

**Limited Partnership
Agreement for Wairau
Valley Vineyards Limited
Partnership**

**The parties named in Schedule 1 of
this Agreement other than the General
Partner**

and

Wairau Valley Vineyards GP Limited

30 June 2022

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Limited Partnership Agreement for Wairau Valley Vineyards Limited Partnership

30 June 2022

PARTIES

1. The parties named in Schedule 1 of this Agreement other than the General Partner (each, an "Initial Limited Partner" and together, the "Initial Limited Partners")
2. Wairau Valley Vineyards GP Limited (the "General Partner")

BACKGROUND

- A. The Initial Limited Partners and the General Partner wish to establish a Limited Partnership to be registered under the Act and governed by this Agreement to acquire assets and operate the Business on the terms set out in this Agreement.
- B. The Limited Partnership will carry on the Business in accordance with this Agreement.
- C. The General Partner will govern and manage the Limited Partnership in accordance with this Agreement and will delegate certain functions to MyFarm Business, a division of AGInvest Trading Limited, on the terms of a Business Management Agreement with the Limited Partnership.

AGREEMENT

1. Definitions and Interpretation

- 1.1 In this Agreement and any schedules to it the following terms shall, unless the context otherwise admits or requires, have the following meanings:
 - "**Accounting Date**" means initially 30 June 2023 then 30 June (or such other date as the General Partner may determine from time to time) in each following year or in the case of the final Accounting Period the date when the Limited Partnership is terminated in accordance with the Act;
 - "**Accounting Period/Financial Year**" means a period ending on and including an Accounting Date and, in the case of the first Accounting Period, beginning on the date of the registration of the Limited Partnership and, in all other cases, on the day following the preceding Accounting Date;
 - "**Accounts**" means the accounts of the Limited Partnership comprising balance sheet and profit and loss account prepared in accordance with this Agreement;
 - "**Act**" means the Limited Partnerships Act 2008;
 - "**Agreement**" means this Limited Partnership Agreement as originally executed and as the same may be amended or supplemented from time to time in accordance with its terms;
 - "**Associate**" means in relation to a Limited Partner any person that would be considered an associated party of that Limited Partner under Sub Part YB of the Income Tax Act 2007;
 - "**Bill Rate**" means the average 90-day bank bill mid-rate as quoted on Reuters Screen page BKBM or the equivalent page replacing page BKBM at or about 10:45am on the relevant date or, if at the

time page BKBM or the equivalent replacement page is not available, the last rate quoted on that page before it became unavailable;

“**Books**” means the books of the Limited Partnership;

“**Business**” means the Limited Partnership’s business of purchasing, owning, and managing one or both of the vineyards located at 2765 and 3211 State Highway 63, Wairau Valley, Marlborough, known as the Wairau Valley Vineyards (each a “**Property**” and together “**the Properties**”) including without limitation:

- (a) further development to the Property as the General Partner may determine from time to time;
- (b) acquiring further vineyards subject to completion of satisfactory due diligence by the General Partner, approval by Special Resolution, and satisfactory capital raising in compliance with this Agreement;
- (c) leasing the Property to Misty Cove Wine Group Limited or its related companies (“**Misty Cove**”) and its successors and assigns, including amending the lease to take account of any further development of the Property; or
- (d) borrowing, and granting security against the Limited Partnership assets, as contemplated by the IM;
- (e) entering into such other leases or agreements as the General Partner may determine from time to time for the leasing or management of the Property; or
- (f) entering into and carrying out such other transactions and activities as the GP from time to time reasonably believes to be conducive to the activities listed above.

“**Business Days**” shall mean any day other than a Saturday, Sunday, or a public holiday and excluding the period commencing 24th December in one year and ending and including 5th January in the following year;

“**Business Management Agreement**” means the business management agreement to be entered into by the Limited Partnership and MyFarm Business, a division of AGInvest Trading Limited;

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

“**Capital Contribution**” means:

- (a) in respect of all Limited Partners, the total in New Zealand dollars at time of receipt of all Committed Capital paid by the Limited Partners to the Limited Partnership from time to time; and
- (b) in respect of the Limited Partner, the total in New Zealand dollars at time of receipt of all Committed Capital paid by that Limited Partner to the Limited Partnership from time to time;

“**Committed Capital**” means:

- (a) in respect of all Limited Partners, the aggregated amount in New Zealand dollars contributed and agreed to be contributed to the Capital of the Limited Partnership by those Limited Partners from time to time; and
- (b) in respect of a Limited Partner, the amount in New Zealand dollars contributed and agreed to be contributed to the Capital of the Limited Partnership by that Limited Partner;

“Completion Date” means the date of this Agreement or such other date as agreed between the General Partner and the Limited Partners;

“Conflict of Interest” means an actual or potential conflict of interest between:

- (a) the General Partner, a Limited Partner or any of their respective Associates; and
- (b) the Limited Partnership;

“Deed of Adherence” means a deed entered into by a party acquiring an interest in the Limited Partnership which will bind that party to the terms of this Agreement for the benefit of the other Parties to this Agreement in the form set out in Schedule 2;

“Deed relating to Performance Fee” means the deed to be entered into by the Limited Partnership and between MyFarm Investments, a division of AGInvest Trading Limited relating to payment of a fee to MyFarm Investments;

“Defaulting Partner” has the meaning set out in clause 8.10;

“Default Rate” means where appropriate the default rate payable under any relevant agreement entered into by AGInvest Trading Limited on the Partnership’s behalf or the then current interest rate that the Limited Partnership from time to time pays the Partnership Bank on its overdraft facility plus 5% per annum, or if the Limited Partnership does not have an overdraft with the Partnership Bank, the Bill Rate plus 10% per annum.

“First Limited Partner” has the meaning given in clause 45;

“General Meeting” means a general meeting of the Limited Partnership;

“General Partner” means the general partner of the Limited Partnership from time to time, being on the date of this Agreement, Wairau Valley Vineyards GP Limited and thereafter any general partner approved under clause 16 acting on behalf of the Limited Partnership;

“GST” means goods and services tax as defined under the Goods and Services Tax Act 1985;

“Holding Company” has the meaning given in section 5 of the Companies Act 1993;

“IM” means the Information Memorandum for Wairau Valley Vineyards Limited Partnership prepared by MyFarm Investments, a division of AGInvest Trading Limited, as supplied to the Limited Partners as prospective investors;

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

“Initial Limited Partner” means any Limited Partner that is named as an “Initial Limited Partner” in Schedule 1 (as amended from time to time);

“Limited Partner” means any person or entity admitted to the Limited Partnership and registered as a limited partner for so long as that person remains a limited partner of the Limited Partnership;

“Limited Partnership” means the Wairau Valley Vineyards Limited Partnership to be registered pursuant to, and governed by the Act and this Agreement;

“Losses” means a loss of Income or Capital;

“New Limited Partner” means any person who is not the First Limited Partner or an Initial Limited Partner and is to become a Limited Partner in accordance with this Agreement;

“Ordinary Resolution” and “Resolution” means a resolution approved by, in the case of the Limited Partners, a simple majority of the votes of the Limited Partners entitled to vote and voting on the matter in question;

“Parties” means the parties to this Agreement and **“Party”** means any of them;

“**Partners**” means the Limited Partners and the General Partner and their successors and assigns, and “**Partner**” means any of them;

“**Partnership Bank**” means the bank so appointed by the directors of the General Partner;

“**Partnership Interest**” has the meaning set out in Section 38 of the Act;

“**Proposing Transferor**” means any Limited Partner who proposes to make an on or off-market transfer of all or part of their Units, or is obliged to make an on or off-market transfer of all or part of their Units pursuant to this Agreement;

“**Registrar**” means the Registrar of Companies;

“**Registration Date**” means the date of registration of the Limited Partnership with the Registrar;

“**Related Company**” has the meaning given in section 2(3) of the Companies Act 1993;

“**Remaining Partners**” means the Partners other than the Defaulting Partner(s);

“**Special Resolution**” means a resolution approved by, in the case of the Limited Partners, at least 75% of the votes of the Limited Partners entitled to vote and voting on the matter in question;

“**Subsidiary**” has the meaning given in section 5 of the Companies Act 1993;

“**Syndex**” means the trading platform for buyers and sellers of proportionately owned assets available on www.syndex.exchange or any revised, replacement or substituted trading platform as determined by the General Partner from time to time;

“**Terminating Event**” means any of the events set out in clause 25.1;

“**Unit**” means each Limited Partner’s respective Partnership Interest, including its Capital Contributions, expressed as a number of whole units calculated in accordance with Schedule 1 and as specified in Schedule 1 on the date of this Agreement and specified from time to time in the Unit Register during the term of this Agreement;

“**Unit Register**” means has the meaning given in clause 7.7;

“**Wholesale Investor**” has the meaning given in clause 36 of Part 3 of Schedule 1 of the Financial Markets Conduct Act 2013.

1.2 Interpretation:

In the construction of this Agreement, unless the context indicates otherwise:

- (a) **Background and Schedules:** the Background and Schedules form part of this Agreement;
- (b) **Clauses and Schedules:** references to clauses and schedules are to clauses and schedules of this Agreement;
- (c) **Defined Expressions:** expressions defined in the main body of this Agreement have the defined meaning throughout this Agreement including the background;
- (d) **Headings:** section, clause and other headings are for ease of reference only and will not affect this Agreement’s interpretation;
- (e) **Persons:** a reference to a person includes a company, limited partnership, and also any body of persons, whether corporate or unincorporate and includes their representatives, executors and assigns;
- (f) **Parties:** references to any **party** include that party’s executors, administrators, successors and permitted assigns;
- (g) **Plural and Singular:** references to the singular include the plural and vice versa;
- (h) **Clauses and Schedules:** references to clauses and schedules and are to clauses in, and the schedules to, this Agreement. Each such clause and schedule form part of this Agreement;

- (i) **Statutes and Regulations:** a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations;
- (j) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (k) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and
- (l) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. **Commencement and Partnership Business**

- 2.1 The Limited Partnership shall commence its Business from the Completion Date, based in Marlborough and operating initially from there or at such other place or places as the Limited Partners may from time to time agree.
- 2.2 Unless agreed by a Special Resolution of the Limited Partners, the Limited Partnership shall not carry on or operate any business or undertaking other than the Business.
- 2.3 The General Partner must ensure that particulars of any relevant changes in the composition, terms or details of the Limited Partnership are notified to the Registrar in accordance with the Act. The General Partner must ensure that the requirements of the Act and of any other legislation or regulations applicable to the Limited Partnership are met appropriately.
- 2.4 At or about the Completion Date, the Limited Partnership shall enter into:
 - (a) the Business Management Agreement on the terms summarised in the IM (if any) and otherwise on commercial terms broadly similar to contracts between MyFarm Business, a division of AGInvest Trading Limited, and other orchard owning limited partnerships; and
 - (b) the Deed relating to Performance Fee to record the payment of the performance fee to MyFarm Investments, a division of AGInvest Trading Limited, as referred to in the IM.

3. **Name of Partnership, Address and Registered Office**

- 3.1 The name of the Limited Partnership shall be Wairau Valley Vineyards Limited Partnership.
- 3.2 The registered office of the Limited Partnership shall be 1st Floor, 8 Manchester Square, Feilding.
- 3.3 The address for service of the Limited Partnership is 1st Floor, 8 Manchester Square, Feilding.

4. **Duration and Nature of Partnership**

- 4.1 The Limited Partnership will continue in accordance with the Act until it is removed from the register by the Registrar at which time there shall cease to be a partnership between any or all of the Partners.
- 4.2 The Limited Partners are limited partners under section 20 of the Act and are to be recorded on the Unit Register initially as per Schedule 1. A Limited Partner has no personal obligation for the debts, liabilities or obligations of the Limited Partnership except:
 - (a) to the extent provided in the Act;

- (b) to the extent provided under other applicable laws (if any); and
 - (c) to the extent that a Limited Partner has at any time expressly in writing assumed any part of any debt, liability or obligation of the Limited Partnership (including a guarantee).
- 4.3 For the avoidance of doubt a Limited Partner shall not incur personal liability simply on account that such Partner has carried out a management function for the Limited Partnership provided such function is permitted under the Act and this Agreement.
- 4.4 The General Partner may not compete with the interests of the Limited Partnership.
- 4.5 The Limited Partners acknowledge and agree that the Limited Partnership is to operate as a capital growth and profit-making entity in the medium to long term, and shall operate as a standalone entity with its own resources.
- 4.6 No Limited Partner shall do or omit to do any act, matter or thing which may cause the Limited Partnership to breach its obligations under the Business Management Agreement.
- 4.7 The Limited Partnership may execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable in order for it to carry on the Business.
- 4.8 The General Partner is the general partner under section 19 of the Act. The General Partner is responsible for all the debts, liabilities and obligations of the Limited Partnership as set out in the Act.
- 4.9 If any business opportunity or proposal (whether or not presented to the Limited Partnership) does not relate to or involve direct competition with the Business then any of the Limited Partners may proceed with that opportunity or proposal without any obligation (fiduciary or otherwise) to account to the Limited Partnership or the other Limited Partners for any profits or other gains made in respect of that opportunity or proposal.

5. No Agency or Authority

- 5.1 Subject to the Act:
- (a) nothing in this Agreement constitutes:
 - (i) any Partner acting as the agent or representative of any other Partner; or
 - (ii) any Limited Partner acting as the agent or representative of the Limited Partnership;
 and
 - (b) a Limited Partner does not have authority to act for or assume any obligation on behalf of any other Partner or the Limited Partnership.

6. Bankers of the Partnership

- 6.1 The bankers of the Limited Partnership shall be the Partnership Bank or such other bank as shall be determined by the directors of the General Partner from time to time. Subject to any specified and authorised designations or nominations made by the General Partner in writing all cheques, drafts and bills of exchange drawn on the Limited Partnership account at the Partnership Bank may be signed by any two directors of the General Partner and all cheques, drafts and bills of exchange received may be endorsed by any director of the General Partner.

7. Units in the Partnership

- 7.1 Each Limited Partner shall have a Partnership Interest in the Partnership, which shall be represented by one or more Units. Each Unit must be a whole Unit. No fraction of a Unit may be issued, transferred or held by any Limited Partner. Units may be subdivided from time to time by resolution of the General Partner, provided such subdivision does not change the proportionality of unitholding in the Partnership and does not impose new or increased liability on any holder of Units.
- 7.2 Subject to clauses 8.1 and 9.5 to 9.9 each New Limited Partner shall have issued to them such Units representing the New Limited Partner's Partnership Interest as the Limited Partnership shall determine in consultation with any New Limited Partner prior to that New Limited Partner accepting admission to the Limited Partnership.
- 7.3 An entry made in the Books with the approval of the General Partner of a transfer of Units (if the transfer is not contrary to the provisions of this Agreement or the Act) shall be effective without any instrument in writing as evidence of the rights to the Units so entered.
- 7.4 For trading purposes and access to information, the Limited Partnership will be hosted on the Syndex Exchange www.syndex.exchange.
- 7.5 Subject to the restrictions on disposal set out in this Agreement, where any Limited Partner is disposing of all or part of that Limited Partner's Units on the Syndex trading platform (www.syndex.exchange) such disposal will be conducted via an automated electronic format.
- 7.6 Units may be held by any person, company or the trustees of any trust, as a Limited Partner.
- 7.7 The General Partner must maintain a register that records the Units held by the Partners (the "Unit Register"). The Unit Register must state:
- (a) the name of each Partner;
 - (b) the number of Units held by each Partner;
 - (c) whether the Units are fully or partly paid (and if partly paid the amount that has been paid and the amount outstanding);
 - (d) the date of issue or transfer of any Units by or to a Partner and, in relation to any transfer of Units, the name of the Partner to whom the Units were transferred.
- 7.8 Subject to section 22 of the Act, the entry of the name of a person in the Partnership Unit Register as holder of a Unit is prima facie evidence that legal title to the Unit vests in that person.

8. Capital Contributions

Initial Limited Partners

- 8.1 Each Initial Limited Partner shall invest a minimum Committed Capital of \$50,000 and any Committed Capital in excess of \$50,000 will be in multiples of \$10,000.00 (10,000 Unit).
- 8.2 Each Initial Limited Partner will be required to pay 65% of the Initial Limited Partner's Committed Capital with their completed application no later than 17 June 2022 and the balance on such date or dates as required by the General Partner with no less than 15 Business Days' written notice.

Minimum Aggregate Committed Capital

- 8.3 From Completion Date, unless agreed otherwise by Special Resolution of the Limited Partners, the minimum aggregate Committed Capital of all Limited Partners will be \$7,020,000 and there will be no maximum.

New Limited Partners

- 8.4 Any New Limited Partner that acquires units pursuant to a Deed of Adherence with AGInvest Holdings Limited or with the underwriter shall invest a minimum Committed Capital of \$50,000 and any Committed Capital in excess of \$50,000 will be in multiples of \$10,000.00 (10,000 Units).
- 8.5 Any other New Limited Partner will invest a minimum Committed Capital of \$50,000 (50,000 Units) and any Committed Capital in excess of \$50,000 will be in multiples of \$10,000.00 (10,000 Units).

General Provisions

- 8.6 A Limited Partner's Capital Contribution (which when aggregated with any other Capital Contributions the Limited Partner may have previously made from time to time) shall not exceed the Limited Partner's Committed Capital.
- 8.7 Any amounts payable by a Limited Partner as Capital Contributions will be paid to the Limited Partnership in immediately available funds:
- (a) free of any restriction or condition; and
 - (b) without any deduction or withholding on account of any amount, whether by way of set-off, counterclaim or otherwise.
- 8.8 In the event any Limited Partner sells, transfers or otherwise disposes of some (but not all) of its Units, such Limited Partner must hold not less than 50,000 Units immediately after such sale, transfer or disposition. This clause applies in addition to the restrictions on disposal set out in this Agreement.

Failure to pay Committed Capital

- 8.9 If any Limited Partner fails to pay its Committed Capital, or any other amount due and payable to the Limited Partnership, when due, that Limited Partner must (without limiting the legal rights of the other Partner and the Limited Partnership), on demand, pay default interest on that amount from the due date until payment is received at the Default Rate.
- 8.10 If any Limited Partner fails to pay its Committed Capital, or any other amount due and payable to the Limited Partnership, when due and within 10 Business Days of the General Partner notifying that Partner in writing of its failure to make payment, the Limited Partner shall be treated as a "Defaulting Partner" for the purposes of this Agreement and:
- (a) unless and until all payments due (including interest at the Default Rate under clause 8.9 which will be retained by the Limited Partnership and will form part of the Capital of the Limited Partnership) are received from a Defaulting Partner by the Limited Partnership, all rights of that Partner under this Agreement and the Act (including voting in any capacity and distribution rights) are suspended;
 - (b) the General Partner may offer the Partnership Interests of the Defaulting Partner for sale on the Syndex trading platform (www.syndex.exchange) or by such other means as the General Partner sees fit at a price determined by the General Partner in its sole discretion, having regard to:
 - (i) the General Partner's view of the value of the Partnership Interests; and
 - (ii) the necessity to discount such value in order to facilitate a timely sale of the Partnership Interests;

- (c) the Defaulting Partner hereby irrevocably appoints the General Partner as its attorney to do all things reasonably necessary to sell and transfer the Defaulting Partner's Partnership Interest under this clause 8.10;
- (d) any proceeds of sale under this clause 8.10 will be applied as follows:
 - (i) firstly, to the costs of sale and any attempted sale;
 - (ii) secondly, to the payment of any unpaid amount of Committed Capital;
 - (iii) thirdly, to interest at the Default Rate due under clause 8.9;
 - (iv) fourthly, to any other costs owing from the Defaulting Partner to the Limited Partnership, and;
 - (v) lastly, to the Defaulting Partner;
- (e) the General Partner is not liable to any Limited Partner (including the Defaulting Partner) in respect of any sale under this clause 8.10;
- (f) a Defaulting Partner whose Partnership Interests have been compulsorily sold in accordance with this clause 8.10 immediately ceases to be a Partner upon completion of the sale of all of their Partnership Interest but remains liable to pay any shortfall between the amount received on sale and any amount outstanding which is due and payable to the Limited Partnership pursuant to this Agreement, including any interest at the Default Rate under clause 8.9 to the date of payment of the amount due;
- (g) the Defaulting Partner may not make any claim as to the adequacy of consideration received on the compulsory sale under this clause 8.10 and good title to transfer the Partnership Interests will pass in accordance with this clause 8.10.

No withdrawal and no interest payable

- 8.11 A Partner is not entitled to withdraw any or all of its Committed Capital or Capital Contribution from the Limited Partnership.
- 8.12 No interest is payable to Limited Partners on their Committed Capital.

9. Future Capital Funding

- 9.1 The Limited Partnership will (insofar as it is able) obtain any further finance and working capital required for the purposes of the Business of the Limited Partnership by:
 - (a) borrowing from banks or other financial institutions;
 - (b) retention of profit;
 - (c) funds advanced to the Limited Partnership by the Limited Partners, such funds to be in proportion to the Committed Capital of each Limited Partner in the Limited Partnership, unless otherwise agreed; or
 - (d) new issue of Units in accordance with this Agreement.
- 9.2 For the avoidance of doubt, unless a Limited Partner votes in favour of a Resolution to contribute further funds to the Limited Partnership as referred to in (c) above, then that Limited Partner shall not be obliged, as a consequence of any such Resolution, to contribute any further funds to the Limited Partnership beyond their agreed initial Capital Contribution.
- 9.3 Any borrowing and the terms and conditions (including the amounts to be borrowed by the Limited Partnership) shall be agreed by the General Partner before the Limited Partnership enters into any agreement to borrow any such amount. No Limited Partner shall advance money to the Limited

- Partnership, or permit any debt to be owed to it by the Limited Partnership, without the prior written consent of the other Limited Partners.
- 9.4 The Limited Partners shall not be under any obligation pursuant to this Agreement to provide any guarantees of any liabilities of the Limited Partnership.
- 9.5 The Limited Partnership may issue new Units which must first be offered to the existing Limited Partners in proportion to the number of existing Units held by those Limited Partners. The offer must be in writing and specify the number of Units offered, the price and the period of time the offer is open for acceptance.
- 9.6 In responding to an offer under 9.5 Limited Partners may indicate that they wish to acquire more Units than the number to which they are entitled if all offers to the Limited Partners are not accepted.
- 9.7 If after expiry of the offer period the General Partner has received indications from any Limited Partners that they wish to acquire more than their entitlement it must first issue the Units in respect of which offers have not been accepted to those Limited Partners. If demand exceeds supply, the Units must be issued to those Limited Partners in proportion to the number of existing Units they hold.
- 9.8 Only after completion of the pre-emptive rights process and if there are Units not taken up in that process can new Units be offered to a New Limited Partner (on terms no more favourable than the terms offered to existing Limited Partners) and subject to the New Limited Partner complying with clause 12.1 and 12.2.
- 9.9 On the issue of new Units, an existing or New Limited Partner must pay the required amount of Committed Capital it has agreed to contribute, without set off or deduction (the provisions of clause 8.9 to 8.10 will apply if the New Limited Partner does not) and the Unit Register is to be updated accordingly.

10. **Disposal and Acquisition of Units**

On-Market Transfers

- 10.1 In this Agreement “on-market” means on a trading platform. All on-market disposals and acquisitions of Units must be conducted via the Syndex trading platform. The following procedure will apply to any proposed sales actioned through Syndex:
- (a) the relevant Limited Partner (“selling Limited Partner”) will post the offer of Syndex, at the price set by them, and
 - (b) there will be a 5 Business Day window in which only existing Limited Partners can see the offer and put in bids; and
 - (c) on expiry of the 5 Business Day window the offer will be opened up to the wider Syndex investor base; and
 - (d) once the selling Limited Partner has found a purchaser for the relevant Units on Syndex, the transaction must be electronically approved or confirmed by the General Partner (at its discretion).

Off-Market Transfers

- 10.2 In this Agreement “off-market” means not on a trading platform. All off-market disposals and acquisitions of Units must be electronically confirmed or approved by the General Partner before the transaction can be finalised. The General Partner must not unreasonably withhold its approval to any of the following off-market transfer of Units:

- (a) Units standing in the name of a deceased Limited Partner may be entered in the names of that deceased Limited Partner's legal personal representatives. The legal personal representatives of a deceased Limited Partner shall be the only persons recognised as having any right in respect of the deceased Limited Partner's Units or any benefits accruing in respect of them;
- (b) Units standing in the name of the legal personal representatives or trustees of the estate of any deceased Limited Partner or the trustees of any settlement made by a Limited Partner may be entered in the names of new trustees for the time being;
- (c) Any Unit in the name of a Limited Partner personally may be transferred by the Limited Partner to any other legal entity which the General Partner directors are satisfied is under the control of the Limited Partner or where the majority of interests are held primarily by a trust for the benefit of the Limited Partner and his immediate family;
- (d) Any Unit may be transferred by a Limited Partner, or by the personal representatives of a deceased Limited Partner, to:
 - (i) any child or adopted child of that Limited Partner; or
 - (ii) any spouse, civil union partner or de facto partner of that Limited Partner; or
 - (iii) any grandchild of that Limited Partner; or
 - (iv) any sibling, or child of any sibling, of that Limited Partner; or
 - (v) the trustee of any trust which, in the reasonable opinion of the General Partner, is exclusively or principally for the benefit of any of those persons. Where Units are held by trustees of any trust which is in the opinion of the General Partner exclusively or principally for the benefit of specified and related beneficiaries such Units may be transferred to such specified and related beneficiaries or to the trustees of any other trust which is in the opinion of the General Partner exclusively for the benefit of any of those persons;
- (e) Any Unit held by the trustee of any trust described in paragraph 10.2(c) above of this clause may be transferred on any change of trustee to the new trustee of that trust; and
- (f) In the case of a Limited Partner that is a company, Units may be transferred to a wholly owned subsidiary company, or to a Holding Company.

Costs of disposal

- 10.3 The Proposing Transferor and the transferee shall bear their own legal costs of and incidental to any transfer of any of its Partnership Interest.

11. Change of Control

- 11.1 Where a corporation is a Limited Partner ("the Corporate Partner") (as against merely a Corporate Trustee of a Limited Partner) then, if any one or more of the following events occurs, whether by one transaction or by a series of transactions completed after the date at which the Corporate Partner became a Limited Partner, the Corporate Partner must obtain prior written approval of the General Partner:
- (a) any transfer of the legal or beneficial ownership of, or of any interest in, any shares in the Corporate Partner or any Holding Company of the Corporate Partner which:
 - (i) alters the beneficial ownership of 50% or more of the shares in either corporation to an Overseas Person; or

- (ii) alters the beneficial ownership of the shares carrying 50% or more of the voting rights at any shareholders meeting via the corporation to an Overseas Person; or
 - (iii) alters the beneficial ownership of the shares in either corporation to an Overseas Person allowing the holder of the shares to appoint a director or directors having 50% or more of the voting rights at any directors meetings; or
 - (iv) alters the beneficial ownership of the shares carrying an entitlement to receive 50% or more of any distribution authorized by either corporation to an Overseas Person;
- 11.2 If the Corporate Partner fails to obtain such prior approval of the General Partner, the Corporate Partner must place their Units for sale and transfer on Syndex immediately. If the Corporate Partner fails to complete a sale and transfer, within a reasonable period, the Corporate Partner will be deemed to have irrevocably appointed the General Partner as its attorney to effect the sale and transfer of its Units.

12. New Limited Partner

- 12.1 When a Limited Partner proposes to transfer Units within 12 months of ownership or the Limited Partnership issue Units to a New Limited Partner, the New Limited Partner must qualify as a Wholesale Investor under the Financial Markets Conduct Act 2013 and complete and supply a certification to that effect in the prescribed form.
- 12.2 Before any Units are entered in the Unit Register as belonging to a New Limited Partner that New Limited Partner shall sign a Deed of Adherence to this Agreement (in the form attached as Schedule 2) evidencing that Limited Partner's admittance to the Limited Partnership and the provisions of this Agreement shall otherwise continue to apply to the Limited Partnership.

13. Disposal in violation of this Agreement

- 13.1 No Partner may assign, transfer, sell or otherwise dispose of its Units or Partnership Interest except in accordance with this Agreement. The Limited Partnership will not recognise for the purposes of making allocations or distributions Income, Capital or Losses (as the case may be), or otherwise with respect to interests in the Limited Partnership, the transfer of any Units:
- (a) made in violation of this Agreement; or
 - (b) on the basis of any representation by or conduct of a Partner which is void and of no effect.

14. Registration

- 14.1 The General Partner may refuse or delay the registration of any transfer of any Units to any person whether an existing Limited Partner or not:
- (a) if so required by law;
 - (b) if registration would impose on the transferee a liability to the Limited Partnership and the transferee has not signed any documentation acknowledging and agreeing to bear such liability;
 - (c) if the Units are being transferred within 12 months of ownership and the proposing transferee has not provided acceptable evidence that it is a Wholesale Investor and completed and provided a certificate to that effect in the prescribed form;

- (d) if the Proposing Transferor of any such Units has failed to pay on the due date any amount payable on such Units either in terms of its offering or as otherwise agreed in writing (including any call made in relation to such Units or Partnership Interest);
 - (e) if such registration or transfer is in violation of any clause of this Agreement;
 - (f) if the transferee is an infant or a person of unsound mind;
 - (g) if the transfer is not accompanied by such proof as the General Partner reasonably requires of the right of the Proposing Transferor to make the transfer;
 - (h) if the General Partner acting in good faith decides in its sole discretion that acceptance of the transfer would not be in the best interests of the Limited Partnership or any of its Limited Partners.
- 14.2 From the date a Limited Partner transfers all of its Units and Partnership Interest in the Limited Partnership and the General Partner confirms there are no outstanding obligations of the Limited Partner transferor, all of the obligations that pertain to that Limited Partner transferor in terms of this Agreement and all of the remaining Limited Partners and the Limited Partnership will be released except in relation to clause 36.1 which will continue to apply to the Limited Partner in relation to the period for which the Limited Partner transferee was a Limited Partner of the Limited Partnership.

15. **Overseas Persons and Associated Persons**

- 15.1 As at the date of this Agreement a partnership in which a certain percentage of the partners are "Overseas Persons" (as that term is defined by the Overseas Investment Act 2005) may itself be considered under law to be an Overseas Person. The Partners do not wish the Limited Partnership to become an Overseas Person because of the additional administrative and reporting costs imposed by the Overseas Investment Act 2005. No Limited Partner that qualifies as an "Overseas Person" may hold any Partnership Interest and no Partnership Interest may be transferred to an "Overseas Person" except with the prior written approval of the General Partner who shall have absolute discretion in determining whether an Overseas Person may hold a Partnership Interest. For the purpose of this clause the General Partner's approval is deemed to have been given in respect of any Limited Partner who is an Overseas Person on the Completion Date. If during the term of this Agreement a Limited Partner becomes an Overseas Person that Limited Partner must promptly give notice of that fact to the General Partner and shall on the written direction of the General Partner transfer such number of its Units in the Limited Partnership to a person who is not an Overseas Person as the General Partner in its sole discretion requires (and in the event such Limited Partner fails to complete such transfer within a reasonable period the Limited Partner will be deemed to irrevocably appoint the General Partner as its attorney to effect such transfer).
- 15.2 As at the date of this Agreement the Income Tax Act 2007 can treat a limited partnership and a limited partner of that limited partnership as "Associated Persons" (as that term is defined in the Income Tax Act 2007) if the limited partner has a 25% or greater share in the limited partnership. The Income Tax Act 2007 can also treat a limited partnership and a person associated with a limited partner of that limited partnership as Associated Persons if the limited partner has a 25% or greater share in the limited partnership. There are taxation risks for the Limited Partnership in a Limited Partner being considered an Associated Person with the Limited Partnership and therefore except with the unanimous resolution of the Limited Partners no Limited Partner may hold a Partnership

Interest that would constitute the Limited Partner being considered an Associated Person with the Limited Partnership.

16. General Partner's Position

- 16.1 The General Partner may resign or withdraw as the General Partner by giving 90 days' notice in writing to the Limited Partners. Any replacement General Partner must be appointed by the Limited Partners by a Resolution, with effect from registration of the appointment with the Registrar in accordance with the Act.
- 16.2 The General Partner may be removed without cause if approved by a Special Resolution and following notification to the Registrar for removal of the General Partner in accordance with the Act, provided that the General Partner cannot be removed without cause during the first five years after the Completion Date.
- 16.3 A replacement General Partner, if any, must be appointed by the Limited Partners with the approval of a Resolution. If no such General Partner is appointed the provisions of clause 25 apply.
- 16.4 Any new General Partner shall sign a Deed of Adherence in the form set out in Schedule 2 evidencing that General Partner's admittance to the Limited Partnership and the provisions of this Agreement shall otherwise continue to apply.

17. General Meetings of Partners

- 17.1 The General Partner or Limited Partners who together hold 20% or more of the total Partnership Interests may convene a General Meeting from time to time.
- 17.2 Unless otherwise agreed unanimously by the Partners, 10 Business Days' notice shall be given of every General Meeting.
- 17.3 Each notice of a General Meeting must state the time and the place at which such meeting will be held (such time and place, to be reasonably selected by the General Partner and such meeting may be held by telephone, internet or any other reasonable means) and must state briefly the purpose of and the business to be transacted at such meeting.
- 17.4 No business shall be transacted at any General Meeting unless a quorum of Partners is present at the time when the meeting proceeds to business. Except as otherwise provided in this Agreement, the General Partner together with Limited Partners who together hold a majority of total Partnership Interests, are present in person or represented by proxy or by attorney, shall constitute a quorum.
- 17.5 If within a quarter of an hour from the time appointed for the meeting a quorum is not present then the General Meeting, if convened by any of the Limited Partners (other than the General Partner) it shall stand adjourned to the same day in the following week at the same time and place, and if at the adjourned meeting a quorum is not present within a quarter of an hour from the time appointed for the meeting any Partner, if present, shall be a quorum.
- 17.6 The Partners present at any meeting shall choose one of their number, or the proxy or attorney of a Partner, or a director of the General Partner to be chairperson of the General Meeting.
- 17.7 At any General Meeting each Partner shall be entitled to one vote for each Unit that Partner holds. Votes and any consent or signature required by this Agreement may be given or signed either in person or by proxy or attorney. All questions at a meeting shall be decided by a majority of the votes of the Partners unless in any particular case this Agreement shall otherwise provide.

- 17.8 A declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact without proof of the votes recorded in favour of or against that resolution.
- 17.9 A resolution or consent in writing signed by not less than 75% of the Partners who would be entitled to vote on that resolution at a meeting of Partners who together hold not less than 75% of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Partners. Any resolution in writing under this clause 17.9 may consist of one or more documents in similar form (including PDF or similar) each signed or assented to by or on behalf of one or more of the Partners. Within five Business Days of a resolution being passed under this clause 17.9, the General Partner must send to every Partner who did not sign the resolution or on whose behalf the resolution was not signed, a copy of the resolution.

18. **Management**

- 18.1 The functions and duties which the General Partner undertakes on behalf of the Limited Partnership are exclusive to the Limited Partnership (except that the General Partner may perform administrative functions for itself and comply with laws applicable to it). The General Partner may perform functions and duties as a General Partner for other limited partnerships or other entities by Special Resolution approval of the Limited Partners.
- 18.2 The General Partner has the power and authority to do all things necessary to carry out the Business and to bind the Limited Partnership without prior consultation with the Limited Partners.
- 18.3 The General Partner must devote as much of its time and attention as is reasonably required for the management of the Business.
- 18.4 The General Partner must procure that all filings and registrations required in relation to the Limited Partnership pursuant to the Act are promptly made.
- 18.5 The General Partner may delegate its authority and powers given to it by this Agreement and the Act to such person or persons as it may reasonably select and appoint, including as provided in the Business Management Agreement. The General Partner must monitor and review the activity of any delegates of the General Partner. Notwithstanding any delegation pursuant to this clause, the General Partner remains responsible and liable for the performance of its obligations under the Act and this Agreement.
- 18.6 The rights, powers and discretions of the General Partner under this Agreement continue despite any change in the composition of the Limited Partnership.
- 18.7 The General Partner's fiduciary obligations set out in Section 49 of the Act are excluded. Notwithstanding this, the General Partner must act at all times in the best interests of the Limited Partnership in conducting the Business.
- 18.8 Except for resolutions, advice or recommendations in relation to the matters set out in clause 18.10 below, which the General Partner must take account of, the General Partner is not, in performing any of its duties or obligations or exercising any of its powers or discretions, required to follow, give effect to or consider any resolution, advice or recommendation of the Committee.

Advisory Committee

- 18.9 The Limited Partners may establish by an Ordinary Resolution an advisory committee ("the Committee"). The election and removal of members of the Committee shall be determined by an

Ordinary Resolution of the Limited Partners, provided that the directors of the General Partner may not be members of the Committee.

- 18.10 Subject to clause 18.13 the function of the Committee will be:
- (a) to be consulted by the General Partner from time to time.
 - (b) to review any actual or potential conflicts of interest between:
 - (i) the General Partner or any Associate of the General Partner;
 - (ii) the Limited Partners; and
 - (c) to meet at agreed times with the General Partner to be updated on the Business.
- 18.11 On any vote of the Committee each Committee member has one vote. A resolution of the Committee is passed or cast by a simple majority of votes cast by the Committee Members.
- 18.12 The Committee will consult with the General Partner and review any actual or potential conflict between the General Partner and its actual or potential conflict affiliates (if any) and the Limited Partnership. If the General Partner becomes aware of any such conflict it shall within a reasonable time convene a meeting of the Committee for the purpose of reviewing that conflict.

Limited Partners participation

- 18.13 The Limited Partners shall not take part in management of the Business and shall have no power to bind the Limited Partnership, provided that a Limited Partner shall not be regarded as participating in management merely because the Limited Partner:
- (a) takes part in a decision about the variation or replacement of this Agreement;
 - (b) takes part in a decision about whether to approve or veto investments proposed to be made by the Limited Partnership:
 - (i) if the value of the investments would be more than half the value of the Limited Partnership's assets before the investment; or
 - (ii) as a member of the Committee.
 - (c) approves (including doing so as a member of the Committee of the Limited Partnership):
 - (i) a change of contractors engaged by a General Partner or the Limited Partnership.
 - (d) takes part in a decision about whether the general nature of the Limited Partnership Business should change;
 - (e) takes part in a decision about whether to dispose of the Business of the Limited Partnership or to acquire another business;
 - (f) takes part in a decision about whether a person should become or cease to be a Partner;
 - (g) takes part in a decision about whether the Limited Partnership should end or be terminated;
 - (h) enforces rights under this Agreement (unless those rights are to carry out management functions);
 - (i) appoints a director of the General Partner;
 - (j) reviews and approves the accounts of the Limited Partnership;
 - (k) is engaged under a contract by the Limited Partnership or by the General Partner of the Limited Partnership (unless the contract is to carry out management functions);
 - (l) acts in the capacity as a director or employee of, or consultant or contractor to, or a shareholder in, a General Partner that is a body corporate (including any right, to appoint or remove directors and employees, attached to shares held by a shareholder);

- (m) takes part in a decision to determine an actual or potential conflict of interest involving a Partner (or partners) and the Limited Partnership;
 - (n) discusses the strategic direction or financial prospects of the Business of the Limited Partnership;
 - (o) consults or advises a General Partner about the activities of the Limited Partnership or about its accounts (including doing so as a member of an advisory committee of the Limited Partnership);
 - (p) acts as a director or employee of, or contractor to, any person in which the Limited Partnership has an interest;
 - (q) brings a derivative action on behalf of the Limited Partnership in accordance with the Act.
- 18.14 Matters that comprise those described in items 18.13(a), 18.13(b), 18.13(d), 18.13(e), 18.13(g) and 18.13(m) can only be determined by Special Resolution of the Limited Partners.

19. Fees and Expenses

- 19.1 The Limited Partnership is to bear all fees, costs and expenses (including GST) associated with operating the Limited Partnership including reporting, regulatory, accounting and legal costs, audit and certification fees and the costs of the Limited Partnership's administration together with any legal and other professional costs (including the fees for reporting accountants) (including GST) relating to the evaluation, making or disposal of any investment, insofar as they are not recoverable from any other person. In addition, except as otherwise provided, all taxes, duties and all fees or other charges levied by any governmental agency against the Limited Partnership in connection with its activities is to be borne by the Limited Partnership.
- 19.2 The Limited Partnership is responsible for meeting all costs and expenses (including GST) incurred in relation to the production and distribution of the reports and accounts referred to in clause 22 and any other valuations or certifications required pursuant to this Agreement.
- 19.3 To the extent any of the fees referred to in clauses 19.1 and 19.2 are paid by any other Partner on behalf of the Limited Partnership, the Limited Partnership will only be entitled to reimburse that Partner if the General Partner is satisfied that the Limited Partnership will meet the requirements for a distribution set out in clause 24.2.
- 19.4 The Limited Partnership will reimburse the Initial Limited Partners and the General Partner for all reasonable legal costs of and relating to the formation of the Limited Partnership.

20. Attorneys and Proxies of Limited Partners

- 20.1 Any Limited Partner may appoint any person to be that Limited Partner's attorney. The appointee, while the appointee remains the attorney of the Limited Partner, shall be entitled to the same extent as the appointer to notice of meetings of Limited Partners and to attend in the place of the appointor and take part in any meeting and to vote at any meeting.
- 20.2 The appointee shall vacate any office held in the Limited Partnership if and when the Limited Partner appointing the appointee ceases to be a Limited Partner or removes the appointee from office, or if the Committee decides in the interests of the better operation of the Limited Partnership that the appointee shall be removed from office.

- 20.3 Any appointment and removal of an attorney by the appointor under this clause shall be effected by notice in writing under the hand of the appointor given to or sent to the General Partner.
- 20.4 Any Limited Partner may appoint any person to be that Limited Partner's proxy:
- (a) to vote for that Limited Partner on any matter to which that Limited Partner is entitled to vote at any General Meeting, or meetings, or at any General Meetings held during any period, if the General Meeting or meetings or period are specified in the instrument of appointment; and
 - (b) to give consent to any resolution on which that Limited Partner is entitled to consent that may be signed by Limited Partners without holding a General Meeting during any period specified in the instrument or relating to any subject specified in the instrument.

21. **Minutes**

- 21.1 Minutes of the proceedings of every General Meeting and every meeting of the General Partner shall be recorded in proper books kept for that purpose, and shall be confirmed either at the meeting to which they relate or at a subsequent meeting, and shall be signed by the chairperson of the meeting at which the minutes are confirmed. The minute book so signed shall upon production and without further proof be prima facie evidence of the proceedings in it and of their regularity. The Limited Partnership minute books shall be open for inspection by any Partner during usual business hours.

22. **Partnership Capital**

- 22.1 The capital of the Limited Partnership shall consist of the following items:
- (a) assets acquired for the purposes of carrying on the Business; and
 - (b) the Committed Capital contributed by Limited Partners and any further sum which they shall by Special Resolution agree the Limited Partners may from time to time contribute for capital purposes, which sum(s) shall be credited to the capital account of that Limited Partner. Should any Limited Partner not make such capital contribution pro rata to its Partnership Interest, its Units in the Limited Partnership shall be adjusted accordingly.

23. **Accounts, Reports, Auditor and Annual Return**

Accounts

- 23.1 The General Partner shall cause accounts to be kept of all items of income and expenditure of the Limited Partnership and of the assets and liabilities of the Limited Partnership by an independent accountant appointed by the General Partner in accordance with the Act and generally accepted accounting practice (as defined in the Financial reporting Act 2013). The Accounts shall be balanced at least once in every year and shall comply with the Financial Reporting Act 2013 and any replacement legislation.
- 23.2 The Accounts shall be kept at the office of the General Partner or at any other place or places decided by the General Partner and shall be open to the inspection of and made available to each Partner upon request.
- 23.3 On the Accounting Date (or such other date agreed upon by the Partners) in each year an account shall be taken of all the capital assets and liabilities for the time being of the Limited Partnership and Accounts making due allowance for bad debts and for recouping any lost capital shall be prepared. A copy of the Accounts shall be furnished to each Partner who shall be deemed to accept them unless

some manifest error shall be discovered in them within three calendar months from the date of the provision of the Accounts in question, in which case such error shall be rectified. As soon as practicable after the preparation of the Accounts the net profits (or losses) shown by the Accounts shall be divided or allocated in accordance with this Agreement.

- 23.4 For the purposes of determining the amount of Income, Capital and Losses to be allocated among the Limited Partners after the payment of or provision for fees, costs and expenses, all Income and Capital arising and Losses accruing must be allocated to Limited Partners (who are not Defaulting Partners) on a pro rata basis (by reference to their respective Capital Contributions). Income, Capital and Losses will be allocated at the end of each Accounting Period and may also be allocated during any Accounting Period.
- 23.5 The Accounts shall be accompanied by a report of the General Partner as to the state of the affairs of the Limited Partnership, and the amount (if any) which the General Partner recommends to be distributed to the Partners (in accordance with clause 24), and the amount (if any) which the General Partner recommends should be carried to reserve funds. After considering the report the Partners in General Meeting shall decide what amount (if any) shall be carried to reserve funds and what amount (if any) shall be distributed.

Reports

- 23.6 In addition to the reports provided under clause 23.5, the General Partner must ensure the following unaudited reports are provided:
- (a) quarterly reports to all Partners on the progress and conduct of the Business; and
 - (b) partner tax statement setting out the Limited Partner's share of any reasonable income and deductions of the Limited Partnership for the preceding Accounting Period within 120 Business Days of the end of each Accounting Period and other information reasonably required by Partners to complete any New Zealand taxation returns in respect of their income or loss from the Limited Partnership.

Auditor

- 23.7 If so requested by Limited Partners holding 5% of the total Units, then the Accounts for any Financial Year shall be examined and the correctness of the profit and loss account and balance sheet certified by an auditor appointed by the Limited Partners in the relevant General Meeting.

Annual Return

- 23.8 The General Partner shall deliver to the Registrar in accordance with the Act the annual return in the form, and during the month allocated for this purpose, required by the Act.

24. Distributions

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

- (c) all distributions in cash or in kind to the Partners following termination of the Limited Partnership.
- 24.2 The General Partner is not obliged to cause the Limited Partnership to make any distribution pursuant to this clause 24:
- (a) unless there is cash available for such distribution;
- (b) unless the Limited Partnership and the General Partner will comply with the provisions of the Act relating to such distributions;
- (c) which, in the reasonable opinion of the General Partner, would or might leave the Limited Partnership with insufficient funds to meet any present or future contemplated obligations, liabilities or contingencies including obligations to the General Partner or otherwise to protect the interests of the Limited Partners.
- (d) however, subject to 24.2(a) to (c) above mandatory distributions to Partners sufficient to pay taxes on Income on any distribution to Limited Partners, calculated using the highest applicable tax rate shall be made.
- 24.3 Distributions made pursuant to this Agreement must be made in accordance with clause 23.4.

25. **Termination and Liquidation**

- 25.1 **Termination:** Subject to clauses 25.2 and 25.3, the Limited Partnership and this Agreement will terminate on the occurrence of any of the following events:
- (a) subject to the Act, if the General Partner is removed under this Agreement then this Agreement will terminate on the expiry of 10 Business Days from the date of such notice unless a replacement General Partner is appointed under this Agreement and the Act prior to the expiry of that 10 Business Day period;
- (b) a notice being served by the General Partner on the Limited Partners following any change in the law as a result of which, in the reasonable opinion of the General Partner, the continuation of the Limited Partnership becomes unlawful, impractical or inadvisable;
- (c) a notice being served by the General Partner on the Limited Partners that no further Committed Capital may be drawn down under the terms of this Agreement and that all investments have been disposed of and all liabilities of the Limited Partnership have been satisfied and the proceeds have been distributed pursuant to clause 24; or
- (d) any event otherwise specified as a terminating event in the Act In the event that this Agreement is terminated pursuant to this clause 25 then, notwithstanding any other provisions of this Agreement, the provisions of clauses 3, 25, 26, 28, 31, 32.1, 33, 36, 38 and any other provisions of this Agreement which shall be necessary for the performance of obligations set out under those clauses, are to survive such termination; or
- (e) Upon the passing of a Special Resolution that the Partnership terminate.
- 25.2 Termination or deregistration of the Limited Partnership will not affect any Party's rights and obligations under this Agreement which are intended to survive such termination or deregistration and will be without prejudice to, and will not be deemed a waiver of, any claim which any Party may have against any other Party for any breach or other failure to comply with any term or condition of this Agreement before the termination date.

- 25.3 On the occurrence of a Terminating Event, no further business is to be conducted except for such action as necessary for completing a transaction unfinished at the time of termination, winding-up the affairs of the Limited Partnership and the distribution of the Partnership's assets amongst the Partners in proportion to their Partnership Interests.
- 25.4 On liquidation of the Limited Partnership under the Act, for the purposes of Section 95 of the Act, the surplus assets of the Limited Partnership (if any) after all the Limited Partnership's debts and liabilities have been paid must be divided among the Partners in proportion to their Partnership Interests.

26. **Liability and Indemnities**

General Partner limitation of liability and indemnities

- 26.1 The General Partner its employees and directors have no liability for any loss incurred by the Limited Partnership or any Limited Partner howsoever arising in connection with the services provided by any of them pursuant to this Agreement, except to the extent such loss is attributable to the General Partner's or that person's wilful default, illegal act, fraud or dishonesty. The General Partner, its employees and directors shall be indemnified out of the funds of the Limited Partnership against all or any costs, losses and expenses which the General Partner or that person may incur or become liable to by reason of any contract entered into, or act or thing done by them as General Partner, unless the same is attributable to the General Partner's or that person's own wilful default, illegal act, fraud or dishonesty.
- 26.2 In particular, and without prejudice to clause 26.1, the General Partner is indemnified against any tax liability (including withholding taxes) in respect of tax on income or capital gains paid or allocated to any Limited Partner, such indemnity to be satisfied in the first instance by the Limited Partner concerned but if not so satisfied, out of the funds of the Limited Partnership in which event the Limited Partnership shall be subrogated to the rights of the General Partner against such Limited Partner.
- 26.3 The General Partner its employees and directors have no liability to the Limited Partnership or any Limited Partner for the negligence, dishonesty, wilful default or bad faith of any agent or delegate acting on behalf of any of them or the Limited Partnership, provided that such agent or delegate was selected and appointed applying reasonable care.

Allocation of liabilities

- 26.4 The Limited Partners have no personal obligation for the debts, liabilities or obligations of the Limited Partnership, except to the extent provided in the Act, this Agreement or in any applicable laws, if any.
- 26.5 Notwithstanding the indemnities and limitation of liability set out in clauses 26.1 to 26.3, the General Partner is responsible for all the debts, liabilities and obligations of the Limited Partnership to the extent set out in the Act.

Limited Partner warranties

- 26.6 Each of the Limited Partners warrant that at the time of entering this Agreement they are not and have no relevant association (as defined in the Income Tax Act 2007 or any replacement legislation) with any land dealer, land developer or builder that could associate the Limited Partnership or any other Limited Partner with such entities. Each Limited Partner (and in the case of any companies their directors who sign this Agreement and in the case of any trusts, the non-independent trustees

who sign this Agreement) (“Indemnifying Party”) agrees to indemnify each of the other Limited Partners and the Limited Partnership against any tax liability and any and all costs arising in relation to any breach by the Indemnifying Party of such warranty in the event that otherwise is proven to be the case. The General Partner shall also have the right to call for such an indemnity from all or any shareholders of such companies or the settlors of such trusts where it deems the same prudent. In the event that in the future there are any developments or improvements to the Property, or any other land is acquired, the Limited Partners warrant that they will ensure that no such association will be in place immediately prior to and upon such activities commencing. Each Limited Partner undertakes to disclose any such association as soon as they become aware of it.

27. Partner acknowledgements

- 27.1 Each Partner acknowledges that, except for the obligations expressly provided in this Agreement:
- (a) it has made its own independent enquiry and investigations in relation to the Limited Partnership and Business, and has entered into this Agreement in reliance solely on its own judgment, and not in reliance on any representations from the General Partner or any other Partner or any of their respective Related Parties, officers, directors, partners, employees or agents;
 - (b) all express (to the extent permitted by law), implied, or other representations or warranties in relation to the Limited Partnership and Business are expressly excluded; and
 - (c) no Partner nor any of its Related Parties, officers, directors, employees or agents have made or make any representation, or have given or give any warranty (express or implied), as to the accuracy, content, completeness, value or otherwise of, nor have or accept any liability in respect of, any information (written, oral or otherwise) directly or indirectly provided or made available to, or used by, any other Partner (“other Partner”) in connection with the Limited Partnership and Business. Each other Partner unconditionally waives any claim (whether arising in tort, in contract, by operation of law or otherwise) it may have against any of them in respect of such information.

28. Duties

- 28.1 Each Partner shall:
- (a) be just and faithful to the other Partner or Partners, and at all times give full information and truthful explanations of all matters relating to the affairs of the Limited Partnership;
 - (b) immediately pay all money, cheques and negotiable instruments received by the Partner on account of the Limited Partnership into the Partnership bank account.
- 28.2 Each Limited Partner must promptly provide the General Partner with information the General Partner reasonably requires for the operation of the Limited Partnership and to meet the requirements of the Act.

29. Limits of Authority

- 29.1 No Partner, shall without the consent of the other Partners mortgage or charge that Partner’s Units or share in the assets or profits of the Limited Partnership, or give any security, or draw, accept or

endorse any bill of exchange, promissory note or other negotiable instrument on account of the Limited Partnership.

30. **Insurance**

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

31. **Expulsion**

31.1 If any Partner shall:

- (a) commit a serious breach of any of the provisions of this Agreement which is calculated to result in the Limited Partnership suffering a material disadvantage and which (if capable of being remedied) is not remedied within 10 Business Days of the request from the other Partners for that Partner to do so; or
- (b) fail to account for money received by that Partner in respect of any Limited Partnership transaction; or
- (c) fail to pay to the Limited Partnership within 10 Business Days of being requested in writing to do so any sums owed by that Partner to the Limited Partnership; or
- (d) act in other respects contrary to the good faith which ought to be observed by all Partners, or act in such a way as to be in the opinion of all of the other Partners materially detrimental to the Limited Partnership as a whole; or
- (e) have no reasonable prospect of being able to pay that Partner's debts, or enter into a compromise for the benefit of that Partner's creditors generally; or
- (f) be convicted of a criminal offence other than a minor motoring offence; or
- (g) become a protected person within the meaning of any relevant legislation relating to the management of the affairs of incapacitated persons; or
- (h) do or suffer any act which would be grounds for dissolution of a Limited Partnership by the Court;

Then the General Partner may convene a General Meeting, and the Partners having so resolved the General Partner may at the direction of the Limited Partnership any time within 3 months after becoming aware of such breach by notice in writing given to the Partner concerned expel that Partner from the Limited Partnership. On issue of a written notice of expulsion the Partner subject to the notice of expulsion shall be required to place their Units for sale in accordance with clause 8 and the provisions of clauses 8.10(b) to 8.10(g) shall apply as if the expelled Limited Partner was a "Defaulting Partner".

31.2 At a General Meeting at which a resolution for the expulsion of any Partner is sought the Partner in question shall be entitled to be advised a reasonable time beforehand of the grounds of the proposed expulsion and to attend the meeting and be heard. No single resolution for expulsion shall relate to more than 1 (one) Partner. For an expulsion resolution to be passed all of the Partners, other than the Partner whose expulsion is sought, must vote in favour of the resolution whether attending the meeting or voting by proxy.

32. **Dispute Resolution**

32.1 In the event of a dispute arising between the Parties about interpreting or implementing this Agreement's provisions:

- (a) **Negotiate:** the Parties will use their best endeavours to resolve the dispute by negotiation in good faith. The Parties will attend at least one meeting to discuss an attempt to resolve the dispute as a condition precedent to taking any other steps concerning the dispute (including but not limited to commencing any legal proceedings other than an application for injunctive relief) PROVIDED HOWEVER in the event the dispute pertains particularly to horticulture the matter shall be referred to an agreed expert (in default appointed by the President for the time being of Horticulture New Zealand or its replacement national body as appropriate or his or her nominee) who at the Limited Partnership's cost will be asked to provide an expert ruling which shall be binding on the Parties.
- (b) **Mediation:** if the dispute (other than relating to horticulture) cannot be resolved in accordance with clause 32.1(a), then the Parties will refer the dispute to mediation by a mediator jointly appointed by them and failing Agreement, a mediator appointed by the chairperson for the time being of AMINZ.
- (c) **Other remedies available at law:** if the dispute is not resolved within 20 Business Days of its reference to mediation in accordance with clause 32.1(b), then the Parties will have the right to pursue any remedies available at law including referring the dispute to arbitration by a single arbitrator agreed on by the Parties or, failing Agreement, to a single arbitrator appointed by the President (or equivalent officer) for the time being of the AMINZ. A dispute referred to arbitration will be resolved according to the rules and principles of arbitration established by AMINZ as amended from time to time. The determination of the arbitrator will be final and binding on the Parties. Arbitration costs will be apportioned between the Parties in the manner determined by the arbitrator.

32.2 Each party shall continue to perform this Agreement and any Business Management Agreement notwithstanding the existence of a dispute or any proceedings under this clause.

33. **Waiver**

33.1 The failure of any Partner at any time or from time to time to require performance of any provision of this Agreement shall in no way affect that Partner's right to enforce such provision at a later time. No waiver by any Partner or any conditional waiver of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise in any one or more instances, shall be deemed to indicate a further or continuing waiver of any such breach, or a waiver of the breach of any other term or covenant in this Agreement.

34. **Notices**

34.1 Notices which may or are required to be given under this Agreement by any Party to another must be in writing and sent by e-mail, facsimile, courier or by prepaid post, to the relevant Party (subject to clause 34.2) such other address as may be designated by any Party by notice addressed to the Limited Partnership in the case of the Limited Partners, and to the Limited Partnership and each Limited Partner in the case of the General Partner. Any notice sent by e-mail or facsimile is deemed

to be received immediately, any notice sent by courier shall be deemed to be received upon receipt and any notice sent by prepaid first class post shall be deemed to be received 5 Business Days after the date of posting.

Agent for Service of Process

- 34.2 Each of the Partners not resident in New Zealand are required to appoint and provide the General Partner with written notice of the Party appointed as its agent for the service of process, service upon whom shall be deemed completed whether or not forwarded to or received by the relevant appointor.
- (a) nothing contained in this Agreement affects the right to serve process in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any judgment or other settlement in any of the courts.
 - (b) any possible cause of action will in all cases be deemed to arise in New Zealand.

35. **Variation and Replacement of Limited Partnership Agreement**

- 35.1 Any of the provisions of this Agreement may be altered, or this Agreement may be revoked and replaced from time to time by:
- (a) Special Resolution passed at a General Meeting or passed by written minute signed under clause 17.9; or
 - (b) in writing signed by all Partners.

36. **Independent Trustees**

- 36.1 The liability of any person who has entered this Agreement solely in their capacity as an independent trustee of a trust ("the Independent Trustee") shall be limited to the net assets for the time being of that trust at realisation, provided that this limitation shall not apply to any loss suffered or incurred by the Limited Partnership, the Partners or the General Partner (or any of its subsidiaries) as a direct or indirect result of any intentional breach of trust, fraud, dishonesty, gross negligence or wilful breach of this Agreement by the Independent Trustee (in which case the Independent Trustee will be personally liable to the Limited Partnership, or the Partners or the General Partner or any of its subsidiaries to the extent the trust's net assets do not satisfy all the Independent Trustee's obligations to the Limited Partnership, or the Partners or the General Partner or any of its subsidiaries).

37. **Confidential Information**

- 37.1 The Partners and the Limited Partnership must not, and must use all reasonable endeavours to procure that neither they nor any Associate of each such Partner or the Limited Partnership disclose to any person, firm or corporation (except legal, accounting and other professional advisers where appropriate confidentiality agreements (whether written or otherwise) have been obtained) or use to the detriment of the Limited Partnership or any of the Partners any confidential information which may have come to its knowledge as a result of being a Partner or the Limited Partnership concerning:
- (a) the affairs of the Limited Partnership; or
 - (b) any of the Partners (including the identity of the Limited Partners);
- unless required to do so by law or by the rules or regulations of any relevant stock exchange or other relevant regulatory authority or any request from any tax authority. Also excluded from this provision

is the ability of an overseas Limited Partner to allow the provision of information to a prospective purchaser of Units. The Partners and the Limited Partnership hereby authorise public disclosure of this Agreement (excluding Schedule 1 and the attestations to this Agreement) on the Syndex trading platform.

38. Conflicts of Interest

38.1 **Conflicts of Interest:** The Limited Partnership's conflict of interest policy is that if a Partner or the Limited Partnership experiences a Conflict of Interest it must immediately disclose the existence of that Conflict of Interest to the Remaining Partners and or the Limited Partnership.

39. General

39.1 The provisions of this Agreement shall continue for the benefit of and shall bind the respective successors, legal representatives, and permitted assigns of each of the Partners.

39.2 The benefit of this Agreement may not be assigned by any Partner.

39.3 Every covenant or agreement in this Agreement given by any Partner shall be deemed to have been given or made by the Partner with the other Partners jointly and with each of them separately.

40. Governing Law

40.1 This Agreement and the rights of the Parties are governed by and construed in accordance with the laws of New Zealand.

40.2 Each of the Parties irrevocably agrees that the courts of New Zealand have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

41. Counterparts

41.1 This Agreement may be signed in any number of counterparts (including by facsimile and PDF transmission) each of which is deemed to be an original, and all of which (when taken together) will constitute one and the same instrument. Any party may enter into this Agreement by signing any such counterpart.

42. Application of the Act

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

43. Severance

43.1 If the implementation of this agreement or any provision or term of this agreement or any part of it is illegal, invalid or unenforceable for any reason whatsoever including but not limited to legislation or other provisions having the force of law, any decision of any court or other body or authority having jurisdiction, such terms or provisions will be deemed to be deleted from this agreement on condition that if any Shareholder considers that any such deletion substantially affects or alters the commercial

basis of this agreement it may give notice in writing to the others to terminate this agreement immediately.

44. **Costs**

44.1 Each Party will meet their own costs relating to entry into this Agreement.

45. **Initial agreement superseded**

45.1 The Parties agree and acknowledge that this Agreement replaces and supersedes a prior limited partnership agreement dated 23 May 2022 entered into for the purpose of registering the Limited Partnership and to obtain IRD and GST registration prior to the Completion Date. On the Completion Date, the Unit held by Andrew Frederick Watters (the “**First Limited Partner**”) under that prior agreement is cancelled.