

DATED

May 14

2001

**PERPETUAL TRUST LIMITED**

**(Landlord)**

**AND**

**ESKIMO LOGISTICS GROUP LIMITED**

**(Tenant)**

---

**DEED OF LEASE  
(INDUSTRIAL)  
(ALL LAND AND BUILDING)**

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**DEED OF LEASE**

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DEED OF LEASE

DEED dated

May 14

2001

BETWEEN PERPETUAL TRUST LIMITED at Christchurch ("the Landlord")

AND ESKIMO LOGISTICS GROUP LIMITED at Christchurch ("the Tenant")

OPERATIVE PART

- 1 The Landlord leases to the Tenant, and the Tenant takes on lease, the premises described in Item 5 of the First Schedule.
- 2 The Landlord and the Tenant covenant and agree that the Lease between them is evidenced by this Deed and the several Schedules specified in Item 19 of the First Schedule and annexures to this Deed of Lease (all of which are incorporated in this Lease and are to be construed as part of this Lease).

SIGNED by PERPETUAL TRUST LIMITED as Landlord by 2 of its Directors: Authorised Signatories:

*[Handwritten signature]*

Signature of Director Authorised Signatory

*[Handwritten signature]*

Signature of Director Authorised Signatory

Paul Michael Bird

Name of Director Authorised Signatory

Witnessed by:  
*[Handwritten signature]*  
Manager  
Christchurch

SIGNED by

ESKIMO LOGISTICS GROUP LIMITED

as Tenant by 2 of its Directors:

*[Handwritten signature]*

Signature of Director

Jeremy Adrian Silva

Name of Director

Ian Taylor

Name of Director Authorised Signatory

Witnessed by:  
*[Handwritten signature]*  
Manager  
Christchurch

*[Handwritten signature]*

Signature of Director

John Derek of Guinness

Name of Director

*[Handwritten initials]*

**FIRST SCHEDULE****THE REFERENCE SCHEDULE AND SPECIAL PROVISIONS****ITEM 1: FULL NAME AND ADDRESS OF LANDLORD**

Perpetual Trust Limited  
 c/- AMP Asset Management (NZ) Limited  
 Level 5, City Tower  
 95 Customhouse Quay  
 Wellington

**ITEM 2: NAME AND ADDRESS OF TENANT**

Eskimo Logistics Group Limited  
 31 Orchard Road  
 Christchurch Airport  
 Christchurch

**ITEM 3: DESCRIPTION OF LAND**

An estate in fee simple in all that land containing 1.3630 hectares more or less being Lot 2 on Deposited Plan 198664 being all the land described in Certificate of Title 127C/413 North Auckland Registry

**ITEM 4: ADDRESS AND DESCRIPTION OF BUILDING**

The buildings, structures and improvements erected on the Land together with all buildings or improvements of every nature or kind now or during the term of this Lease erected on or placed on the Land.

**ITEM 5: DESCRIPTION OF PREMISES**

The Land and Building together with all of the Landlord's fixtures fittings and plant (including the items specified in Item 17 of this First Schedule) now or during the term of this Lease installed in or on the Premises.

See attached

**ITEM 6: TERM OF LEASE (Clause 2.1)**

Fifteen (15) years

**ITEM 7: DATE OF COMMENCEMENT OF LEASE (Clause 2.1)**

1 December 1999

**ITEM 8: DATE OF TERMINATION OF LEASE (Clause 2.1)**

30 November 2014

**ITEM 9: ANNUAL PREMISES RENT (Clause 3.1(a))**

\$1,241,323.44 plus GST

**ITEM 10: MONTHLY INSTALMENTS OF PREMISES RENT**

\$103,443.61 plus GST

**ITEM 11: TENANT'S PERCENTAGE OF OPERATING EXPENSES (Clause 3.1(b))**

100%

**ITEM 12: PREMISES RENT REVIEW DATE(S) (Clause 3.14)**

3 yearly from commencement date

**ITEM 13: AMOUNT OF PUBLIC RISK INSURANCE (Clause 6.3(a))**

\$5,000,000

**ITEM 14: PERMITTED USE OF PREMISES (Clauses 8.1 and 8.2)**

Coolstore and coldstore storage and operations, controlled atmosphere storage, blast freezing, dry goods storage and handling, transportation, freight forwarding, general logistics, and incidental and ancillary administration facilities.

**ITEM 15: FLOOR LOADINGS (Clause 8.4)**

Coldstore storage area:	45 kpa
Loading area	45 kpa
Office/amenities	2.5 kpa

**ITEM 16: IMPROVEMENTS PERCENTAGE (Clause 6.5)**

11.5%

**ITEM 17: INVENTORY OF LANDLORD'S PLANT, FIXTURES AND FITTINGS (Clause 5.1)**

Refer "Mt Wellington Coolstore Complex for Eskimo Group Limited" "Operations Manual and As Built Documents Register (December 1999)"

**ITEM 18: SPECIAL PROVISIONS****18.1 Limitation of Liability of Landlord**

The Tenant acknowledges that, in entering into this Lease, the Landlord is acting as the trustee of the AMP Property Fund and that any liability of the Landlord or arising under the Lease will at all times be limited to the assets of the AMP Property Fund under the administration of the Landlord from time to time.

**18.2 Right(s) of Renewal**

If there is no material and unremedied breach of this Lease by the Tenant, and the Tenant gives notice in writing to the Landlord at least six (6) months (time being strictly of the essence) before the end of the term of the Tenant's desire to take a renewed Lease of the Premises, then the Landlord will grant to the Tenant a renewal of the Lease for a further term or terms specified below as follows:

- (a) The initial rental payable under each renewed Lease will be agreed upon and failing agreement will be determined in accordance with clauses 3.14 to 3.23 of the Second Schedule (but will not in any circumstances be less than the annual Premises Rent payable at the commencement date of this Lease).

- (b) The rent payable under the renewed Lease will be subject to review during the renewed term on the rent review dates specified in Item 12 of this Schedule or, if no dates are specified, after the lapse of equivalent periods of time as are provided for during the initial term of this Lease for rent reviews.
- (c) The renewed Lease will otherwise be upon and subject to the covenants and agreements contained or implied in this Lease **EXCEPT THAT** the term of this Lease plus all further terms will expire on or before the final expiry date specified below.
- (d) Pending the determination of the rent payable under the renewed Lease, rent will be payable at the rate determined in accordance with clause 3.21 of the Second Schedule and, upon that determination, any necessary adjustments will be made in accordance with that clause.

**Number of further term(s):** One (1)  
**Length of further term(s):** Five (5) years (less one day)  
**Final expiry date:** 29 November 2019

**ITEM 19: SCHEDULES FORMING PART OF THIS LEASE**

**First Schedule:** Reference Schedule and Special Provisions  
**Second Schedule:** Covenants, Terms, Conditions and Provisions  
**Third Schedule:** Operating Expenses  
**Fourth Schedule:** Specific "Making Good" Requirements

**SECOND SCHEDULE****COVENANTS, TERMS, CONDITIONS AND PROVISIONS****SECTION 1: DEFINITIONS, INTERPRETATION AND EXCLUSIONS****Definitions and Interpretation**

1.1 In this Lease, unless a contrary intention appears:

- (a) Words importing the singular number will include the plural; the masculine gender will include the feminine and neuter; persons will include companies (and vice versa);
- (b) The Table of Contents and any headings and marginal notations in this Lease will not in any way limit or govern the construction of the terms of this Lease;
- (c) Any reference in this Lease to a "month" or "monthly" will mean respectively calendar month and calendar monthly;
- (d) Where the Landlord's consent or approval is required pursuant to any provision of this Lease, that consent or approval will be required for each separate occasion, notwithstanding any prior consent or approval obtained;
- (e) Except to the extent that this Lease expressly provides otherwise, any reference in this Lease to any service, facility, fixture or fitting provided by the Landlord will only apply to services, facilities, fixtures or fittings in the Premises at the commencement date, and will not be construed as imposing upon the Landlord an obligation to install or provide any such service, facility, fixture or fittings;
- (f) All provisions contained in this Lease will be construed to whatever extent as may be necessary to ensure that such provisions are not illegal, invalid or unenforceable. If any such provision, or part, cannot be so construed, it will be deemed to be void and severable and the remaining provisions of this Lease will not in any way be affected or impaired by that avoidance and severance;
- (g) "Authority" means each and every local body, government or other authority having jurisdiction or authority over or in respect of the Premises or the use thereof;
- (h) "Dry Goods Storage Rent" means the current market rent for the Premises on the notional basis that they are used for dry goods storage (being non-refrigerated goods storage) determined in accordance with clause 3.18 (a);
- (i) "GST" means Goods and Services Tax or any tax imposed pursuant to the provisions of the Goods and Services Tax Act 1985 or any amendments or substitution for that Act;
- (j) "MAF Standards" means all Ministry of Agriculture and Fisheries standards in respect of the Premises and any other standards or binding obligations in respect of the Premises which are applicable to the business use to be carried out from the Premises by the Tenant. MAF Standards shall not include any binding requirements or obligations with which the Tenant must comply in regard to the business processes or operations of the Tenant where such matters do not concern the physical Premises itself or any fixture or fitting in the Premises;
- (k) "Premises Rent", "rent" and "rental" means the annual Premises Rent as provided in Item 9 of the First Schedule, or as increased pursuant to any rent review;



- (l) "the Building" means the building structures and improvements described in Item 4 of the First Schedule together with the Landlord's plant, machinery, equipment, fixtures and fittings (and together with any extension or alterations subsequently made thereto);
- (m) "the Land" means the land described in Item 3 of the First Schedule;
- (n) "the Landlord" means, where appropriate, the successors, executors, administrators and permitted assigns of the Landlord and where not repugnant to the context includes the officers, employees, contractors and agents of the Landlord;
- (o) "the Landlord and/or persons under the control of the Landlord" means the Landlord and any other organisation under the control of the Landlord and over which the Landlord is exercising active management;
- (p) "the Operating Expenses" means the total sum of all the outgoings, costs and expenses in the Third Schedule;
- (q) "the Premises" described in Item 5 of the First Schedule will be deemed to include such floor coverings, curtains, blinds, ceilings, light fittings, air conditioning and other equipment provided by the Landlord from time to time to service the Premises (including alterations and additions to those services carried out by the Landlord at the request of the Tenant) together also with the fixtures and fittings described in Item 17 of the First Schedule (if any);
- (r) "the Tenant" means where appropriate the executors, administrators and permitted assigns of the Tenant, and where not repugnant to the context includes the officers, employees, contractors and agents of the Tenant;
- (s) "the Tenant and/or persons under the control of the Tenant" means the Tenant and any other organisation under the control of the Tenant and over which the Tenant is exercising active management;
- (t) "Valuer" means a fully registered member of the New Zealand Institute of Valuers who is competent to practise as a valuer of premises similar to the Premises and also has had at least two (2) years experience in valuing such premises and who is active in the market at the time of his or her appointment;
- (u) "working day" means any day of the week other than:
  - (i) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day, New Years Day, 2 January, New Zealand's anniversary day and the provincial anniversary days observed in Auckland and Wellington; and
  - (ii) a working day shall be deemed to commence at 9.00am and to terminate at 5.00pm.

### **Exclusion of Statutory Provisions**

- 1.2 Such of the provisions of the Property Law Act 1952 as are inconsistent with or contradictory to this Lease will not be implied in this Lease and are (unless prohibited by statute) expressly negated or modified to the extent of such inconsistency but not further or otherwise.

## **SECTION 2: TERM**

### **Term of Lease**

- 2.1 The term of this Lease will commence on the commencement date set out in Item 7 of the First Schedule and will expire at midnight on the termination date set out in Item 8 of the First Schedule.

### Monthly Tenancy

- 2.2 If the Landlord permits the Tenant to continue to occupy the Premises beyond the expiration of the term of this Lease (otherwise than pursuant to the grant of a further lease), the Tenant will do so as a monthly tenant only at the rental then payable. The rental is to be payable monthly in advance - the first of those monthly payments to be made on the day following the date of expiration, together with a one-twelfth proportion of the Tenant's annual contribution to the Operating Expenses not payable by the Tenant direct (and the Landlord shall promptly provide an invoice for the same).
- 2.3 The tenancy so created may be determinable at any time by either party by one (1) month's notice in writing, but otherwise the tenancy will continue on the same terms and conditions (so far as applicable to a monthly tenancy) as are contained in this Lease.

### SECTION 3: RENT, TENANT'S CONTRIBUTION TO OPERATING EXPENSES, AND PREMISES RENT REVIEW

#### Payments by Tenant

- 3.1 The Tenant will duly and punctually pay to the Landlord during the term of this Lease:
- (a) the Premises Rent at the rate specified in Item 9 of the First Schedule or, where increased in accordance with the express provisions of this Lease, at the increased rate;
  - (b) the Operating Expenses for the Premises; and
  - (c) any other moneys required to be paid by the Tenant to the Landlord under this Lease.
- 3.2 The Tenant will pay to the Landlord when due (or otherwise immediately upon demand) all GST payable in respect of any payments made or payable by the Tenant under this Lease (including the payment of rent) or paid or payable by the Landlord on behalf of the Tenant and any penalties or other sums arising by reason of any failure by the Tenant to make such payments.
- 3.3 The Landlord may require that the name of the Tenant be placed on the Rating Roll as occupier of the Premises and the Tenant will duly and punctually pay all rates so assessed against the Tenant in respect of the Premises.

#### Payment of Utility Charges by Tenant

- 3.4 The Tenant will duly and punctually pay to the proper Authorities all charges for water, electricity, gas, telephone and all utility and other services payable in respect of the Premises or used in the Premises by the Tenant. If the Tenant defaults in payment of those charges, the Landlord may pay them and immediately recover the amount paid as if it were rent in arrears payable by the Tenant.

#### Manner of Payment of Rent and Contribution to Operating Expenses

- 3.5 The Tenant will pay the rent by equal monthly instalments in advance on the first day of each month (and proportionately for any part of a month) - the first instalment to be paid on the commencement date of the Lease.
- 3.6 The Tenant shall pay the Operating Expenses or other monies required to be paid by the Tenant to the Landlord or as directed by the Landlord on or before the 20th day of the month following receipt of an invoice for the same from the Landlord. The Landlord shall at all times act reasonably and prudently where any Operating Expenses originate from any agreement or

arrangement entered into by or on behalf of the Landlord such that the Operating Expenses are fair and reasonable in the circumstances.

- 3.7 All payments of rent will be paid without demand from the Landlord and (subject to clauses 3.9 to 3.13) without any deduction or set-off whatever.
- 3.8 Unless and until the Landlord otherwise directs the Tenant in writing, the Tenant will pay the monthly instalment of rent as the Landlord may from time to time direct and, if required by the Landlord, by a single order to the Landlord's nominated Bank account and the Tenant will immediately execute a new order or new orders (as the case may be) following the periodic review of the rent.

#### **Tenant's Right of Set-off**

- 3.9 In the event that default is made by the Landlord in the due and punctual performance of any of its obligations in this Lease, and as a result of the default the Premises or the Tenant's operation of the business from the Premises may fail to comply with any MAF Standards, then the Tenant shall give written notice to the Landlord detailing the default.
- 3.10 If the obligation is urgently required to be undertaken in order to comply with any of the MAF Standards then the Landlord must commence works to remedy the default within five (5) working days or such other shorter notice period as the Tenant's notice may specify as is reasonable in the circumstances. In all other cases the Landlord must commence works to remedy the default within two (2) months of receipt of the Tenant's notice.
- 3.11 If the Landlord has not prior to the expiry of the relevant time period in clause 3.10 commenced works to remedy the default then without prejudice to the Tenant's other rights and remedies expressed or implied the Tenant may (but without imposing an obligation to do so) execute and complete such obligations.
- 3.12 All works and actions carried out by the Tenant pursuant to clause 3.11 are to be carried out in a reasonable manner having regard to the nature of the obligations concerned, and all works are to be completed in a proper and workmanlike manner.
- 3.13 Any monies expended by the Tenant in executing such works or actions or carrying out such obligations shall be payable by the Landlord to the Tenant on demand. In the event the Landlord fails to pay such monies within twenty (20) working days from the date the Landlord receives such demand from the Tenant, then notwithstanding any other provision in this Lease the Tenant shall have the right to set off against rental payments any such monies expended without further demand being made on the Landlord.

#### **Premises Rent Reviews**

- 3.14 (a) At any time not earlier than four (4) months prior to each successive date stated in Item 12 of the First Schedule (each of those dates being called a "Review Date") the Landlord will give notice in writing to the Tenant ("the Landlord's Rent Review Notice") of the Landlord's assessment of the current market Premises Rent to apply from that particular Review Date together with details as to how the current market Premises Rent has been determined.
- (b) If the Tenant does not agree with the Landlord's assessment in the Landlord's Rent Review Notice, the Tenant will notify the Landlord in writing ("the Tenant's Notice") within twenty eight (28) days of the date on which the Tenant is deemed to have received the Landlord's Rent Review Notice in terms of clause 11.3 (in which respect time will be of the essence) that the Tenant requires the Premises Rent to be determined in accordance with clauses 3.16 to 3.23 and the Tenant's Notice must include the amount which the Tenant considers to be the current market Premises Rent as at the particular Review Date.

- (c) Unless the Tenant's Notice (including the amount which the Tenant considers to be the current market Premises Rent) is received by the Landlord within that twenty eight (28) day period, then the amount stated in the Landlord's Rent Review Notice will become the Premises Rent reserved by this Lease as and from that particular Review Date.
- (d) The Landlord will not by reason of its failure to give notice of its assessment of the current market Premises Rent prior to the Review Date forfeit its right to have the Premises Rent reviewed as from that particular Review Date. The reviewed Premises Rent will date back to, and be payable from, that particular Review Date and any receipt for the payment of Premises Rent due on or after a particular Review Date will not prejudice the Landlord's right to demand any additional Premises Rent payable by the Tenant.
- 3.15 (a) If the Landlord has not given the Landlord's Rent Review Notice before the expiry of three (3) months after the applicable Review Date, then the Tenant shall be entitled to give notice in writing ("the Tenant's Rent Review Notice") to the Landlord of the Tenant's assessment of the current market Premises Rent to apply from that particular Review Date together with details as to how the current market Premises Rent has been determined.
- (b) If the Landlord does not agree with the Tenant's assessment in the Tenant's Rent Review Notice, the Landlord will notify the Tenant in writing ("the Landlord's Notice") within twenty eight (28) days of the date on which the Landlord is deemed to have received the Tenant's Rent Review Notice in terms of clause 11.3 (in which respect time will be of the essence) that the Landlord requires the Premises Rent to be determined in accordance with clauses 3.16 to 3.23 and the Landlord's Notice must include the amount which the Landlord considers to be the current market Premises Rent as at the particular Review Date.
- (c) Unless the Landlord's Notice (including the amount which the Landlord considers to be the current market Premises Rent) is received by the Tenant within that twenty eight (28) day period, then the amount stated in the Tenant's Rent Review Notice will become the Premises Rent reserved by this Lease as and from that particular Review Date.
- 3.16 Where the Tenant gives the Tenant's Notice disputing the Landlord's assessment or the Landlord gives the Landlord's Notice disputing the Tenant's assessment, the Landlord and the Tenant will enter into negotiations to resolve the dispute. Should agreement not be reached within fourteen (14) days (or whatever longer period as the Landlord and the Tenant may agree upon) after the date of the Tenant's Notice or the Landlord's Notice, then:
- (a) The Landlord and the Tenant will, within twenty one (21) days of the Tenant's Notice or the Landlord's Notice each appoint a Valuer to jointly determine the current market Premises Rent.
- (b) If either the Landlord or the Tenant fails to so appoint a Valuer within that twenty one (21) day period, then the determination of the current market Premises Rent will be made by the sole Valuer as nominated by the other party within one (1) further month of the expiry of that twenty one (21) day period and that Valuer's determination will be final and binding on both parties as if the Valuer's appointment had been by consent.
- (c) Before proceeding with their determination, those Valuers will agree upon and appoint an umpire (also being a Valuer). If those Valuers either fail to appoint such an umpire, or are unable to agree upon such an umpire, within fourteen (14) days of the date of their appointment, then either the Landlord or the Tenant may request the President for the time being of the New Zealand Institute of Valuers to appoint such an umpire.
- (d) The Valuers so nominated will, within one (1) month of the date of their appointment, jointly determine the current market Premises Rent as at that particular Review Date.
- (e) If either Valuer fails to provide to the other Valuer his or her written assessment of the current market Premises Rent within one (1) month of the date of their appointment, then

the current market Premises Rent will be determined by the other Valuer and his or her determination will be final and binding on the parties.

- (f) If the Valuers are unable to agree upon a determination within one (1) month of their appointment (or within whatever extended time as the Landlord and the Tenant may agree upon), then the current market Premises Rent will be determined by the umpire, whose determination will be final and binding on the parties. The umpire will have due regard to any evidence submitted by the Valuers as to their assessment of the current market Premises Rent. The umpire will give his or her determination and the reasons for it in writing.

3.17 In determining the current market Premises Rent, the Valuers or umpire will:

- (a) be deemed to be acting as expert(s) and not as arbitrator(s);
- (b) disregard:
  - (i) the value of any goodwill attributable to the Tenant's business and the value of the Tenant's fixtures and fittings in the Premises;
  - (ii) any interest in the Premises created by this Lease;
  - (iii) any deleterious condition of the Premises, if that condition results from any breach of any term of this Lease by the Tenant;
  - (iv) any rent abatement, allowance for fitout or any such allowance or payment made by the Landlord to the Tenant by or at the commencement of, or during the term of, this Lease;
- (c) have regard to the terms and conditions of this Lease and, in particular, to the period of time until the next Review Date and to the Tenant's obligations to pay a contribution to the Operating Expenses **EXCEPT THAT** in determining the current market Premises Rent the Valuers or umpire will not take into account or make any allowance for any deduction or discount for any increases in contribution to the Operating Expenses payable by the Tenant between the date on which the Premises Rent is being reviewed or fixed (as the case may be) and the next following Review Date or the date of termination of this Lease (as the case may be);
- (d) have regard to comparable coldstore market rentals;
- (e) take into account on the first rent review that the Premises Rent payable from the commencement date is based on a return on the cost of the Building (which includes a development margin), and that such initial Premises Rent will still form part of the market evidence to be taken into account by the Valuer or umpire in assessing the current market Premises Rent;
- (f) assume that all covenants on the part of the Tenant and the Landlord contained in this Lease have been fully performed and observed; and
- (g) take into account the general condition of the Building other than any deleterious condition caused by the Tenant.

3.18 If there is insufficient comparable coldstore market rental data then:

- (a) the Valuers or umpire shall notionally regard the Premises as a dry goods storage facility for the purposes of rent review, and determine the current market rent for the Premises on that basis. To achieve that result the Valuers or umpire will observe the provisions set out in clause 3.17(b), (c), (f) and (g) and have regard to rentals of

comparable dry goods storage facilities of a similar size, age, stud height and quality as the Premises;

- (b) once the Dry Goods Storage Rent has been determined, the new Premises Rent shall be arrived at by applying the following formula:

$$A = B_1 + C \left[ \left( \frac{B_1 - B_0}{B_0} \right) + 1 \right]$$

Where

A = the new Premises Rent as at the review date;

B<sub>0</sub> = the Dry Goods Storage Rent payable by the Lessee immediately prior to the review date, provided that where the Premises Rent prior to the review date was not determined using the process set out in this clause 3.18, the Valuers or umpire will also determine what the Dry Goods Storage Rent would have been at the previous review date;

B<sub>1</sub> = the Dry Goods Storage Rent as at the review date;

C = \$559,337.07 or the amount which on the previous rent review was the difference between the Dry Goods Storage Rent and the Premises Rent as at that review date.

- (c) Should the rental as arrived at under clause 3.18 (a) and (b) not fall within the broad parameters of rentals for similar size, age, stud height and quality premises when compared on a coldstore cubic capacity basis then the new Premises Rent shall be adjusted to come within the said broader parameters for such similar premises but the adjustment shall be the minimum adjustment necessary to bring the new Premises Rent within those parameters.

- 3.19 Each party will be responsible for the cost of its own appointed Valuer provided that where the determination is made by a single Valuer pursuant to subclause 3.16(e), the cost of his or her determination will be apportioned equally as between the Landlord and Tenant. The Landlord and the Tenant will equally share the costs of the umpire - unless any party has acted capriciously or unreasonably in any of the proceedings, in which case the umpire may determine the manner in which those costs will be apportioned between the Landlord and the Tenant.
- 3.20 Notwithstanding the provisions of clauses 3.14 to 3.18 inclusive, the Premises Rent payable by the Tenant following the Review Date will not in any circumstances be less than the annual Premises Rent payable at the commencement date of this Lease.
- 3.21 Any variation in the Premises Rent resulting from such determination will take effect on and from that particular Review Date. Where a review of the Premises Rent is completed after the relevant Review Date, then the Tenant shall pay the rent specified in the Landlord's Rent Review Notice provided that the rent is substantiated by a registered valuer's report, or the rent specified in the Tenant's Rent Review Notice in the event that the Landlord's Rent Review Notice has not been given. Upon determination of the new rent an appropriate adjustment will be made.
- 3.22 If any moratorium or other law, act or regulation that applies to this Lease has the effect of postponing any review of the Premises Rent then, that review will (if legally permitted) take place as at the date that that moratorium is lifted or that law, act or regulation is repealed or amended.

- 3.23 Immediately upon agreement or determination of any altered Premises Rent the Tenant will enter into a rent review deed in the Landlord's usual form to be prepared by the Landlord. Any stamp duty liable to be paid in respect of the new Premises Rent will be paid by the Tenant.

#### SECTION 4: ASSIGNMENT/SUBLETTING

##### Control of Subletting and Assignment

- 4.1 The Tenant will not assign or transfer this Lease or the interest of the Tenant under this Lease or sub-let all or any part of the Premises or otherwise deal with or part with possession of the Premises or any part or parts of the Premises or this Lease, or any estate or interest in the Premises or this Lease, without first obtaining the written consent of the Landlord - which consent will not be unreasonably withheld and will only become effective, if:
- (a) the Tenant is not at the time of applying for that consent or thereafter in a material and unremedied default in the due and punctual observance or performance of the Tenant's covenants in this Lease;
  - (b) the Tenant proves to the satisfaction of the Landlord that the proposed assignee, transferee or sub-lessee ("the ingoing tenant") is a respectable, responsible, solvent person or company of high financial standing, and able to meet its obligations under this Lease;
  - (c) the Tenant pays the Landlord's reasonable costs and expenses incidental to enquiries as to the responsibility, solvency, fitness and suitability of the ingoing tenant (whether or not the proposed assignment or sublease proceeds to completion), including the Landlord's administrative and other expenses and legal costs incidental to the giving of its consent;
  - (d) in the case of a sublease, the Tenant proves to the satisfaction of the Landlord (by valuation or valuations, if so required) that the rent payable by the proposed sub-lessee under the proposed sublease is at a rate not less than the then current market rate of rent for the Premises provided that this clause 4.1(d) shall not apply if the deed of sublease records that the rental payable is less than the current market rent for the Premises;
  - (e) in the case of a transfer or assignment, the Tenant procures the execution by the ingoing tenant of covenants in favour of the Landlord in a form satisfactory to the Landlord in all respects;
  - (f) the Tenant and the ingoing tenant comply with the Landlord's requirements in relation to the documentation, stamping and registration (if necessary) of the intended transfer, assignment or sublease at the cost in all things of the Tenant;
  - (g) in the case of a transfer or assignment, the Tenant provides in favour of the Landlord any guarantees of the obligations and covenants of the ingoing tenant (including where the ingoing tenant is a company, the guarantees of the directors and/or controlling shareholders of that company) as may be reasonably required by the Landlord, in a form acceptable to the Landlord; and
  - (h) in the case of a sublease, the sublease absolutely prohibits any further subletting in whole or in part; limits any proposed assignment of the sublease to an assignment of the sublease of all the premises demised under the sublease (and not part only); provides that any such proposed assignment will be subject to the prior written consent of the Landlord; and provides that if a receiver or statutory manager or liquidator is appointed to the Tenant as sub-lessor, then the sublease rental will be paid by the sub-lessee directly to the Landlord as head lessor.
- 4.2 If the Tenant is a company, any change or rearrangement in the beneficial ownership of the principal shareholding of the Tenant or its holding company (if any) whereby there is a change in the effective management or control of the Tenant, or any alteration in the Constitution of the

Tenant altering the effective management or control of the Tenant will be deemed a proposed assignment of this Lease and will require the consent of the Landlord.

- 4.3 A public float of the Tenant in which no one entity has effective control of the Tenant other than its existing major shareholder shall not be an assignment requiring the consent of the Landlord.
- 4.4 Any assignment or underletting of the interest of the Tenant within the meaning of Section 109(2) of the Property Law Act 1952 will be deemed to be a breach of the provisions of this Section 4.

## SECTION 5: MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

### Tenant to Keep Premises and Fixtures in Good Repair

- 5.1 The Tenant will keep the interior and the exterior of the Premises (including all yards, carpark, paved or sealed areas, structures and improvements and all gardens and vegetation on the Land), and all of the Landlord's plant, equipment, machinery fixtures and fittings (including any carpets, curtains or blinds) installed or provided by the Landlord (including the fixtures and fittings described in Item 17 in the First Schedule) in good and substantial repair and condition and at the expiry or sooner determination of this Lease will yield them up in good repair and, without limiting the generality of this provision and in addition to the Tenant's obligations under clause 5.5, will carry out and complete, at its own cost and in a proper tradesmanlike manner, the work specified in the Fourth Schedule.
- 5.2 The obligations of the Tenant stated in clause 5.1 do not include (except to the extent set out in clauses 5.5 and 5.7) responsibility for:
- (a) fair wear and tear and any damage caused by flood, fire, earthquake, fire resulting from earthquake, storm, tempest, Act of God or damage caused by aircraft;
  - (b) any structural maintenance, replacement or repair, except where it is rendered necessary by any act, neglect, default, conduct or omission of the Tenant and/or persons under the control of the Tenant, provided that the Tenant shall not be liable for any structural maintenance, replacement or repair which has resulted from fair wear and tear. Minor repairs to the roof of the Building and all repairs necessary to keep the Building waterproof (other than repairs to the roof of the office) are agreed to be a structural repair;
  - (c) any painting or other treatment, as previously treated, of all exterior surfaces of the Premises except where it is rendered necessary by any act, neglect, default, conduct or omission of the Tenant and/or persons under the control of the Tenant; and
  - (d) any repair or maintenance which is an obligation of the Landlord under this Lease.

The Tenant shall not be required to carry out any of its maintenance obligations hereunder if that maintenance is brought about by a failure by the Landlord to carry out its own maintenance obligations provided for in this Lease and the Tenant has given notice to the Landlord of the Landlord's failure to comply with such obligations.

- 5.3 The Tenant acknowledges that the Premises were in good and substantial repair and condition at the commencement of the term of this Lease **EXCEPT THAT**, in the case of the fixtures and fittings described in Item 17 of the First Schedule, those fixtures and fittings were in the state of repair and condition as specified in that Item.

### Replacement of Plant and Machinery by Landlord

- 5.4 In the event the Landlord, acting reasonably, determines that any item of refrigeration or other plant or machinery in the Premises which has been properly maintained by the Tenant shall suffer damage or is otherwise required to be replaced or renewed at a cost in excess of twenty

thousand dollars (\$20,000.00) (adjusted as set out below) plus GST, then the Landlord will replace the item, or repair or renew the item to "as new" condition at the Landlord's cost. The sum of twenty thousand dollars (\$20,000.00) shall be adjusted from the commencement date of this Lease by the corresponding change in the Consumers Price Index. For the purpose of this clause "item" shall mean an individual piece of machinery or plant, or a group of such pieces or components which are commonly regarded as an individual or separate integral unit of machinery.

### **Redecoration**

5.5 In addition to the Tenant's obligations under clause 5.1, the Tenant will attend to the maintenance and redecoration of the Premises to the reasonable satisfaction of the Landlord as and when reasonably required by the Landlord and on the termination date specified in Item 8 of the First Schedule. The term "redecorate" shall mean the washing down of the whole of the interior of the Premises (including all partitions or additions), the replacing of all carpet and floor tiles which, in the reasonable opinion of the Landlord, are worn or damaged and in need of replacement, the maintenance and marking of carparking areas and the treatment, as previously treated, of all interior surfaces by touch up painting, staining, papering, polishing or otherwise, in each case to a reasonable specification approved by the Landlord.

### **Tenant's Further Maintenance/Repair Obligation**

5.6 The Tenant will, at the Tenant's expense:

- (a) give to the Landlord oral notice, followed by notice in writing, of any damage, or defect in or to the Premises or in or to any of the Landlord's plant equipment and machinery, or services within or around the Premises or any circumstances likely to cause any damage or injury within the Building or the Premises immediately the Tenant becomes aware of that damage, defect or circumstances occurring provided that the Tenant shall not be required to give notice if in the reasonable opinion of the Tenant the damage or defect is not significant or is immaterial;
- (b) immediately make good, to the reasonable satisfaction of the Landlord, any damage to any part of the Premises caused by the Tenant and/or persons under the control of the Tenant;
- (c) replace all damaged or non-operative light bulbs, globes and tubes in the Premises;
- (d) repair or, where appropriate, replace heating, lighting, electrical or plumbing facilities installed in or on the Premises and broken or damaged by the Tenant and/or persons under the control of the Tenant using materials of the same specifications and quality as the broken or damaged items;
- (e) keep and maintain the Land and any carpark pavings and other sealed or surfaced areas and any grounds and yards in good clean order and repair; and
- (f) keep and maintain the storm and waste water drainage systems (including downpipes and guttering) on the Premises clear and unobstructed.

### **Cleaning of Premises by Tenant**

5.7 The Tenant will, at the expense of the Tenant:

- (a) keep the Premises (including interior and exterior surfaces and windows) clean and free from dirt and rubbish and will ensure that all routine waste is placed daily in suitable receptacles and any excess waste and rubbish is removed from the Premises;
- (b) take any steps necessary to control any pest infestation occurring in or emanating from within the Premises and, if required by the Landlord, engage a pest exterminator approved by the Landlord; and

- (c) clean the exterior of the building on a six-monthly cycle, or as recommended by the manufacturer, and in keeping with the requirements as laid down under the product warranty.

#### **Alterations or Additions to Premises by Tenant**

- 5.8 The Tenant will not injure, cut or maim any of the floors, walls, ceilings or partitions of the Premises or make, nor permit to be made, any alterations to the external appearance of the Premises or erect any new or further structure on the Land, nor conduct earthworks nor make alterations or additions to the Premises, nor install or alter any partitioning, equipment, fitting, fixture or machinery likely to affect any part of the Premises or any system servicing the Premises, without the Landlord's prior written approval (such approval not to be unreasonably or arbitrarily withheld) and:
- (a) In seeking the Landlord's approval the Tenant will submit plans and specifications of the proposed works, and a detailed proposal and time table for the works.
- (b) The Landlord may impose reasonable conditions on the Tenant's works, including (without limitation):
- (i) conditions necessary to ensure that any such work is carried out properly and safely with minimum inconvenience to the Landlord and to any occupiers of neighbouring properties or other persons and in accordance with the Landlord's requirements. The Landlord will be entitled to call for a halt to all work until the Landlord is satisfied that the terms and conditions of its approval will be complied with at all times; and
- (ii) payment by the Tenant of all reasonable costs and liabilities incurred by the Landlord in considering the proposed works and their supervision, including the fees of architects or other consultants employed by the Landlord, and as may be incurred by the Landlord as a result of any such alterations or additions.
- (c) The Tenant shall:
- (i) obtain from every competent Authority all necessary approvals or consents necessary to enable the Tenant's works to be lawfully effected and shall produce for inspection to the Landlord copies of all those approvals and consents from each such Authority;
- (ii) at all times, strictly comply with those provisions of the Building Act 1991 which relate to building work carried out by or on behalf of the Tenant in the Tenant's capacity as an owner for the purposes of that Act; and
- (iii) upon completion of the Tenant's works, produce to the Landlord any certificates of compliance issued by any such competent Authority.

The parties acknowledge that the erection of movable racking in the Premises does not require the prior written approval of the Landlord pursuant to this clause.

#### **Removal of Fixtures by Tenant on Termination**

- 5.9 Without limitation to the general obligation of the Tenant to "make good" under this Lease, the Tenant will (if required so to do by the Landlord) at or prior to the expiration of the term of this Lease or within a reasonable time after the expiry or any earlier determination of the term, remove all plant, equipment, machinery, fixtures and fittings, partitions, alterations or additions (except those owned by the Landlord) (in these clauses 5.9 and 5.10 called "Tenants Fixtures") and make good damage to the Premises caused by that removal.
- 5.10 If the Tenant does not complete that removal and making good in accordance with clause 5.9, then the Landlord may remove and store and/or discard those Tenant's Fixtures which the Tenant

has failed to remove and the Tenant undertakes to pay on demand all costs and expenses incurred by the Landlord in doing so. The Landlord may alternatively give written notice to the Tenant requiring the Tenant to effect that removal within thirty (30) days from the date on which the Tenant is deemed to have received that notice in terms of clause 11.3, and, where the Tenant fails to comply with that notice, those Tenant's Fixtures will, at the expiration of that thirty (30) day period, become the property of the Landlord and no compensation for them will be payable by the Landlord to the Tenant. The Tenant undertakes to pay, on demand, all costs and expenses incurred by the Landlord in exercising any of its rights under this clause 5.10.

#### **Entry by the Landlord to View and Effect Repairs and Alterations**

5.11 The Landlord will have the right to enter upon the Premises, with all necessary materials and equipment, at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) to enter and view the state of repair of the Premises and to ascertain whether or not there has been any breach of this Lease;
- (b) to carry out repairs or other works to the Land or the Building or the Premises or to the services or to any adjacent land or building;
- (c) to carry out any work required to remedy a defect which is the Tenant's duty to repair;
- (d) for the purpose of complying with the terms of any present or future legislation affecting the Land or the Premises or the Building or of any notice of any competent Authority for which the Tenant is not responsible under this Lease; and
- (e) in the event of the Building being either damaged or partially destroyed, for the purpose of rebuilding or restoration

**PROVIDED THAT** the Landlord will use its best endeavours to minimise any disturbance caused to the Tenant in the occupation and use of the Premises by the Tenant.

#### **Landlord's Right to Reimbursement for Works**

5.12 If the Tenant fails to comply with any redecoration or "make good" obligation or other works required under this Section 5 by any required date, the Landlord will give written notice to the Tenant that, unless that redecoration or work is completed by the Tenant within a specified but reasonable time, then the Landlord may undertake the redecoration or work at the Tenant's expense and the Tenant will reimburse the Landlord, upon demand, for all moneys so expended by the Landlord.

### **SECTION 6: INSURANCES AND INDEMNITIES**

#### **Landlord to Insure Building**

6.1 The Landlord will at all times during the term of this Lease keep and maintain the Building insured to its full replacement value against destruction or damage by fire and earthquake and may recover the cost of the premium payable in respect of that insurance from the Tenant. The Landlord may also, at its sole discretion, take out public liability and loss of rents insurance with respect to the Premises. The Landlord shall provide a copy of all insurance policies relating to the Building at the commencement date to the Tenant and a copy of any changes to the terms of the policies where such changes effect the Tenant's operation of the permitted use of the Premises or the Tenant's compliance with clause 6.4. The terms of all policies (and changes thereto) shall at all times permit the Tenant to carry out the principal components of the permitted use of the Premises in a reasonable and prudent manner whilst exercising appropriate care and judgement.

- 6.2 The Landlord shall not unreasonably vary the terms of any insurance policy whereby the premium payable by the Tenant is increased without the prior written consent of the Tenant (which consent shall not be unreasonably or arbitrarily withheld). This clause 6.2 shall not apply at any time whilst Perpetual Trust Limited is the Landlord hereunder.

#### **Public Risk, Glass and Fittings Insurance by Tenant**

- 6.3 The Tenant will keep current:
- (a) a policy of public risk insurance for not less than the amount stated in Item 13 of the First Schedule for any one single accident or event or such higher amount as the Landlord may from time to time reasonably require;
  - (b) policies for the full insurable value (on a replacement basis) against all insurable risks in respect of all glass (including plate glass) in or about the Premises, all additions to the Premises carried out by the Tenant and all the Tenant's Fixtures (as defined in clause 5.9); and
  - (c) policies in respect of any risk of contamination to the Premises arising from the use or the manner of use of the Premises by the Tenant,

each such policy to be effected in the names of the Tenant and the Landlord for their respective rights and interests with an insurance company approved by the Landlord. The Tenant will, if so requested by the Landlord, provide the Landlord with copies of those policies from time to time with a certificate of currency for those policies.

#### **Tenant Not to Prejudice Landlord's Insurance or Premium Rate**

- 6.4 The Tenant and/or persons under the control of the Tenant must not do or permit to be done anything upon the Premises (excluding the principal components of the permitted use of the Premises set out in Item 14 of the First Schedule carried out in a reasonable and prudent manner whilst exercising appropriate care and judgement) whereby any insurance effected by the Landlord or by the Tenant may be rendered void or voidable or (except with the Landlord's prior written approval) whereby the premium payable on any such insurance will be liable to increase **AND** the Tenant will, as and when required by the Landlord, pay all extra premiums payable by the Landlord on account of extra risk caused by the use to which the Premises are put or permitted to be put by the Tenant. The Tenant will not be liable for any breach of this clause where the breach is of a change to the terms of any policy and (notwithstanding clause 6.1) a copy of that change has not been provided by the Landlord to the Tenant.

#### **Compliance with Legal Requirements**

- 6.5 The Tenant shall at all times comply with:
- (a) all obligations, restrictions and requirements imposed by or arising in consequence of any statutes, regulations, by-laws, plans and rules in force for the time being (including the obtaining of all consents, authorisations, approvals, certificates of compliance, permits and code compliance certificates required by law); and
  - (b) the requirements which may be made, or notices or orders which may be given, by any Authority, effecting or relating to the enjoyment, use or occupation of the Premises from time to time or any fixtures, fittings or equipment installed in the Premises; and
  - (c) the Landlord's reasonable requirements in relation to such matters, provided that the Tenant shall not be liable for any structural repairs or alterations to the Premises.
- 6.6 If the Landlord is obliged by any such legislation or requirement to expend money on any improvement, addition or alteration to the Premises or to any systems or features provided in or to the Premises then until the next following Rent Review Date or the expiry of the term

(whichever is the earlier) the Landlord shall be entitled to charge an annual sum in addition to the annual Premises Rent equal to the improvements percentage set out in Item 16 of the First Schedule of the amount so expended and instalments of the monthly Premises Rent shall increase accordingly from the next payment date after completion of such works. If the Landlord would be obliged to expend an unreasonable amount then a course or programme will be agreed to by the parties and in the event that the parties fail to agree or if there is any dispute as to whether or not the amount is unreasonable then the issue shall be resolved in accordance with clause 11.5.

#### **Tenant to Occupy Premises at its Risk**

6.7 The Tenant agrees to occupy and use the Premises at the Tenant's risk.

#### **Indemnity by Tenant**

6.8 The Tenant will indemnify the Landlord from and against all damage, liability or loss for which the Landlord is or may be or becomes liable, and all notices, orders and requisitions imposing obligations on the Landlord to carry out any rectification, remedial or other work arising from any act or omission on the part of the Tenant and/or persons under the control of the Tenant.

#### **Indemnity by Landlord**

6.9 The Landlord will indemnify the Tenant from and against all damage, liability or loss for which the Tenant is or may be or becomes liable, and all notices, orders and requisitions imposing obligations on the Tenant to carry out any rectification, remedial or other work arising from any act or omission on the part of the Landlord and/or persons under the control of the Landlord.

#### **Prior Representations**

6.10 Subject to any other provision of this Lease to the contrary, this Lease comprises the whole of the agreement between the parties at the commencement date of this Lease in regard to the terms and conditions on which the Premises are leased (notwithstanding any negotiations or discussions prior to the execution of this Lease or anything contained in any brochure, report or other document prepared by or on behalf of the Landlord) and the parties expressly agree and declare that no further or other covenants, agreements, provisions or terms in respect of the leasing arrangements between the parties will be deemed to be implied in this Lease or to arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking on or prior to the execution of this Lease.

### **SECTION 7: DAMAGE OR DESTRUCTION OF PREMISES**

#### **Partial Destruction**

7.1 Subject to the following provisions of this Section 7, if the Building or any part of the Building, is damaged or partially destroyed (but so that it may be repaired and reinstated without having to be wholly rebuilt), then provided the Landlord is not prevented by any act, ordinance, regulation or by-law then in force from doing so and if any policy or policies of insurance effected on the Building has not been vitiated or payment of the policy moneys refused as a result of some act or default of the Tenant, then the Landlord will, with all convenient speed, repair and reinstate the Building (but only to the extent of the insurance moneys actually received by the Landlord together with the excess associated with the replacement policy). Pending that reinstatement, a fair and just proportion of the rent according to the damage sustained will, as from the date of the damage or partial destruction, be suspended until the Building has been repaired and reinstated.

#### **Total Destruction**

7.2 If the Building is totally destroyed or so damaged as to be rendered totally untenable or unfit for use or if the Building is totally destroyed or if any part or parts of the Building is substantially unfit for use and repair, rebuilding or reinstatement is impracticable or undesirable in the

reasonable opinion of the Landlord, then this Lease and its term will terminate as from the date of that destruction or damage, but without releasing the Tenant from liability for rent and other moneys up to that date or for any previous breach of the provisions of this Lease. If at the time that the Lease is terminated there was eight (8) years or more of the term (including renewals) of the lease to run, then provided the Landlord is not prevented by any act, ordinance, regulation or by-law then in force from doing so and if any policy or policies of insurance effected on the Building has not been vitiated or payment of the policy moneys refused as a result of some act or default of the Tenant, and the Tenant has given written notice to the Landlord requesting the same within one (1) month of the date of termination, then the Landlord will, with all convenient speed, repair and reinstate the Building (but only to the extent of the insurance moneys actually received by the Landlord together with the excess associated with the replacement policy), and the Tenant will enter into a new lease on the same terms and conditions as are contained in this Lease (except term) from completion of the Building for a term of not less than eight (8) years.

#### **Premises to be Vacated**

- 7.3 If the Building or any part of the Premises is damaged by any cause as to render it impracticable for the Landlord to repair or reinstate without obtaining sole possession of all or part of the Premises, the Landlord may, upon the expiry of one (1) month's written notice, take possession of the Premises or such part for whatever period as may be necessary for the purpose of that repair or reinstatement. The Tenant will not be entitled to any compensation or damages for any inconvenience or loss to the Tenant thereby occasioned and the rent (or part of the rent as the case may be) will be suspended for whatever period as the Tenant does not have possession of the Premises or that part. This provision will be paramount to any clause or provision contained in this Lease which may be inconsistent with it.

### **SECTION 8: USE OF PREMISES**

#### **Use to Which Premises May be Put by Tenant**

- 8.1 The Tenant covenants that it is an essential term of this Lease that the Tenant will use the Premises for the sole purpose of conducting the business stated in Item 14 of the First Schedule and shall conduct that business at all times in a proper and safe manner and in compliance with all necessary permits or consents for such business.

#### **No Warranty by Landlord as to Suitability of Premises**

- 8.2 Subject to any other agreement to the contrary, the Landlord does not in any way warrant that the Premises (including any fixtures fittings plant or machinery therein) are or will remain suitable or adequate for any of the purposes of the Tenant and, to the full extent permitted by law, all warranties as to suitability and to adequacy implied by law are expressly negated. If the purpose stated in Item 14 of the First Schedule is permissible only with the consent of any Authority, the Tenant will obtain that consent at the Tenant's cost.

#### **Offensive Acts**

- 8.3 The Tenant will not allow any act or thing to be done or bring or permit to be brought into or grow on the Premises any thing which is or may be or become or cause annoyance, nuisance, grievance, damage or disturbance to the Landlord or to the occupiers or owners of any adjoining or adjacent premises or to any other person and the Tenant will not use the Premises or knowingly allow them to be used for any noisome, noxious, illegal or offensive trade or business and will not hold, or allow to be held, any auction, fire, bankruptcy or liquidation sale on the Premises **EXCEPT THAT** any bona fide operation of the permitted use of the Premises will not constitute a breach of this clause, although the manner in which the Tenant carries on or conducts that permitted use of the Premises may.

**Heavy Objects**

8.4 The Tenant will not:

- (a) bring, or permit to be brought, upon the Premises any heavy merchandise, machinery or other article, plant or equipment (including safes), of such nature or size as to impose, or in the reasonable opinion of the Landlord be likely to impose, on the floors or walls or any other parts of the Premises any stress, strain or weight likely to damage or weaken or cause any movement or structural defect in any part of the Premises;
- (b) place or store any heavy articles or materials on any of the floors of the Premises in excess of the floor loadings referred to in Item 15 of the First Schedule; or
- (c) do, or permit to be done, in or about the Premises any act, or thing which might cause any strain, damage, weakening, movement or structural defect in or about the Premises.

**Dangerous Goods**

8.5 The Tenant will not:

- (a) (except for customary office applications) use, or permit or suffer to be used, any chemicals or inflammable gases, fluids or substances in or upon the Premises without the prior consent of the Landlord except to the extent that such uses are incidental to the usual or customary business use stated in Item 14 of the First Schedule and such uses and the manner in which the Tenant conducts or carries on such uses comply with the provisions of this Lease in all respects; or
- (b) conduct or permit any "hot works" in or around the Premises other than in accordance with any "hot work permit" system approved by the Landlord. "Hot works" includes welding of all descriptions, use of blow torches, and any other heat generating activity designated as "hot work" by the Landlord. The Landlord shall provide the Tenant with a copy of any required changes thereto.

8.6 Where any part of the Building is not air-conditioned, the Tenant will not use or permit to be used any method of heating or lighting such part, other than by electric current or gas supplied through the meters.

**Signs**

8.7 The Tenant will not erect or paint or exhibit (or permit such) any sign, notice, name-plate or other advertising devices ("signage") on any part of the outside or inside of the Building or the Premises or on the Land without the express written consent of the Landlord and then only of such colour, size and style and in such places approved by the Landlord. The Landlord's consent shall not be unreasonably or arbitrarily withheld in respect of reasonable signage describing the Tenant's business.

8.8 The Tenant will maintain and keep in good order and repair all signage erected or painted or exhibited by the Tenant. At the expiry or determination of this Lease, the Tenant will remove such signage and shall make good any damage or disfigurement occasioned by such removal (including any repainting), failing which the Landlord may remove such signage and make good any such damage or disfigurement caused by that removal and the Tenant will pay on demand any costs incurred by the Landlord in doing so.

**Building Act Notices**

8.9 If the Landlord is required by any Authority to carry out any work to the Premises (or any part) or to the systems and features provided in or to the Premises (or any part), the Landlord may carry out that work and, for that purpose, enter upon the Premises, temporarily suspend operation of systems and features and temporarily restrict access to the Premises and may require the

Tenant to vacate the Premises or part for whatever period as may be necessary for the carrying out of that work. The exercise by the Landlord of its rights under this clause shall be subject to the Landlord first giving two (2) weeks written notice where none of the Tenant's temperature controlled storage operations are required to be shut down and one (1) months written notice where shut-down will be required. In the case of an emergency the Landlord will provide the Tenant with reasonable notice in the circumstances.

- 8.10 The Tenant will not be entitled to any compensation, damages or other relief for any inconvenience, loss of use or loss of benefit thereby occasioned by such work **EXCEPT THAT**, unless the relevant work has arisen, or the requirement for carrying out the relevant work resulted, in whole or in part, as a result of any act, omission or default by the Tenant and/or persons under the control of the Tenant, the rent will be abated for whatever period as the Tenant does not occupy or have the right to occupy the Premises or part. Any dispute as to the Tenant's entitlement to that abatement or as to the period of that abatement will be determined in accordance with clause 11.5.

#### **Acknowledgement of Specialist Nature of Premises**

- 8.11 The Landlord acknowledges that the Premises is a specialist building and as such the Landlord will when exercising its rights and obligations under this Lease do so in such a manner as will cause the least possible interference to the operation of the business use from the Premises by the Tenant.

#### **Resource Consents and Contamination**

- 8.12 Without limitation to any other provision of this Lease (but subject to any other agreement to the contrary):
- (a) The Tenant will obtain all resource consents required in accordance with the Resource Management Act 1991 to enable the Tenant to undertake all activities undertaken or intended to be undertaken from or in connection with the use of the Premises;
  - (b) The Tenant shall:
    - (i) conform with all pollution-control regulations and practices with regard to the use of the Premises and in particular, the disposal of any items or substances whatsoever and prevention of entry of such substances into the soil or sewer systems or drains or any part of the Premises;
    - (ii) keep operative and properly pump out any sumps drains or tanks or the like and ensure the ongoing good and safe condition of such items; and
    - (iii) notify the Landlord of every instance of contamination or pollution, or like outflow or actual or potential damage to the Premises; and
  - (c) The Tenant shall indemnify the Landlord in full against all liabilities incurred by or on behalf of the Landlord during or subsequent to the term of this Lease and arising from breach by the Tenant of any of the covenants of this clause 8.12.

#### **Other Prohibited Uses**

- 8.13 Without limitation to any other provision of this Lease, the Tenant:
- (a) shall comply at all times with the Landlord's reasonable requirements in relation to the air conditioning system (if any) and ventilation system operating in the offices within the Premises;
  - (b) shall not keep or permit to be kept any live animals birds or pets in or about the Premises; and

- (c) shall not permit any person to sleep in the Premises (except in any emergency) or to reside upon the Premises.

#### **Toilets**

- 8.14 The toilets, sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

### **SECTION 9: DEFAULT BY TENANT**

#### **Distress**

- 9.1 The Landlord may distress for rent in arrears for more than fourteen (14) days, whether it has been legally demanded or not. For the purpose of Section 9, references to "rent" include any moneys payable by the Tenant under this Lease.

#### **Re-entry**

- 9.2 The Landlord may re-enter the Premises (and the term will determine on that re-entry):
- (a) if the rent (as defined in clause 9.1) is in arrears for more than fourteen (14) days, whether or not any formal demand has been made for that rent;
  - (b) if the Tenant is in breach of any of the covenants and agreements of this Lease and the Tenant has failed to remedy that breach within a reasonable time of receipt of notice of that breach from the Landlord; or
  - (c) if the Tenant is insolvent, bankrupt or placed in liquidation or makes or enters into, or endeavours to make or enter into, any composition, assignment or other arrangement with or for the benefit of the Tenant's creditors.

#### **Non-payment of Rent, Operating Expenses and other Money**

- 9.3 Failure to pay rent (as defined in clause 9.1) on the due date will be a breach going to the essence of the Tenant's obligations under this Lease. The Landlord's entitlement to damages will subsist notwithstanding any determination of the Lease.

#### **Interest on Overdue Rent or Other Moneys**

- 9.4 Without prejudice to the other provisions of this Lease, if any rent or other moneys payable by the Tenant to the Landlord under this Lease is in arrears and unpaid for seven (7) days (whether any formal or legal demand for the moneys has been made or not), those moneys will bear interest compounded on quarterly rests and computed from the due date for their payment until the date of payment in full of those moneys at a rate which is 5% per annum above the commercial lending rate, at the time that the default occurred, for ninety (90) day commercial bills at the Landlord's trading bank, and that interest will be recoverable in the same way as rent in arrears.

#### **Repudiation and Mitigation of Damages**

- 9.5 The Tenant will compensate the Landlord and the Landlord will be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of this Lease (or the Tenant's obligations under this Lease). That entitlement will be in addition to any other remedy or right which the Landlord may have and will not be affected by the Tenant vacating the Premises or the Landlord's acceptance of any such repudiation. Any steps taken by the Landlord to mitigate damages to which the Landlord may be entitled under

this Lease will not of themselves constitute acceptance of any breach or repudiation by the Tenant or a surrender by operation of law.

#### **Loss on Re-entry**

- 9.6 The Landlord will not be liable for any loss to any property of the Tenant upon re-entry by the Landlord. Upon that re-entry the Landlord will be entitled to remove any property belonging to the Tenant from the Premises and place such property outside the Premises.

#### **Landlord May Remedy Tenant's Default**

- 9.7 If the Tenant defaults in payment of rent (as defined in clause 9.1) or any term of this Lease then (without prejudice to any other rights powers and remedies of the Landlord) the Landlord may elect to remedy any such default at any time without notice and all money (including interest) and expenses incurred by the Landlord (including legal costs) in remedying that default will be paid by the Tenant to the Landlord upon demand, together with interest as prescribed in clause 9.4.

#### **Receivership, Liquidation or Statutory Management of Tenant**

- 9.8 If the Tenant (being a company) is put or goes into receivership or liquidation or statutory management and it has subleased all or part of the Premises, then all rent payable under that sublease will be paid directly to the Landlord, as head lessor, and applied: first, towards, or on account of, any arrears of rent under this Lease; secondly towards, or on account of, any current rent due under this Lease; and thirdly, any balance will be paid to the receiver or liquidator or statutory manager (as the case may be).

#### **Landlord's Rights Not Exercisable in the Case of Valid Set-Off**

- 9.9 The rights granted to the Landlord pursuant to Section 9 of this Lease, and any other rights available to the Landlord for default, whether granted by this Lease or implied by law, shall not be exercised by the Landlord in the event of a valid set-off against rental in accordance with clauses 3.9 to 3.13 of this Lease.

### **SECTION 10: COVENANTS BY LANDLORD**

#### **Quiet Enjoyment**

- 10.1 The Tenant, while paying the rent reserved by this Lease and performing and observing the covenants, provisos, conditions and agreements contained in this Lease and on the part of the Tenant to be paid, observed and performed, will peaceably hold and enjoy the Premises, without interruption by the Landlord or by any person or persons claiming under the Landlord, until the expiration or sooner determination of this Lease.

#### **Rates and Taxes**

- 10.2 The Landlord will pay all rates, taxes and assessments charged upon the Premises, except those which the Tenant is obliged to pay. Payments made by the Landlord pursuant to this clause are to be included in the Operating Expenses.

#### **Repair to Structure, Roof and Exterior**

- 10.3 The Landlord shall at its own cost (and without prejudice to or limitation of the Tenant's maintenance obligations) keep and maintain the structure, roof and exterior of the Building and all Building services in good and substantial repair, order and condition and in a watertight condition throughout the term of this Lease.

**SECTION 11: MISCELLANEOUS****Costs**

- 11.1 (a) Each party will meet its own legal and other costs of and incidental to the preparation negotiation and finalisation of this Lease and of any renewal extension or variation of this Lease. The Tenant will pay all stamp duty at any time payable in respect of this Lease.
- (b) The Tenant will pay all costs, charges and expenses for which the Landlord becomes liable as a result of, or in connection with, any breach or default by the Tenant in the performance or observance of any of the terms, covenants and conditions of this Lease.

**Tenant to Permit Inspection and Display of Signs**

- 11.2 The Tenant will at all reasonable times permit the Landlord to exhibit the Premises to prospective tenants or purchasers and will during the period of three (3) months prior to the termination date of this Lease allow the Landlord to affix and exhibit whatever "For Sale" and "To Let" notices as the Landlord thinks fit.

**Notices**

- 11.3 Any notice or other document required to be given under this Lease may be given:
- (a) in any manner mentioned in Section 152 of the Property Law Act 1952; or
- (b) by registered post addressed to the registered office, principal place of business or post office box of the party intended to be served; or
- (c) by means of facsimile to the facsimile number of the party intended to be served,

and any notice or other document will, when given by post, be deemed to have been received by the other party two (2) working days after the date of posting and any notice given by facsimile will be deemed to have been received by the other party 24 hours after transmission. Any notice or document may be signed on behalf of the Landlord or the Tenant by any employee or solicitor of or for the Landlord or the Tenant or any other person authorised by the Landlord or the Tenant as the case may be.

**No Caveats or Registrable Lease**

- 11.4 The Tenant will not caveat the title to the Land nor call upon the Landlord to execute a registrable memorandum of lease of the Premises.

**Dispute Resolution**

- 11.5 (a) Notwithstanding any requirement in this Lease for arbitration, the Landlord and the Tenant will explore whether any difference or dispute between them can be first resolved by agreement between them using informal dispute resolution techniques, such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique.
- (b) If the parties have not been able to reach agreement to refer any difference or dispute to alternative dispute resolution within seven (7) days of written notice by one party to the other of the difference or dispute or if having reached such agreement to refer and the difference or dispute is not resolved within fourteen (14) days of that written notice by one party to the other of the difference or dispute (or whatever further period agreed in writing between the parties), either party may refer the difference or dispute to arbitration in New Zealand of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before their entering upon the reference) in accordance with the Arbitration Act 1996 or any amendment of that Act for the time being in force.

**No Waiver Implied**

- 11.6 No consent or waiver, express or implied, by the Landlord to or of any breach of any covenant, condition, or duty of the Tenant will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach by the Tenant will be implied from the Landlord's failure to exercise the Landlord's rights in respect of that breach. In particular the acceptance by the Landlord of arrears or of any late payment of rent (as defined in clause 9.1) will not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay that rent during the term of this Lease.

**Limitation on Covenants of Original Landlord**

- 11.7 If the Landlord described in Item 1 of the First Schedule (the "Original Landlord") transfers its ownership of the Premises during the term of this Lease (or any renewal), all covenants and obligations of the Landlord under this Lease will cease to bind or affect the Original Landlord from the date on which that transfer is completed except in respect of any breach of the covenants and obligations of the Original Landlord under this Lease which occurs prior to such transfer.

**Confidentiality**

- 11.8 The Tenant shall ensure that only duly authorised personnel within the Tenant's organisation and the Tenant's professional advisers are permitted to view any copy of this Deed of Lease or any Agreement to Lease or any correspondence or documents relating to this Lease and the Tenant shall ensure that all personnel within the Tenant's organisation and the Tenant's professional advisers shall not disclose to third parties the total occupancy cost comprising rent nor the Tenant's share of the Operating Expenses nor any other contents of this Deed of Lease or such Agreement to Lease or such correspondence or documents except:
- (a) as may be agreed in writing between the Landlord and the Tenant and, in such case, strictly limited to the terms agreed; or
  - (b) disclosure of information which is public knowledge other than as a result of unauthorised disclosure by the Tenant; or
  - (c) where disclosure is required by law; or
  - (d) where the Tenant proposes to sell its business and has obtained the prior written consent of the Landlord (which shall not be unreasonably or arbitrarily withheld) to the disclosure (on a confidential basis) of such relevant information to prospective purchasers.

**Landlord to give Tenant Notice of Sale**

- 11.9 If at any time during the term and any renewal of this lease:
- (a) the Landlord decides to sell the Premises, or
  - (b) the Landlord received an unsolicited offer for the purchase of the Premises which the Landlord wished to accept or pursue further with the offeror,

then the Landlord shall, prior to making known its intention to offer the Premises for sale or prior to the Landlord accepting or pursuing the offer as the case may be, give written notice to the Tenant that the Landlord proposes to sell the Premises.

**THIRD SCHEDULE**  
**OPERATING EXPENSES**

Operating Expenses includes all rates, taxes, costs and expenses of the Landlord properly or reasonably assessed or assessable, paid or payable or otherwise incurred in respect of the Premises and without limitation will include:

- 1 Rates or levies payable to any local or territorial authority.
- 2 Charges for water, gas, electricity, telephones and other utilities or services.
- 3 Rubbish collection charges.
- 4 New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
- 5 Such portion of the Landlord's land tax as the value of the Land forming part of the property bears to the total value of all land included in the Landlord's assessment for land tax.
- 6 Insurance premiums and related valuation fees.
- 7 Service contract charges for air conditioning, lifts and other building services.
- 8 Cleaning maintenance and repair charges including charges for touch up painting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the Building (minor repairs to the roof of the Building and all repairs necessary to keep the Building waterproof (other than repairs to the roof of the office) are agreed to be a structural repair).
- 9 The provisioning of toilets and other shared facilities.
- 10 The cost of ground maintenance i.e. lawns, gardens and planted areas including plant hire and replacement.
- 11 Yard and carparking area maintenance and repair charges but excluding charges for structural repairs to the Building.
- 12 The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by Section 45 of the Building Act 1991.

"Operating Expenses" do not include:

- (a) any item specified in this Third Schedule where such item is separately assessed and levied and is paid directly by the Tenant to the applicable Authority;
- (b) any cost expense or payment made or incurred by the Landlord in respect of the Premises or the Building services in carrying out any of the Landlord's maintenance obligations or any other obligation which is expressed to be an obligation of the Landlord in this Lease.


  
 RB  
 [Signature]  
 4/10

**FOURTH SCHEDULE**

(Clause 5.1)

**SPECIFIC "MAKING GOOD" REQUIREMENTS**

- (a) Make good all ceiling penetrations.
- (b) Remove all the Tenant's non-standard light fittings and make good all damage and imperfections associated with that removal of non-standard light fittings.
- (c) Withdraw and remove all the Tenant's communications and data cables and all wiring associated with non-standard light fittings.
- (d) Clean the ceilings.
- (e) Remove all the Tenant's partitions and make good all damage and imperfections associated with that removal of those partitions, including by way of example (but not in limitation) replacing carpet, if the floor coverage is incomplete or inconsistent as a result of that removal of those partitions.
- (f) Clean the Landlord's partitions, carpet, curtains and blinds.
- (g) Remove all the Tenant's fixtures and fittings and make good all damage and imperfections associated with that removal of those fixtures and fittings.
- (h) Restore all lighting, sprinkler and air-conditioning systems to an open-plan configuration as originally provided to the Tenant.
- (i) Remove all the Tenant's non-standard floor coverings and make good all damage and imperfections associated with that removal of non-standard floor coverings, including by way of example (but not in limitation) replacing carpet, if the floor coverage is incomplete or inconsistent as a result of that removal of non-standard floor coverings.
- (j) Remove all lettering, signs, notices, name-plates, advertising devices or any other distinctive marks put by or for the benefit of the Tenant on any part of the Premises, including doors and partitions, and will make good any damage or disfigurement caused by reason of the placing or removal of such lettering, marks, signs, notices, name-plates or other advertising devices.



**Item 5: Description of Premises****Cold Stores**All dimensions, areas and volumes relate to the *internal* dimensions of the rooms

COLD STORE NUMBER	LENGTH (m)	WIDTH (m)	HEIGHT (m)	AREA (m <sup>2</sup> )	VOLUME (m <sup>3</sup> )
S12	45.425	26.025	10.65	1,182.2	12,590.3
S11	45.425	25.950	10.65	1,178.8	12,554.0
S10	45.425	26.050	10.65	1,183.3	12,602.4
S9	30.000	26.025	10.65	780.8	8,315.0
S8	15.275	5.550	10.65	84.8	902.9
S7	15.275	20.475	10.65	312.8	3,330.8
S6	20.700	30.500	10.65	631.4	6,723.9
Blast Freezers	9.400	5.000	5.80	47.0	272.6
			Store Areas =	5,400m <sup>2</sup>	
<b>Offices</b>					
Ground Floor Offices				232.05	
First Floor Offices				232.05	
<b>Other Amenities and support areas</b>					
	LENGTH (m)	WIDTH (m)	HEIGHT (m)	AREA (m <sup>2</sup> )	VOLUME (m <sup>3</sup> )
ELA			8.20	1,492.84	12,241.3
Access Ramp	18.80	4.40		82.72	
Loading Canopy	34.06	30.14		1,026.57	
Loading Docks	31.00	3.50		108.50	
Dock Canopy	37.12	3.00		111.36	
Battery Recharge	10.85	6.00		65.10	
Switchboard Rm	10.85	2.95 & 4.90		38.71	
Plant Room	13.05	6.00		78.30	
			Total Areas =	8,404	



**Eskimo Logistics Group Limited**

**P & O Cold Logistics (NZ) Limited**

**Perpetual Trust Limited**

## **Deed of Assignment**

**(Premises at 20 Paisley Place, Mt Wellington, Auckland)**

**KPMG Legal  
Solicitors  
Auckland & Wellington**

Deed dated 24 May 2001

## Parties

- 1 Eskimo Logistics Group Limited at Christchurch (“Assignor”)
- 2 P&O Cold Logistics (NZ) Limited at Auckland (“Assignee”)
- 3 Perpetual Trust Limited at Christchurch (“Landlord”)

## Background

- A Pursuant to the Lease, the Premises described in the Schedule are leased to the Assignor.
- B By the Agreement the Assignor has, amongst other things, agreed to assign the Lease to the Assignee.

## Covenants

### 1 Assignment

- 1.1 The Assignor, assigns to the Assignee all the Assignor’s estate, right, title and interest in the Premises and the Lease.

### 2 Assignor’s covenants

- 2.1 The Assignor warrants to the Assignee that:
  - a. the rent provided for in the Lease has been paid and all the covenants on the part of the lessee under the Lease have been observed and performed to the Date of Assignment;
  - b. the Lease is a good valid and subsisting lease.

The foregoing warranties are given and take effect subject to the provisions of clauses 13.3 and 13.6 to 13.11 (inclusive) of the Agreement (“**Relevant Clauses**”). In the event of a breach of any of the foregoing warranties, then, subject to the provisions of the Relevant Clauses, the Assignee will be entitled to have recourse to all or any of the remedies set out in the Agreement.

- 2.2 The Assignor indemnifies the Assignee from and against all actions, costs, claims, demands, damages or losses whatsoever arising out of any default by the Assignor in payment of rent or in the observance or performance of the covenants, conditions and provisions on the part of the lessee under the Lease up to the Date of Assignment. The foregoing indemnity is given and takes effect subject to the provisions of the Relevant Clauses. In the event of any breach

of this indemnity, then, subject to the provisions of the Relevant Clauses, the Assignee will be entitled to have recourse to all or any of the remedies set out in the Agreement.

- 2.3 The Assignor acknowledges to the Landlord that the covenants of the Assignee are not in substitution for and do not reduce, prejudice or vary the liability of the Assignor under the Lease.

### **3 Assignee's covenants**

- 3.1 The Assignee covenants with:

- a. the Assignor from the Date of Assignment to pay the rent in accordance with the provisions in the Lease and to observe and perform all and singular the covenants, conditions and provisions in the Lease contained or implied and on the part of the lessee under the Lease to be observed or performed;
- b. the Landlord that from the Date of Assignment and during the remainder of the term of the Lease the Assignee will pay the rent in accordance with the provisions in the Lease and keep and perform all the covenants conditions and provisions contained or implied and on the part of the lessee under the Lease to be observed or performed.

- 3.2 The Assignee indemnifies the Assignor from and against all actions, costs, claims, demands, damages or losses whatsoever arising out of any default by the Assignee in payment of rent or in the observance or performance of the covenants, conditions and provisions on the part of the lessee under the Lease from and after the Date of Assignment. The foregoing indemnity is given and takes effect subject to the provisions of clause 13.12 of the Agreement.

### **4 Mutual covenants**

- 4.1 The parties acknowledge that the current term under the lease expires on the date set out in the Schedule and the current rent is as set out in the Schedule.

### **5 Condition of the premises**

- 5.1 The Assignor and Landlord acknowledge, without limiting the Assignor's warranty under clause 2.1 and the Landlord's acknowledgement under clause 6.1, that there are no outstanding items of repair or maintenance of the Premises required to be carried out by the Assignor pursuant to the Lease.

- 5.2 It is recorded that the parties have or will record the condition of the Premises as at the Date of Assignment by a suitable video or photographic process.

### **6 Landlord's acknowledgement and consent**

- 6.1 The Landlord acknowledges that to the best of its knowledge and belief as at the date of execution of this Deed that the provisions of the Lease have been properly observed and performed.

- 6.2 The Landlord consents to the assignment contained within this Deed but without prejudice to the Landlord's rights powers and remedies under the Lease.

## 7 **Lease variation**

- 7.1 The covenants and agreements contained and implied in the Lease are varied as follows:
- a. Any requirement in the Lease that the lessee obtain the Landlord's consent to an assignment of the Lease will not apply in the case of an assignment to a Related Company of the Assignee. "**Related Company**" has the meaning ascribed to it in the Companies Act 1993. On each occasion that the Tenant assigns the Lease to a Related Company, the Tenant will within 30 days after such assignment, provide the Landlord with written notification of any such assignment and full details of the assignee.
- 7.2 The covenants and agreements contained and implied in the Lease as varied by this Deed will continue to apply and the Landlord and the Assignee hereby mutually covenant that they will respectively perform and observe them.

## 8 **Governing Law and Jurisdiction**

- 8.1 The laws of New Zealand shall govern this Deed and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

## 9 **No merger**

- 9.1 Each representation covenant and obligation under this Deed shall continue in full force and effect until it is satisfied.

## 10 **Interpretation**

- 10.1 In this Deed:
- a. "Agreement" means the Agreement described in the Schedule;
  - b. "Lease" means the lease described in the Schedule;
  - c. Save where inconsistent with the context the expressions "the Assignor", "the Assignee" and "the Landlord" shall include their respective executors or administrators, successors and assigns;
  - d. Where the context requires or admits, words importing the singular number include the plural and vice versa;
  - e. Where any party comprises more than one person, such person shall be deemed to have entered into the deed both jointly and severally.
- 10.2 The Schedule forms part of this Deed. Expressions used in this Deed which correspond with an Item in the Schedule have the meaning set out in that Item.

## 11 **Limitation of Landlord's liability**

- 11.1 The Parties acknowledge that, in entering into this Deed, the Landlord is acting as the trustee of the AMP Property Fund and that any liability of the Landlord or arising under this Deed


will at all times be limited to the assets of the AMP Property Fund under the administration of the Landlord from time to time.

## **Schedule**

<b>Agreement</b>	Agreement relating to the Sale and Purchase of Certain Business Assets between the Assignor and Assignee and other parties dated the 4 <sup>th</sup> day of April 2001
<b>Premises</b>	An estate in fee simple being all that parcel of land containing 1.3630 hectares more or less being Lot 2, DP 198664, CT 127C/413 (North Auckland Registry) together with the buildings, structures and improvements of every nature or kind now or during the term of the Lease erected or placed on that land together with all the Landlord's fixtures, fittings and plant described in the Lease.
<b>Lease</b>	Deed of Lease between the Landlord and the Assignor dated the            day of May 2001
<b>Current rental</b>	\$1,241,323.44 plus GST per annum
<b>Expiry date of Lease</b>	30 November 2014, with one (1) right to a further term of five (5) years less one day, and a Final Expiry Date of 29 November 2019
<b>Date of Assignment</b>	The            day of May 2001

**Execution**

**Signed** on behalf of  
**Eskimo Logistics Group Limited**  
as Assignor in the presence of:

  
\_\_\_\_\_  
Name [ Jeremy Sika ]  
Director

  
\_\_\_\_\_  
Name [ Richard George Cutfield ]  
Director/Authorised Signatory

Witness to the above signature(s):


\_\_\_\_\_  
Witness Signature


\_\_\_\_\_  
Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Signed** on behalf of  
**P & O Cold Logistics (NZ) Limited**  
as Assignee in the presence of:

  
\_\_\_\_\_  
Name [ ADRIAN MILLETT ]  
Director

  
\_\_\_\_\_  
Name [ STEVE RINNING ]  
Director/Authorised Signatory

Witness to the above signature(s):

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Signed** on behalf of  
**Perpetual Trust Limited**  
as Landlord in the presence of:



Name [ \_\_\_\_\_ ]

~~Director~~ Authorised Signatory



Name [ \_\_\_\_\_ ]

~~Director~~/Authorised Signatory

Witness to the above signature(s):



Witness Signature

Name Shivana Satyanand  
Corporate Client Officer  
Wellington

Occupation

Address

**AMP NZ PROPERTY INDUSTRIAL LIMITED**  
Lessor

**VERSACOLD NZ LIMITED**  
Lessee

**VERSACOLD NZ HOLDINGS LIMITED**  
Covenantor

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**DEED OF COVENANT**

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DEED dated *the 10<sup>th</sup> of May*

2006

## PARTIES

**AMP NZ PROPERTY INDUSTRIAL LIMITED** ("Lessor")

**VERSACOLD NZ LIMITED** ("Lessee")

**VERSACOLD NZ HOLDINGS LIMITED** ("Covenantor")

## BACKGROUND

- A. The Lessor and Lessee are present parties to a deed of lease in respect of the premises at 20 Paisley Place, Mt Wellington ("Lease") for the term and on the covenants contained in the Lease.
- B. Prior to 17 December 2005, POCL Holdings (NZ) Pty Limited ("POCL Holdings") owned all the shares in the Lessee under its former name P&O Cold Logistics (N.Z.) Limited.
- C. Pursuant to a share sale agreement between Versacold Holdings Corporation, P&O America Incorporated and P&O Australia Limited dated 2 November 2005, POCL Holdings sold all of its shares in the Lessee to the Covenantor on 17 December 2005.
- D. In terms of the Lease the change in shareholding of the Lessee is deemed to be an assignment requiring the Lessor's consent.
- E. The Lessor has agreed to consent to the assignment upon the condition that the parties enter into and execute this Deed.

## AGREED

- 1. The Lessee shall continue to pay the rent at the time and in the manner provided by the Lease and observe and perform all the covenants contained or implied in the Lease to be observed and performed by the Lessee.
- 2. In consideration of the Lessor consenting to the deemed assignment of the Lease the Covenantor guarantees to the Lessor:
  - (a) The due and punctual payment to the Lessor by the Lessee of all future rent and other monies payable in terms of the lease; and
  - (b) The observance and performance by the Lessee of all the Lessee's covenants contained in the Lease.
- 3. Although as between the Covenantor and the Lessee the Covenantor may be a surety only, as between the Covenantor and the Lessor the Covenantor shall be deemed to be a principal debtor and liable for all the covenants contained in the Lease and the

Covenantor shall not be released by any act matter or thing the happening of which would release one liable only as a surety.

- 4. In all other respect the Lease is hereby confirmed by the Lessor, Lessee and the Covenantor.
- 5. The Lessee shall be liable for the Lessor's costs in reviewing the request for consent and in the preparation, finalisation and execution of this deed.

**EXECUTION**

**SIGNED** for and on behalf of **AMP NZ PROPERTY INDUSTRIAL LIMITED** as Lessor in the presence of:

Nicholas Peter Dobson

\_\_\_\_\_  
Name of Director

  
Signature of Director

Anthony Montgomery Beverley


\_\_\_\_\_  
Name of Director

  
Signature of Director

**SIGNED** for and on behalf of **VERSACOLD NZ LIMITED** as Lessee:

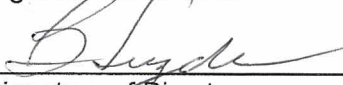
STEPHEN B RUNNING

\_\_\_\_\_  
Name of Director

  
Signature of Director

BRENT SINKDEN


\_\_\_\_\_  
Name of Director

  
Signature of Director

**SIGNED** for and on behalf of the Covenantor **VERSACOLD NZ HOLDINGS LIMITED**:

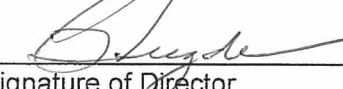
STEPHEN B RUNNING

\_\_\_\_\_  
Name of Director

  
Signature of Director

BRENT SINKDEN

\_\_\_\_\_  
Name of Director

  
Signature of Director