

Dated 28 July 1974

BETWEEN

THE PROPRIETORS OF UTAKURA
(Incorporated under the Maori
Affairs Act 1953)

OWNERS

A N D

WHITECLIFFS SAWMILLING
COMPANY LIMITED

LESSEE

AGREEMENT TO LEASE

PALMER & MACAULEY,
SOLICITORS,
KAIKOHE.

*McCauley & Macauley
Solicitors
Kaiakohe
Report for file to be kept
by [unclear]*

MEMORANDUM OF AGREEMENT made the 23rd day of July 1974

BETWEEN THE PROPRIETORS OF UTAKURA (incorporated under the Maori Affairs Act 1953) (hereinafter together with their successors and assigns called "the Owners") of the one part

AND WHITECLIFFS SAWMILLING COMPANY LIMITED a duly incorporated Company having its registered office at Auckland and carrying on business as Timber Millers (hereinafter together with its successors and permitted assigns called "the Lessee") of the other part

WHEREAS the Owners own certain land as Maori freehold land part of which is shown outlined in red on the plan attached hereto and marked with the letters "A" "B" "C" and "X"

AND WHEREAS the Owners and the Lessee have reached agreement upon the terms relating to a long term lease by the Owners to the Lessee of such land outlined in red and marked with the Letters "A" "B" "C" and "X" (subject however to the omission therefrom of all existing houses adjacent to formed or unformed roads shown on the said plan attached hereto) for the purposes of forestry

~~AND WHEREAS the Lessee has agreed at its expense to have the necessary survey made and plan prepared and deposited to enable such lease to be registered~~

Ref. (21)

Lease Unregis
this clause legal
signatures of the o
signatories.

AND WHEREAS the Committee of Management of the Owners (hereinafter called "the Committee" which term shall include any managing body or Board analogous to the present Committee of Management and having functions generally similar to the present Committee of Management) did on the 27th day of September 1973 resolve and agree to lease the said land to the Lessee (subject however as aforesaid) upon the terms and conditions hereinafter appearing

NOW THEREFORE the Owners DO HEREBY LEASE unto the Lessee the surface of the said land and the trees timber and other forest products now or hereafter established and grown on the said land for a term calculated from and including the 1st day of April 1972 and expiring on the 31st day of March 2038

Term of Lea

AND THE LESSEE DOth HEREBY COVENANT WITH THE OWNERS AS FOLLOWS:

1. THAT the Lessee shall pay to the Owners the following amounts by way of rental in respect of the said land:

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S.M. EDWARDS & CO. LTD

1974
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(a) As from the 1st day of April 1972 until such time as moneys from the sale of the first marketable thinnings to be extracted from any forest established or to be established upon the said land shall be received an annual rental at the rate of 20 cents per acre of the said land such rental to be paid by annual payments on the 31st day of March in each year until such time as marketable thinnings shall be extracted, the first of such payments to be made on the 31st day of March 1973 and any such payments not paid at the date hereof shall be paid upon the execution of this Lease PROVIDED ALWAYS that the rental for the year in which the first moneys for such marketable thinnings shall be received shall be apportioned and a proportionate part thereof paid for the period from the commencement of such year down to the date when the first returns for such marketable thinnings shall be received,

Annual Rent, is to be paid until the trees are harvested and royalty is paid

(b) From and after the time when receipts for such first marketable thinnings shall be obtained (but subject always to the provisions hereinafter appearing) the Lessee shall pay to the Owners by way of rent or royalty seventeen (17) percentum of the stumpage amount received by the Lessee from the sale of any timber or trees or other plants and the produce thereof from any such forest PROVIDED ALWAYS that such rent so calculated shall be not less than the rental payable in accordance with subclause (a) above. Such payments by way of rent or royalty shall be made quarterly on the last days of March, June, September and December in each year.

Royalty or Stumpage Payment. 17%

2. FOR the purposes of calculating the rent or royalty to be paid by the Lessee in accordance with clause 1 (b) above:

(a) IF the sale by the Lessee of any timber or trees or other plants and the produce thereof from any such forest shall be to any third party with the right to take standing or naturally fallen timber then the stumpage amount shall be the amount in money or moneys worth which the Lessee shall receive as stumpage payment in respect of the market value of such standing or naturally fallen timber; or

stumpage payments definition. i.e.

[Handwritten mark]

(d)

IF the cutting and/or extraction of any such timber or trees or other plants and the produce thereof from any such forest is carried out by or on behalf of the Lessee then the stumpage amount shall be that proportion of the gross sales receipts from the produce so cut and extracted by or on behalf of the Lessee as would properly and fairly be allocated as stumpage as provided in the preceding subclause for forest produce of the type so cut and extracted in the district at that time if the trees had been sold standing or naturally fallen to a third party on the open market and if the parties are unable to agree on the amount thereof then the same shall be settled by reference to arbitration.

STUMPAGE
Price set on market values for stumpage to not money received for products manufactured from the logs.

3. NOTHING in this Lease shall be construed as preventing the Lessee from purchasing consuming utilising or realising by logging and/or milling or otherwise converting the forest products on the said land provided that in such case the stumpage amount shall be calculated as is provided in clause 2 (b) hereof being not less than the market price prevailing at the time.

Lessee permission to convert cut logs into timber products and only pay stumpage.

4. THAT the Lessee :-

(a) SHALL at its own expense establish manage and protect a forest on the said land in accordance with sound forestry principles including and not limited to planting, re-seeding and replanting, building of roads and fire breaks and protection of trees from fire, insects and disease and generally in such a manner as will produce a high regular and sustained yield of marketable forest products and may utilise any all or a combination of the following methods:

- (i) Thinning and/or improvement cutting, being the cutting and removal of any trees or growth that are diseased, crooked, poorly formed, damaged or are crowding desirable dominant trees that should be reserved as crop or seed trees for future more profitable cuts.
- (ii) Seed tree cutting, being the cutting and removal of substantially all of the growth except an appropriate number of selected seed trees per acre and if this method of cutting shall be adopted in any area which does not appear to be satisfactorily re-stocked with seedlings within three years after the seed tree cutting

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the Lessee shall re-seed or replant the area regardless of the fact that seed trees may still remain.

(iii) Clear cutting, being the cutting and removal of all millable or usable timber growth including seed trees and if such shall be done the Lessee shall within three years of such clear cutting re-stock through seeding or planting any area upon which clear cutting has taken place.

Lessee
Obligation to
re-plant unseeded
replanting
areas.

(iv) Any other acceptable methods of management of forest land which may be hereafter developed and which are accepted and used as good forestry practice by Foresters in plantations of exotic forest of the type planted within the North Island of New Zealand including the grazing and cultivation and the subletting of grazing and cultivation rights PROVIDED ALWAYS that the Lessee will not sublet for grazing or cultivation any portion of the said land capable of being economically grazed or cultivated without first affording the owners or their nominees an opportunity to sublease.

Such development shall be effected at the earliest reasonable and practicable time PROVIDED ALWAYS that the Lessee shall complete the initial full establishment of a forest on the said land not later than the 31st day of March 1987.

Completion of
planting
(clear blocks)
This was late
letter with a file

(b) Shall have the right without liability to the Owners to kill destroy or otherwise eliminate cull trees or other growth considered by the Lessee to be undesirable by the use of girdling or poisoning or the use of chemical spray or other means usual customary or accepted as reasonable methods in forest land management.

(c) Will re-stock through seeding or planting any area the trees on which are damaged by fire, weather, insect or disease killing or destroying substantially all existing timber growth on it at the time and leaving insufficient suitable seed trees.

Replant damaged
areas

(d) Will prepare an initial management plan and will supply a copy thereof to the Committee not later than the 31st day of March 1975 which plan shall include the establishment proposals and the extraction proposals with such maps as may be necessary or desirable to make such plan clear

Management Plan

1975, 1985, 1995

J.F.

and will during the term of this Lease furnish revised management plans at intervals of not greater than ten years PROVIDED ALWAYS that the Lessee at its discretion may make adjustments and revisions to such management plan at any time as forestry development may require but shall advise the Committee accordingly PROVIDED FURTHER that the annual Control Report on the management plan shall each year be available to the Committee. *demand this*

said revised management plans to Comm. advise on adjustments.

- (e) Having established a forest thereon will use its best endeavours to obtain the full realisation value and utilisation of the timber and timber-like products therefrom.
- (f) Shall keep accurate records of the realisation or utilisation of forest products and of the receipts obtained therefrom and the Committee may at all reasonable times by its duly appointed professional agents or representatives have the right to examine the said records.

5. IT IS HEREBY DECLARED that all work done by the Lessee in connection with any matter arising under the preceding clause prior to the signature of this Lease shall be deemed to have been done pursuant to the provisions of the preceding clause and at the sole cost and expense of the Lessee.

6. THAT the Lessee shall use the said land only for those purposes incidental to the establishment, management and protection of a forest thereon and the sale, realisation and utilisation of the produce of such forest and shall not be entitled to remove as "forest produce" any earth, rock, sand, shingle or other minerals as part of the utilisation of such land PROVIDED ALWAYS that the Lessee may have the free use of any sand, clay or gravel located in or upon the said land for any purposes in connection with this lease.

7. THAT the Lessee shall not at any time during the term hereof assign, sublet or part with possession of the said land or any part thereof save and to the extent that the same may be necessary in carrying out the objects of this Lease PROVIDED ALWAYS that the provision of dwellings and the operation of amenities for employees engaged in work upon this forest shall be considered as necessary for the objects of this Lease.

Prohibition of Assignment.

8. FOR the purposes hereof the Lessee shall be deemed to have all necessary power and authority by virtue of these presents to cut remove and dispose of forest products from the said land and to enter into contracts by which other

CUTTING RIGHTS.

persons may cut remove and dispose of such forest products during the term hereof and for such purposes but limited only to such time as this Lease shall remain in full force and effect the property in all timber and timber-like products and forest products whether severed from the soil or not arising out of the operations of this Lease shall vest in the Lessee as tenants crops but this provision shall be subject always to the rights of the Owners against the Lessee for payment of the rent hereby reserved and any other moneys payable by the Lessee in terms hereof.

- outside -
CUTTING RIGHTS.

9. THAT the Lessee shall during the said term hereof and as and when the same shall become due and payable duly and punctually pay and discharge all rates, taxes, charges (including electric power charges) and assessments (other than the Owners' land Tax) which during the said term may be rated, taxed, charged, assessed or made payable in respect of the said land or in respect of any improvements which the Lessee may place or erect upon the said land.

RENT RATES.

10. IT is acknowledged that the Owners have already fenced the said land from certain of the adjoining lands owned by the Owners in a manner satisfactory to the Owners and the Lessee and that as from the date hereof the maintenance including replacement if necessary of such fencing and any additional fencing shall be at the joint cost of the Owners and the Lessee.

Fencing is additional fencing jointly by

11. THAT the Lessee shall in all respects comply with and indemnify the Owners against all liability under The Forest and Rural Fires Act 1955, the Rabbit Nuisance Act 1928, The Noxious Weeds Act 1950 and The Noxious Animals Act 1956 and will comply with all fencing notices in relation to the said land which may be served under The Fencing Act 1908 and with all other provisions of the said Act and all other statutory provisions regulations and by-laws in any way affecting the said land and will indemnify the Owners against liability thereunder respectively.

Lessee. Indemnify OWNER.

AND THE OWNERS DO HEREBY COVENANT WITH THE LESSEE as follows:

12. THAT the Lessee shall have and enjoy full quiet and undisturbed occupation of the said land and the Owners shall abide by those directions given by the Lessee to enable the full and efficient administration of the said land for the purposes and the conditions hereof.

Lessee UNDISTURBED OCCUPATION.

13. THAT the Owners shall ensure that all land owned controlled or occupied by the Owners in the vicinity of the said land is so used as not to interfere with or cause

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hazard to the objects of this Lease (but this shall not impose any greater liability upon the Owners in respect of such user than exists at common law) and shall permit access across any such land to the said land when and where requisite for the carrying out of the objects of this Lease PROVIDED ALWAYS that if the Lessee shall in making use of such permitted access across other land of the Owners require to cut any fence it shall do so in such a fashion that the efficiency of the fence is not destroyed and shall place a gate or other effective stock barrier across the opening and shall ensure that such barrier prevents stock from straying and likewise it shall be the responsibility of the Lessee to ensure that any drains or farm roads or crops are not damaged or destroyed by the operations of the Lessee or that any damage so occurring shall be made good.

AND IT IS HEREBY MUTUALLY AGREED DECLARED AND COVENANTED:

14. THAT the Lessee shall have the right to remove any and all buildings and fixed machinery which have been placed by it upon the land during the term hereof within a period of six (6) months following the determination of the term hereby granted unless it shall be agreed that compensation shall be paid therefore in accordance with the provisions hereinafter appearing.

Lesser permission to remove building and machinery

15. THAT in the thirty sixth year of the term hereby granted and in the succeeding ten years at least three more times at not greater intervals than three (3) years the representatives of the Committee and of the Lessee shall confer to consider the then state of the forest established pursuant to the terms hereof and to consider the proposals of the Lessee and of the Committee regarding the operations of such forest subsequent to the term hereof whether or not there shall be an extension of the term hereof and if so the terms and conditions of such extension and also to consider any special arrangements as to the operation of the forest during the last twenty (20) years of the term hereof.

2008 - 2018

Compulsory mt. 3x during 10y negotiate future proposals by Lessee.

16.(a) IF the Committee and the Lessee shall at the conferences provided in the preceding clause agree either on a renewal or extension of the term hereof and on the terms of such extension or on the operation plan of the forest on the said land during the last twenty years of this Lease and in particular upon the method and upon the liability for the cost of that portion of the management and operations during such last period of twenty years

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being in particular the planting and management of trees which would not be taken as a final crop during such last period of twenty years then the terms so agreed upon shall apply and shall be embodied in a formal written document.

- (b) IF the parties are unable to agree upon any such extension and are unable to agree upon any special terms relating to the operation of the forest during the last twenty years of the term hereby created then from the forty sixth year of the term hereof until the expiry of such term the rents or royalties payable hereunder shall be diminished by the cost of the replanting re-seeding and re-stocking of the areas cut over during that period and by the cost of the management and control thereof the reason for this provision being that the income from the mature crop of trees to be received from such areas will be received in total by the Owners and no other compensation shall be payable by the Owners to the Lessee in respect of timber or trees upon the said land at the expiration of the term hereof.

17. IF the said land or any part thereof including the forest products thereon is taken by proclamation or otherwise by any local authority or the Crown pursuant to the Public Works Act 1928 or any other Statute so enabling the amount of compensation paid in respect of the growing trees upon any land so taken shall be divided between the Owners and the Lessee in the same proportions as would moneys received for such timber trees by way of stumpage.

18. THE Lessee shall indemnify and have harmless the Owners from any liability at law for injury or damage to any person or property resulting from any act or omission by the Lessee his agents, servants, contractors or employees upon the said land.

19. THE Committee shall be at liberty on giving not less than forty-eight hours notice on each occasion by its agents and servants at all reasonable times to enter upon the said land and view the same.

2 days notice to enter forest view the same

20. THE Committee may give notice to the Lessee of any matter arising under the terms hereof which the Committee considers to be a breach of such terms and the Lessee shall thereafter have ninety days from the receipt of such notice in which to commence the necessary operations to comply with any requirements properly notified thereunder

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and shall after the commencement of such remedial action proceed with it to completion with all practicable speed.

~~21. THAT the Lessee will at its own expense have a survey of the said land made and shall have a plan prepared and deposited in the Land Transfer Office at Auckland to enable this lease to be registered.~~

22. THAT if the said rent hereby reserved or any part thereof shall be in arrear and unpaid for the space of three calendar months next after any of the days hereinbefore appointed for payment thereof whether the same shall have been legally demanded or not the Owners by the Committee or its agents may immediately or at any time thereafter enter and distrain upon the said land for the arrears of the said rent and dispose of the distress or distresses then and there found as landlords may do for rent and all costs and expenses occasioned by the same being so in arrear may be fully paid and satisfied.

23. IN case the rent hereby reserved or any part thereof shall be in arrear and unpaid for the space of three calendar months after any of the days whereon the same is hereby payable (whether the same shall have been legally demanded or not) or in case default shall be made in the fulfilment observance or performance of any obligations covenant or agreement whether affirmative or negative herein expressed or implied and on the part of the Lessee to be fulfilled observed or performed then and in any such case it shall be lawful for the Owners by the Committee or its agent or bailiff forthwith without any further or other notice to enter into and upon the demised premises or any part thereof in the name of the whole and the same to have again repossess and enjoy as in its former estate without prejudice however to any right or remedy of the Owners against the Lessee in respect of any antecedent breach of any covenant condition or agreement herein contained or implied.

Sec. 118, 119
Property Laws
Act

24. THE Committee may by notice in writing given to the Lessee not later than six months preceding the expiration of the term hereof require the Lessee not to remove any buildings or fixed machinery specified in such notice whereupon the Committee and the Lessee shall agree upon a value for such buildings or fixed machinery so required

J.S.

to be left and if agreement cannot be reached on the value thereof such value shall be fixed by arbitration. The value so fixed shall be paid by the Owners to the Lessee upon the delivery of possession PROVIDED ALWAYS that if the value so involved is greater than the net royalties received by the Owners during the preceding five years then the Lessee shall allow the Owners to pay such amount by not more than ten equal annual instalments the amount outstanding from time to time to bear interest at a rate not exceeding six per centum per annum PROVIDED FURTHER that apart from that for the buildings or fixed machinery so specified no compensation whatsoever shall be payable from the Owners to the Lessee.

25. SHOULD either party be unable to perform its obligations or undertakings hereunder including particularly the covenants of the Lessee contained in clause 4 hereof by reason of war, acts of the Queen's enemies, restrictions or prohibitions of the Government, the taking of the whole of the said lands by proclamation, disease, blight or infection of timber or any other matter resulting from causes beyond the reasonable control of that party such party shall be relieved to the extent and for the time only it is so prevented from the performance of such obligations and if by reason of the time when such occurrence preventing performance occurs or of the extent of any taking of lands or any matter whatsoever it shall appear that the intention of the contract evidenced by this Lease shall be ^{Frustrated} ~~Frustration~~ then either party may apply to the other for a termination hereof. If the other shall agree to such a termination then the terms hereof shall be agreed or failing agreement settled by arbitration. If the other shall not agree to such a termination then as to whether or not there should be such a termination and as to the terms thereof also shall be settled by reference to arbitration as hereinafter provided.

26. THIS Lease is subject to any necessary consent of the Administrative Division of the Supreme Court and the Lessee will within fourteen days from the date of signature hereof either :-

Supreme Court
Admin. Consen

- (a) Complete and deposit with the District Land Registrar a Declaration in conformity with Section 24 of the Land Settlement Promotion and Land Acquisition Act 1952 and its amendments and deliver a copy thereof to the Owners; or

23/7/74

23/7/74 - 6/8/74.

(b) Deliver to the Owners any statement declaration or other document required by regulation or otherwise to be completed by the Lessee for filing with an application to the Administrative Division of the Supreme Court;

And each party hereto shall do all such acts and things as may be necessary or expedient for the purposes of endeavouring to obtain such consent or ensuring compliance with the provisions of the Land Settlement Promotion and Land Acquisition Act 1952 and its amendments and any regulations for the time thereunder;

And the Lessee shall bear the legal and other costs whatsoever of and incidental to any such declaration application or other process.

27. IF such consent where necessary shall not be granted by the _____ day of _____ 1974 or such later date as the parties agree on or shall be refused or shall be granted subject to conditions then this Lease subject as hereinafter mentioned shall be void PROVIDED HOWEVER that if such consent shall be granted within such time subject to conditions to which the parties shall agree or subject to conditions not prejudicial to the Lessee of the Owners shall within seven days after the grant thereof notify the Lessee or its solicitor of the Owners willingness to comply with such conditions then this Lease shall be binding upon the parties as modified by such conditions.

28. IF this Agreement shall become void as provided herein or by virtue of the provisions of the Land Settlement Promotion and Land Acquisition Act 1952 and its amendments then neither party shall have any right or claim against the other.

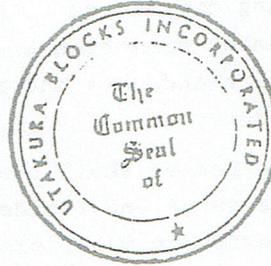
29. IN the event of any dispute or difference arising as to any clause matter or thing herein contained or implied or as to the construction hereof or arising in any way in respect hereof such dispute or difference shall be referred pursuant to the Arbitration Act 1908 to two arbitrators (one of whom shall be appointed by each party to the reference) and an umpire who shall be appointed by the arbitrators before proceeding with the reference and who shall sit with them during the reference.

30. THE lessor does not warrant that this lease/in its present form is registrable and if the lessee shall desire to effect registration hereof the necessary survey and other plans shall be prepared checked and if necessary deposited in the Land Registry Office or alternatively annexed hereto and an amended description of the parcels prepared executed and annexed hereto and this lease registered at the cost in all things of the lessee.

J.P.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

THE COMMON SEAL of THE PROPRIETORS OF UTAKURA was hereunto affixed in the presence of :



..... *R. Marsh* Deputy Chairman
..... *H. Rapatiere* Member

THE COMMON SEAL of WHITECLIFFS SAWMILLING COMPANY LIMITED as Lessee was hereunto affixed in the presence of :



..... *W.R. Taylor*
..... *Jas. F. Taylor*

THE COMMON SEAL of THE PROPRIETORS OF UTAKURA was affixed to this Instrument in the presence of the above two members of the Committee of Management pursuant to a resolution passed by the Committee of Management on the 23rd day of July 1974 authorizing the Common Seal to be so affixed This Instrument having been produced and shown to the said Meeting.

DATED at Kaikohe this 23rd day of July, 1974.