lessor in writing (“the Lessee’s notice”) within 1 month of receiving the Lessor’s notice.
- d) The Lessee’s notice must state the Lessee’s estimate of rental.
- e) If the Lessee gives the Lessee’s notice the parties must enter into negotiations to resolve the dispute. If they cannot agree within 14 days (or a longer period if they agree) of the Lessor receiving the Lessee’s notice, then they will each within a further 14 days appoint a valuer who is a member of the New Zealand Institute of Valuers (NZIV). The valuers will fix the current market rent of the Property.
- f) If either party fails to appoint a valuer, the rent will be set by the valuer who is appointed.
- g) Before proceeding with their determination, the valuers shall be directed to agree upon and appoint an umpire (also being a member of the NZIV) and obtain the umpire’s acceptance in writing of that appointment. Should the valuers not agree upon and appoint an umpire within 14 days of the Lessor’s valuer being appointed then either the Lessor or the Lessee or their valuers may request the president of NZIV to appoint an umpire and obtain the umpire’s acceptance in writing of the appointment.
- h) If the valuers are unable to agree within 1 month of the date of the appointment of their umpire upon the current market rental for the Property, then at any time subsequently either party may require the current market rental for the Property to be determined by the umpire. The umpire shall be directed to give the umpire’s decision in writing together with reasons.
- i) In fixing the current market rent the valuer(s) or umpire will:
  - (a) Be deemed to be acting as an expert and not as an arbitrator;
  - (b) Consider any use to which the Property may be put consistent with the Permitted Use imposed by this Lease;
  - (c) Consider any abnormal use of the building or the Property by the Lessee;
  - (d) Exclude:
    - (i) the value of any goodwill of the Lessee’s business and the value of the Lessee’s plant and equipment;
    - (ii) improvements made to the Property by the Lessee unless those improvements were requirements in the Lease;

(iii) the poor condition of the Property if it is caused by a breach of the Lessee's obligations under this Lease or any negligent act of omission of the Lessee.

- j) All valuers' and umpires' costs will be paid equally by the parties unless:
- (a) The new rental is either equal to or exceeds the rent fixed in the Lessor's notice in which case the Lessee will pay all costs; or;
  - (b) The new rental is equal to or less than the rent fixed in the Lessee's notice in which case the Lessor will pay all costs; or
  - (c) The valuer decides that the conduct of one party is such that it is appropriate that the above calculations be adjusted in favor of the other party.
- k) Notwithstanding anything in this clause to the contrary the reviewed rent may not be less than the rent payable immediately before the relevant Rent Review Date, unless otherwise agreed by the Lessor.
- l) The Lessee will pay the rent fixed by the Lessor under clause b) from the relevant Rent Review Date as soon as the Lessor's notice is given. Any necessary adjustment will be paid within 14 days of the reviewed rent being fixed in accordance with the provisions of this clause.
- m) The Lessor will forfeit the right to have the rent reviewed from the Rent Review Date if the Lessor fails to give the Lessor's notice within a period of 60 days (before or after) of the relevant Rent Review Date. If the Lessor has given the notice within 60 days after the Rent Review Date the notice will have the same effect as if it were given before the Rent Review Date. The reviewed rent amount will be effective and paid from the Rent Review Date.
- n) When the reviewed rent has been fixed the parties will enter into a Deed of Variation recording the variation in rent if the Lessor requires. The legal costs in relation to the deed will be paid in accordance with clause 4.34a).

#### 6.6 Resource Consents

- a) The Lessor will make available to the Lessee all resource consents held by the Lessor which apply to the Permitted Use on the Property.
- b) The Lessee warrants and undertakes that the Lessee will strictly adhere to all terms and conditions contained in each resource consent and hereby indemnifies the Lessor in all respects against all damages and costs associated with a breach of this clause.

#### 6.7 Registration

- a) The Lessee will not be entitled to register this lease or any renewal or amendment of it and will not caveat the Title to the Property.

#### 6.8 Implied Terms

- a) The terms and conditions implied in Leases under Part 4 of the Property Law Act 2007 and Part 7 of the Land Transfer Act 1952 will apply to this Lease unless they are inconsistent with it.

#### 6.9 No Compensation

- a) The Lessee will not be entitled to compensation for any improvements made to the Property.

#### 6.10 Waiver

- a) If either party delays or does not exercise any right or remedy under this Lease it is not a waiver of that right or remedy.
- b) The single or partial exercise of any right or remedy under this Lease does not preclude the exercise of any other right or remedy or its further exercise.
- c) The rights and remedies provided in this Lease are cumulative. They do not exclude any rights or remedies provided by law.
- d) Any waiver or consent given by a party must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

#### 6.11 Environmental Regulation

- a) The Lessor shall be responsible for the compliance with any Acts of Parliament, government policies and regulations, Regional Council or District Council regulations that relate to the Property and the Lessor's operations on the Property.
- b) The Lessor (unless otherwise agreed and mutually beneficial) shall be responsible for the costs associated with stock exclusion as required in the National Policy Statement for Freshwater Management 2020. If stock exclusion shall benefit the Lessee costs may be shared equally.
- c) The Lessor shall be responsible for the preparation of and all costs associated with completing a Farm Environment Plan (or similar document) to comply with the National Policy Statement for Freshwater Management and Regional Council Plan.
- d) The Lessor takes full responsibility for identifying and appropriately excluding significant natural areas such as wetlands and critical source areas. If stock exclusion by way of fencing is required costs shall be met by the Lessor unless there is benefit to the Lessee in which case the costs may be shared.
- e) The Lessee shall have full responsibility for complying with any Acts of Parliament or other government policies and regulations or Local Council regulations that relate to Lessee operations on the Property.
- f) The Lessee is responsible for all aspects of compliance with intensive winter grazing rules. These pertain to crop area, paddock selection, grazing management, and setback from waterways.
- g) In the event that any Act of Parliament or associated documentation (such as Farm Environment Plan) recommend management changes to the extent that the intended land use for this Lease is unable to be carried out the Lessor and Lessee agree to renegotiate the terms of the lease in good faith. If agreed terms cannot be reached the Lease shall terminate.
- h) As part of any Farm Environment Plan it may be required that parts of the Property be fenced, planted, and retired. Any proposed works of this nature will be discussed and agreed between parties prior to

commencement of any works. Any effective area retired will be deducted from the effective area of the Lease and an appropriate adjustment made to the rent paid on a per hectare basis. If the area retired results in a material change in the scale of the Lessee's enterprise the Lessor and the Lessee agree to renegotiate the terms of the lease. If agreed terms cannot be reached the Lease shall terminate.

#### 6.12 Capital Works

- a) The parties shall agree on any capital development prior to commencement of such works via a written Capital Works Plan. Either party may prepare a Capital Works Plan and present that to the other party for approval to be negotiated in good faith.
- b) The Capital Works Plan will outline the agreed capital works and timing, which party will carry out the capital works, and which party will pay for the capital works.

### 7 Dispute Resolution

7.1 If any dispute or difference shall arise between the parties or any of them with respect to this Deed the parties to this dispute shall use their reasonable endeavors to resolve such dispute or difference in the spirit of co-operation and goodwill.

#### 7.2 Mediation

- a) A party must use the mediation procedure to resolve a dispute before commencing legal proceedings.
- b) The mediation procedure is:
  - (a) The party who wishes to resolve a dispute must give a notice of dispute to the other party.
  - (b) The notice of dispute must state that the dispute has arisen and state the matters in dispute.
  - (c) When the notice of dispute has been given the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - (d) The parties must co-operate with the mediator in an effort to resolve the dispute.
  - (e) The mediator may engage an appropriately qualified expert to give an opinion on technical matters. The cost will be a mediator's cost (clause b)(h)).
  - (f) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - (g) If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - (h) Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments, etc.

- (i) The terms of settlement are binding on the parties and override the terms of the contract if there is any conflict.
- (j) Either party may refer the matter to arbitration when mediation ceases under clause b)(g).
- (k) The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- (l) The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any legal proceedings.
- (m) The provisions of clause a) will not apply to an application by either party seeking urgent interlocutory relief from any Court.
- (n) Pending resolution of any dispute the parties will perform this Lease in all respects including performance of the matter which is the subject of dispute.

## 8 **Arbitration**

- 8.1 In the event of any dispute arising under this Lease which is not settled by mediation in accordance with this Agreement the dispute will be referred to arbitration by a single arbitrator to be appointed by the parties and if they fail to agree the arbitrator will be appointed by the president of the New Zealand Law Society or the president's nominee and the arbitration will be conducted in accordance with the Arbitration Act 1996 or any Act in substitution thereafter.

## 9 **Special Terms and Conditions**

Refer to the Third Schedule.

## 10 **Supervision of This Lease**

- 10.1 The Lessor may require that ongoing supervision of this Lease shall be provided by a chosen consultant on such a basis as shall be agreed but which shall not be less than a full property inspection jointly with the Lessor(s) and Lessee(s) at signing/or the Start Date, and thereafter once per annum and two (2) months prior to the conclusion of the Lease.
- 10.2 The consultant shall apply all their skills and resources so as to ensure the parties to the Lease meet their obligations but shall not in any way be liable for the outcomes of any advice, action, or activity, of whatever kind or nature.
- 10.3 All consultant fees and disbursements for this supervision shall be borne by the Lessor.

## 11 Notices/Address for service

11.1 Any notice must be in writing and it must be made in accordance with the requirements of sections 352 to 362 of the Property Law Act 2007 and may be served by any of personal delivery, posted by registered or ordinary postal service, or by email. A notice is deemed to have been served:

- a) In the case of personal delivery, when it is actually received by the named recipient;
- b) In the case of ordinary mail, on the second working day following the date of posting to the named recipient at the address provided for in this Lease unless that address has been changed and the change notified to the other party in which case that changed address will be the address for posting;
- c) In the case of facsimile transmission, when sent to the named recipient's facsimile number; or
- d) In the case of email, when receipt of the same is acknowledged by the named recipient by return email or any other means in writing.

11.2 The address for service of the Lessor is:

Masterton District Council  
161 Queen Street  
Masterton 5810

11.3 The address for service of the Lessee is:

[ENTER]

11.4 A party may vary the address for service of that party by notifying the other party in writing and any of the means for service of notice contained in this clause.

### **WARNINGS** *(These warnings do not form part of this contract)*

1. This is a binding contract. Professional advice as to the effect and implications of this Deed should be sought **before signing**.
2. Before signing this Deed, the Lessee should make sure that the status of the Property under the Resource Management Act 1991 is satisfactory for the Lessee's intended use of it.

## 12 GUARANTEE

12.1 In consideration of the Lessor executing this Lease of which this guarantee is part at the request of the Guarantor:

12.2 The Guarantor guarantees to the Lessor the due and punctual payment of the Annual Rent and other payments to be made under this Lease.



- 12.3 The Guarantor guarantees to the Lessor the due and punctual observance of all the terms and conditions to be performed by the Lessee under this Lease.
- 12.4 The Guarantor indemnifies the Lessor against any loss the Lessor might suffer if the Lease is lawfully disclaimed by the Lessee or any liquidator or receiver or statutory manager or by any other person or otherwise on behalf of the Lessee.
- 12.5 As between Lessor and the Guarantor, the Guarantor is a principal obligor, and the Lessor is under no obligation to take proceedings against the Lessee before taking proceedings against the Guarantor.
- 12.6 The Guarantor is not released from liability by reason of any forbearance, waiver, act, or omission on the part of the Lessor, assignment(s) or the Lease, alterations to the terms of the Lease, renewals of the Lease, or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety.
- 12.7 If there is more than one Guarantor, their liability under this guarantee is both joint and several.
- 12.8 This guarantee continues and the Guarantor remains liable until all rent and other outgoings have been paid and all covenants, conditions, and agreements on the part of the Lessee under the Lease have been performed.

## SECOND SCHEDULE

### Clause 4.6a)

#### Farm Maintenance

4.6.1 Specific responsibilities to maintain, rectify damage or deterioration, are:

1. Stock water reticulation. Stock water reticulation is provided on a "as is where is basis". It is the Lessee's responsibility to ensure livestock have access to good potable water at all times. The cost of this is to be borne solely by the Lessee.

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2. Centre Pivot Irrigator, other irrigation and affiliated pumping equipment. The Lessee will throughout the term hereof keep in the same good substantial and serviceable repair, order and condition as at the commencement of the term all irrigation plant and machinery including centre pivot PROVIDED ALWAYS that only fair wear and tear without neglect of the Lessee and damage by fire earthquake tempest lightning and inevitable accident shall be excepted from the provisions of this clause.

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3. Fencing. The fencing on the lower Tocker block includes aged concrete posts, and poorer electric fencing. This along with some of the fencing on the upper Tocker block, and also by David Holmes's house is deteriorating. It is the Lessee's responsibility to ensure that this remains fit for purpose and stock proof.

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- 4.

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- 5.

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### Clause 4.8

#### Permitted Use

4.8.1 Sheep and beef farming, some dairy support farming plus cropping and most activities allied and/or ancillary to those uses.

### Clause 4.11

#### Fertiliser Requirements

4.11.1 The Lessee will in a husband-like manner and at the proper season for so doing top-dress the agreed areas of the property with the following minimum fertiliser:

- (a) 250 kg per effective hectare per annum of superphosphate or its equivalent based on nutrients.
- (b) Any area cut for silage or hay shall receive an additional application of 350 kg per hectare of 30% Potash Super per cut of hay/silage within two months of the crop being harvested. This requirement applies even if it is intended to feed those supplements back to stock on the areas from which it was conserved.
- (c) With prior agreement from the Lessor lime may be applied at a rate of 1 tonne per effective hectare in lieu of the annual superphosphate requirement.

- (d) The Lessee shall sow with (or apply to where applicable) those quantities of soluble nutrients in kg/ha of actual elemental nutrients which are to be supplied through applications of registered standard common and soluble fertiliser materials with annual fodder crops and green feeds as recommended by a qualified fertiliser representative so as to maintain soil fertility prior to such cropping.
- (e) The Lessee may request a reduction or a deferral in fertiliser application on the basis of hardship. Hardship will be based on a specific event (e.g. climate, market price, or disaster). This is on the basis that an average efficient owner-operator would likely make the same decision in that circumstance. Approval or otherwise of this request is at the discretion of the Lessor (acting reasonably).
- (f) The Lessee must supply annual records of all fertiliser applied on the Property in order to confirm minimum requirements are being met.
- (g) Soil tests shall be undertaken by the Lessee at least once per lease term and be provided to the Lessor.

#### Clause 4.13

##### Stock Types/Classes Which May Be Farmed

4.13.1 The Lessee may farm on the Property any class or type of stock specifically detailed in the following list:

- Sheep, all classes
- Cattle, all classes noting heavy cattle restriction as follows:

The Lessee may only graze R1 cattle on the land between **1 May and 30 October** each year unless otherwise approved at the absolute discretion of the Lessor subject to their assessment of climatic and ground conditions.

#### Clause 4.22

##### Cropping

4.22.1 The Lessee will not sow a feed crop or cash crop in any area for more than two years in succession.

#### Clause 4.23

##### Regrassing

4.23.1 The Lessee shall ensure any of the Property which is cropped is sown in a new pasture mixture at the optimum time in respect of accepted district husbandries prior to the conclusion of the Lease.

4.23.2 The Lessee shall obtain the prior written approval of the Lessor (acting reasonably) for the mix of pasture species which will be sown, the actual cultivars of those species sown, as well as their quality and quantity sown.

Clause 4.24

Property Feed Position at Takeover and Surrender

- 4.24.1 Average pasture covers at Start Date shall be recorded and agreed between parties.
- 4.24.2 At the conclusion of the Lease, unless otherwise agreed to in writing, the pasture cover must be equal to, or more than the average pasture covers recorded at the Start Date.
- 4.24.3 The costs of any feed measurements described in 4.24.1 and 4.24.2 will be borne equally between the Lessor and Lessee.

## THIRD SCHEDULE

### 9. Special Terms and Conditions

#### Clause 9.1 Irrigation

9.1 The Lessee may use the irrigation plant and machinery installed on the land in accordance with sound irrigation practice and all local territorial authority rules and regulations and take water on the terms contained in the current Resource Consent WAR160305 (a copy of which has been supplied to the Lessee).

In respect of that consent, it is noted in particular:

- a) The rates at which water is extracted shall not exceed 194,400m<sup>3</sup>/year at 1,296m<sup>3</sup>/day at a maximum pumping rate of 15 litres per second.
- b) When the flow in the Ruamahanga River at Wardells Bridge monitoring site falls below 2,700 litres/second the consent holder shall:
  - I. Restrict the abstraction to a cumulative total of 12 hours/day; and
  - II. Not take water between 8am and 5pm (in order to minimise evapotranspiration losses); unless otherwise agreed to the satisfaction of the Manager, Environmental Regulation.
- c) When the flow in the Ruamahanga River at Wardells Bridge monitoring site falls below 2,400 litres/second the water take shall cease.

#### Clause 9.2 Woolshed and Yards

9.2 The area of approximately 0.66 hectares containing the woolshed and yards is subject to a separate Deed of Lease (WOOLSHED) hereafter referred to as the "Woolshed Agreement" to East Pakaraka Limited who farm the land on the eastern side of Lees Pakaraka Road. The Lessee of the subject property has rights to use the woolshed and yards subject to the relevant clauses in the Woolshed Agreement and is responsible for making the appropriate arrangements with East Pakaraka Limited (Sully Allsop). Refer to the provided Woolshed Agreement Clause 5 which outlines access and use of the premises.

#### Clause 9.3 Dwelling Removal

9.3 The Lessor retains the right to remove the dwelling at 236 Lees Pakaraka Road at any time during the lease. The Lessee must allow the Lessor and Lessor's agent's contractors access to carry out works required for removal. The Lessor must notify the Lessee prior to any works and ensure minimal disturbance to the Lessee's farm operations.

Clause 9.4 Proposed Subdivision

9.4 The Lessor retains the right to subdivide a lifestyle block from the property at any stage during the lease. The Rent shall be reduced based on the subdivided area and rental per hectare from the date the land is subdivided or as agreed between parties.

**CAPITAL WORKS PLAN**

The Lessor and the Lessee agree to fund capital expenditure as follows:

(a)

(b)