



NSW LOCAL GOVERNMENT (JARDINES) MUTUAL PROPERTY SCHEME

PROPERTY PROTECTION WORDING

This Wording incorporates the Schedule, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda and Warranties (if any) and any other terms herein contained which are to be read together and any word or expression to which a specific meaning has been given in any part of this Wording shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

WHEREAS The Member named in the Schedule is a Member of the NSW Local Government (Jardines) Mutual Property Scheme ("Statewide") and has paid or agreed to pay to Statewide the Contribution shown in the Schedule, now Statewide agrees to indemnify The Member as specified herein against loss arising from any protected events which occur during the Period of Protection stated in the Schedule or any renewal thereof, subject to the Terms, Conditions, Exclusions, Memoranda, Warranties, limitations and other provisions contained herein or endorsed hereon and subject to the terms of the Deed governing Statewide. In the event of any inconsistency between the Deed governing Statewide and this Wording, the provisions of the Deed shall prevail.

PROVIDED THAT the total liability of Statewide any one loss or series of losses arising out of the one event Situation shall not exceed the appropriate Limit or Sub-Limit(s) of Liability as stated in the Schedule or such amount(s) as may be substituted therefor by endorsement or memorandum hereon or attached hereto.

SIGNED ON BEHALF OF STATEWIDE AT SYDNEY:

DATED: 30 JUNE 2006

SECTION 1 - MATERIAL LOSS OR DAMAGE

THE INDEMNITY

In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as “damage” with “damaged” having a corresponding meaning) not otherwise excluded happening at the Situation to the Property Protected described in Section 1, Statewide will, subject to the provisions of this Wording including the limitation on Statewide’s liability, indemnify The Member in accordance with the applicable Basis of Settlement.

Subject to the liability of Statewide not being increased beyond the Limit(s) of Liability already stated herein, Statewide will also indemnify The Member for:

- (a) architects', surveyors', consulting engineers', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property hereby protected but not such costs, fees and salary for preparing any claim hereunder;
- (b) any, fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) protected hereunder; provided that Statewide shall not be liable for payment of any fines and/or penalties imposed upon The Member by any such Authorities;
- (c) costs and expenses necessarily and reasonably incurred for the purpose of extinguishing fire at or in the vicinity of property hereby protected or threatening to involve such property or for the purpose of preventing or diminishing imminent damage to property hereby protected by any other peril covered by this Wording, including damage to gain access and the cost of replenishment of fire fighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines;
- (d) costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property hereby protected pending repair or replacement consequent upon damage recoverable hereunder;
- (e) costs of replacing locks and/or keys and/or combinations where if as a result of burglary, theft, or any attempt thereat the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations;
- (f) costs and expenses necessarily and reasonably incurred in respect of:
 - (i) the removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property protected by this Wording and occasioned by a peril protected against;



- (ii) The Member's legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 8 in relation to premises, roadways, services, railway or waterways of others, consequent upon damage to the Property Protected by a peril hereby protected against, for such costs together with the cost of cleaning provided that such liability was not assumed by The Member under an agreement entered into after the commencement of the Period of Protection or any renewal thereof unless liability would have attached in the absence of such agreement;
 - (iii) the demolition and removal of any property belonging to The Member which is no longer useful for the purpose it was intended, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of Property Protected under this section and is consequent upon damage to the Property Protected by a peril hereby protected against;
- (g) damage to clothing and tools of trade belonging to directors and employees of The Member whilst on the Premises.

Provided that the protection under Clauses (b) to (g) inclusive above shall not be subject to application of any Co-insurance clause or memorandum contained in this Policy.

PROPERTY PROTECTED:

All real and personal property, of every kind and description (except as hereinafter excluded) belonging to The Member or for which The Member is responsible, or has assumed responsibility to insure prior to the occurrence of any damage, including all such property in which The Member may acquire an insurable interest during the Period of Protection.

It is understood and agreed that the term "personal property" shall include Money (which shall mean current coin, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps and including the value of stamps contained in franking machines) whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia, including whilst contained in the night safe of any bank or financial institution where The Member transacts business, and in the personal custody of The Member and/or persons authorised by The Member whilst contained in their private residences.

BASIS OF SETTLEMENT:

- (a) On buildings, machinery, plant and all other property and contents (other than those specified below); the cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement and Replacement and Extra Cost of Reinstatement Memoranda as set out herein.

Provided that if The Member elects to claim the indemnity value of any damaged property, Statewide will pay to The Member the value of such property at the time of the happening of the damage or at its option reinstate, replace or repair such property or any part thereof. In any event Statewide will pay costs incurred by The Member in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.



- (b) On raw materials, supplies and other merchandise not manufactured by The Member; the replacement cost at the time and the place of replacement or, if such property is not replaced, the value thereof at the time and place of the damage.
- (c) On material in process of manufacture; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon at the time and the place of the damage.
- (d) On finished goods; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon before any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.
- (e) On computer systems records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description; the cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to The Member of the said information; or, if such is not required, the replacement cost of materials as blank stationery at the time and place of the damage.
- (f) On patterns, models, moulds, dies or lasts; the cost of repair or replacement (if actually replaced) otherwise the indemnity value to The Member of such property.
- (g) On glass; the cost of repairing or replacing the broken glass including:
 - temporary shuttering and/or hiring of security service pending replacement of broken glass;
 - signwriting or ornamentation on glass;
 - replacement burglar alarm tapes on glass;
 - removing and re-fixing of window and show case frames and fittings;
 - heat reflecting material or process on glass.
- (h) On directors' and employees' clothing and tools of trade; the replacement cost at the time of replacement subject to due allowance for wear and tear, depreciation and betterment.
- (i) On empty premises awaiting demolition; the salvage value of the building materials and/or landlords fixtures and fitting.



MEMORANDA TO SECTION 1

Except to the extent that this Wording is hereby modified under the following Memoranda the terms, Conditions and limitations of this Wording shall apply.

INTERESTS OF OTHER PARTIES:

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners and all other parties specifically noted in the records of The Member shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in event of damage.

Where this Wording covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties; provided the remaining party/parties shall, immediately on becoming aware of any act or neglect whereby the risk of damage has increased, give notice in writing to Statewide and on demand pay such reasonable additional Contribution as Statewide may require.

Notwithstanding the foregoing paragraph it is understood and agreed that in the event of any of the parties referred to herein being entitled to the benefits of any "Concessions Agreement", which it may have entered into with Statewide the said "Concessions Agreement" will take precedence over the foregoing paragraph.

BRANDED GOODS:

Any salvage of branded goods and/or merchandise, The Member's own or held by The Member in trust or on commission, and/or goods sold but not delivered, shall not be disposed of by sale without the consent of The Member. If such salvage is not disposed of by sale then the damage will be assessed at the value agreed between The Member and Statewide after brands, labels or names have been removed by or on behalf of The Member.

DECLARED VALUES:

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) attaches to and forms part of this Wording for the purpose of the application of Co-Insurance.

REINSTATEMENT OR REPLACEMENT: (Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (i) under Basis of Settlement).

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the damaged property insured at the time of its reinstatement, subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Wording.

For the purpose of the protection under this memorandum "reinstatement" shall mean:

- (a) Where property is lost or destroyed: in the case of a building, the rebuilding thereof or in the case of property other than a building, the replacement thereof by similar



property: in either case in a condition equal to, but not better or more extensive than, its condition when new.

- (b) Where property is damaged: the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.

Provisions

- (i) The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of The Member, but subject to the liability of Statewide not being thereby increased), must be commenced and carried out with reasonable despatch, failing which Statewide shall not be liable to make any payment greater than the indemnity value of the damaged property at the time of the happening of the damage.
- (ii) When any property protected to which this memorandum applies is damaged in part only, the liability of Statewide shall not exceed the sum representing the cost which Statewide could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- (iii) Property protected under this memorandum is separately subject to the following Co-Insurance clause:

in the event of damage to any property protected hereunder at any situation caused by any event hereby protected against, Statewide shall be liable for no greater proportion of such damage than the amount that The Member's declaration of value of property protected at such situation on the day of the commencement of the Period of Protection bears to the sum representing eighty-five per cent (85%) of the cost which would have been incurred in reinstatement if the whole of such property had been destroyed on that day, but not exceeding the Limit of Liability expressed in the Schedule; provided that if the sum actually incurred or expended in rebuilding or replacing the damaged property, within the meaning of sub-paragraph (a) of the abovementioned definition of reinstatement, exceeds the amount which would have been payable under this Wording if this memorandum had not been incorporated herein, but is less than the cost of reinstatement as above defined, then the sum so actually incurred or expended shall, for all purposes of this memorandum, be deemed to be the cost of reinstatement of the property.

Provided further that the above clause shall not apply if the amount of the damage does not exceed five (5) per cent of the amount of The Member's declaration aforementioned.

- (iv) No payment beyond the amount which would have been payable under this Wording if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred; provided that where The Member reinstates or replaces any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.



- (v) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of The Member shall be on a similar reinstatement basis.

EXTRA COST OF REINSTATEMENT: (Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (i) under Basis of Settlement).

This Wording extends to include the extra cost of reinstatement (including demolition or dismantling) of damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Wording.

Provisions

- (i) The work of reinstatement (which may be carried out, wholly or partially upon any other site(s), if the requirements of the aforesaid Act, Regulation or By-law so necessitate, subject to the liability of Statewide not being thereby increased), must be commenced and carried out with reasonable despatch, failing which Statewide shall not be liable to make any payment beyond the amount which would have been payable under this Wording if this memorandum had not been incorporated herein.
- (ii) The amount recoverable shall not include the additional cost, incurred in complying with any such Act, Regulation, By-law or requirement with which The Member had been required to comply prior to the happening of the damage.
- (iii) Co-insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for Co-insurance purposes in terms set out in any clause contained in this Wording.
- (iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of The Member shall be on a similar basis.
- (v) If the cost of reinstatement of damaged property protected is less than fifty per cent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable hereunder shall be limited to:
 - (a) the extra cost necessarily incurred in reinstating only that portion damaged; or
 - (b) whilst applying to such property protected, the Sub-Limit stated herein,

whichever is the greater. In the event of a Sub-Limit not being stated in this Wording Statewide's liability shall be limited to the amount as described in sub-paragraph (a) of this provision.

FLOOR SPACE RATIO INDEX (PLOT RATIO)



Subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Wording, in the event of any building(s) being damaged so as to constitute total loss or constructive total loss and, as a result of the exercise of Statutory powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities, reinstatement of such building(s) as before is prohibited and reinstatement is only permissible subject to a reduced floor space ratio index.

Statewide agrees to pay in addition to any amount payable on reinstatement of such building(s) the difference between:

- (a) the actual cost of reinstatement incurred in accordance with the reduced floor space ratio index and
- (b) the cost of reinstatement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under (a) and (b) above any payments made by Statewide shall include the extra cost of reinstatement, including demolition or dismantling of the protected property, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between (a) and (b) above shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on behalf of The Member in the reinstatement of the buildings.

ACQUIRED COMPANIES

This Wording extends to include property located in Australia belonging to companies and other organisations a controlling interest in which is acquired by The Member during the currency of this Wording; subject to The Member declaring details of such acquisition within a reasonable period following the date of acquisition. Provided the business of the new acquisition shall be similar to the Business as stated in the Schedule.

For the purposes of this memorandum a controlling interest shall in the case of a company, mean the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of ordinary shareholders in such company.

CO-INSURANCE

Unless otherwise stated herein to the contrary, this Wording is subject to the following Co-insurance memorandum:

In the event of damage to property protected hereunder at any situation caused by any event hereby protected against, Statewide shall be liable for no greater proportion of such damage than the amount of The Member's declaration of value of such property on the day of the commencement of the Period of Protection bears to the sum representing eighty-five per cent (85%) of the actual value of property protected at such situation on the day of commencement of the Period of Protection but not exceeding the Limit of Liability expressed in the Schedule. Provided that this clause shall not apply if the amount of the damage does not exceed 5% of the amount of The Member's declaration aforementioned.

It is expressly understood and agreed that the provisions of this Co-insurance Memorandum shall not apply in respect of that part of any claim which is made under the provisions of the Reinstatement and Replacement Memorandum.

SECTION 2 - CONSEQUENTIAL LOSS

THE INDEMNITY

In the event of any building or any other property or any part thereof used by The Member at the Premises for the purpose of the Business being physically lost, destroyed or damaged by any cause or event not hereinafter excluded (loss, destruction or damage so caused being hereinafter termed "Damage") and the Business carried on by The Member being in consequence thereof interrupted or interfered with, Statewide will, subject to the provisions of this Wording including the limitation on Statewide's liability, pay to The Member the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement.

Provided that Statewide will not be liable for any loss under this section unless The Member's property lost, destroyed or damaged is protected against such Damage (loss arising out of destruction or damage by explosion of Boilers and/or Economisers excepted) and the Insurer or Insurers or Protection Providers by which such property is insured or protected shall have paid for, or admitted liability in respect of, such Damage unless no such payment shall have been made or liability shall not have been admitted therefor solely owing to the operation of a provision in such insurance excluding liability for loss below a specific amount.

BASIS OF SETTLEMENT

Item No. 1

The protection under this item is limited to loss of Gross Profit due to: (a) Reduction in Turnover and (b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:

(a) In respect of Reduction in Turnover:

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the damage, fall short of the Standard Turnover;

(b) In respect of Increase in Cost of Working:

the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Protection be less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover, (or its proportionately increased multiple thereof, where the Indemnity Period exceeds 12 months) the amount payable hereunder shall be proportionately reduced.

Item No. 2

The protection under this item is to cover such reasonable professional fees as may be payable by The Member, and such other reasonable expenses necessarily incurred by The Member and not otherwise recoverable, for preparation of claims under The Member's Material Damage and Consequential Loss protection wordings and Statewide shall indemnify The Member for such reasonable fees and expenses.

Item No. 3

The protection under this item is limited to loss in respect of Pay-Roll and the amount payable as indemnity thereunder shall be:

(a) In respect of Reduction of Turnover

- (i) during the portion of the Indemnity Period beginning with the occurrence of the Damage and ending not later than the number of weeks thereafter specified in the Schedule: the sum produced by applying the Rate of Pay-Roll to the Shortage in Turnover during the said portion of the Indemnity Period less any saving during the said portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Pay-Roll paid;
- (ii) during the remaining portion of the Indemnity Period: the sum produced by applying the Rate of Pay-Roll to the Shortage in Turnover during the said remaining portion of the Indemnity Period less any saving during the said remaining portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Pay-Roll paid; but not exceeding the sum produced by applying the percentage of the Rate of Pay-Roll specified in the Schedule to the Shortage in Turnover during the said remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause (a)(i).

Note:

At the option of The Member the number of weeks referred to in clause (a)(i) above may be increased to the number of weeks specified in the Schedule under the heading "Consolidated Period"; provided that the amount arrived at under the provisions of clause (a)(ii) shall not exceed such amount as is deducted under clause (a)(i) for savings effected during the said increased number of weeks.

(b) In respect of Increase in Cost of Working

So much of the additional expenditure described in clause (b) of Item 1 as exceeds the amount payable thereunder, but not more than the additional amount which would



have been payable in respect of Reduction in Turnover under the provisions of clauses (a)(i) and (ii) of this item had such expenditure not been incurred.

Provided that if the Declared Value of Insured Pay-Roll at the commencement of each Period of Protection be less than the sum produced by applying the Pay-Roll Limits to the sum produced by applying the Rate of Pay-Roll to the Annual Turnover (or its proportionately increased multiple thereof, where the Indemnity Period exceeds 12 months) the amount payable shall be proportionately reduced.

Item No. 4

The protection under this item is limited to increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Turnover and/or resuming and/or maintaining normal business operations and/or services.

DEFINITIONS

GROSS PROFIT: the amount by which:

- (a) the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed
- (b) the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule.

Note: The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with The Member's normal accountancy methods, due provision being made for depreciation.

TURNOVER: the money (less discounts, if any allowed) paid or payable to The Member for goods sold and delivered and for services rendered in course of the business at the Premises.

INDEMNITY PERIOD: the period beginning with the occurrence of the Damage and ending not later than the number of months specified in the Schedule thereafter during which the results of the Business shall be affected in consequence of the Damage.

PAY-ROLL: the remuneration (including but not limited to pay-roll tax, bonuses, holiday pay, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) of all employees.

SHORTAGE IN TURNOVER: the amount by which the Turnover during a period shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

RATE OF GROSS PROFIT: The rate of) to which such adjustments shall
Gross Profit earned on the Turnover during) be made as may be necessary to
the financial year immediately before the date) provide for the trend of the
of the Damage) Business and for variations in or
) other circumstances affecting the



<u>ANNUAL TURNOVER:</u> The Turnover during the 12 months immediately before the date of the Damage)	Business either before or after the Damage or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage.
<u>STANDARD TURNOVER:</u> The Turnover during that period in the 12 months immediately before the date of the Damage which corresponds with the Indemnity Period)	
<u>RATE OF PAY-ROLL:</u> The rate of Pay-Roll to Turnover during the financial year immediately before the date of the Damage)	

MEMORANDA TO SECTION 2

Except to the extent this Wording is hereby modified under the following Memoranda the terms, Conditions and limitations of this Wording shall apply.

TURNOVER ELSEWHERE AFTER DAMAGE

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the Premises for the benefit of the Business either by The Member or by the others on The Member's behalf, the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

DEPARTMENTAL CLAUSE

If the Business be conducted in departments the independent trading results of which are ascertainable the provisions of clauses (a) and (b) of Item Nos. 1 and 3 shall apply separately to each department affected by the Damage.

NEW BUSINESS:

In the event of Damage occurring at the Premises before the completion of the first year's trading of the Business the terms "Rate of Gross Profit", "Annual Turnover", "Standard Turnover" and "Rate of Pay-Roll" shall bear the following meanings and not as within stated:



RATE OF GROSS PROFIT: the rate of)
Gross Profit earned on the Turnover during)
the period between the date of the)
commencement of the Business and the)
date of the Damage)
)
ANNUAL TURNOVER: the proportional)
equivalent, for a period of 12 months of the)
Turnover realised during the period between)
the commencement of the Business and the)
date of the Damage)
)
STANDARD TURNOVER: the proportional)
equivalent, for a period equal to the Indemnity)
Period, for the Turnover realised during the)
period between the commencement of the)
Business and the date of the Damage)
)
RATE OF PAY-ROLL: the rate of Pay-Roll to)
Turnover during the period between the date)
of the commencement of the Business and)
the date of the Damage)

to which such adjustments shall
be made as may be necessary to
provide for the trend of the
Business and for variations in or
other circumstances affecting the
Business either before or after the
Damage or which would have
affected the Business had the
Damage not occurred, so that the
figures thus adjusted shall
represent as nearly as may be
reasonably practicable the results
which but for the Damage would
have been obtained during the
relative period after the Damage.

ACCUMULATED STOCKS

In adjusting any loss, account shall be taken and equitable allowance made if any Shortage in Turnover due to the Damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks of finished goods.

BOOKS OF ACCOUNT

Any particulars or details contained in The Member's books of account or other business books or documents which may be required by Statewide for the purpose of investigating or verifying any claim hereunder may be produced and certified by The Member's auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used herein shall have the meanings usually attached to them in the books and accounts of The Member unless otherwise defined in this Wording.

PUBLIC UTILITIES EXTENSION

Any loss resulting from interruption of or interference with the Business in consequence of damage to property, caused by a peril damage as a result of which is protected hereunder, at any electricity station or sub-station, gas works or water works of a public supply undertaking which is situated on or immediately adjacent to the Premises shall be deemed to be loss resulting from Damage to Property used by The Member at the Premises.

TURNOVER/OUTPUT ALTERNATIVE

At the option of The Member the term "Output" may be substituted for the term "Turnover" and, for the purpose of this Wording, "Output" shall mean the sale and/or invoice value of goods manufactured and/or processed by The Member in course of the Business at the Premises. Provided that only one such meaning shall be operative in connection with any one event involving Damage.

If the meaning set out above be used, the memorandum "Turnover Elsewhere After Damage" shall be altered to read as follows:

"if during the Indemnity Period goods shall be manufactured and/or processed other than at the Premises for the benefit of the Business either by The Member or by others on The Member's behalf the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period."

COMPUTER

This Wording extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the Business occasioned by Damage to computer installations including ancillary equipment and data processing media utilised by The Member anywhere in Australia.

SALVAGE SALE

If, following Damage giving rise to a claim under this Wording, The Member shall hold a salvage sale during the Indemnity Period:

(i) Clause (a) of Item 1 of this Section shall, for the purpose of such claim, read as follows:

(a) In respect of Reduction in Turnover

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

(ii) The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows:

Shortage in Turnover shall mean:

the amount by which the Turnover during a period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted the Pay-Roll paid during the period of the salvage sale.

PREMISES IN THE VICINITY (PREVENTION OF ACCESS)

Loss as protected by this Wording resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of the Premises caused by a peril, damage as a result of which is protected hereunder, which shall prevent or hinder the use thereof or access thereto, whether the Premises or property of The Member therein shall be damaged or not, shall be deemed to be loss resulting from Damage to property used by The Member at the Premises.

Loss as protected by this Wording resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of and forming part of or contained in the complex of which the Premises forms part caused by a peril, damage as a result of which is protected hereunder, which results in a cessation or diminution of trade due to temporary falling away of potential custom whether the Premises or property of The Member therein shall be damaged or not shall be deemed to be loss resulting from Damage to property used by The Member at the Premises.

REGISTERED VEHICLES &/OR TRAILERS

Notwithstanding the provisions of Property Exclusion 5, this Wording extends to include loss resulting from interruption of or interference with the Business occasioned by Damage to registered vehicles &/or trailers whilst such vehicles or trailers are at the Premises owned or occupied by The Member; provided always that this Wording does not cover loss resulting from physical loss, destruction of or damage to such vehicles &/or trailers whilst they are being used on any public highway or thoroughfare.

EXCLUSIONS TO ALL SECTIONS

PROPERTY EXCLUSIONS

This Wording does not cover physical loss, destruction of or damage to the following property or loss under Section 2 resulting therefrom:

1. Property (except Money) whilst in transit other than during the incidental movement of such property within situations occupied by The Member. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any situation in the Commonwealth of Australia but, whilst such property is in transit, cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.
2. Money:
 - (a) Whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder;

Provided that where in the ordinary course of business The Member enters into an agreement with such carriers and such agreement provides that The Member shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result



of any event hereby protected against, this protection shall operate as if this Property Exclusion 2(a) had been deleted;

- (b) stolen from an unlocked and unattended vehicle;
- (c) stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the Situation outside business hours, unless such key or combination details have been properly secured;
- (d) where the loss is not discovered within five (5) working days of the event;
- (e) where the loss arises out of:
 - (i) kidnapping;
 - (ii) bomb threat;
 - (iii) hoax;
 - (iv) extortion

or any attempt thereat.

- 3. Jewellery, furs, bullion, precious metals or precious stones other than as stock and/or merchandise of the Business.
- 4. (a) Any locomotive or rolling stock or watercraft other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder whilst any watercraft is on water.

(b) Any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
- 5. Vehicles or trailers registered or licensed to travel on a public road, provided that this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by The Member.
- 6. Livestock, animals, birds or fish.
- 7. Standing timber, growing crops and pastures.
- 8. Land, provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Wording.
- 9. Bridges, canals, roadways and tunnels, railway tracks (other than on the premises occupied or used by The Member), dams and reservoirs (other than tanks) and their contents.
- 10. Docks, wharves and piers not forming part of any building.
- 11. Mining property located beneath the surface of the ground unless otherwise expressly stated in this Wording.

12. Property during the course of, and as a result of, its processing.
13. (a) Gates, fences, retaining walls, textile awnings and blinds;
(b) property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof;

caused by wind, rainwater or hail.
14. (a) Property undergoing construction, erection, alteration or addition when the value of work exceeds 10% of the Limit of Liability or \$500,000 whichever is the lesser.
(b) Empty premises undergoing demolition.
15. Oil and gas drilling and/or production rigs whilst offshore.
16. All Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electromechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.

Provided that Property Exclusion 16 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.

For the purpose of Property Exclusion 16, Machinery means:

any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.

17. Any boiler (other than a boiler used for domestic purposes) economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss or destruction or damage. This exclusion shall not apply to Section 2 as specifically stated therein.

PERILS EXCLUSIONS

Statewide shall not be liable under Sections 1 and/or 2 in respect of:



1. Physical loss, destruction of or damage to the Property Protected:
 - (a) directly or indirectly occasioned by or happening through or connected with war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
 - (b) resulting from confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority.

Notwithstanding the provisions of Perils Exclusion 1(b) Statewide shall be liable for loss, destruction of or damage to, or the cost of removal of, sound property at the Premises for the purpose of preventing or diminishing imminent damage by, or inhibiting the spread of fire or any other peril insured against under this Wording.

2. (a) Physical loss, destruction of or damage to the Property Protected;
- (b) any legal liability of whatsoever nature;

directly or indirectly caused by or contributed to by or arising from:

- (i) ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;

For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission;

- (ii) nuclear weapons materials.

3. Physical loss, destruction or damage occasioned by or happening through:
 - (a) flood, which shall mean the inundation of normally dry land by water overflowing from the normal confines of any natural watercourse or lake (whether or not altered or modified), reservoir, canal or dam;
 - (b) water from or action by the sea, tidal wave or high water.

Provided that Perils Exclusions 3(a) and 3(b) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance.

4. Physical loss, destruction or damage occasioned by or happening through:
 - (a) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom);
 - (b) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good;
 - (c) error or omission in design, plan or specification or failure of design;



- (d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration;
- (e) faulty materials or faulty workmanship.

Provided that this Exclusion 4(a) to (e) shall not apply to subsequent loss, destruction of or damage to the Property Protected occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

5. Physical loss, destruction or damage occasioned by or happening through:

- (a) incorrect siting of buildings consequent upon;
 - (i) error in architectural design or specification;
 - (ii) faulty workmanship;
 - (iii) non compliance by The Member (or anyone acting on behalf of The Member) with the necessary permits issued by Government, Public or Local Authorities;
- (b) demolitions ordered by Government or Public or Local Authorities due to failure on the part of The Member or their agents to obtain the necessary permits required.

6. Physical loss, destruction or damage occasioned by or happening through:

- (a) theft of property (other than Money in transit) in the open-air;
- (b) unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of materials to or from the Insured;
- (c)
 - (i) spontaneous combustion;
 - (ii) spontaneous fermentation or heating or any process involving the direct application of heat.

Provided that Perils Exclusions 6(c)(i) and 6(c)(ii) shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat.

7. Physical loss, destruction or damage occasioned by or happening through:

- (a)
 - (i) fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the



Property Protected by The Member or any employee(s) of The Member acting alone or in collusion with any other person(s);

- (ii) access by any person(s) other than The Member or The Member's employee(s) to The Member's computer system via data communication media that terminate in The Member's computer system.

Provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of The Member or theft of money whilst in transit.

- (b) (i) the cessation of work whether total or partial;
- (ii) the cessation, interruption or retarding of any process or operation;

as a result of strikes, labour disturbances or locked out workers.

Provided that Perils Exclusions 7(b)(i) and 7(b)(ii) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons.

- (c) erosion, subsidence, earth movement or collapse resulting therefrom;
- (d) kidnapping, threat, hoax, extortion or any attempt thereat.

Provided that this Exclusion 7(a) to (d) shall not apply to subsequent loss, destruction or damage to the Property Protected occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

- 8. Any legal liability of whatsoever nature other than as herein provided;
- 9. Consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.
- 10. Notwithstanding anything to the contrary contained herein, this Wording does not cover loss or destruction or damage resulting from pollution or contamination except (unless otherwise excluded) loss or destruction of or damage to property or any part thereof used by The Member at the premises for the purpose of the business caused by:
 - (a) pollution or contamination at the premises which itself results from fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, bursting overflowing discharging or leaking of water tanks, apparatus or pipes, sprinkler leakage or impact by any road vehicle or animal;
 - (b) any of the perils listed in (a) above which itself results from pollution or contamination.

MEMORANDA APPLICABLE TO ALL SECTIONS

Except to the extent that this Wording is hereby modified under the following Memoranda the terms, Conditions and limitations of this Wording shall apply.

AMOUNT OF POLICY NOT REDUCED BY LOSS

The protection under each section and/or item of this Wording and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by The Member of a pro-rata additional Contribution calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Protection.

EVENT

Only for the purpose of the application of any deductible: all loss destruction or damage resulting from earthquake occurring during each period of 72 consecutive hours shall be considered as one event whether such earthquake is continuous or sporadic in its sweep and/or scope and the loss, destruction or damage was due to the same seismological conditions. Each event shall be deemed to have commenced on the first happening of any such loss, destruction or damage not within the period of any previous event.

SUBROGATION WAIVER

Statewide agrees to waive any rights and remedies or relief to which it may become entitled by subrogation against:

- (a) any corporation or organisation (including its directors, officers, employees or servants) owned or controlled by any Member named herein or subsidiary to any Member named herein or any co-owner of the property protected hereunder;
- (b) any Member named or described by this Wording (Including its directors, officers, employees or servants).

ADJUSTMENT OF CONTRIBUTION

- (a) The Contribution shown is provisional and is calculated on the Declared Values of:
 - (i) Property Protected;
 - (ii) Gross Profit and Insured Pay-Roll;on the day of commencement of each Period of Protection.
- (b) The Member undertakes to declare to Statewide within a reasonable time after the day of expiry of the Period of Protection:
 - (i) the value of Property Protected on the day of expiry of the Period of Protection. For the purpose of this declaration, stock-in-trade and/or merchandise shall be taken at its average value during the Period of Protection;



- (ii) the amount of the Gross Profit earned and Pay-Roll paid, in accordance with the cover afforded in the respective items of Section 2, in the course of the Business during the accounting period of 12 months most nearly concurrent with the Period of Protection.
- (c) The provisional Contribution shall be adjusted by payment to Statewide of an additional Contribution or by allowance to The Member of a return Contribution, as the case may be, calculated at the agreed rate on:
 - (i) fifty per cent (50%) of the difference between property declared in accordance with clauses (a)(i) and (b)(i);
 - (ii) the full agreed rate hereunder on the difference between the amounts declared under clauses (a)(ii) and (b)(ii).
- (d) It is agreed to make allowance for any abnormal fluctuation in values and to charge a Contribution commensurate with the risk, such Contribution to be agreed between the parties to this agreement.
- (e) The Declaration of Values at the expiry of the Period of Protection declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under this Wording.

DEFINITION OF "POLLUTION" AND "CONTAMINATION" AND "DEBRIS"

Where the words "pollution" or "contamination" are used as part of this Wording or its endorsements or attachments they shall have the specific meaning given below:

Damage or loss arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, atmosphere or any watercourse or body of water (including groundwater).

Where the word "debris" is used as a part of this Wording or its endorsements or attachments it shall have the specific meaning given below:

- (a) The residue of damaged Property Protected; or
- (b) material deposited on the protected premises as a result of the operation of a protected peril, excluding any material which can cause pollution or contamination and which is deposited beyond the boundaries of the protected premises.



CONDITIONS - APPLICABLE TO ALL SECTIONS

1. MISREPRESENTATION AND NON-DISCLOSURE

If The Member:

- (i) failed to disclose any matter which The Member was under a duty to disclose to Statewide; or
- (ii) made a misrepresentation to Statewide before this Wording was entered into;

and if Statewide would not have entered into this Wording for the same Contribution and on the same terms and Conditions expressed in this Wording but for the failure to disclose or the misrepresentation;

then -

- (a) the liability of Statewide in respect of any claim will be reduced to an amount to place Statewide in the same position in which Statewide would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- (b) if the non-disclosure or misrepresentation was fraudulent, Statewide may avoid this Wording.

2. ALTERATION

Statewide shall not be liable for loss, destruction of or damage to any property protected hereunder caused or contributed to by any alteration after the commencement of this Wording:

- (a) by removal of such property from the Premises other than as provided under the terms of Property Exclusion 1;
- (b) in the trade or processes of manufacture carried on at the Premises or whereby the nature of the occupation or other circumstances affecting the Premises and/or The Member's property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;
- (c) whereby any premises containing any property protected hereunder shall become unoccupied, and so remain for a period of more than thirty days; or
- (d) whereby The Member's interest ceases except by will or the operation of law,

Provided that any such alteration, upon coming to the knowledge of The Member's officer responsible for insurance, shall be immediately notified to Statewide and, if agreed to by Statewide in writing, an appropriate additional Contribution paid if required.



3. SPRINKLER INSTALLATIONS - APPLICABLE TO OWNED PREMISES OR INSTALLATIONS FOR WHICH THE MEMBER IS RESPONSIBLE

The Member warrants that in such of the Premises as are protected or as are required by law to be protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Member further warrants that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS 1851 part 3 Automatic Sprinkler Installation by the installing engineers or firm or, failing this, by a person or organisation who must be approved by Statewide to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by The Member to Statewide as soon as reasonably practicable.

4. OTHER INSURANCE

The Member shall give written notice as soon as practicable to Statewide of any other insurance or insurances effected covering the Property Protected.

5. CANCELLATION

- (a) This Wording may be cancelled at any time at the request of The Member, in which case Statewide will retain the customary short-period rate for the time this Wording has been in force.
- (b) Statewide may also cancel this Wording by giving The Member written notice to that effect where:
 - (i) The Member or any person who was at any time The Member failed to comply with the duty of utmost good faith;
 - (ii) the person who was The Member at the time when this Wording was entered into failed to comply with the duty of disclosure;
 - (iii) the person who was The Member at the time when this Wording was entered into made a misrepresentation to Statewide during the negotiations for this Wording but before it was entered into;
 - (iv) The Member or any person who was at any time The Member failed to comply with a provision of this Wording, including a provision with respect to the payment of the Contribution;



- (v) The Member has made a fraudulent claim under this Wording or any other policy of insurance (whether with Statewide or some insurer) that provided insurance cover during any part of the period during which this Wording provides protection;
 - (vi) The Member failed to notify Statewide of any specific act or omission where such notification is required under the terms of this Wording; or
 - (vii) The Member acted in contravention of or omitted to act in compliance with any condition of this Wording which empowers Statewide to refuse to pay, or reduce its liability in respect of, a claim in the event of such contravention or omission.
- (c) Statewide's notice of cancellation takes effect at the earlier of the following times:
- (i) the time when another form of protection or policy of insurance between The Member and Statewide or some insurer, being a form of protection or policy that is intended by The Member to replace this Wording, is entered into; or
 - (ii) 4.00 p.m. on the thirtieth business day after the day on which notice was given to The Member.

In the event that Statewide cancels this Wording, Statewide will repay to The Member a rateable proportion of the Contribution for the unexpired Period of Protection from the date of cancellation.

6. NOTIFICATION OF CLAIMS

On the happening of any loss, destruction or damage, The Member shall forthwith give notice thereof in writing to Statewide and shall (within thirty (30) days after such loss, destruction or damage or such further time as Statewide may in writing allow), at The Member's own expense, deliver to Statewide a claim, in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto, having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby protected.

The Member shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business to avoid or diminish the loss and shall also deliver to Statewide a statement in writing of any claim certified by The Member's auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

No claim under this Wording shall be payable unless The Member has complied with the terms of this condition.



7. FRAUD

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by The Member or anyone acting on The Member's behalf to obtain any benefit under this Wording, or if any destruction or damage be occasioned by the wilful act or with the connivance of The Member, Statewide, without prejudice to any other right(s) Statewide might have under this Wording, shall be entitled to refuse to pay such claim.

8. REINSTATEMENT

If Statewide elects or becomes bound to reinstate or replace any property, The Member shall at The Member's own expense produce and deliver to Statewide all such plans, documents and information as Statewide may reasonably require. Statewide shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

9. STATEWIDE'S RIGHTS

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Wording, Statewide and every person authorised by Statewide may, without thereby incurring any liability, and without diminishing the right of Statewide to rely upon any Conditions of this Wording, enter, take or keep possession of any building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to Statewide any of the property hereby protected and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition shall be evidence of the leave and licence of The Member to Statewide so to do. If The Member or any one acting on The Member's behalf shall not comply with the requirements of Statewide or shall hinder or obstruct Statewide in doing any of the abovementioned acts, then all benefits under this Wording shall be forfeited. The Member shall not in any case be entitled to abandon any property to Statewide whether taken possession of by Statewide or not.

10. SUBROGATION

- (a) Any person claiming under this Wording shall at the request and at the expense of Statewide do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by Statewide for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which Statewide shall be or would become entitled or subrogated upon Statewide paying for or making good any destruction or damage under this Wording.
- (b) If Statewide makes any recovery as a result of such action, The Member may only recover from Statewide any amount by which the amount recovered by Statewide exceeded the amount paid to The Member by Statewide in relation to the loss.



11. PRECAUTIONS TO PREVENT LOSS

The Member shall take all reasonable precautions to prevent loss, destruction or damage to the property protected by this Wording.

12. THE MEMBER'S ACTION AFTER THEFT OR DAMAGE

The Member shall, upon becoming aware of any loss by theft or of any wilful or malicious damage which may give rise to a claim under this Wording, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged.

13. TERMINATION OF COVER UNDER SECTION 2

Notwithstanding anything contained herein to the contrary, if during any period in respect of which this Wording is in force:

- (a) The Member ceases to carry on the Business or any part of the Business is disposed of, permanently discontinued or The Member's interest in the Business or such part thereof ceases otherwise than by death; or
- (b) The Member (being a corporation) is placed in liquidation (or provisional liquidation), is placed under Official Management, enters into a Scheme of Arrangement, has Receivers and/or Managers appointed over its assets or undertakings); or
- (c) The Member (being a natural person) becomes a bankrupt or enters into a scheme of arrangement or compromise or composition with creditors;

then the protection provided under Section 2 of this Wording in respect of such Business or Member shall automatically and forthwith cease.

In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed for or on behalf of Statewide.

14. OBSERVANCE OF TERMS AND CONDITIONS

The due observance and fulfilment of these Conditions and the other terms of this Wording by The Member, insofar as the same are capable of being construed as such, are conditions precedent to any liability of Statewide to make any payment under this Wording.

15. PROGRESS PAYMENTS

Provided that liability has been admitted progress payments on account of any claim may be made to The Member at such intervals and for such amounts as may be agreed upon production of a report by the Loss Adjuster (if appointed) provided such payment(s) shall be deducted from the amount finally determined upon adjustment of the claim.



16. HEADINGS

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Wording are not to be construed or interpreted by reference to such headings.

"A"

**AGREED PERCENTAGE
EUCALYPT PLANTATION JOINT VENTURE FORESTRY RIGHT
AGREEMENT
COVENANTS AND PROVISIONS**

PARTIES: FORESTRY COMMISSION OF NSW Trading as FORESTS
NSW

AND: The Owner in Item 1 of Schedule 1.

PERIOD: The Term in Item 4 of Schedule 1.

CONTENTS

PARTS:

1. Definitions and Interpretation
2. Objects
3. Rights and Obligations
4. Payments and Administration
5. Management
6. Protective Measures
7. Harvesting and Marketing
8. Reduction of Available Land
9. Damage to Plantation, Force Majeure Events
10. Transfer of Land and Assignment of Rights
11. Rights, Liabilities and Indemnities
12. Termination of Agreement by Either Party
13. Disputes
14. Forests NSW Sole Judge of Proper Forest Management
15. Variation of Conditions
16. Notice
17. Governing Law
18. Severability
19. Special Conditions

SCHEDULES:

1. Particulars
2. Land map
3. Agreed Percentages
4. Working Plan
5. Draft Transfer
6. Special Conditions

**AGREED PERCENTAGE
EUCALYPT PLANTATION JOINT VENTURE FORESTRY RIGHT
AGREEMENT
COVENANTS AND PROVISIONS**

SCHEDULE 1

SCHEDULE OF PARTICULARS OF JOINT VENTURE AGREEMENT

Item 1	Owner	THE COUNCIL OF THE SHIRE OF TWEED
Item 2	Owner's address	P O Box 816 MURWILLUMBAH NSW 2484
Item 3	<u>The Property</u> Lot & DP Local Govern. Area Parish County Encumbrances	Lot 1 DP582300 Lot 3 DP582300 Lot 4 DP582299 Lot 10 DP778512 Lot 11 DP778512 Lot 15 DP801723 Lot 16 DP801723 Lot 17 DP801723 Lot C DP381297 Tweed Kunghur Rous U808296 Forestry Right 2719960 Profit A Prendre 3408620 Profit A Prendre 3408622 Profit A Prendre W599792 Lease to the Crown X957265 Lease to JE & KJ Morrow
Item 4	Term	40 years
Item 5	Commencement date	1 st January 1994
Item 6	Rental	N/A

~~Annexure 2~~ - LAND MAP

cao002, 008, 017 Tweed Council Section













J.V. Murwillumbah State Forest No -32

HP Casino Region

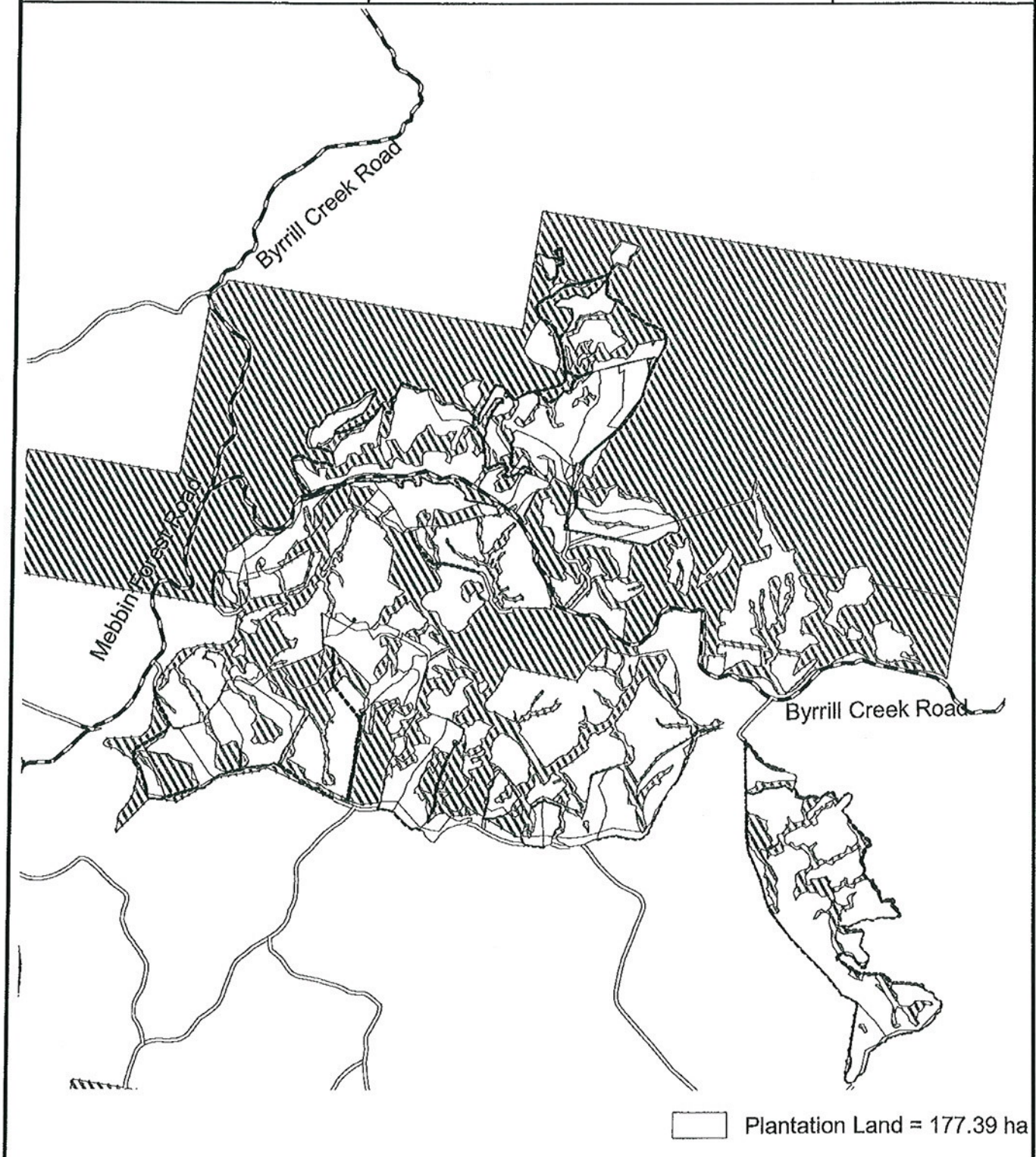
Planted Forests Division

Produced on: Feb 6, 2007

From data valid at: February 03, 2007

- | | | |
|--|--|---|
|  Plantation |  Other PPA |  Service Exclusion |
|  Clearfall |  Environ. Exclusion |  Other Exclusion |
|  Closed Road |  Sealed Road | |
|  Major Gravel Road |  Minor Gravel Road | |
|  Natural Surface Road |  Minor Track | |

Schedule 2
Land Map



Schedule 3

1. Subject to clause 7.4 the Term of the agreement is the term in Item 4 in Schedule 1 commencing on the date in Item 5 Schedule 1.
2. The proportion of net proceeds from sale of all produce net of harvesting and extraction costs as referred to in clause 4.4 shall be in accordance with the proportions set out in the following table which corresponds to the year of harvest reckoned from the commencement date.

Year of Harvest	Forests NSW Proportion	Landowners Proportion
1	94.1	5.9
2	89.2	10.8
3	84.6	15.4
4	80.5	19.5
5	77.0	23.0
6	74.0	26.0
7	71.2	28.8
8	68.8	31.2
9	66.6	33.4
10	64.6	35.4
11	62.9	37.1
12	61.2	38.8
13	59.8	40.2
14	58.4	41.6
15	57.2	42.8
16	56.0	44.0
17	55.0	45.0
18	54.0	46.0
19	53.1	46.9
20	52.2	47.8
21	51.5	48.5
22	50.7	49.3
23	50.0	50.0
24	49.4	50.6
25	48.8	51.2
26	48.2	51.8
27	47.7	52.3
28	47.2	52.8
29	46.7	53.3
30	46.3	53.7
31	45.6	54.1
32	45.5	54.5
33	45.1	54.9
34	44.7	55.3
35	44.4	55.6
36	44.1	55.9
37	43.8	56.2
38	43.5	56.5
39	43.2	56.8
40	43.0	57.0

3. The responsibility for respective management activities in the plantation establishment and maintenance is as specified in the Working Plan.

PRO FORMA
Schedule 4

Working Plan - Joint Venture Agreement

The Owner in Item 1 of Schedule 1 and Forests NSW of NSW

Agreement

This Working Plan comprises Schedule 4 of the Plantation Joint Venture Agreement between the Forestry Commission of NSW trading as Forests NSW of NSW and the Owner in Item 1 Schedule 1 whose address is in Item 2 of Schedule 1.

Particulars of Plantation Land

The land on the north and south of Byrrill Creek Road approximately 8km west of Kyogle Road Junction comprising undulating to moderately sloping topography.

Agreed Access to Plantation

Access to the Plantation shall be via Byrrill Creek Road, and then access tracks from there to and within the property.

Location

The Land shown hatched on the Land Map comprising Schedule 2.

Land Rental

The land rental value was negotiated between the Owner in Item 1 Schedule 1 and Forests NSW and is shown in Item 6 of Schedule 1.

Soil Type: Sandy loam

Area of Plantation: 177.39ha

Species

Eucalyptus Dunnii, Eucalyptus Grandis, Eucalyptus Pilularis, Eucalyptus Saligna, Eucalyptus Cloeziana

Schedule of Operation and Responsibility

The following table identifies the principal activities in establishment and management of the plantation crop. The table specifies the responsibility of the landowner and Forests NSW for undertaking and paying for specific tasks. All operations where landowners have equipment and demonstrated competency and time to do the work are available for the landholder to undertake by agreement.

Table of Responsibility and Task

1A) Plantation Establishment - Completed

IIA) Plantation Maintenance

ACTIVITY	RESPONSIBILITY	COMMENTS
Tree pests & disease monitoring	Forests NSW & Landowner	As required and as agreed
Fence maintenance	Landowner	To manage stock
Access maintenance (annual)	Landowner	Sufficient for 4WD
Firebreak maintenance (annual)	Landowner	As required
Fuel reduction burning within plantation	Forests NSW	As required
Fuel reduction burning outside plantation	Landowner	As required and as agreed
Noxious Weed Control	Landowner	As required by Law. Consult first with Forests NSW on method and use of chemicals

Pruning

Depending on circumstances pruning may be necessary.

Nature of Operations

The objective is to establish a commercially viable eucalypt plantation to produce a range of products dependent on market availability and value.

Forests NSW will keep the Owner informed of proposed operations or treatment and confer with the owner thereon.

At final harvest the site is to be restored as specified in the Agreement. Proceeds from each harvest are to be divided in the proportion of the compounded costs contributed by each party.

Harvesting and Yield

The plantation will be harvested to maximise yield through the rotation. Depending on growth, tree quality, stocking and available markets, small roundwood thinnings would be expected from the first commercial thinning operation. A second commercial thinning, depending on the above conditions, would produce small sawlog, poles and veneer. The final harvest would yield veneer and sawlog products.

Harvesting is to be organised by Forests NSW.

Site restoration and marketing costs are to be deducted from royalties at the time of stand realisation. Marketing costs will be a maximum of 10% of the Royalties.

Site Restoration

The aim of site restoration is to provide for the option of restoration of the Land to its former land-use or alternatively to continue with a further plantation rotation.

Site restoration will be agreed according to clause 7.7 and may include the cutting of all tree stumps to an agreed height, the removal of all logging slash from within four (4) metres of the boundary fence, and the windrowing for subsequent burning of all logging slash on the area.

Site restoration will be managed by Forests NSW.

Retention

Clause 7.5 allows the Owner within limits, to elect to retain such trees, in numbers and location, as he may require. The forgone royalty value of these trees is to be included in the royalty determination for the plantation and an appropriate adjustment made to the Owner's royalty entitlement (see Part 8).

Part 8, also gives the Owner the opportunity to purchase Forests NSW' interest in part or all of the plantation (within limits).

Contract Preparation

Forests NSW will be responsible for the preparation of the joint venture agreement and the working plan for the plantation. Each party is to pay its own legal costs in connection with contract preparation and execution.

Oversight

Forests NSW is to carry out a review and report of plantation progress (growth rates, weed, insect, disease control) at years 1, 2, 5, and subsequently at five (5) yearly intervals as necessary.

A copy of the review and report will be provided as soon as practicable to the Owner.

Documentation

The Working Plan and Agreement documents together detail the procedural requirements of all parties to the joint venture.

All costs, including land rental component, are to be reinvested in the joint venture to determine each party's royalty entitlement.

Schedule 5

Form: 01TH
Release: 1
www.lpi.nsw.gov.au

TRANSFER CREATING
~~PROFIT A PRENDRE OR~~
FORESTRY RIGHT
New South Wales

Leave this space clear. Affix additional pages to the top left-hand corner.

Sections 87A and 88AA Conveyancing Act 1919

PRIVACY NOTE: this information is legally required and will become part of the public record

(A) TORRENS TITLE	Servient Tenement		Dominant Tenement (if applicable)
	1/582300 3/582300 4/582299 10/778512 11/778512 15/801723 16/801723 17/801723 C/381297		
(B) LODGED BY	Delivery Box	Name, Address or DX and Telephone	CODE
		Reference:	TH
(C) TRANSFEROR	THE COUNCIL OF THE SHIRE OF TWEED		
(D) TRANSFEREE	FORESTRY COMMISSION OF NEW SOUTH WALES trading as Forests NSW		
(E)	TENANCY:		

The transferor acknowledges receipt of the consideration of \$ 1.00 and

- (F) transfers and grants a FORESTRY RIGHT (TIMBER) pursuant to section 87A of the Conveyancing Act 1919 to the transferee as follows:
- (G) 1. Term: 40 years 2. Commencing date: 01 January 1994 3. Terminating date: 31 December 2034
- 4. Particulars of the forestry right are set out in annexure "A" consisting of 1 pages.
- 5. Incorporates the covenants set out in annexure N.A. consisting of N.A. pages.
- 6. Incorporates the provisions set out in memorandum No.N.A. filed at Land and Property Information New South Wales.

(H) Encumbrances (if applicable): N.A

DATE

(I) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Authorised officer's name:
Authority of officer:
Signing on behalf of: TWEED SHIRE COUNCIL

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Authorised officer's name:
Authority of officer:
Signing on behalf of: FORESTS NSW

Annexure "A" to TRANSFER CREATING FORESTRY RIGHT

Parties:

THE COUNCIL OF THE SHIRE OF TWEED (Transferor)
FORESTRY COMMISSION OF NEW SOUTH WALES trading as Forests NSW (Transferee)

Dated

PARTICULARS OF FORESTRY RIGHT

1. Rights created by and appurtenant to the forestry right are as follows:-
 - (a) to enter the land burdened;
 - (b) to establish, maintain and harvest a crop of trees (the "Plantation") on the land burdened;
 - (c) to construct and use such buildings, works and facilities as may be necessary or convenient to enable the transferee to establish, maintain and harvest the crop;
 - (d) to store and carry away timber grown in the Plantation and sell any produce derived from the Plantation;
 - (e) to do all such other acts and things as may be necessary or desirable for the full exercise and enjoyment of the abovementioned rights.

2. The forestry right together with all appurtenant and incidental rights is to be held in gross for a term of forty (40) years commencing on 1st January 1994 subject to agreement between the Transferor and Transferee.

The common seal of The Council
Of the Shire of Tweed was hereunto
Affixed in the presence of:-

.....
Signature of Witness

.....
Name of Witness

.....
Address of Witness

Signed by the Forestry Commission of
New South Wales trading as Forests NSW
by its Delegate

.....
in the presence of:-

.....
Witness

Page 2 of 2

Page 9 of 26

THIS DEED OF AGREEMENT is made the day of

Two thousand and eight

BETWEEN:

PARTIES

The Owner in Item 1 of Schedule 1 whose address is in Item 2 Schedule 1 (hereinafter called "the Owner") of the first part; and

FORESTRY COMMISSION OF NSW Trading as Forests NSW of NSW of 423 Pennant Hills Road, Pennant Hills NSW 2120 (hereinafter called "Forests NSW") of the second part.

RECITALS

- A. The Owner is the owner of the whole of the Property as defined herein;
- B. Forests NSW is the business name of the Forestry Commission of NSW, which is a corporation sole constituted under the Forestry Act 1916 with power to enter into agreements with any person for the purpose of carrying on the business of forestry;
- C. Forests NSW and the Owner have agreed to plant, cultivate, harvest trees and market produce therefrom as a commercial joint venture on the terms and conditions contained in this Agreement, upon the Land defined herein being part of the Property above referred to;
- D. The objects of the joint venture are set forth in Part 4 of this Agreement;
- E. Forests NSW desires to enter on the Land for the purpose of commencing work to establish eucalypt plantations;
- F. The Owner has agreed that a forestry right should be registered over the Land.

PART 1: DEFINITIONS AND INTERPRETATIONS

Definitions

In this Agreement unless the context otherwise requires:-

1.1 "the Act" means the Forestry Act 1916.

"additional inventory" means the measurement of stand condition following a force majeure event to determine changes in the stand.

"agreement" means this agreement as amended from time to time together with all Schedules.

"balance date" means 30 June in each year during the Term.

"boundary" means the boundary of the Land defined by pegs placed on the Property by Forests NSW and indicating the limit of the Land.

"clearfelling" means the final cutting and removal of a crop of trees planted on any area on the Plantation.

"commencement date" means the date shown in clause 1 of Schedule 3.

"commercial thinning" means a thinning whereby sale proceeds are received by Forests NSW from the sale of the Produce resulting from the thinning;

"establishment and management cost" means an amount incurred by either party in the course of performing his obligations under this Agreement including, but not limited to, each party's costs for preliminary works on the Plantation, construction of maintenance facilities, establishment of a crop of trees on the Land, pruning and non commercial thinning operations on the Plantation.

"forestry right" has the meaning ascribed to it in section 87A of the Conveyancing Act 1919.

"harvest" means the intentional felling and removal of timber for the purpose of sale.

"harvest inventory" means the measurement of plots recording the likely yield of logs from a harvesting operation.

"the land" means that part of the Property shown hatched on the Land Map.

"land map" means the sketch plan numbered 1 in Schedule 2 and includes any amendments of or variations to the land map which may be agreed by the parties from time to time.

"maintenance facilities" means any facility needed or reasonably required by the Forests NSW to perform its obligations under this Agreement and without limiting the generality of the foregoing includes roads, tracks, firebreaks, buildings, dams and water supplies.

"non commercial pruning" means a pruning whereby Forests NSW does not sell the Produce resulting from the pruning.

"non commercial thinning" means a thinning whereby Forests NSW does not sell the Produce resulting from the thinning.

"noxious weeds" means those weeds described and defined within the meaning of the Noxious Weeds Act 1993.

"owner" means the Party of the first part and his successors and assigns.

"the plantation" means the crop of trees established on the Land pursuant to this Agreement.

"plantation plan" means the sketch plan numbered 2 in Schedule 2 and includes any amendments of or variations to that plan which may be agreed by the parties from time to time.

"produce" means any saleable produce derived from timber grown on the Plantation.

"pruning" means removing the branches from trees to a height specified by Forests NSW in order to produce wood free of knots;

"the property" means the land described in Schedule 1 subject to the encumbrances described in Schedule 1.

"routine inventory" means the measurement of plots recording tree sizes and quality characteristics.

"royalty rates" means the gross sale price per cubic metre or per tonne of produce, net of all costs of harvesting and extraction.

"stand assessment" means the measurement of plots recording stand growth and condition.

"Forests NSW" means the Forestry Commission of NSW trading as Forests NSW, its successors and assigns.

"term" means the period for which this Agreement remains in force, as specified in clause 1 of Schedule 3 or any substituted period agreed to in writing by the parties.

"thinning" means the intentional felling or destruction of any trees to produce specified produce and/or to accelerate growth of the residual trees.

"timber" means any trees specified in the Working Plan and grown for produce and includes dead or dying trees.

"vermin" means those animals described or defined as vermin within the meaning of the Rural Lands Protection Act 1989; and

"working plan" means the plan annexed to this Agreement as Schedule 4 describing the nature, extent and timing of all activities associated with the establishment and management of the plantation and includes any amendments of or variations to the working plan which are agreed to in writing by the parties from time to time.

- 1.2 A word or expression that indicates one or more particular genders is to be taken to indicate every other gender;

a reference to a party includes a reference to the employees, agents or contractors of that party;

a reference to a Part, a clause, or a Schedule, is a reference to a Part, a clause, or a Schedule in or to this Agreement; and
a reference to an agreement, Act, Code or other instrument includes references to any amendment, variation, addition, substitution or re-enactment which may have been made or may hereafter be made to that agreement, Act, Code or other instrument.

Words and phrases used in this Agreement which are defined in the Act, except where inconsistent with the express or implied provisions of this Agreement have the meanings ascribed to them in the Act.

The headings and list of contents in this Agreement are for convenience only and are not to be taken into account in the construction of this Agreement.

PART 2: OBJECTS

The paramount object of the joint venture is the commercial production of hardwood timber from Eucalypt plantations. The broader objectives are as follows:

- a) to procure additional lands for Forests NSW for establishment, growing, harvesting and sale of plantation timbers;
- b) to augment timber resources available to Forests NSW for supply to industry;
- c) to provide an opportunity for the Owner to utilise his land to commercial advantage and participate in a viable commercial

hardwood timber enterprise by means of contribution of funds and management expertise by Forests NSW;

- d) to conduct a viable commercial venture in accordance with good forestry practice without compromising future value and yield for short-term benefit;
- e) to enable the Owner to exploit the value of trees within the whole farm plan in contributing to the management of the Owner's pastoral or cropping interests;
- f) to establish a commercially viable Eucalypt plantation to produce a range of products commensurate with market demands and availability and value;
- g) to utilise the respective skills and resources of the parties to the greatest extent possible.

PART 3: GRANT OF RIGHTS AND OBLIGATIONS

- 3.1 The Owner will do all things and sign all documents necessary and as soon as reasonably practicable to cause the registration of a forestry right over the Property in accordance with the draft transfer granting easement attached to this Agreement and referred to as Schedule 5. In particular the Owner will use his best endeavours to obtain the consent of any mortgagee, lessee, chargee or encumbrancee to the grant of the forestry right. And this Agreement is subject to and conditional upon the consent of any mortgagee, lessee, chargee or encumbrancee.
- 3.2 The Owner warrants that he has full legal capacity to enter into this Agreement and that he is not prevented from executing this Agreement by the provisions of any mortgage, deed, charge or otherwise howsoever.
- 3.3 Forests NSW has full free and exclusive right liberty and power from time to time:
 - to exercise all of the rights as specified for a forestry right in section 87A of the Conveyancing Act;
 - to establish, maintain and harvest a crop of trees in the manner detailed in the Working Plan;
 - to store and carry away timber grown in the Plantation and sell any produce derived from the Plantation;
 - to do all such other acts and things as may be necessary or desirable for the full exercise and enjoyment of its rights under this Agreement.

- 3.4 Subject to this Agreement and in particular to the Working Plan, Forests NSW will establish, maintain and harvest a crop of trees on the Land and market the timber therefrom, using its best endeavours to obtain the best price for the produce having regard to market conditions prevailing at the time. Forests NSW gives no guarantee whatsoever as to the saleability of any produce or royalty rates obtainable.
- 3.5 The boundaries of the Land defined in sketch plan or plans set out in Schedule 2 are approximate only and the location and area may be confirmed by a plan based on aerial photography or another surveying or measuring technique. The annual Land rental is to be calculated accordingly upon the actual area planted.

PART 4: PAYMENTS AND ADMINISTRATION

- 4.1 Forests NSW must within four weeks after the date of receipt of payments for the sale of produce, make payments to the Owner in accordance with the provisions of Schedule 3.
- 4.2 The parties must in accordance with Schedule 4 and in accordance with principles of good forest practice and husbandry, plant, tend, protect and manage the Plantation to ensure the health, vigour and marketability of the timber.
- 4.3 The parties must comply with all Acts and Regulations and any relevant codes of logging practice relating to the Plantation.
- 4.4 Subject to clause 4.2 and the following sub clause:
- (a) The parties agree to comply with Tables IA and IIA of Schedule 4.
 - (b) The parties agree that the responsibilities detailed in Table IA will be commenced within six (6) months of the dates specified therein. The parties also agree that if the planting of seedlings does not occur within six (6) months of the date specified therein, then either party may terminate the agreement by notice in writing to the other in accordance with Part 16 of the Agreement.
- 4.5 Timber may be removed as thinnings or by clearfelling from the Plantation during the Term, according to good forestry management principles and as described in the Working Plan.
- 4.6 At the end of the Term, harvesting of the remaining plantation timber on the Plantation is to be done, unless otherwise agreed between the parties.

4.7 In the course of performing Forests NSW' obligations under this Agreement Forests NSW must endeavour to avoid causing any undue or unreasonable interference to the operations of the Owner on any part of the Property other than the Land.

4.8 Forests NSW must keep records of:

- (1) The volume and grade of all produce taken from the Plantation during any harvest operation or, if there is more than one harvest operation, the volume and grade of all produce taken from the Plantation during each particular operation; and
- (2) The royalty rates applicable to produce for each harvest.

To enable Forests NSW to carry out its obligations under this clause, agreed expenditure incurred by the Owner determined in accordance with Schedules 3 and 4 must be notified to Forests NSW within fourteen (14) days after the end of each month during the Term.

4.9 Subject to clause ~~4.12~~ 4.11, with the exception of thinning operations and final harvesting, Forests NSW is not to engage any person other than Forests NSW employees to perform work required to be performed by this Agreement, if that work might reasonably be performed to a standard satisfactory to Forests NSW by the Owner, without first offering the Owner the opportunity of himself performing the work at a rate equivalent to the market rate for such work.

4.10 The Owner and Forests NSW are to meet annually to review the progress of the Plantation and discuss any amendment to the Plantation Map or Working Plan which may be necessary or desirable.

4.11 Forests NSW is not required to offer to the Owner the opportunity of performing the work referred to in clause 4.9 if Forests NSW is of the opinion that the Owner could not perform the work to the standard required by Forests NSW.

4.12 The Owner must during the Term comply with the provisions of all mortgages, leases, licences, charges or other encumbrances relating to the Land and must not cause or permit any breach of any covenant in any mortgage, lease, licence, charge or encumbrance and shall punctually pay all rates, taxes and other charges levied by any relevant authority in respect of the Land.

4.13 The Owner must not during the Term, grant any mortgage, charge lien or other security, legal or equitable, over the Land without the prior written consent of Forests NSW. Such consent will not be unreasonably withheld.

PART 5: MANAGEMENT

- 5.2 The parties agree that all roads and fences within the Plantation Area are to be maintained in accordance with the usual forestry practices adopted by Forests NSW.
- 5.3 The Owner must at all times during the Term allow Forests NSW, its employees, agents and contractors full and free access to and egress from the Land through the Property for such purposes as Forests NSW deems necessary or convenient for the performance of its obligations and obtaining the benefit of its rights under this Agreement.
- 5.4 Except as provided in clause 7.5, the parties to this agreement are absolutely entitled to the proceeds from the sale of all produce, net of harvesting and extraction costs, in the proportions as set out in Schedule 3.
- 5.5 The Owner may only graze livestock on the Land in such numbers and at such times and on such conditions as are agreed to by Forests NSW.
- 5.6 The parties must not use any poison or any chemical substance on the land in a manner that could damage the Plantation or contrary to the Pesticides Act 1978 or other relevant legislation.

PART 6: PROTECTIVE MEASURES

- 6.1 The Owner must not light or allow the lighting of any fires in any part of the Property in contravention of the provisions of the Rural Fires Act 1997 and must take all measures necessary to ensure that any fires which are lit are properly controlled and supervised. The Owner must notify Forests NSW 48 hours before lighting any fire on the Property.
- 6.2 The Owner must at its own cost take such reasonable precautions to eradicate vermin and noxious weeds which occur on the Property other than the Plantation and which are likely to cause damage to the Plantation and to protect the Plantation from grazing stock.

PART 7: HARVESTING AND MARKETING

- 7.1 The sale of produce is to be directed and controlled by Forests NSW. Forests NSW will endeavour to ensure that sale procedures and forestry practices accord so far as possible with those applying at the time for harvesting of timber from Crown-timber lands.
- 7.2 Forests NSW must give the Owner at least one month's notice in writing of its intention to commence any harvest.

- 7.2 Forests NSW must give the Owner at least one month's notice in writing of its intention to commence any harvest.
- 7.3 The time, intensity and method of any harvest is to be determined by Forests NSW in accordance with the activities described in the Working Plan.
- 7.4 The Term stipulated in clause 1 of Schedule 3 may be reduced or extended by such period as may in the opinion of Forests NSW be necessary to enable the final harvest of the timber on the Land and restoration of the Land pursuant to clause 7.7 to take place, however the Owner has the right to require final felling and restoration to take place within a period of twenty-four (24) months after notice from the Owner to Forests NSW, which notice may be given at any time after the date of expiry of the Term as stipulated in clause 1 of Schedule 3. After expiry of the period of notice, the Owner may terminate the Agreement and the forestry right granted pursuant to this Agreement.
- 7.5 At the time of final harvest the Owner has the right, reduced by any option taken pursuant to Part 8, to retain up to 25% of the volume available for final harvest as trees remaining on the Land. The value of the retained trees is to form part of the Owner's share of the joint venture proceeds. The value of the retained volume must not exceed the net value of the Owner's share of the anticipated net proceeds from sale of timber resulting from the final harvest. If the parties are unable to agree on any matter referred to in this clause the matter is to be determined by an expert in accordance with Part 13.
- 7.6 The parties will at their own cost by the expiration of the Term remove from the Land such improvements to the Land constructed by the parties during the Term other than roads, water supplies and fences, as the parties agree should be removed.
- 7.7 Subject to clause 7.5, the parties will before the expiration of the Term decide and, on final harvesting, implement one of the following options for land restoration;
- a) Leave the Land in a clean and tidy condition with all stumps cut to an agreed stump height. Debris may be swept into windrows within the Plantation or left as otherwise agreed.
 - b) Leave the Land, as in (a) above with all stumps treated with herbicide to prevent regrowth and promote the biological breakdown of the stumps.
 - c) If not clearfelled, then implement a mutually acceptable plan of management to return the site to productivity in line with forest retained on the Land.

In any case the cost of this treatment is to be treated as a harvesting cost.

If agreement cannot be reached on the above preferred option, the matter is to be determined by conciliation and arbitration in accordance with Part 13.

- 7.8 The Owner must not, without the prior written consent of Forests NSW, remove any timber or produce from the Plantation or knowingly cause or permit any person to remove any timber or produce from the Plantation.
- 7.9 The Owner must notify Forests NSW forthwith of the removal of any timber or produce from the Plantation.

PART 8: REDUCTION OF AVAILABLE LAND

Subject to the fulfilment of the paramount objective of commercial timber production, for the purpose of exploiting the value of trees within the whole farm plan in contributing to the management of the Owner's pastoral or cropping interest, the Owner has the right at any time on giving Forests NSW one month's written notice to remove from the Terms of this Agreement up to a total of 25% of the Land shown in the Land Map as at the date of this Agreement ("Withdrawn Land"), provided that the remaining area remains in the opinion of Forests NSW viable as a commercial forest management unit. The Owner must compensate Forests NSW for the area withdrawn. The amount of compensation is to be the sum of the following amounts:

- (a) the value of Forests NSW' Inputs in respect of the Withdrawn Land.

PART 9: DAMAGE TO PLANTATION, FORCE MAJEURE EVENTS

9.1 If -

- (a) the plantation is damaged or destroyed by fire, disease or any other natural cause whatsoever; or
- (b) the area of the Land available for plantation is reduced by any event which is beyond the control of Forests NSW and the Owner (a "force majeure event"),

Forests NSW is to assess and determine the extent of the damage to the plantation or the reduction in the area available for the planting and cultivation of forest and Forests NSW may either:

- (c) terminate this Agreement,
- (d) reduce the area of the Plantation within the agreement

- (e) reinstate the damaged area pursuant to this agreement or as otherwise agreed.
- 9.2 Where, pursuant to clause 9.1 any section of the Land ceases to be managed for the growing of trees the parties will have joint responsibility for the rehabilitation of the land as specified in clause 7.7, and costs are to be shared equally between the parties.
- 9.3 If Forests NSW exercises its option to terminate this Agreement pursuant to clause 9.1 neither party will be entitled to reimbursement from the other for any costs which have already been incurred.
- 9.4 The early termination of the obligations created by this Agreement pursuant to clause 9.1 is to be without prejudice to any right acquired by one party against the other party pursuant to this Agreement prior to such early termination and it is expressly agreed that clause 7.7 shall survive such an early termination.
- 9.5 If any of the events referred to in clause 9.1 occur Forests NSW must cut down and dispose of all salvageable timber and the parties will be entitled to the proceeds from the sale of that salvageable produce as set out in clause 9.6.
- 9.6 Where damage occurs which is not caused by an intentional or reckless act or omission of the Owner or Forests NSW, the proceeds accruing from salvage operations are to be shared between the parties in accordance with the proportions specified in Schedule 3. Neither party will be liable to pay for any salvage costs which exceed the sum of the proceeds. Without prejudice to any right which either party may have in law or equity, where damage occurs which is caused by an intentional or reckless act or omission of a party, that party must bear the cost of all salvage operations and land rehabilitation, and is not entitled to any proceeds from the sale of salvageable produce.
- 9.7 Notwithstanding clause 9.6, if damage occurs within five years of the commencement of the Agreement the parties may if they so agree re-establish the Plantation on a similar cost basis to the original establishment and the terms and conditions in this Agreement are to apply.

PART 10: TRANSFER OF LAND AND ASSIGNMENT OF RIGHTS

- 10.1 The Owner undertakes and agrees not to transfer the land to successors in title unless the rights and obligation in this agreement are also assumed by the new owner adopting the terms of this agreement with Forests NSW, by way of an agreement executed by Forests NSW and the successor in title. If the Owner decides to offer the land for sale he must promptly notify Forests NSW in writing of his intention to do so.

10.2 Except as provided for in clause 10.1 the Owner must not assign his rights and responsibilities under this Agreement to any person or company.

10.3 Forests NSW agrees that they will not transfer or assign their rights and interests under this agreement without the written consent of the owner, but such consent is deemed to be given in respect of any assignment or transfer of such rights or interests to a related governmental department, entity or body that subsequently fulfils the position now held by Forests NSW in respect to this Joint Venture Agreement.

PART 11: RIGHTS, LIABILITIES AND INDEMNITIES

11.1 The parties agree that:

- (a) the rights, duties, obligations and liabilities of the parties are in every case to be several and not joint, nor joint and several;
- (b) the relationship between the parties is one of independent contractors for the limited purpose of carrying out the project, so that nothing contained in this Agreement is to constitute either of them as agent or partner of any other of them, nor to create any agency or partnership for any purpose whatsoever; and
- (c) except as otherwise specifically provided in this Agreement, a party has no authority to act for, or to create or assume any responsibility or obligation on behalf of, the other party.

11.2 Each party ("the indemnitor") hereby irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the other parties and their respective directors, officers, employees, agents and representatives ("the indemnitee") from and against any and all liability, loss, harm, damage, cost or expenses (including legal fees) that the indemnitee may suffer, incur or sustain as a result of any negligent act or omission of, or any purported assumption of any obligation or responsibility by, the indemnitor or any of its directors, officers, employees, agents or representatives, done or omitted to be done, or undertaken, or apparently done or omitted to be done or undertaken, on behalf of the indemnitee in connection with the project and not authorised by or pursuant to this agreement.

PART 12: TERMINATION OF AGREEMENT BY EITHER PARTY

12.1 The Owner is entitled to terminate this Agreement by notice to Forests NSW if:-

- (a) Forests NSW is in default of any material obligation under this Agreement for any reason other than force majeure; and
- (b) such default continues for a period of three calendar months after receipt by Forests NSW of written notice from the Owner specifying the default and requesting that the default be remedied.

12.2 Forests NSW is entitled to terminate this Agreement by notice to the Owner if,-

- (a) the Owner, being a corporation, enters into liquidation (other than by a voluntary liquidation for the purposes of reconstruction and assignment of rights under this Agreement), or
- (b) the Owner being an individual, becomes bankrupt or makes a composition or arrangement with his creditors generally or takes advantage of any statute for the relief of insolvent debtors; or
- (c) the Owner is in default of any material obligation under this Agreement in a material respect for any reason other than force majeure; and such default continues for a period of three calendar months after receipt by the owner of written notice from Forests NSW specifying the default and requiring that the default be remedied;
- (d) the forestry right over the Land is not registered within six (6) calendar months from the date of this Agreement or such further period as Forests NSW shall allow.

12.3 Any termination of this Agreement pursuant to this Part is to be without prejudice to any rights acquired by either party pursuant to this Agreement prior to the termination of this Agreement.

12.4 In the event of the early termination of this Agreement pursuant to this Part the parties are to determine a suitable method of account having regard to the maturity of the Plantation, relevant levels of money, labour and expertise contributed by each of the parties and the nature of the default to fairly compensate the party terminating the Agreement for all loss (including future loss of profits) suffered or to be suffered by it arising out of the default of the other party. If the parties are unable to agree upon a suitable method of account the dispute is to be dealt with by conciliation and arbitration in accordance with Part 13.

PART 13: DISPUTES

- 13.1 Subject to the provisions of the Forestry Act, 1916, arbitration on matters of dispute arising from the interpretation or implementation of this Agreement is to be effected as provided for in this Part.
- 13.2 If a dispute arises out of or relates to this contract (including any disputes as to breach or termination of the contract, the giving of any notice or as to any claim in tort, in equity or pursuant to any statute) a party to the contract may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.

A party to this contract claiming that a dispute ("the Dispute") has arisen under or in relation to this contract must give written notice to the other party to this contract specifying the nature of the Dispute.

On receipt of that notice by that other party, the parties to this contract must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

If the parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the Dispute must be submitted to conciliation in accordance with and subject to the Institute of Arbitrators Australia Rules for the Conduct of Commercial Conciliations.

- 13.3 If a difference or dispute is not settled by conciliation within thirty (30) days of submission to conciliation, or such other time as the parties agree, it must be submitted to arbitration in accordance with and subject to the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations.

A reference to arbitration (including giving notice of any difference or dispute) will not affect the requirement of each party to carry out its respective obligations under this Agreement.

Each party may be represented at the arbitration by a duly qualified legal practitioner or any other party.

- 13.4 The arbitrators or some person appointed on their behalf may investigate the Owner's and Forests NSW' affairs and accounts so far as may be necessary to assist them to determine any matter referred to them and the Owner and Forests NSW must give them full access to all accounts and papers necessary for that purpose and are to afford them full information and assistance.
- 13.5 Any arbitration conducted under this Part is to be conducted in accordance with and governed by the Commercial Arbitration Act 1984.
- 13.6 Where within a period of thirty (30) days the parties are unable to agree on a matter which is to be referred for determination by an expert pursuant to this Agreement, the matter must be referred to an expert agreed between the parties or, failing agreement within a further period of fourteen (14) days, the expert being appointed by the President for the time being of the Australian Institute of Valuers and Land Administrators Inc. The expert shall act as an expert and not as an arbitrator and his determinations on costs or any other matter relating to the reference shall be final and binding on the parties.

PART 14: FORESTS NSW SOLE JUDGE OF PROPER FOREST MANAGEMENT

Where any provision of this Agreement requires a determination regarding proper forest management, Forests NSW is to determine what constitutes proper forest management but if so requested in writing Forests NSW will consult with the Owner in relation to any such matter.

PART 15: VARIATION OF CONDITIONS

This Agreement embodies the total understanding of the parties. None of the provisions of this Agreement are to be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.

PART 16: NOTICE

- 16.1 Any notice to be given under this Agreement must be in writing and delivered personally or sent by prepaid post addressed to the other party's abovementioned address, and in the case of Forests NSW, addressed to the Secretary.
- 16.2 Any notice so delivered or mailed is taken to have been duly given and, in the case of posting, received on the 7th day after posting.
- 16.3 Any party may change its address for service of notices at any time by giving notice thereof to the other party as provided in this Part.

16.4 Any notice may be signed on behalf of the Owner by any of its directors (if a company) or his duly authorised representative and on behalf of State Forest by its delegate.

PART 17: GOVERNING LAW

This Agreement takes effect and is to be governed by and interpreted in accordance with the laws of New South Wales.

PART 18: SEVERABILITY

If any provisions of this Agreement are held to be invalid, illegal, or unenforceable by a Court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions are not to be in any way affected or impaired thereby.

PART 19: SPECIAL CONDITIONS

19.1 The special covenants, agreements and conditions (if any) set out in Schedule 3, 4 and 6 are taken to be incorporated in this Agreement as if fully set out herein and in the event of any inconsistency arising between the covenants, agreements and conditions contained in this agreement and the special covenants, agreements and conditions in the Schedules the special covenants, agreements and conditions in the Schedules are to prevail.

19.2 Each party covenants and agrees with each other party:

- (a) to diligently observe and perform its obligations and commitments pursuant to this agreement.
- (b) not to engage (whether alone or in association with others) in any activity on the Land except as authorised by this agreement.
- (c) that this Agreement constitutes the entire agreement between the parties with respect to the subject matter and contains all of the representations, warranties, covenants and agreements of the parties.

In WITNESS WHEREOF the parties hereto have hereunto set their hand and seals the day and year first here and before written.

The Common Seal of **THE**)
COUNCIL OF THE SHIRE)
OF TWEED was hereunto)
affixed in the presence of:-)

Signed by **THE FORESTRY**)
COMMISSION OF NEW)
SOUTH WALES trading as)
Forests NSW by its Delegate)
)
)
in the presence of :-)
