

DATED this day of

2000

PORTAGE LICENSING TRUST

AND

WAIKAKERE LICENSING TRUST

AND

WEST AUCKLAND TRUST SERVICES LIMITED

DEED

OF

AGREEMENT

EWAN PRICE

P O BOX 21-463 (DX DP92509) HENDERSON

PH : 836 1079 FX : 837 2667

Ref: ERP:LMP *wait5906.plt wlt wats moa*

THIS AGREEMENT made the day of 2000

BETWEEN: **PORTAGE LICENSING TRUST** a duly constituted licensing trust in terms of the Sale of Liquor Act 1989 (hereinafter called "PLT") of the one part

AND: **WAITAKERE LICENSING TRUST** a duly constituted licensing trust in terms of the Sale of Liquor Act 1989 (hereinafter called "WLT") of the second part

AND: **WEST AUCKLAND TRUST SERVICES LIMITED** a duly incorporated company having its registered office at Auckland (hereinafter called "the company") of the other part

BACKGROUND

- A. Both WLT and PIT (hereinafter severally called a "Trust") operate premises holding licences under the Sale of Liquor Act 1989 (hereinafter collectively called "the outlets").
- B. Currently both Trusts have employees and premises devoted to management and administration as distinct from line management of the outlets.
- C. It has been agreed between the Trusts that the company be formed to take over such management and administrative function on behalf of both Trusts.
- D. Both Trusts are former suburban licensing trusts as defined by section 241 of the Sale of Liquor Act 1989 (hereinafter referred to as "the Act").
- E. Neither WLT nor PLT has passed any resolution nor been involved in a poll pursuant to section 215 of the Act and in consequence section 216 remains applicable to both Trusts.
- F. Nothing in this agreement constitutes an amalgamation proposal of the Trusts for the purposes of section 211 of the Act.

NOW THEREFORE THIS AGREEMENT WITNESSETH as follows:

1. CONSTITUTION

- 1.1 Immediately on execution of this agreement WLT shall arrange for the transfer of one-half of the shares in the company to PLT and the remaining one-half to WLT and shall further require the existing shareholders of the company to resign from their respective positions as directors and secretary of the company.

- 1.2 Immediately on the transfer of shares required under clause 1.1 the parties shall procure the reregistration of the company under the Companies Act 1993 and adoption by the company of the constitution in the form attached ("the constitution").
- 1.3 Neither of the Trusts as equal shareholders in the company shall be entitled to sell their respective shareholding in the company unless the pre-emptive provisions in the constitution have been fully complied with.
- 1.4 Notwithstanding that the company may be involved in the sale of liquor (as that term is defined in the Act) to either or both of the Trusts it shall not hold any licence under the Act.
- 1.5 It is specifically recorded that the directors of the company are neither shareholders nor employees of the company and nor shall they be entitled to be engaged or employed in either of those capacities.
- 1.6 Both Trusts recognise that the directors of the company shall exercise that office for a proper purpose and (subject to the constitution) in the interests of the company.
- 1.7 The directors of the company shall be entitled to report to the Trust of which they are a member on any matter arising in the course of the business of the company relating to that Trust only. Under no circumstances shall directors be required to reveal information received by them in their capacity as director of the company to the Trust of which they are a member, about the other Trust.
- 1.8 Notwithstanding the above the directors of the company may forbid disclosure to either Trust of any particular matter coming before them.
- 1.9 In the event that a Trust wishes to issue a policy direction to the company that shall be directed by the Secretary of the Trust to the company and shall not be communicated through a director.

2. APPOINTMENT

- 2.1 Both Trusts hereby appoint the company to administer the outlets holding a licence under the Act at the date of this agreement, any further outlets which may be opened by either Trust, and the commercial activities and operations of both Trusts.
- 2.2 To avoid any doubt it is hereby specifically declared that licences under the Act do not by virtue of this agreement vest in or become the property of the company and nor does this agreement constitute the operating company manager (as that term is defined by the Act) of any of the outlets.

3. TERM

- 3.1 This agreement shall be for a period of one (1) year from the 1st day of October 1996, and shall be extended annual terms thereafter until terminated in accordance with clause 8 hereof.

4. ADMINISTRATION

- 4.1 The outlets shall be operated as a composite group for the profitable good of that group.
- 4.2 Notwithstanding the above both Trusts recognise that some promotions, advertising, purchasing, pricing and similar factors will favour either on-licences or off-licences or different geographical areas.
- 4.3 All parties hereto specifically record that they are aware of the restrictions in the Commerce Act 1986 preventing agreements which have the purpose of substantially lessening competition in a market and covenant that such is not the intent of this agreement. In particular they record that in their view the "market" for the sale of liquor in which they are involved is the greater Auckland metropolitan area and further record at the date hereof neither Trust has the ability to operate outlets in the area of the other.

5. MANAGEMENT

- 5.1 The company shall appoint such staff as are necessary to discharge its functions under this agreement.
- 5.2 The company shall employ on behalf of the Trust holding a licence for any particular outlet such staff as are necessary to ensure the profitable operation of that outlet.
- 5.3 The company shall have the following specific responsibilities:

- 5.3.1 To ensure the profitable operation of the Trust consistent with the social responsibilities of a Licensing Trust.

- 5.3.2 To ensure that there is a complete and adequate management structure for the outlets and the head office administrative and financial staff required to support that management.

To deliver to its shareholders a statement of corporate intent ("SCI") not later than one (1) month after the commencement of each financial year of the company.

- 5.3.3 The SCI shall specify in respect of the financial year in which it is delivered and each of the following two financial years the following information:

- (a) The objectives of the business of each Trust;
- (b) The nature and scope of the activities to be undertaken;
- (c) The ratio of accumulated funds to total assets, and definitions of those terms;
- (d) The accounting policies;

- (e) The performance targets and other measures (including the rate of return on net assets after payment of tax) by which the performance of the business of the Trust may be judged in relation to its objectives;
- (f) An estimate of the amount or proportion of accumulated profits that is intended to be available for distribution to the beneficiaries of the Trust;
- (g) The kind of information to be provided to the trustees of each Trust during the course of those financial years, including the information to be included in each half-yearly report;
- (h) The cost budget for the company and how that is to be paid;
- (i) Such other matters as are agreed by the elected members of the Trust and the directors of WATS.

5.3.4 To provide strategic analysis for each Trust particularly in relation to changing requirements as a result of the review of the Sale of Liquor Act 1989.

5.3.6 To closely monitor competitors and to adjust the company management, advertising strategies or presentation as will best meet competition from any source.

5.3.7 To supervise all staff and to guide and monitor their work and progress including through the provision of training and education courses.

5.3.8 To actively supervise the industrial relations arrangements of each Trust and to ensure that the outlet managers promote harmonious industrial relations within the ambit of the Employment Contracts Act.

5.3.9 To collect and account for gaming machine proceeds in such manner as is from time to time determined by each Trust or as is required by statute or regulation.

5.3.10 To actively promote the interests of the Trust within the community and be aware of and respond to the particular position of the suburban Trusts under the Sale of Liquor Act 1989.

5.3.11 To ensure that the Trust accounts comply with such requirements as may be imposed by the auditors of either Trust.

5.3.12 Above all to be a pro-active manager actively promoting the interests of the Trusts rather than a reactionary responding to pressures generated outside the Trusts.

5.4 Without affecting the generality of clause 5.3 the company shall undertake the following functions:

5.4.1 Purchase supplies on behalf of the Trusts.

- 5.4.2 Monitor stock levels.
- 5.4.3 Establish selling prices.
- 5.4.4 Co-ordinate marketing/promotion programmes.
- 5.4.5 Provide operational support for tavern and outlet managers, including conducting wage negotiations with staff and union representatives.
- 5.4.6 Administer liquor licences.
- 5.4.7 Pay all suppliers for purchases by each Trust.
- 5.4.8 Maintain the wage records, including PAYE records, and pay all employees of each Trust.
- 5.4.9 Present cheques for countersignature.
- 5.4.10 Maintain the bank accounts for the Trusts.
- 5.4.11 Prepare annual accounts, tax returns and statutory returns on behalf of the Trusts.
- 5.4.12 Ensure an adequate insurance programme is implemented for each Trust.
- 5.4.13 At least twice a year (or when directed so to do) present a report to each Trust showing all matters referred to in the SCI to be reported back, and the actual performance of the company in relation to the SCI.
- 5.4.14 Review requests for donations, reject those requests which do not meet policy requirements and present all other requests to the respective Boards of PLT and WLT.
- 5.4.15 Provide secretarial and administrative support to the Boards of PLT and WLT.
- 5.4.16 Any other duties currently undertaken by the general managers and head office staff of PLT and WLT.
- 5.5 The company shall as agent have the power to commit either Trust in respect of transactions in the ordinary course of the business of that Trust, but not capital purchases for an amount in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in respect of any one item.
- 5.6 The company shall not as agent be entitled to incur liability for any particular Trust without the consent of the Trust in relation to the following:
 - 5.6.1 The purchase or disposition of real property.

- 5.6.2 A lease for any period exceeding six (6) months of either real property or chattels.
- 5.6.3 Engage any employee of the Trust whose salary package inclusive of supplementary benefits has a value in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).
- 5.6.4 Establish any superannuation fund or similar arrangement requiring ongoing contributions from a Trust in respect of its employees.
- 5.6.5 Establish any overdraft facility or commit a Trust to any loan arrangements whether with a trading bank or otherwise.
- 5.6.6 Commit either Trust to the distribution of its profits or gaming machine proceeds whether generally or to any particular recipient.
- 5.6.7 The continuation of any business or operations which either Trust considers is not in the best interests of its community and so notifies the company.
- 5.7 Notwithstanding the above the company shall be entitled to purchase all such supplies as are required for the operation of the outlets and to effect such purchases in the name of either WLT or PLT or the name of the company. In the event that such purchase is in the name of the company the Trusts hereby agree jointly and severally to indemnify the company against the cost of such purchases notwithstanding that they are not at the date of purchase appropriated to a particular outlet or a particular Trust.
- 5.8 No Trust shall mortgage, pledge, charge or otherwise encumber that Trust's shares in the company or that Trust's interest under this agreement without the prior consent of the other Trust which consent shall not be arbitrarily withheld provided that this clause shall have no application in relation to debentures or charges in existence in respect of either Trust at the date of this agreement.
- 5.9 In the event that the company effects purchases in its own name such will be invoiced to the respective Trust at the time of delivery to an outlet at the cost to the company of such supplies without any further markup.

6. COST SHARING

- 6.1 The directors of the company shall determine how the cost of operation of the company are to be met and include that in the SCI.
- 6.2 Without restricting the generality of that clause, the SCI may provide for costs to be recovered by direct levy, commission on sales, markup of purchases, or otherwise, within a general requirement that the company and each Trust operate a successful and financially viable business.

7. AUDIT

- 7.1 The company will observe the requirements of the auditor of each Trust whether in relation to reporting, record keeping, disclosure or in any other respect while observing however, the obligation of confidentiality in relation to the activities of each Trust.
- 7.2 The company will liaise with and assist such auditors in the course of their audit and ensure that such audit concluded promptly.

8. TERMINATION

- 8.1 Any party hereto shall be entitled upon giving three (3) months' written notice to the other to terminate this agreement. The obligations shall enure hereunder after the date of such termination for the purposes of resolving any outstanding questions between the parties arising under the agreement during its currency.
- 8.2 This agreement shall terminate immediately in the event of:
- 8.2.1 The company or other Trust being placed in receivership or liquidation voluntarily or by any creditor pursuant to any security provided by that Trust or by order of the High Court.
 - 8.2.2 Either Trust failing for a period of thirty (30) days to pay any amount due to the company pursuant to this agreement.
 - 8.2.3 Either Trust fails to pay any supplier where the company has incurred an obligation on behalf of that Trust and such default continues for a period of thirty (30) days after the company has given that Trust specific instructions to pay that supplier.

NO PARTNERSHIP

9. Except as otherwise expressly provided in this agreement neither Trust nor the company is the agent of nor can bind any of the other parties and nothing in this agreement shall constitute a partnership between the Trusts.

NO VARIATION

10. No variation, alteration or addition to this agreement shall be binding on the parties unless it is in writing and signed by each of the parties.

11. PUBLICITY

- 11.1 The company shall not provide any statement to the media or other information relating to any matter arising under this agreement, but shall provide to each Trust as

an when required such material or information as such Trust may require for the purposes of its publicity or public relations.

IN WITNESS WHEREOF this agreement has been executed by the parties the day and year first hereinbefore written.

THE COMMON SEAL of
WAITAKERE LICENSING TRUST
 was hereunto affixed in the presence of:



[Handwritten signature]

THE COMMON SEAL of
PORTAGE LICENSING TRUST
 was hereunto affixed in the presence of:



[Handwritten signature]

[Handwritten signature]

EXECUTED by WEST AUCKLAND
TRUST SERVICES LIMITED by two
 of its directors



[Handwritten signature]