

Gracefarm Incorporated

Management Agreement

This agreement made the of 2007.

BETWEEN the individual owners of 12 lots (hereinafter), together with their successors and assigns, referred to as “**The Owners**”

AND Gracefarm Incorporated, a duly incorporated society having its registered office at 20 Mangawhai Road, RD 5, Wellsford, hereinafter together with its successors referred to as “**The Society**”.

PREAMBLE

1. The **Owners** are or will be the registered proprietors of those pieces of land containing more or less 4.2 hectares being Lots 3 -13 inclusive and Lot 15 on scheme plan 3776 (hereinafter called the “**Residential Lots**”) and 100 hectares more or less being Lot 2 of Deposited Plan 396079 (hereinafter called the “**Farm Lot**”)The Farm Lot together with the private road comprise the whole farm estate. Additional to that are the residential lots.
2. The **Owners** desire:
 - a) The orderly administration, management, maintenance and development of the Farm Lot by the Society whose responsibility will be to carry out these objects on their behalf.
 - b) As members of the Society, the best utilisation of the Farm Lot by leasing the working farm to a suitably qualified Lessee.
 - c) The enabling of reasonable and qualified recreational access and enjoyment of sundry benefits over the Farm Lot.
 - d) The proper care and management of covenant conservation and other wood lot or landscape areas.

AGREEMENT

The parties wish to record the terms and conditions of this agreement as follows;

1. APPOINTMENT OF THE SOCIETY

- a) The Owners appoint and the Society accepts appointment as manager of the **Farm Lot** to provide for the orderly administration, management, maintenance and development of the Farm lot, including any existing or future buildings, fixtures and recreation or other amenities thereon.
- b) In addition and subject as hereinafter provided, the Owners grant the Society responsibility to arrange a lease agreement for the **working farm** area of the **Farm Lot**, for the purpose of conducting a productive, agriculture farming business thereon.

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- c) The Owners grant the Society the responsibility to administer, manage, maintain and develop the conservation areas of the **Farm Lot** in accordance with the Resource Consent.
- d) The owners grant the Society the responsibility to administer, manage and maintain the Cottage and Cabin on the **Farm Lot**.
- e) The owners grant the society the responsibility to maintain the private road, easement (F) on the survey plan and being part of lot 2.

2. OBLIGATIONS OF THE SOCIETY

2.1 To Lease Working Farm

- a) The Society will prepare a Rural Farm Lease Agreement for the occupation of the working farm by a suitably qualified Lessee on normal rural farm lease terms as is common in the area (*a draft copy of the lease agreement is attached hereto*).
- b) The Society shall identify and secure a suitably qualified working farm Lessee and will select a Lessee from the following order of preference;
 - i) One of the owners in Gracefarm Incorporated.
 - ii) If there is not a suitably qualified Lessee from the owners the Society will select a suitable qualified Lessee farmer from the immediate district.
 - iii) In the event there is no suitably qualified farmer in the immediate district, the Society will select and find a Lessee who will lease the working farm and occupy the cottage situated on the Farm Lot.
- c) The Society will determine a fair annual rental for the working farm and such rental will remain for the term of the lease which shall not exceed three years in any one term, excluding rights of renewal.
- d) The Society, having delegated responsibility to a Lessee to manage the working farm, together with responsibilities for good husbandry and maintenance, will oversee the lease agreement to ensure the Lessee performs according to the terms of the agreement.

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2.2 Tenancy of Cottage

- a) The Society will administer and manage the tenancy of the cottage situated on the Farm Lot.
- b) The Society will secure suitable tenants under a residential tenancy agreement.
- c) The Society will set rentals and ensure payment.
- d) The Society will maintain the cottage.

2.3 Conservation Land

The Society shall administer and maintain the land designated for conservation in the manner prescribed under the Resource Consent. The Society shall keep the Farm Lot, and specifically the conservation areas, free and clear of weeds and noxious growth or animals as far as it is practical to do so. The Society shall keep a register of weed and pest control as required by the resource consent.

2.4 Financial Administration

- a) The society shall properly account for income and expenditure, monthly and annually and pay all charges as follows;
 - i) Pay all rates, taxes and assessments charged, levied or assessed in respect of the Farm Lot. The Society may however transfer the liability for payment of rates to the Working Farm Lessee
 - ii) Pay all charges in respect of electric power, water or gas supplied to or used on the Farm Lot, and all other charges for utilities and services payable, chargeable or assessed in respect of the Farm Lot or the Society use thereof. The Society may however transfer the liability for payment of electricity, water or gas charges to the farm Lessee.
- b) The Society is authorised to use income arising from farm and/or cottage Rent for the following;
 - i) Maintenance of the road marked “F” on the plan and being part of the Farm Lot.
 - ii) Care for and maintain the grass verges and entrance landscaping.
 - iii) Apply income for such other Farm Lot improvement as approved by owners.
 - iv) After meeting its obligations, liabilities and duties hereunder, to retain or apply any surplus income for the furtherance of the objects hereof.
 - v) The Society may, at its discretion, distribute net income to owners

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2.5 Owners Contributions

A) In the event of a short fall in operating expenditure or, if it should be found that the income arising from the rentals from the working farm or tenancy of the cottage are insufficient to enable to Society to carry out its obligations, liabilities and duties contained in Clause 2.4 herein, including a provision for anticipated future maintenance expenditure for the current and following year, the Society may from time to time raise funds from the Owners by way of an Owners Contribution.

Such Owners Contribution shall only be made if;

- a) A budget has been prepared by the Society.
- b) Written notification of the amount of the proposed Owners Contribution and copy of the budget has been sent to all the Owners at the addresses shown in the Society records.
- c) A meeting is called pursuant to Clause 2 of the schedule hereof within 14 days of receipt of the notification referred to in **b)**. A simple majority of votes cast by the Owners present in person or by proxy in favour of the proposed Owners contribution shall approve the contribution. If no such meeting is called, the Owners contribution shall be deemed to have been approved and each owner shall contribute 1/12th of the owners contribution assessed by the society.

B) Capital Contribution

- a) The Owners, at an annual or special general meeting may elect to make Owners Contribute for specified capital work that will improve the Working Farm, Conservation areas or Owner's amenities with the approval of 75% of the Owners at a meeting of owners called and conducted as provided in Clause .6 **c)** of the schedule for the purpose of considering such contribution.
- b) Each Owner shall contribute 1/12th of the Owners Contribution assessed by the Society for such capital works which shall be recorded in the Society accounts under the individual owner's account as an "advance" to the Society which may be repaid to the owner at the discretion of the Society. Any advance made however should not have any expectational probability of being repaid as it is perpetually available to the Society. The advance is subordinated to all other creditors and accordingly is additional equity to the Society.
- c) This equity capital recorded in the members account will be an interest free unsecured advance to the Society.

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- d) Contributions charged by the Society pursuant to these provisions shall be due and payable at the time and in the manner notified by the Society and the Owners shall pay the same as and when so demanded. In the event that an owner fails to pay so much as may from time to time become payable, then the payment may be recovered as a debt due to it by the Society in an action in any court of competent jurisdiction against each Owner, at the time the Owner's Contribution is demanded and not so paid.
- e) Should at any time it be found that the Society has surplus funds from its operations and the Society shall so decide that any such surplus funds need not be retained to meet its duties and obligations hereunder then the Society may return any surplus funds as repayment of owners advances pro rata to the then Owners.

2.6 Resource Consents

The Society shall manage any Resource Consents held over the **Farm Lot** and specifically;

- Stormwater consent with the ARC, keeping all culverts, water courses, ditches and drains clean and clear from rubbish.
- The Consent Order as applying to the on-going conditions contained therein.

2.7 Insurance

The Society shall insure and keep insured in the name of the Society all buildings and other erections of all insurable improvements now at any time hereafter erected on the Farm Lot, under a comprehensive policy of insurance to replacement value thereof, against fire, flood, lightning, explosion, wind storm, hail, snow, aircraft or any aerial device dropping there from, impact, riot and civil commotion, malice damage, accidental damage arising from leakage or spillage of gas, vapour or liquid, burglary, theft and earthquake of excess of indemnity value and such other risk as the Society shall elect.

In the event of destruction or damage of any property so insured, the Society shall, subject to hereinafter provided, apply all money received or available in respect of any policy of insurance in or towards the repair or reinstatement of the matter or thing so damaged or destroyed providing the Society shall not be obliged to expend any monies in excess of the monies received by it or made available via the insurer under any such policy.

If in the opinion of the Society any repair or reinstatement is not desirable or necessary, then such insurance money shall be held by the Society to be expended as it thinks fit in furtherance of the objects of this agreement.

Where applicable, the Society may also transfer the premiums on certain buildings to the working farm Lessee.

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2.8 Meetings

The Society shall summon a meeting;

- a) Where the Society requires the direction, or approval of the Owners to any proposed contribution for any purpose, or
- b) Upon the request in writing of 75% or more Owners.

3. DEBT BY SOCIETY/INDEMNITY OF OWNERS BY SOCIETY

- a) The Society shall not incur any debt in the Owners names or hold itself out as agent of the Owners.

4. ACCESS WITHIN THE FARM LOT

Each of the Owners as proprietors, shall be entitled;

- a) To pass/re-pass in through and over all of the roadways, carriageways, paths and other defined accessways now existing or hereinafter upon the Farm Lot.
- b) To make use of and enjoy any recreational facilities and access provided on the Farm Lot providing such access has the prior approval of the Society and the working farm Lessee and is within the guidelines set out in the Owners handbook.
- c) Apart from such access and notwithstanding the Owners common ownership of the Farm Lot, each of the Owners acknowledges that he will not use the Farm Lot in any way which interferes with the farming business carried out by the Society or their Working Farm Lessee except in accordance with any rules made by the Society from time to time concerning the same.

5. OBLIGATIONS OF OWNERS

Owners shall not;

- (a) Use or permit to use for any purpose which is illegal or injurious to the reputation or operation of the Farm Lot or other Residential Allotments of which he is registered proprietor.
- (b) Make or permit to be made undue noise or disturbance or cause a nuisance or disturbance in or on the Residential Lot of which he is a registered proprietor or upon the Farm Lot.

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- (c) Keep or bring animals in or upon the Residential Lot of which the owner is a registered Proprietor which may reasonably be expected to, or which does interfere with any of the Farm Lot operations or the quiet enjoyment of their land by any other Residential lot owners.
- (d) Allow or permit any animal or pet to stray or wander unrestricted upon or over the Farm Lot.
- (e) Exercise the uses authorised by Clause 4 hereof in a manner such as might unreasonably interfere with the use and enjoyment thereof by other registered proprietors of Residential Lot and their families or visitors.
- (f) Exercise the uses authorised in Clause 4 hereof in a manner such as might unreasonably interfere with farming operations in any form administered by the Society through a Lessee.
- (g) Permit or allow noxious weeds or noxious plants or noxious animals to grow on the Residential Lot of which he is a registered proprietor and will comply with any requisitions issued pursuant to the provisions of the Bio Security Act 1993 or any like act for the time being enforced in respect of any Residential Lot and shall keep the Residential Lot of which he is a registered proprietor in a clean and tidy condition.
- (h) The discharge or permit to discharge any firearm in or upon the Residential Lot or Farm Lot without the prior consent of the Society or its delegated right to the working farm Lessee.
- (i) Object to any activity by the Lessee which is normal accepted farm practise in the district
- (j) Graze or permit to be grazed any animal in or upon any part of the farm lot not specifically set aside by the Society for that purpose, other than in accordance with and upon the terms (including any grazing rental fee) set and fixed by the Society or its delegated responsibility to the working farm Lessee.
- (k) Rent their properties without ensuring that their Licensees or Lessees have knowledge of this agreement and will agree to abide by its terms.
- (l) For security and health and safety purposes where a person or people other than the owners are occupying a residence for more than one month, the Owner shall advise the Society Secretary in writing of the principal occupier's full name and telephone number.
- (m) Do anything which will interfere with the lessee's commercial operation of the farmlot.

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6. INDEMNITY TO THE OTHER MEMBERS BY THE OWNERS

The Owners and each of them in respect of their individual responsibilities shall;

- a) Hereby agree to indemnify and keep the Society indemnify from and against any costs for repair to any roadway, carriageway, paths and the like for which the Owner may be responsible.
- b) Hereby agree to indemnify and keep the Society indemnify from and against all costs, claims, proceedings and actions arising out of or from any breach of the Owners covenants contained or implied herein or any Deed of Covenant.

7. PRINCIPLES OF AGREEMENT & RULES

It is acknowledged by the parties hereto that, as it is not possible to set out in extension the rights, obligations and duties of each to the other, they declare their recognition of the general principles of this agreement to provide for the orderly control and efficient management of the Farm Lot to the best advantage as Owners and as Members of the Society for the time being and it is agreed and declared that the Society may from time to time make and set various rules which may affect the operation of this agreement, notwithstanding the same are not set out herein. The parties shall be bound by, and will observe and perform all such rules, provided however such rules shall not be inconsistent with the general principles of this agreement.

8. SEPTIC TANKS

If it shall be a requirement of the Local Authority for the issue of a Building Permit for any dwelling to be constructed on any Residential Lot, that a effluent field for a septic tank shall in any way extend onto the Farm Lot, the Owner of such Residential Lot shall be permitted at his expense to construct such effluent field on the Farm Lot in such a place as the Society may consent providing such Owners shall indemnify the Society from and against all costs, claims and demands arising from the installation of such effluent field on the Farm Lot, and the said Owner shall be responsible to maintain and keep such effluent field pipes running from the Residential Lot thereto.

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9. VARYING THE TERMS OF THIS AGREEMENT

The terms and conditions hereof may from time to time be altered, varied or amended by agreement between the Society and with approval by a majority of 75% of the Owners, at a meeting of Owners called and conducted as provided for in the schedule. Such Owners shall be present in person or by a representative at such meeting. The Owner shall be bound by and will observe and perform any such alterations, variations and amendments.

10. TERMINATION OF THIS AGREEMENT

This agreement shall come into force on the date hereof and shall continue until terminated by mutual agreement of the Society and Owners if a majority of 75% of the Owners at a meeting of Owners called and conducted as provided in the schedule.

11. ZONING CHANGE

Should the Farm Lot be subject to a proposed change of zoning detrimental to the use thereof by the Owners, the Owners do hereby appoint the Society to do all things and take all necessary steps that the Society shall deem advisable to oppose, vary or alter any such proposed zoning change.

12. RESUMPTION OF FARM LOT

Should the Farm Lot be subject of any intended resumption or taking by the Crown or any other Authority pursuant of the provisions of the Public Works Act 1991 and Land Settlement Promotion and Land Acquisition Act 1952 or any other Act or amendment now or hereinafter enforce, the Owners hereby authorise and direct the Society to do all things and take all necessary steps pertaining to a claim for compensation including opposition and compromising of any such claim and these present shall be sufficient evidence that payment to the Society shall be deemed a sufficient receipt for settlement monies. Upon receipt of such settlement monies, the Society shall account to the Owners in proportion to their ownership of the Residential Lot. ***(Excluded from the provisions of this clause is the land scheduled to be taken for the Mangawhai South bound passing lane on SH1 described as areas 5 and 6 of the schedule and comprising 3477 square meters. Compensation for this taking alone shall be payable to Ramon George & Pamela Grace Hollis.)***

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13. CONFLICT BETWEEN SOCIETY & OWNERS

Subject to the provisions of this agreement, the Society shall use all reasonable endeavours to ensure that there is no conflict between the use and enjoyment of the Residential Allotments and the Farm Lot, and will use such reasonable endeavours to ensure that such farm operations carried out by the Society do not have a materially adverse or detrimental affect upon the Residential Allotment. In the event of any dispute between the Owner and the Society, the matter in dispute shall be referred to arbitration in accordance with provisions hereto.

14. DISPUTE RESOLUTION

All questions, doubts, differences or disputes whatsoever which may at any time arise between the parties in regard to disagreement or the construction thereof shall be referred to a single arbitrator to be appointed by the President or Vice-President of the Auckland District Law Society for the time being and every such arbitration shall be subject to and conducted under the provisions and in that behalf contained in the Arbitration Act 1996 or any Act amended or passed in substitution thereof.

15. HEADINGS

All headings used in this agreement are for ease of reference and do not constitute part of this agreement.

16. GENDER

In the interpretation of the forgoing words signifying the masculine shall include the feminine and neuter, the singular the plural and in each case vice versa.

17. PARTIES BOUND

Where there is more than one registered proprietor of a Lot each will be bound by this agreement jointly and severally.

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

SIGNED BY)
)
)
GRACEFARM INCORPORATED SOCIETY)

_____ **CHAIRMAN**

-----**EXECUTIVE MEMBER**

SIGNED for and on behalf of the Owners pursuant to a duly authorised Meeting of Owners held on the day of 200

_____ **Owner**

_____ **Owner**

_____ **Owner**