



**CHEP USA**  
**DEPOT/REPAIR FACILITY OPERATING AGREEMENT**

**THIS DEPOT/REPAIR FACILITY OPERATING AGREEMENT** (the "Agreement") is made as of the 8th day of February, 2002 by and between CHEP USA, a New York general partnership ("CHEP") having its principal office at 8517 South Park Circle, Orlando, Florida 32819-9040, and HC- Wooden Pallets ("Operator"), having a place of business at Carretera # 312 Km. 0.3, Barrio Pubelo, Rincon, Pureto Rico 00677.

In connection with CHEP's operation of a national pallet and container pool business, CHEP needs to establish and maintain storage, repair and equipment handling depots at various locations throughout the United States. CHEP has established HC-Wooden Pallets (the "Depot") as one of these locations. CHEP desires that Operator perform certain services at the Depot and Operator has agreed to do so, pursuant to the terms set forth below:

1. **Services; No Agency.** CHEP hereby designates the Depot as an authorized location for the purpose of inspecting, storing, handling and repairing pallets, containers, and other devices used in the movement, storage or transportation of goods owned by CHEP and rented to participants in the CHEP pallet and container pool program (collectively, the "Equipment"). Operator shall perform the inspection, storing, handling and repair services and administrative functions necessary for the operation of the pool program, strictly in accordance with the requirements of CHEP as specified by CHEP in and/or pursuant to this Agreement. Operator's authority with respect to the Equipment is limited solely to the services and functions set forth in or determined pursuant to this Agreement. Any other use, including possession or rental of Equipment for Operator's own use, is prohibited unless the Operator enters into a separate rental or other agreement with CHEP providing for that use.

**IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY THE OPERATOR THAT NEITHER THIS AGREEMENT NOR THE DESIGNATION OF THE DEPOT CREATE ANY AGENCY, PARTNERSHIP, JOINT VENTURE OR OTHER SIMILAR RELATIONSHIP BETWEEN CHEP AND THE OPERATOR. ACCORDINGLY, THE OPERATOR AGREES THAT IT HAS NO AUTHORITY TO ENTER INTO ANY CONTRACTS OR AGREEMENTS ON BEHALF OF CHEP, NOR TO MODIFY OR WAIVE ANY OF THE TERMS AND CONDITIONS OF ANY CHEP RENTAL AGREEMENT OR ANY OTHER AGREEMENT CHEP MAY HAVE WITH THE PARTICIPANTS IN THE POOL PROGRAM OR ANY OTHER THIRD PARTIES. IN ADDITION, THE OPERATOR WILL NOT ACCEPT ANY PAYMENTS OWING TO CHEP FROM POOL PARTICIPANTS, OR OTHERS, AND THE OPERATOR WILL ADVISE ALL POOL PARTICIPANTS THAT ALL FINANCIAL TRANSACTIONS MUST BE CONDUCTED EXCLUSIVELY WITH THE APPROPRIATE CHEP OFFICE AS DESIGNATED BY CHEP. THE OPERATOR WILL MAKE NO REPRESENTATION INCONSISTENT WITH THE FOREGOING.**

CHEP has provided Operator with a copy of CHEP's Depot Operations Manual (the "Operations Manual"), CHEP's published Visitation Policy (the "Visitation Policy") and CHEP's Pest Control Procedures (the "Pest Control Procedures"), and Operator acknowledges Operator's receipt and review of and agreement to comply with the Operations Manual, the Visitation Policy and the Pest Control Procedures. CHEP may, from time to time, provide Operator additional or revised policies and procedures governing Operator's performance of the services (which policies and procedures will be deemed to be incorporated into this Agreement, the Operations Manual, the Visitation Policy and the Pest Control Procedures.

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Operator acknowledges and agrees that, in general, it will be responsible for the following:

(a) Inspecting and repairing Equipment received from CHEP, CHEP customers, or others, as more particularly described in Section 2 hereof;

(b) Storing Equipment, while at the Depot, in accordance with CHEP requirements as required by this Agreement or as published in the Operations Manual or other written directions from CHEP, and with such care as a reasonably careful person would exercise under like circumstances;

(c) Providing CHEP with access to the Depot and Equipment in accordance with the Visitation Policy;

(d) Providing adequate staffing necessary during business hours for the timely and proper inspection and repair of Equipment during those hours and adhering to the performance indicators referenced in the Operations Manual and the Pest Control Procedures;

(e) Maintaining documentary records on forms as directed by CHEP or as provided by CHEP (which may include computerized records), of the Equipment located and transactions conducted at the Depot, which records shall be updated on a daily basis, and verified by physical counts of Equipment on a weekly basis. The Operator shall maintain such records for the benefit and on behalf of CHEP, and CHEP shall be entitled to copies of such records upon written request to the Operator;

(f) In accordance with CHEP requirements, preparing and issuing to CHEP daily and other periodic reports, including inventory verifications; and

(g) Dealing promptly and courteously with all requests and/or questions received from CHEP (subject, in all cases, to the limitations specified in this Agreement), and keeping CHEP promptly informed of any problems or concerns.

2. **Repair of Equipment.** In connection with the inspection and repair by Operator of Equipment, the parties hereby further agree as follows:

(a) Operator shall repair and inspect Equipment in accordance with such inspection and repair standards and procedures specified by CHEP herein or in the Operations Manual or other written directions from CHEP (the "Standards"). CHEP reserves the right to change the Standards, with notification in writing to the Operator, at any time and from time to time. Operator shall maintain its own records, which CHEP may inspect at any time, of materials and quality control procedures used in repairing the Equipment. Operator acknowledges that the repaired Equipment will be rented to others.

(b) CHEP shall not be deemed to have accepted the Equipment until inspected and accepted by CHEP or until the Equipment has been inspected, found acceptable and segregated by Operator in accordance with an acceptance procedure provided in writing by CHEP ("Internal Acceptance"). CHEP shall have the right to reject or return any Equipment, which fails to meet the Standards ("Rejected Equipment"). Inspection and acceptance of the Equipment by CHEP and/or CHEP's placement of an agent at the Depot shall not (i) relieve Operator of its warranty and indemnification obligations or any other obligation of Operator arising pursuant to this Agreement

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Operator shall provide sufficient hardware to operate such software.

5. **Personnel.** The Operator shall contract for or employ personnel with sufficient qualifications so as to perform the Operator's obligations pursuant to this Agreement. The Operator shall be solely responsible for all wages, liabilities and costs associated with the employment of such personnel. The Operator may use a labor leasing or similar company to procure such personnel.

6. **Permits, Costs and Expenses.** The Operator, at its sole cost and expense, shall procure and maintain all licenses and permits necessary for the services performed by the Operator pursuant to this Agreement. Any increases in such costs, whether because of the imposition of additional types of licenses or permits shall be paid by the Operator. The Operator shall comply with all laws, rules and regulations controlling the Operator's performance of the services contemplated herein, including satisfaction of all requirements for permits or licenses. The Operator shall pay all other costs and expenses, including telephone service and waste disposal expenses, related to the operation of the Depot, except for those set forth in Section 7 hereof, which shall be the sole responsibility of CHEP.

7. **Loss or Damage to Equipment.** The Operator shall be responsible for any piece of Equipment accepted at the Depot from CHEP, other operators, and CHEP customers, unless and until that Equipment is issued to a CHEP customer, transferred to another CHEP operator, or returned to CHEP, all in accordance with, and as reflected by the records maintained pursuant to, the requirements specified by CHEP in or pursuant to this Agreement. If any Equipment in the possession or control of Operator or for which the Operator is responsible is stolen, lost or cannot be accounted for by the Operator, or is damaged due to the Operator's negligence in handling, repairing or storage, the Operator shall pay to CHEP the cost reasonably incurred by CHEP in repairing or replacing that Equipment, which cost is initially established as set forth on attached Exhibit B. CHEP reserves the right, during regular business hours and upon reasonable notice to the Operator, to enter into the Depot and perform physical counts and examine the condition of the Equipment.

8. **Liability and Indemnity.** The Operator releases CHEP, including CHEP's agents, officers, directors and employees, from any claims arising directly or indirectly out of or in connection with the performance of this Agreement by the Operator or the use, operation or condition of the Equipment. The Operator hereby agrees to indemnify, defend and hold harmless CHEP from any liability, damage, cost, fines, penalties or expense (including reasonable attorney's fees) arising from or attributable to (a) personal injury, including death, or damage to property sustained by the Operator, its employees, agents or others arising from operations and activities of the Operator, or (b) the Operator's failure to comply with all federal, state or local laws, rules, regulations or other governmental requirements applicable to the Operator's services, including environmental laws applicable to the use, handling and repair of the Equipment, including the rules and regulations of any utility provider providing service to the Operator of the Depot or (c) the Operator's failure to inspect and maintain the Equipment or otherwise perform its obligations in accordance with the terms set forth in or established pursuant to this Agreement.

9. **Insurance.** CHEP will maintain insurance coverage against the destruction or damage to the Equipment, by fire or other causes, exclusive of theft. The Operator will maintain and provide evidence of insurance coverage against theft or similar loss of the Equipment while in the Depot or Operator's possession or control, general liability insurance in the amount hereinafter

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provided with respect to the Depot and Operator's performance of this Agreement and Worker's Compensation coverage for its employees, naming CHEP as an additional insured on such coverage. The Operator shall maintain comprehensive general liability insurance coverage in an amount not less than \$5,000,000.00, which insurance coverage shall name CHEP as an additional insured, and which insurance may not be canceled without thirty (30) days prior written notice to CHEP. The Operator shall provide CHEP with satisfactory evidence of the existence of such insurance upon request by CHEP.

10. Terms of Agreement. This Agreement shall be effective from the date hereof until terminated in accordance with any of the following:

(a) Either CHEP or the Operator may terminate this Agreement, with or without cause, by not less than 365 days prior written notice delivered to the other party;

(b) Either CHEP or the Operator may terminate this Agreement upon a material breach of the terms set forth in or established pursuant to this Agreement by the other party, provided that the other party fails to cure such breach within 10 days after receipt of written notice specifying such breach;

(c) CHEP may terminate this Agreement immediately if a petition in bankruptcy is filed by or against the Operator, if a receiver is appointed for the Operator or its assets, or if the Operator generally ceases paying its current obligations or makes an arrangement with its creditors; or

(d) At such time and from time to time that CHEP issues any new written policies or procedures pursuant to this Agreement and the Operator cannot or will not comply with such policies and procedures, the Operator may terminate this Agreement, by written notice delivered not more than 10 days after its receipt of such policies and procedures, such termination to be effective not less than 120 days after delivery of such notice; provided that if no notice of termination is delivered, then the Operator shall be deemed to have accepted such policies and procedures.

In the event of a termination of this Agreement as provided herein, the Operator shall immediately, upon demand by CHEP, vacate the Depot, clean and repair the Depot as necessary to restore the Depot to the same condition as before Operator began to perform its duties under this Agreement, and deliver to CHEP any and all Equipment and any other property or records of CHEP then in the possession or under the control of the Operator. If Operator fails to clean and repair the Depot as set forth above, in addition to any other remedy available to CHEP, Operator shall be liable to CHEP for the reasonable cost of cleaning and repairing such area. If Operator fails or refuses to deliver any such Equipment, property or records to CHEP, in addition to any other remedy available to CHEP, Operator shall be liable to CHEP for the reasonable cost of replacing such Equipment, property or records. Notwithstanding any provision of or interpretation of this Agreement, Operator acknowledges that all Equipment in the possession of Operator is and at all times shall remain the exclusive property of CHEP, and that CHEP shall have the right to recover such Equipment by mandatory injunction or any other available legal or equitable means.

11. Representations of Operator.

(a) The Operator represents and warrants that it will comply with all laws, rules

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and regulations, including satisfying all requirements for permits or licenses, applicable to the services to be performed by the Operator pursuant to this Agreement.

(b) The Operator warrants that all Equipment shall be (i) repaired in compliance with the Standards and all federal, state and local laws and (ii) free from any and all defects (other than those expressly permitted by the Standards) in material and workmanship.

12. **Independent Contractor.** Operator is an independent contractor, and this Agreement does not create any agency, partnership, joint venture, employment or similar relationship between CHEP and Operator. Operator is not a warehouseman as defined in the Uniform Commercial Code or any similar law, and Operator hereby waives and disclaims any right to any lien or claim against the Equipment of CHEP, either at law or in equity.

13. **Ownership.** The ownership of the Equipment shall at all time remain with CHEP and neither the Operator nor any third person shall be entitled to possess, collect, sell or otherwise dispose of the Equipment in any way which is inconsistent with this Agreement or CHEP's ownership. The Operator agrees to execute one or more UCC-1 financial statements, which may be filed for information purposes with appropriate local officials to create constructive notice of CHEP's ownership. The Operator waives any rights or claims inconsistent with this Agreement.

14. **Assignment.** The Operator shall not assign, transfer or subcontract its rights or obligations under this Agreement. Any sale, merger, dissolution or other transaction which changes the effective operation or control of the Operator to a person or entity not a party to this Agreement, without CHEP's prior written consent, which consent may be withheld by CHEP for any reason or no reason, shall constitute a breach of this Agreement whereupon CHEP shall have the immediate right to terminate this Agreement.

15. **Notices.** Any notice to be served on either of the parties by the other shall be sent by certified mail, return receipt requested, addressed to the parties as set forth above, and shall be deemed to have been received by the addressee on the third day after mailing.

16. **Waiver.** Failure by CHEP to enforce any of the terms and conditions of this Agreement shall not be a waiver of them or of the right thereafter to enforce all terms and conditions of this Agreement.

17. **Exclusivity and Confidentiality.** Neither the Operator nor its affiliates will engage or participate in, either as a principal or agent, any business or operation consisting of the rental of equipment comparable to or competitive with the CHEP Equipment while this Agreement is in effect and, unless this Agreement is terminated by the Operator due to a breach by CHEP, for a period of 3 years after termination of the Agreement. In addition, the Operator acknowledges that all information relating to CHEP's business, including, without limitation, operational and pricing policies, products, product design, product movement, marketing and sales, strategic planning, manufacture, repair and replacement of Equipment, computer programs and records, customer lists and records is confidential and proprietary to CHEP ("Confidential Information"), and the Operator agrees not to disclose or otherwise use any Confidential Information either during the term of this Agreement (except for the purpose of this Agreement), or thereafter, without the written consent of CHEP, which consent may be withheld or denied in the sole and absolute discretion of CHEP.

18. **No Recourse.** In the event of any controversy or claim arising out of or relating to

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this Agreement, the breach hereof, or the transaction contemplated hereby, Operator shall look solely to the assets of CHEP and shall have no recourse against any other party, including, without limitation, any partner, officer, director, employee, agent or affiliate of CHEP or any shareholder, partner, officer director, employee, agent or affiliate of any of the foregoing.

19. **Entire Agreement.** The parties agree that this Agreement, together with any written policies, procedures and directives as may be issued by CHEP from time to time as contemplated hereunder, contains the whole agreement between the parties and supersedes any prior agreements between the parties whether written or oral. Each provision of this Agreement shall be interpreted on its own, and if any provision hereof shall be found unenforceable as written, such provision shall be enforced to the extent reasonable under the circumstances.

20. **Law.** This Agreement shall be governed by and interpreted in accordance with the law of Florida. The Operator hereby consents to the exclusive personal and subject matter jurisdiction of the federal and state courts of the State of Florida with respect to any proceedings arising from or relating to this Agreement, and hereby waives any defenses based on the lack of such jurisdiction. Venue of any action or proceeding for the enforcement or interpretation of this Agreement shall be in Orange County, Florida.

21. **Attorneys' Fees.** In the event of any legal action, including arbitration proceedings, seeking enforcement of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, and the costs of such proceedings, from the other party, including fees and costs associated with any appeal.

[Signatures on Following Page]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CHEP USA, a New York general partnership

\_\_\_\_\_  
DATE

By: \_\_\_\_\_  
Authorized signatory of the Partnership

\_\_\_\_\_  
Name and Title (Please Print)

HC-Wooden Pallets

2/15/04  
DATE

By: [Signature]  
Authorized signatory of the Corporation

[Signature]  
Name and Title (Please Print)



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**Exhibit A**

**Rates**

**CHEP Pallets:**

1. Handling charge of \$ .1288 per pallet.
2. Inspection charge of \$ .1350 per pallet.
3. Storage charge of \$ .0035 per pallet per day.

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Exhibit B  
Equipment Costs