

APPENDIX 10

TERMS OF DEED OF CUSTODIANSHIP

DEED OF TRUST made the 30th day of March 2001

BETWEEN The Companies listed in the first schedule hereto (with their respective successors and permitted assigns "the Partners")

AND

THE TRUSTEES EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED (trading as TOWER Trust) a duly incorporated company having its registered office at Wellington ("the Trustee")

WHEREAS

- A. By a Deed of Participation dated 30 March 2001 ("Partnership Deed") the Partners formed the Baywood Forest Partnership ("the Partnership") to carry on the business of forestry on the land at Gisborne more particularly described in the second schedule ("the Land").
- B. The Partners are entitled to be registered as proprietors of the Land as tenants in common in their respective shares.
- C. The Partners have requested and the Trustee has agreed to be registered as the proprietor of the Land in trust on behalf of the Partners.
- D. The Trustee has also agreed to act as the Statutory Supervisor of the Baywood Forest Partnership.

NOW THIS DEED WITNESSES and it is hereby agreed and declared as follows:

1. INTERPRETATION

In this deed unless the context otherwise requires:

- 1.1 **Headings:** clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this deed;
- 1.2 **Plural and Singular:** words importing the singular number shall include the plural and vice versa;
- 1.3 **Schedules:** schedules to this deed and the provisions and conditions contained in such schedules shall have the same effect as if set out in the body of this deed;
- 1.4 **Parties:** references to parties are references to parties to this deed;
- 1.5 **Persons:** references to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
- 1.6 **Defined Expressions:** expressions defined in the main body of this deed bear the defined meaning in the whole of this deed including the recitals; and
- 1.7 **Clauses, Schedules etc:** references to clauses and schedules are references to clauses of and schedules to this deed respectively.

2. THE PARTNERS' OBLIGATIONS

- 2.1 The Partners request and direct the Trustee to be registered as proprietor of the Land in trust for the Partners as tenants in common in the respective shares shown in the Partnership Deed.
- 2.2 The Partners confirm all the terms, covenants and conditions in the Partnership Deed including the Trustee's powers.
- 2.3 The Partners and the Trustee acknowledge that Forest Enterprises Limited ("the Manager") has been appointed by the Partners to act as the manager of the business of the Partnership.

- 2.4 The Partners delegate to the Trustee all the powers, authorities and discretions vested in them as beneficial owners of the Land to be exercised by the Trustee on behalf of the Partnership. This delegation shall not release the Partners from their obligations under the Partnership Deed.
- 2.5 The Partners agree that the reason the Trustee is to be registered as the legal owner of the Land on their behalf is purely to achieve simplification of ownership inter se.
- 2.6 The Trustee in its capacity as the trustee appointed under this deed shall not be subject to any liability or obligation whatsoever other than any liability or obligation that arises as a consequence of this deed. The Partners shall not have any action or claim against the Trustee for any damages, losses, expenses or orders unless the same arises directly from a breach by the Trustee of any of the duties and obligations set out in this deed. The Partners jointly and severally indemnify the Trustee and agree to hold it indemnified in respect of any action or claim for damages, losses, expenses or orders brought against the Trustee arising from the act, neglect, default or omission of the Partners or any of them.

3. TRUSTEE'S OBLIGATIONS

- 3.1 The Trustee covenants and agrees with the Partners as follows:
 - (a) To become registered as the proprietor of the Land in trust for the Partners as tenants in common in the respective shares set out in the Partnership Deed and to hold all income, profits, accretion and capital arising therefrom in trust for the Partners absolutely in accordance with the respective shares set out in the Partnership Deed; and
 - (b) To execute as the legal owner of the Land any document, deed, lease, mortgage, pledge, encumbrance or transfer of any property of the Partnership or any part thereof at the request of the Manager.
- 3.2 The Trustee enters into this deed with the intention of binding itself and its successors as trustee only to the extent that the assets of the trust are available to meet any liability or obligation that arises under this deed.

4. MUTUAL OBLIGATIONS

The parties agree as follows:

- 4.1 The Partners shall pay to the Trustee during the term of its appointment a fee that is agreed upon by the Trustee and the Manager.
- 4.2 The Trustee shall be entitled to a notice of and to attend all meetings of the Partnership and shall have the right to be heard at such meetings through its delegate, agent or representative but shall not have the right to vote.
- 4.3 The Partners shall not be entitled to require the Trustee to individually transfer their beneficial interest. The Trustee shall be obliged however to transfer the Land to the Partners or to such person as they shall nominate in writing pursuant to a resolution of the Partners properly passed under the terms of the Partnership Deed. When the Trustee receives such written direction it shall be entitled before signing such transfer to obtain payment of all fees, costs and expenses to which it is entitled under this deed and to recover all moneys expended by it on behalf of or advanced to the Partnership or the Partners.
- 4.4 Each Partner discharges the Trustee from any liability to the Partners under this deed and indemnifies it against all actions, claims, losses, suits or damages brought or charged against it for any matter arising in respect of the Land either before or after the date of signing of the said transfer. The indemnity shall not relate to any wilful or negligent act or omission of the Trustee.
- 4.5 The Trustee may upon giving to the Partners and the Partnership not less than three (3) months written notice of its intention so to do resign and retire as Trustee (without prejudice to the rights of the Partners and the Manager in

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respect of any breach of its duties and responsibilities prior to the date of retirement).

4.6 At the expiration of such period of three (3) months the Trustee shall immediately transfer the Land as directed in writing by the Partners. If the Trustee is not so directed it will transfer the Land to the Partners as tenants in common in the respective shares set out in the Partnership Deed or to which they are entitled pursuant to the terms hereof.

5. GENERAL

5.1 If any dispute or difference shall arise between any of the parties in any way arising out of or in connection with this deed such dispute or difference shall be referred to the arbitration of a single arbitrator if the parties to the dispute or difference can agree upon one or otherwise of two arbitrators, one to be appointed by each of the parties to the dispute or difference or an umpire to be appointed by the two arbitrators prior to entering into consideration of the matter and any such reference shall be a submission to arbitration within the meaning of the Arbitration Act 1908 and its amendments.

5.2 All notices to be given under this deed shall be in writing and shall be given either personally or sent by registered post to the last known principal place of business or residence of any person or party.

SIGNED by BAYWOOD FOREST (NO. 1) LIMITED

.....
Director

.....
Director

**THE COMMON SEAL of THE TRUSTEES
EXECUTORS AND AGENCY COMPANY
OF NEW ZEALAND (trading as TOWER
Trust) as Trustee was hereto affixed
by the authority of:**

.....
Authorised Signatory

.....
Authorised Signatory

FIRST SCHEDULE

List of Partners in the Baywood Forest Partnership

- Baywood Forest (No. 1) Limited
- Baywood Forest (No. 2) Limited
- Baywood Forest (No. 3) Limited
- Baywood Forest (No. 4) Limited
- Baywood Forest (No. 5) Limited
- Baywood Forest (No. 6) Limited
- Baywood Forest (No. 7) Limited
- Baywood Forest (No. 8) Limited
- Baywood Forest (No. 9) Limited
- Baywood Forest (No. 10) Limited
- Baywood Forest (No. 11) Limited
- Baywood Forest (No. 12) Limited
- Baywood Forest (No. 13) Limited
- Baywood Forest (No. 14) Limited
- Baywood Forest (No. 15) Limited
- Baywood Forest (No. 16) Limited
- Baywood Forest (No. 17) Limited
- Baywood Forest (No. 18) Limited
- Baywood Forest (No. 19) Limited
- Baywood Forest (No. 20) Limited
- Baywood Forest (No. 21) Limited
- Baywood Forest (No. 22) Limited
- Baywood Forest (No. 23) Limited
- Baywood Forest (No. 24) Limited
- Baywood Forest (No. 25) Limited
- Baywood Forest (No. 26) Limited
- Baywood Forest (No. 27) Limited
- Baywood Forest (No. 28) Limited
- Baywood Forest (No. 29) Limited
- Baywood Forest (No. 30) Limited
- Baywood Forest (No. 31) Limited
- Baywood Forest (No. 32) Limited

SECOND SCHEDULE

266.92 hectares being part Lot 1 Deposited Plan 9711 being the balance of the land contained in Certificate of Title 6C/374 (Gisborne Registry) as shown on the shaded map attached.

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