

Land Use Regulations 2011

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Land Use Regulations 2011

TABLE OF AMENDMENTS

Land Use Regulations 2011 (LN 12 of 2011) commenced on 17 September 2010, as amended by:

Amending Legislation	Date of Commencement
Native Lands (Amendment) Decree 2011 (No 7 of 2011)	1 March 2011

PART 1 — PRELIMINARY

[LU 10,005] Short title and commencement

- 1 (1) These Regulations may be cited as the Land Use Regulations 2011.
- (2) These Regulations commence on 17 September 2010.

[LU 10,010] Interpretation

- 2 In these Regulations, unless the context otherwise requires—

affected party means, with respect to an assessment made under regulation 8(1)—

- (a) the Trustees of land subject to the assessment; and
- (b) the Lessee, where the amounts payable by the Lessee are calculated by reference to the assessment;

Act means the Land Use Act 2010, as amended from time to time;

designated land means land designated by the Prime Minister under section 6(2) of the Act;

Director means the Director of Lands;

iTaukei Land has the same meaning as that term is defined in the iTaukei Lands Act 1905;

[def am Decree 7 of 2011 s 4, opn 1 Mar 2011]

Land Owning Unit includes the Yavusa, Mataqali, or Tokatoka as the case may be;

Lessee means the lessee or proposed lessee under a lease to be granted under the Act;

Minister means the Minister responsible for lands and mineral resources;

qualifying member means a member of a Land Owning Unit as verified by the iTaukei Land and Fisheries Commission, who permanently resides in Fiji and is over the age of 18 years;

[def am Decree 7 of 2011 s 4, opn 1 Mar 2011]

State Land has the same meaning as that term is defined in the State Lands Act 1945;

Statutory Head Lease means the Statutory Head Lease granted under regulation 14; and

Trustees mean the elected representatives of a Land Owning Unit.

[LU 10,015] Application

- 3 These Regulations apply to all designated land.

PART 2 — iTAUKEI LAND

[Pt heading am Decree 7 of 2011 s 4, opn 1 Mar 2011]

[LU 10,020] Consent of iTaukei Land Owning Units

4 (1) A Land Owning Unit will be deemed to consent to the designation of iTaukei Land (including, where applicable, iTaukei reserve) under the Act, if a consent notice is delivered to the Minister signed by a minimum of 60% of qualifying members of the relevant Land Owning Unit.

[subreg (1) am Decree 7 of 2011 s 4, opn 1 Mar 2011]

(2) Upon receipt of the consent notice, the Minister must inform the Prime Minister and refer the land to the Prime Minister for designation.

(3) The consent notice must be in writing and lodged in Form 1 in Schedule 1 and must include all required information fully and correctly stated.

(4) The Minister must not refer land to the Prime Minister for designation until such time as the consent of the Land Owning Unit has been first obtained.

[reg 4 am Decree 7 of 2011 s 4, opn 1 Mar 2011]

[LU 10,025] Trustees of Land Owning Units

5 (1) Each Land Owning Unit must elect one or more (but not more than 5) qualifying members to act as Trustees for the purposes of these Regulations and submit the names of the persons so elected to the Prime Minister for approval.

(2) The Prime Minister shall, acting in his or her discretion, appoint the Trustees of the Land Owning Unit from the names submitted to the Prime Minister under subregulation (1) or refer the names back to the Land Owning Unit for further names to be submitted.

(3) The Land Owning Unit must—

- (a) preside over the election of the trustees; and
- (b) ensure that a Deed of Trust is prepared in accordance with the Trustee Act 1966 and registered after the endorsement of the Director.

(4) A person may not become or continue to act as a Trustee if—

- (a) the person has been convicted of any indictable offence or an offence involving fraud or dishonesty;
- (b) the person is an undischarged bankrupt;
- (c) the person is not or ceases to be a qualifying member; or
- (d) the person dies or becomes incapacitated.

(5) The Prime Minister may remove any Trustee at any time where the Prime Minister is of the opinion that the Trustee is not adequately discharging his or her responsibilities under the Regulations.

(6) Where no Trustees have been appointed under this regulation, the Prime Minister may appoint a person or persons to act as Trustees on an interim basis until such time as Trustees are validly appointed by the Land Owning Unit.

(7) The Office of the Auditor-General must audit the annual financial statements of accounts for the Land Owning Unit for any calendar year.

(8) The Trustees shall convene an Annual General Meeting before the end of 31 January every year where audited annual financial statements of accounts are endorsed and the election of new Trustees conducted.

(9) Copies of the minutes of the meetings and annual audited financial statements of account shall be provided to the Director and the permanent secretary responsible for lands.

(10) Subject to subregulations (5) and (6), any changes to the Trustees shall be made with the consent of not less than 60% of qualifying members.

[The next page is 927,001]

PART 3 — DESIGNATION OF LAND

[LU 10,030] Processes of designation of land

6 (1) All land referred to the Prime Minister for designation must be presented in Form 2 in Schedule 1, including—

- (a) a scheme plan if the subject area is not surveyed;
- (b) an approved survey plan;
- (c) a deposited plan; or
- (d) iTaukei Land Commission lot.

[subreg (1) am Decree 7 of 2011 s 4, opn 1 Mar 2011]

(2) The Trustees may from time to time request the Prime Minister in writing that the designation of any land (or part thereof) cease, provided that a minimum of 5 years have elapsed since the date the land was first designated under the Act.

(3) To the extent that designated land (or part thereof)—

- (a) is subject to a request under subregulation (2);
- (b) is not the subject of any current lease entered into under the Act; and
- (c) will not be (in the opinion of the Prime Minister) the subject of any lease in the 12 months immediately following the receipt by the Prime Minister of the request under subregulation (2),

then the Prime Minister must promptly issue a public notice to that effect and the designation of the land will cease effective from the date of such notice.

[LU 10,035] Land Use Bank

7 (1) The Director must ensure that the availability of all designated land is advertised widely in appropriate newspaper or internet advertisements.

(2) The Director must ensure that prior to granting any lease or entering into any agreement to lease with respect to designated land that (at the direction and on behalf of the Director)—

- (a) a professional land survey is undertaken with respect to any such designated land which is unsurveyed; and
- (b) an assessment of the fair market rent is determined in accordance with regulation 8.

[LU 10,040] Valuation of designated land

8 (1) The Director must ensure that following the designation of the land and at least once every 5 years thereafter an assessment of the fair market rent of all designated land is undertaken in accordance with the best principles and practices of valuation and any guidelines or directions made by the Minister.

(2) The Director must ensure that the most recent assessment report is available for inspection by the Minister.

(3) The Director must not enter into any lease for an aggregate consideration of less than the fair market rent as detailed in the assessment required under subregulation 8(1), except with the prior written consent of the Prime Minister.

(4) If the Director or any affected party does not agree with the findings of the assessment, then either the Director or any affected party may—

- (i) meet with a view to reaching agreement as to the fair market rent, and where agreement is reached, the amount agreed will become the current fair market rent as between the parties in agreement; or
- (ii) (within 30 days after receipt of the assessment) refer the assessment to the Prime Minister for determination as follows—
 - (a) the Prime Minister must promptly appoint an independent valuer or valuers to determine the fair market rent;
 - (b) the Director and any affected party may make written submissions to the valuer or valuers appointed;
 - (c) any valuer appointed must act as an expert and not an arbitrator;
 - (d) the determination of the valuer or valuers will become the current fair market rent and be binding upon the Director and all Affected Parties; and
 - (e) as between the Director and the relevant Trustees, the costs of the determination will be borne equally.

[The next page is 927,201]

PART 4 — LEASES

[LU 10,045] Application for lease

9 (1) Any person may apply to the Director for the grant of a lease of designated land.

(2) The application must include any information required by the Director or the Minister, including (where applicable) details of—

- (a) the proposed lessee, including details of the financial standing of the lessee and details of the person or persons in ultimate control of the lessee;
- (b) the proposed lease premiums, rent, rent adjustment and rent review and any other financial consideration to be provided by the lessee;
- (c) the proposed term and estimated commencement date;
- (d) the proposed use, including details of any environmentally sensitive or hazardous uses;
- (e) the proposed development, including details of the likely environmental impact of the development;
- (f) any security or third party guarantees to be procured by the lessee; and
- (g) any other lease held by the lessee, the applicant or any person associated with the lessee or the applicant and the State or the Director.

[LU 10,050] Director to approve/refuse application

10 (1) The Director may approve or refuse any application made under regulation 9 and may approve any such application subject to conditions. The Director is not required to provide reasons for such approval or refusal.

(2) Approval of the application, or approval subject to conditions, does not constitute acceptance of a contractual offer and will not give rise to any contract, lease, estate or interest at law or equity or be the grounds for any estoppel restraining the Director.

[LU 10,055] Survey and preparation of lease

11 (1) Upon the approval by the Director of an application for a lease, the Director must—

- (a) notify the applicant in writing of such approval and any conditions attaching thereto; and
- (b) provide the applicant with a letter of offer detailing the in-principle terms and conditions of the lease (which offer will be capable of acceptance by the applicant within not more than 30 days after the date of the letter of offer).

(2) The Director may negotiate the proposed lease terms and conditions and may revise and re-issue any letter of offer at any time, in which case any prior letters of offer provided to the applicant with respect to the same designated land will automatically lapse.

(3) Upon the acceptance in writing by the applicant of a letter of offer, the applicant must pay all sums due and payable as described in the letter of offer.

[LU 10,060] Drawing and execution of leases

12 (1) Upon receipt of the acceptance and sums payable under regulation 11(3), the Director must prepare a lease containing the approved terms and conditions, together with any necessary survey plan.

(2) The applicant and the lessee will not be entitled to enter or occupy the land until such time as—

- (a) the Director has executed the lease;
- (b) the lessee has—
 - (i) executed the lease;
 - (ii) paid all sums due and payable under the lease;
 - (iii) provided evidence of any insurance required to be effected under the lease (such evidence must be to the satisfaction of the Director); and
 - (iv) provided any security (deposits, payments in advance, bank guarantees) and any guarantees required under the lease.

(3) Where the Director gives notice to an applicant that the relevant lease is ready for execution and the lessee fails to execute and produce to the Director the lease within 14 days after the date of the notice, the Director may cancel the approval given under regulation 10 and re-advertise the land as available for letting to other parties.

[LU 10,065] Form of leases

13 (1) All leases must be in the form set out in Form 3 in Schedule 2, subject only to any additions or alterations approved in writing by the Director.

(2) The Director will be, and will be deemed always to be entitled to be, the lessor of all leases issued on designated land on behalf of the State.

(3) The lease must be executed in triplicate.

[LU 10,070] Statutory Head Lease

14 (1) Upon the entry into of any lease of iTaukei Land pursuant to the Act, a Statutory Head Lease will be deemed to exist on the terms and conditions contained in Form 4 in Schedule 2 (or such other terms and conditions as the Minister may from time to time approve).

[subreg (1) am Decree 7 of 2011 s 4, opn 1 Mar 2011]

(2) Notwithstanding any principle of law or equity to the contrary,

- (a) the Statutory Head Lease may not be terminated or surrendered except as expressly provided in the Statutory Head Lease; and
- (b) the legal and beneficial ownership of any buildings or improvements on iTaukei Land subject to, and during the term of, the Statutory Head Lease may vest in and remain with the Head-Lessee or otherwise as specified in the relevant Statutory Head Lease or lease.

[subreg (2) am Decree 7 of 2011 s 4, opn 1 Mar 2011]

[LU 10,075] Date of commencement of lease

15 The term of the lease will commence upon a date specified by the Director.

[LU 10,080] Registration of leases

16 The lessee must ensure that an executed original lease is provided to the Registrar of Titles for registration.

[LU 10,085] Administration of leases

17 The Director must—

- (a) administer all leases and collect all premiums, rents, outgoings, expenses and other consideration or monies payable under any lease;
- (b) enforce the terms of the lease; and
- (c) with respect to iTaukei Land, promptly pay the rent due and payable under all Statutory Head Leases to the relevant Trustees without deduction.

[reg 17 am Decree 7 of 2011 s 4, opn 1 Mar 2011]

[LU 10,090] Issue of certified copies of lost agreements

18 For the purposes of the issue of certified copies of lost or destroyed agreements granted under the Act the following provisions shall apply—

- (a) the application for the certified copy shall state the full particulars of the lost or destroyed agreement and shall be accompanied by a statutory declaration stating the facts of the case to the best of the declarant's knowledge and belief, and shall be addressed to the Director;
- (b) the application may be disposed of summarily at any time after it is filed, provided that the Director may in his or her discretion, before accepting any application require the applicant to give at least 14 days' notice in the Gazette of his or her intention to make such application;
- (c) the Director shall, if satisfied with the proof of the loss of an agreement issue a certified copy of such licence or lease;
- (d) the copy shall be a true copy of the original and shall bear the following endorsement—

"Certified copy issued this day of 20 , in lieu of the original, which has been lost (or destroyed)

*.....
Director of Lands"*

[LU 10,095] Fees

19 The Director may charge and collect for the preparation of any lease granted under these Regulations the fees set out in Schedule 3.

[LU 10,195]

SCHEDULE 1

FORMS

[LU 10,200]

FORM 1

CONSENT FORM

LAND USE UNIT
MINISTRY OF LANDS AND MINERAL RESOURCES
LAND USE ACT 2010
CONSENT FORM

(Regulation 4(3))

Village : _____
District : _____
Province: _____
Date : _____

1 We the members of landowning unit _____
Yavusa _____ residing
in the village of _____ have agreed to give our
land with particulars listed below to the Land Use Unit to administer.

2 Particulars of the land :

Name of the land : _____

NLC Lot No : _____

Reserve Claim No : _____

Sheet No : _____

Head of the Yavusa: _____

Head of the Mataqali: _____

Tokatoka Nos: _____

NLC No : _____

Area : _____


MEMBERS OF LANDOWNING UNIT

	NAME [To be clearly shown]	DATE OF BIRTH	SIGNATURE

FORM 2

(Regulation 6(1))

DESIGNATION OF LAND

		
REFERENCE SHEET REF: Scale	Plan Showing DESIGNATED AREA <i>ACT 36/2010</i> Legal Description: Tikina: Province:	Designated Area
FILE REF:		

[The next page is 927,601]

[LU 10,210]

SCHEDULE 2

FORMS OF LEASE

[Sch 2 am Decree 7 of 2011 s 4, opn 1 Mar 2011]

[LU 10,215]

FORM 3

MEMORANDUM OF LEASE

(Regulation 13)

STAMP DUTY	LU _____	Lease No. (FOR TITLES OFFICE USE ONLY)
	LEASE _____	
Original S	DESIGNATED LAND	FEES
Duplicate \$		Registration Fee
\$ _____		Drawing Fee
Paid vide RR	THE DIRECTOR OF LANDS	Plan Fee
of	(hereinafter referred to as the lessor)	Survey Fee
	of Fiji hereby	Total _____
	leases to _____	Revenue Receipt
For Director of Lands	(hereinafter referred to as the lessee)	No. _____
		Date
		Initials

UNDER THE LAND USE ACT 36/2010

All that piece of Land being

C.T. or C.G (e)	Number	Name of Land	Province	District or Town	Area	Lot No.	Plan No. (d)

the boundaries of which are more particularly delineated on the plan hereon to be held by the said _____, for the Term and at the Rent payable to the Director of Lands and subject to the terms and conditions set out in Annexures A and B.

LEASE NO.
REGISTERED at
.....
Registrar of Titles

ANNEXURE A

REFERENCE SCHEDULE AND SPECIAL CONDITIONS

This is Annexure A to lease between the Director of Lands (lessor) and
(lessee).

1. Reference Schedule

In this lease, the following items are defined as follows—

Item 1	Term	<i>{Note: Insert details of the term of the lease}, commencing upon the Commencement Date.</i>
Item 2	Commencement Date	<i>{Note: Insert Commencement Date}</i>
Item 3	Rent:	
	(a) Premium:	<i>{Note: Insert details of premium} payable in full on or before the Commencement Date.</i>
	(b) Base Rent:	<i>{Note: Insert details of rent} per annum, payable[monthly, bi-annually, annually] in advance in equal monthly instalments.</i>
Item 4	Rent Adjustment	<i>Upon each anniversary of the Commencement Date (other than a date the Base Rent is reviewed to fair market rent), the Base Rent will increase by {Note: insert details of [annual] fixed or percentage increases}.</i>
Item 5	Rent Review	<i>Upon every [fifth] anniversary of the Commencement Date, the Base Rent must be reviewed to fair market rent in accordance with regulation 8 of the Land Use Regulations 2011.</i>
Item 6	Outgoings	
	(a) Statutory:	<i>All rates, taxes, charges, duties, and impositions assessed with respect to the land, the lessee's use of the land, or the lessee by the State or any lawful authority or statutory body.</i>
	(b) Operating Expenses:	<i>All insurance premiums payable by the lessor {Note: Include details of any other operating expenses to be payable (wholly or partially) by the Lessee}</i>
Item 7	Permitted Use	<i>{Note: Insert details. For example "The grazing of livestock"}</i>
Item 8	Option to Renew	<i>{Note: Insert details and include a special condition if an option to renew is to apply}Nil.</i>
Item 9	Security	<i>{Note: Insert details of any security deposits, bank guarantees or personal guarantees to be provided by the Lessee}</i>
Item 10	Default Notice Periods	<i>1st Default Notice Period: {Note: Insert period} [14 days] commencing upon the date the notice under clause 13(c) is given. 2nd Default Notice Period: {Note: Insert period} [7 days] commencing upon the date the notice under clause 13(d) is given.</i>

2. Special Conditions

Notwithstanding any provision of Annexure B, the following special conditions apply:

(a) *{Note: Insert details of any special conditions}*

[The next page is 927,641]

ANNEXURE B

GENERAL CONDITIONS

This is Annexure B to lease between the Director of Lands (*lessor*) and (*lessee*).

1. Land

- (a) The lessor grants and the lessee accepts a lease of the land for the term and at the rent and on the terms and conditions of this lease.
- (b) The grant of the lease is subject to the following reservation—
 - (i) the lessor reserves all precious metals, coals and minerals of every description including crude oil upon, in or under the land with full liberty at all times to search, dig for and carry away such metals, coals and minerals of every description including crude oil and for that purpose to enter upon the said land or any part thereof.

2. Rent

- (a) The lessee must pay the rent in cleared funds when due and without demand.
- (b) The lessor may from time to time specify the manner in which the Rent must be paid, including any requirement that rent be paid by electronic funds transfer to an account nominated by the lessor.
- (c) The rent will be adjusted and reviewed as the case may be in the manner specified in the Reference Schedule.

3. Outgoings

- (a) The lessor may from time to time provide the lessee with a statement detailing the outgoings. The statement may include actual or estimated amounts, however where an estimated amount is included the lessor must promptly reconcile such estimated amounts as against the actual amounts incurred and include the adjustment in the following statement of outgoings.
- (b) The lessee must pay the amount specified in the statement within 14 days of receipt in cleared funds.

4. Assignment and Sub-letting

- (a) This lease is a protected lease under the provisions of section 12(1) of the Land Use Act 2010.
- (b) The lessee must not alienate or deal with its estate or interest in the lease of any part thereof, whether by sale, transfer or sublease or any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor except at the suit or with the written consent of the Director of Lands shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.
- (c) For the purposes of this clause,
 - (i) where the lessee is a company and there is either—
 - (A) a change in the beneficial ownership of the lessee;
 - (B) a change in the majority shareholding of the lessee; or
 - (C) a change in the person or persons in ultimate control of the lessee, or
 - (ii) where the lessee makes a declaration of trust with respect to the lease, then such occurrence will be deemed to constitute a transfer of the lease requiring the prior written consent of the Director of Lands.

- (d) Paragraph (c)(i) will not apply where—
 - (i) the change occurs solely by virtue of a change in ownership of any shares listed on an official list of a stock exchange; or
 - (ii) where the lessee is a foreign investor within the meaning of the Foreign Investment Act 1999 and the requirements of that Act are complied with respect to the change.
- (e) The lessor may disregard and treat as null and void any purported dealing with the lease in contravention of this clause.
- (f) As a condition of granting consent, the lessor may require the lessee to repay any fitout contributions, lease incentives or costs provided or incurred by the lessor under the lease in the immediately preceding 10 years. This paragraph will not apply to transfers by way of administration and natural love and affection to the spouse and children of the lessee.
- (g) Any consent under this lease may be given in writing by any officer or officers, either solely or jointly, authorised on behalf of the lessor. Any consent given under the lease will lapse if not acted upon within 90 days after the consent is given.

5. Permitted Use

- (a) The Lessee must—
 - (i) use and must continue to use the land for the Permitted Use; and
 - (ii) not use the land for any purpose other than the Permitted Use.
- (b) Where the Permitted Use includes a use specified in the first column of Schedule 1, then the provisions of the second column of Schedule 1 will apply.
- (c) The Lessee must not subdivide the land without the prior written consent of the lessor obtained and then only in accordance with a plan of subdivision approved by the lessor in writing.
- (d) The Lessee shall not obstruct in any way the free passage of any person over the public thoroughfare intersecting or adjoining the demised land and shall if required by the Lessor of the Divisional Surveyor so to do forthwith remove any crop or other obstruction placed by him or her on such public thoroughfare in contravention of this condition. Should any question arise as to whether any path intersecting or adjoining the demised land is a public thoroughfare it shall be referred to the Director of Lands whose decision shall be final and conclusive.

6. Repairs and Maintenance

The lessee must at its cost—

- (a) keep the land and any improvements in good repair and condition, including the carrying out of any structural repairs;
- (b) carry out such drainage works as may be required to the satisfaction of the lessor; and
- (c) keep clean and open and maintain in good condition all drains, ditches, water-courses and drainage and sewage systems in, upon or intersecting the demised land to the satisfaction of the Lessor.

7. Access

The lessor or any authorised person or persons may at any time without let or hindrance—

- (a) enter upon the land to construct, place, or maintain, posts, pipes, cables or wires and drains of any nature whatsoever above or below the ground anywhere within the land; and

- (b) enter upon such drainage reserve for the purpose of carrying out any drainage works or repairs whatsoever; and
- (c) any rights exercised under this clause will not constitute re-entry or forfeiture of the lease.

8. Protection of assets

- (a) The lessee must not erect or permit to be erected any structure of any nature whatsoever over or upon any portion or portions of the land—
 - (i) where posts, pipes and cables or wires have been placed and where drains of any nature whatsoever have been dug; or
 - (ii) shown on the plan hereon as drainage reserve and coloured blue, and the lessee must not do any act or thing that will or may; or
 - (iii) damage any post, pipe, cable, wire or drain or impede the flow of water along any drain constructed within the land; or
 - (iv) damage or impede the flow of water along any drain that has been or may be constructed or excavated along such drainage reserve.
- (b) The lessee must not remove or dispose of by sale or otherwise any forest produce growing upon the land without the written consent of the lessor first had and obtained and subject to such conditions as to the payment of royalty or otherwise prescribed by the Forest Regulations 1955 as the lessor may direct.
- (c) The lessee must keep open and maintain in good condition to the satisfaction of the lessor all drains, ditches and water courses upon or intersecting the demised land.

9. Boundary marks to be protected by lessee

The lessee must in all respects at its cost—

- (i) have boundaries of which have been surveyed and marked on the ground;
- (ii) maintain and protect such boundary marks from loss or damage; and
- (iii) maintain such marks and the boundary lines reasonably clear of bushes, weeds, vines, or other undergrowth so as to enable such survey marks and boundary lines to be readily found and followed at any time, provided that no boundary mark established by a surveyor shall be moved, replaced or otherwise interfered with by any person not being a registered surveyor other than by re-piling fallen stones or earth around such mark.

10. Insurance

The lessor may effect prudent policies of insurance with respect to—

- (a) public liability (including personal injury and property damage);
- (b) building replacement insurance; and
- (c) industrial special risks,

and may require the lessee to reimburse the lessor a fair proportion of any premiums paid by the lessor or the State. The lessee must not do anything which may vitiate or cancel the lessor's insurance policies.

11. Indemnity

The lessee releases and indemnifies the lessor, the State, the Trustees, iTaukei land owners (and any of their respective agents, contractors, officers and employees) from any loss, damage, liability or claims with respect to the use or occupation of the land by the lessee (or anyone under the lessee's control) with respect to the lease.

12. Warranty

Each party warrants to the other that it has legal capacity to enter into this lease and to grant and perform the rights and obligations contained in the lease. The lessee warrants that, to the best of the lessee's knowledge, any information provided with respect to this lease under regulation 9(1) is true and correct as at the Commencement Date and the lessee indemnifies the lessor from any loss, damage, liability or claims caused by the breach of this warranty.

13. Default

- (a) In the event of any breach by the lessee of any covenant or condition in this lease the Lessor may issue a notice to the lessee specifying the default and requiring that the default be remedied within the 1st Default Notice Period.
- (b) Where the default is not capable of remedy, the lessee will be deemed to have remedied the default upon payment to the lessor in cleared funds reasonable compensation for the default as determined by the lessor (acting reasonably).
- (c) Where the default remains unremedied after the expiry of the 1st Default Notice Period specified in the notice of default, the lessor may give the lessee a further notice stating that if the default remains unremedied within the 2nd Default Notice Period, then the lessor may terminate the lease.
- (d) Where the default remains unremedied after the expiry of the 2nd Default Notice Period, the lessor may automatically terminate the lease by notice to the lessee, such notice must be given at any time within 6 months after the expiry of the 2nd Default Notice Period.
- (e) Upon termination of the lease, the lessor may enter upon and take possession of the land, without limiting any other rights of the lessor.
- (f) Notwithstanding any other provision of this lease,
 - (i) if the lessee becomes (or if one or more of the lessees become) bankrupt or insolvent then the lessor may terminate this lease immediately, and such termination will be without prejudice to any other rights of the lessor; and
 - (ii) where the lessee has defaulted under the lease, the lessor may (but without being obliged to do so) take such steps as are reasonably necessary or convenient to remedy the breach or limit or contain the likely loss or damage arising out of or in connection with the breach and may recover its reasonable costs and expenses thereby incurred from the lessee as a liquidated debt and any actions taken by the lessor will be deemed not to constitute re-entry or forfeiture of the lease.

14. Improvements

- (a) The lessee may remove any building or improvement erected by the lessee on the land at any time within 3 months after the expiration of the lease at its own expense provided that—
 - (i) before the removal of any building the lessee shall have paid all rent owing by him or her and shall have performed or satisfied all his or her other obligations to the lessor in respect of the demised land;
 - (ii) in the removal of any building the lessee shall not do any avoidable damage to any other buildings or other part of the demised land;
 - (iii) immediately after the removal of any building the lessee shall make good all damage occasioned to any other building or other part of the demised land;

- (iv) the lessee shall not remove any building without giving one month's previous notice in writing to the lessor of his or her intention to remove it;
- (v) at any time before the expiration of notice of removal, the lessor, by notice in writing given by him or her to the lessee, may elect to purchase any building comprised in the notice of removal, and any building thus elected to be purchased shall be left by the lessee and shall become the property of the lessor, who shall pay to the lessee the fair value;
- (vi) if the lessee applies for a renewal of the lease the provisions of paragraph (i) shall be deemed to cease to apply as from the date of the application of the lessee for a renewal of the lease; and
- (vii) that in the event of any breach by the lessee of any covenant or condition in the lease the lessor may enter upon and take possession of the land without limiting any other rights of the lessor.

15. Compliance with Laws

The lessee must comply at all times with all laws applicable to the land, the lease and the lessee.

16. Governing Law

This lease will be governed by the laws of Fiji.

17. Definitions and Interpretation

In this lease—

- (a) references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) terms which are defined in the Land Use Act 2010 or the Land Use Regulations 2011 have the same meaning in this lease;
- (c) the word “includes” or “for example” or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (d) clause headings and subclause headings shall not be used in the interpretation of the lease;
- (e) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender and other parts of speech and grammatical forms of a word or phrase defined in the Lease have a corresponding meaning;
- (f) unless otherwise provided, all references to monetary amounts in the lease are in Fijian dollars;
- (g) if any provision of the lease is deemed to be or becomes void, voidable or unenforceable, it shall be read down or, if incapable of being read down, severed and the remaining provisions of the lease shall continue to have full force and effect;
- (h) a reference to a decree, statute, regulation, proclamation, ordinance or by-law includes all decrees, statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a decree or statute includes all regulations, proclamations, ordinances and by-laws issued under that decree or statute;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;

- (j) no provision of the lease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Lease or that provision; and
- (k) a covenant or agreement on the part of 2 or more persons binds them jointly and severally.

SPECIFIC LAND USE CONDITIONS

Column 1

All uses other than commercial, residential, industrial, tramway uses

Column 2

In addition to any other conditions which the Director, in the circumstances of any case may see fit to impose, the lessee may only erect such buildings on the land as are necessary for—

- (a) dwelling or dwellings for the lessee;
- (b) dwellings for persons *bona fide* employed on the land; such as stockmen, farm, plantation or quarry labourers and supervisors; or
- (c) accommodation for implements, vehicles, horses, and other stock used in connection with the farm, plantation or quarry or any building connected with the work of a farm, plantation or quarry, as the case may be.

Agricultural purposes

In addition to any other conditions which the Director in the circumstances of the case may see fit to impose, the lessee must—

- (a) keep the whole of the land in good condition and must not allow any part to become impoverished and must use such artificial or other manure as may be required by the lessor or an officer authorised by or on behalf of the lessor in that behalf in writing;
- (b) apply such measures to check soil erosion as may be required by the lessor in writing and shall maintain such measures to the satisfaction of the lessor or of an officer appointed by the lessor in writing. Without prejudice to the generality of this paragraph, such measures may include one or more of the following—
 - (i) strip cropping;
 - (ii) terracing;
 - (iii) contour-planting;
 - (iv) cover cropping;
 - (v) rotation of cropping;
 - (vi) construction of drains or dams; and
 - (vii) construction of fences;
- (c) not fell trees or clear or burn off bush or cultivate any land within a distance of 7 metres from the bank of a river or stream; and
- (d) not without prior consent of the lessor clear, burn-off, cultivate or permit excessive grazing of the top 25% of the hills (as measured vertically) which have a slope exceeding 25 degrees from the horizontal.

Residential purposes

In addition to any other conditions which the Director in the circumstances of any case may see fit to impose, the lessee must—

- (a) within a specified period and under penalty of re-entry erect to the satisfaction of the lessor a dwelling house on the demised land at a minimum expenditure or of such dimension or both as shall be specified in the lease;
- (b) not without the written consent of the lessor erect or permit to be erected on the demised land a greater number of dwelling-houses than is specified in the lease;
- (c) not use or permit to be used the demised land or any part thereof or any dwelling-house or accessory out-building to be erected thereon, for any trade, business, occupation or calling whatsoever; and no act, matter or thing whatsoever shall, during the term of the lease, be done in or upon the said land or buildings or any part thereof, which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the occupier, lessee or owner of the adjoining land, provided that a home industry approved by the lessor in writing or a professional practice may with the written consent of the lessor first had and obtained be conducted within a dwelling-house; and
- (d) at all times maintain and keep in good repair and tenantable condition, to the satisfaction of the lessor, all buildings erected upon the demised land.

Tourism, commercial or industrial purposes

In addition to any other conditions which the Director in the circumstances of any case may see fit to impose, the lessee must—

- (a) within a specified period erect to the satisfaction of the lessor a commercial or industrial building as the case may be on the demised land at a minimum expenditure or of such dimension or both as shall be specified in the lease; and
- (b) at all times maintain and keep in good repair and tenantable condition, to the satisfaction of the lessor, all buildings erected upon the demised land.

Grazing or dairying purposes

In addition to any other conditions which the Director in the circumstances of any case may see fit to impose, the lessee must—

- (a) within a specified number of years and under penalty of re-entry effect to the satisfaction of the lessor such permanent improvements, which shall include fencing, as maybe specified in the lease;
- (b) stock the land in the manner specified in the lease;
- (c) plant the land with grass in the manner specified in the lease;

- (d) keep the areas planted in compliance with the provisions of paragraph (c) at all times free from weeds and undergrowth to the satisfaction of the lessor;
- (e) not without the prior consent of the lessor clear, burn off, cultivate or permit uncontrolled grazing of the top 25% of hills (as measured vertically) having a slope exceeding 25 degrees from the horizontal;
- (f) apply such measures to check soil erosion as may be required by the lessor in writing and shall maintain those measures to the satisfaction of the lessor or of an officer appointed by the lessor in that behalf in writing. Without prejudice to the generality of this paragraph, such measures may include the restriction of grazing, terracing, construction of fences;
- (g) not without the prior consent of the lessor in writing, take, use or otherwise injure any forest tree growing upon the demised land except for the purpose of clearing the land for the planting of grass or of erecting fences or buildings incidental to the use of the land for grazing purposes; and
- (h) ensure that the whole or any portion of the land used for the grazing of stock shall be enclosed with good and substantial fencing so that all stock kept upon the land shall at all times be adequately fenced in.

Tramway purposes

In addition to any other conditions which the Director in circumstances of any case may see fit to impose,

- (a) the lessee must not erect on the land any building not incidental to the use of the land for tramway purposes;
- (b) the lessee must ensure that the owners and occupiers of adjacent land which enjoy the benefit of a right of way over the leased land shall have the right at all times to cross any tramway lines laid or constructed provided they do not hinder or obstruct the passage of trains thereon or cause any damage thereto;
- (c) the lessee must form and maintain in good order to the satisfaction of the lessor during the currency of the lease, all level crossings and gates and such bridges as the public have the right to use;
- (d) that, subject to the prior written consent of the Director, the lessee shall have the right at any time during the currency of the lease to remove the said tramway line and bridges connected therewith except any bridge or bridges that may connect portions of the public highway;

Quarrying purposes

Land must be used solely for the removal of sand, common stone, lime or other similar material and for the housing of the machinery and implements necessary therefore and the labourers employed thereon and the royalty to be paid for such material and the manner of payment and the nature of the improvements required to be effected shall be set out in every such lease in detail.

Signed by the Director of Lands for and on behalf of the Lessor:

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Witnessed by:

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Signed by the Lessee

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Witnessed by:

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Correct for the purposes of the Land Transfer Act 1971

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[LU 10,220]

FORM 4**STATUTORY HEAD LEASE**

(Regulation 14)

The terms and conditions of the Statutory Head Lease are as follows—

1. Definitions

Terms used in this Head-Lease and defined in the Land Use Act 2010 or the Land Use Regulations 2011 have the same meaning in this Head-Lease.

Commencement Date means the commencement date specified in the Lease.

Current Fair Market Rent means the most recent fair market rent assessed, agreed or determined as the case may be under regulation 8 of the Land Use Regulations 2011;

Lease means a Lease entered into by the Director under the Regulations;

Lessee means the lessee under the Lease;

Head-Lessor is the true owner from time to time of the iTaukei Land within which is situate the Premises, and represented at all times by the Trustees;

Head-Lessee is the Director of Lands on behalf of the State;

Premises means the land the subject of the Lease;

Rent means the rent specified in Clause 3;

Statutory Outgoings means all rates, taxes, charges, duties, and impositions assessed with respect to the Premises, the Head-Lessee's use of the Premises, or the Head-Lessee by the State or any lawful authority or statutory body.

Term means the term of the Lease plus one day, commencing on the Commencement Date.

2. Grant

- (a) The Head-Lessor grants, and the Head-Lessee accepts, a head lease of the Premises for the Term and the Rent and otherwise on the terms and conditions set out in Clauses 3, 4 and 5.
- (b) The grant of the Head-Lease includes the grant of all rights and benefits reasonably necessary and convenient for the Head-Lessee to grant the Lease (as amended from time to time).

3. Rent

- (a) The rent shall be payable annually in advance to the Trustees without demand. For the avoidance of doubt, rent shall only be payable after a Lease is entered into by the Director in respect of the land in question.
- (b) The rent shall be the Current Fair Market Rent as determined in accordance with regulation 8 of the Land Use Regulations 2011 and the Lease.

4. Outgoings

- (a) The Head-Lessee must pay when due all Statutory Outgoings.
- (b) The Head-Lessor must provide all reasonable assistance to the Head-Lessee to enable the Head-Lessee to comply with its obligations under this Clause 4.

5. General Term and Conditions

- (a) (Use) The Head-Lessee may use and develop the land for any use or development permitted by law.

- (b) (Improvements) The Head-Lessee may erect buildings or improvements on the land at any time and without the consent of the Head-Lessor. As between the Head-Lessor and the Head-Lessee, legal and beneficial ownership of such buildings and improvements will vest in and remain with the Head-Lessee.
- (c) (Assignment and Subletting) The Head-Lease will not be capable of assignment. However, the Head-Lessee may grant, vary, and in all respects deal with the Lease and any estate or interest granted under the Lease without the consent of the Head-Lessor.
- (d) (No termination) Notwithstanding any provision of the Head-Lease or any principle of law or equity to the contrary,
 - (i) the Head-Lessor will not be entitled to terminate the Head-Lease for any reason (including without limitation any purported repudiation of the Head-Lease);
 - (ii) (subject to clauses 3, 4 and 5) the Head-Lessor's right to contractual damages, compensation or any financial remedy will be limited to the corresponding amount actually recovered by the Head-Lessee from the Lessee; and
- (e) the Head-Lessor will not be entitled to any remedy or relief (including injunctive relief) against the Head-Lessee except to the extent that the Head-Lessee can actually require the Lessee to fully perform and comply with such remedy or relief.
- (f) (Surrender) If the Lease is terminated for any reason (including the effluxion of time), the Head-Lessee—
 - (i) may surrender this Head-Lease automatically without payment of any surrender sum or compensation with effect on and from the date the Lease is terminated; and
 - (ii) will be released in full from performance of any obligations which fall due for compliance on or after the date the Lease is terminated.

[The next page is 927,861]

[LU 10,225]

SCHEDULE 3

(Regulation 17)

FEES

FEES	\$
(i) On application for a lease, tenancy or licence	100
(ii) Preparation of lease inclusive of issue of approval notice but exclusive of plan, provided that where special clauses are required this fee may be increased by an amount not exceeding \$100 at the discretion of the Director	200
(iii) Preparation of extension or variation of lease	50
(iv) Preparation of licence (exclusive of plan)	200
(v) Plan fee if plan drawn on lease or licence	50
(vi) Plan fee if photocopies of plan attached to lease or licence	50
(vii) Certified copy of lost or destroyed licence including plan	50

(All fees being charged are VAT Exclusive)